distinguished colleague from California, ALAN CRANSTON, on the Senate side.

The full text of the statement by the CWA executive board is as follows:

THE RIGHT TO KNOW

Never, since 1787, has the right of the public to know about public business been under so strong and concerted an attack than during the present time. This is an attack on a principal guarantee of the Constitution.

A little at a time, the administration has resorted to broadside attacks on the right of the news media to analyze and criticize the operations of government. The administration seems to be following the line of the present military government of Greece, which nominally guarantees a "freedom of the press" but in fact cracks down on news media which "abuse" their "freedom."

The most sinister development in the United States is the attempt to compel persons engaged in newsgathering to reveal sources of information. The practical effect of such disclosure of sources would necessarily be to stifle free expression.

When the Constitution was adopted, there was wide controversy over the question of freedom of the press. At that time, various segments of the press were carrying on scurrilous attacks on public officials, even including George Washington. The Constitutional Convention of 1787 at first rejected a provision to guarantee inviolable freedom of the press. Subsequently, as a capstone of the Bill of Rights, the Convention provided for the free press, to help ensure against abuse of power by government.

The situation in the early 1970's has become so serious that the Congress is looking into legislation to define, once again, the doctrine that the free flow of information must be unrestricted. The Judiciary Committee of the House of Representatives and the Senate are hard at work on legislation to prohibit government agencies from compelling disclosure of source materials. The proposed bills run from total privilege of the newsgathering persons to a "qualified" privilege.

A major reason for the intense interest within the Congress for legislation to protect the media is a series of federal and state court decisions in the last 3 years. Newsgatherers have been summoned before grand juries to produce mental and written notes, still film negatives, and film and tape "outtakes" not used in broadcast programing. Some news media representatives have been incarcerated because they were protecting news sources; the reason offered by government for jailing of reporters has been the implication that justice was being obstructed.

The United States Supreme Court in June 1972 threw over longheld tradition and established precedent by its decision in *Branzburg* v. *Hayes*, thus deciding on a 5–4 vote that an investigative reporter must disclose to a grand jury information gathered in the course of his duties. The tradition and precedents date back to Thomas Jefferson, James Madison and Alexander Hamilton through the "Pentagon Papers" case against the New York Times in 1971. In all of those, the weight of decision had been toward untrammeled disclosure of information vital to the public's right to know about its business.

Among the many bills the Congress presently is examining on the subject of legal privilege for newsgatherers to protect sources and continue to report the public's business without harassment are those introduced by Representatives Ogden Reid and Jerome Waldie and Senator Alan Cranston. Congressman Reid's bill would provide for unqualified and total privilege for reporters, so that they might not be required to abridge the First Amendment's rights in proceedings before the Congress, federal courts and agencies. The Waldie-Cranston proposal would extend the unqualified privilege to reporters in all federal and state proceedings.

The Executive Board of the Communications Workers of America subscribes to the principles of the Reid, Waldie and Cranston proposals. This Board does not draw stringent distinctions between the Reid and the Waldie-Cranston proposals, since the basic right of news media must in the end be determined by the federal court system—which is, and must continue to be, governed by the United States Constitution as a result of the decisions taken by the Constitutional Convention of 1787.

The CWA Executive Board, moreover, condemns the trend toward stifling of information attempted by government at all levels by whatever pretext employed.

The CWA Executive Board urges the Congress to enact legislation for unqualified privilege in terms sufficiently clear that the declarations of the nation's founders in 1787 may be fully honored in the 1970's and beyond.

SHIP SUBSIDY UP 20 PERCENT

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 6, 1973

Mr. LEHMAN. Mr. Speaker, while social programs are faced with massive budget cutbacks, certain special interest subsidies are alive and prospering.

The President's budget proposes that we subsidize ship construction by $213 million—an increase of more than 20 percent in 1 year.

An increase in special-interest subsidies at a time when programs that help people are being closed down every day is a tragic example of our Nation's badly misaligned priorities.

As Congress works this year to reshape our national priorities, let us find a better use for the proposed $36 million increase in the ship construction subsidy.

SENATE—*Thursday, March 8, 1973*

The Senate met at 12 o'clock meridian and was called to order by Hon. ROBERT T. STAFFORD, a Senator from the State of Vermont.

PRAYER

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

Eternal God, our Creator and Redeemer, before Thee we acknowledge that Thou art holy and we are unholy, Thou art perfect and we are imperfect, Thou art pure and we are impure. In these Lenten days of penitence and renewal, may a new spirit be born in us and in all the people of this good land. Deliver us from all that obstructs the way of righteousness and truth. Deliver us from pride and prejudice, from the clash of class with class, or race with race, from hostility or mistreatment of our fellow citizens, from distrust of one another, from intemperate speech, the hot invective, the cruel epithet. Set our minds upon the vision of Thy kingdom and a better people in a more righteous land, that we may set forward the fulfillment of that kingdom, the law of which is love and the Ruler of which is the Lord of Life.

In His name who forgives and renews the humble and contrite of heart. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 8, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ROBERT T. STAFFORD, a Senator from the State of Vermont, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, informed the Senate that, pursuant to Public Law 301 of the 78th Congress, the chairman of the Committee on Merchant Marine and Fisheries has appointed Mr. DOWNING, Mr. ECKHARDT, and Mr. MOSHER as members of the Board of Visitors to the U.S. Merchant Marine Academy, for the year 1973, and Mrs. SULLIVAN has been appointed to serve as an ex officio member.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, March 6, 1973, be dispensed with.

The PRESIDING OFFICER (Mr. NUNN). Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

CAMBODIA

Mr. MANSFIELD. Mr. President, in the the latest issue of U.S. News & World

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Report, there is an article entitled "Cambodia . . . Still in Agony."

The article starts as follows:

Cambodia was the last of the Indo-Chinese nations to be drawn into war, and now it is doomed to be the last to find a way out.

When it does, the cost of a war the country tried for years to avoid may be higher, proportionately, than that paid by its neighbors—North and South Vietnam, and Laos.

Mr. President, I ask unanimous consent to have this article from the U.S. News & World Report, under date of March 12, 1973, printed in full in the RECORD.

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

CAMBODIA . . . STILL IN AGONY

PNOMPENH.—Cambodia was the last of the Indo-China nations to be drawn into war, and now it is doomed to be the last to find a way out.

When it does, the cost of a war the country tried for years to avoid may be higher, proportionately, than that paid by its neighbors—North and South Vietnam, and Laos.

In Saigon and Vientiane there is talk about an end to fighting, but here the mood hovers between desperation and fear of coming disaster.

Communist-led rebels dominate nearly three quarters of the country, either occupying it outright or moving freely about at will.

In recent weeks, a rebel offensive, described by some military observers as the biggest of the three-year-old war, has surged to within 10 miles of Pnompenh.

Almost all highways leading from the capital are cut or open only intermittently to convoy traffic, and the country's Mekong River lifeline to the outside world also is seriously threatened.

The American-equipped Cambodian Army—which the Government says numbers about 200,000 men—has shown improvement over the past year, but it has not mounted a sustained offensive since late 1971. Some soldiers still fight with spirit, yet military observers warn that a long string of defeats is seriously undermining morale and discipline.

The country's economy is a shambles, with corruption rampant and prices skyrocketing. It is almost completely dependent on U.S. military aid totaling nearly 200 million dollars a year and an additional 100 million dollars in economic assistance.

CHANCES FOR PEACE

Is a cease-fire in Cambodia likely? The odds are rated very slim at the moment, according to experts in Pnompenh, because the various factions in the conflict are so fragmented.

Ailing President Lon Nol's political party monopolizes the Government, with his brother, Lon Non, a power behind the throne. Strong American efforts to get the two leaders to broaden the Government's base and bring in non-Communist, but anti-Lon Nol, elements have been unsuccessful.

It's a similar story on the other side.

With only about 23,000 North Vietnamese in the country, fewer than 10,000 of them combat soldiers, most of the fighting is in the hands of Cambodian insurgents—the "Khmer Rouge." Their strength is estimated at between 30,000 and 40,000 men—trained, led or advised by the North Vietnamese.

But the Khmer Rouge is divided, and not all of its supporters are Communists. Some are anti-Lon Nol nationalists, others are royalists who support the former ruler, exiled Prince Norodom Sihanouk, and many are little more than bandits.

Observes one specialist on Indo-Chinese affairs:

"The only thing the rebels agree on is opposition to Lon Nol. The problem in negotiating with the rebels is that we do not even know who leads some of the many groups."

SIHANOUK'S ROLE

Another major unknown is the extent of Sihanouk's influence among the rebels. U.S. officials generally think he has few, if any, important supporters. On the other hand, there are French experts who insist he will be able to return to Cambodia as an uncrowned head of state, if not as chief of government.

The U.S. has relatively little power to impose a truce in Cambodia. Washington could cut off military and economic aid, but that would almost guarantee collapse of the Lon Nol regime. On the other side, Hanoi does not appear to have the decisive influence over Cambodian rebels that it had with its Viet Cong allies in South Vietnam and the Pathet Lao in Laos.

As most authorities on Indo-China see it, Cambodia's immediate future will be keyed more to fighting, political chaos, economic disruption—and less to a genuine search for peace.

WOUNDED KNEE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that an article published in the Christian Science Monitor on March 7, 1973, entitled "Getting Beyond Wounded Knee," be printed in the RECORD.

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

GETTING BEYOND WOUNDED KNEE

It is not easy to cut through the events at Wounded Knee, South Dakota, and reach a simple answer to general Indian discontent.

One can rightly be relieved that the militant Indian takeover of the hamlet is ending without a forceful invasion by federal or Indian authorities. Over-reaction to other kinds of demonstrations, on campuses or in the streets, in the past few years was often found to be the precipitating cause of violence. And one can regret that the Indians introduced arms to the demonstration. It can be argued that without an adequate threat of danger, of desperation, the issues the Indians wanted to present might not have gotten the attention they deserve. But the bearing of arms in disputes raised the issue also to another threshold of danger. The legal consequences for those involved could be grave.

It may be that the issue of Indian militance ultimately will have to be decided within the Indian community itself. It may be that the tension between armed militants other militants, and moderate Indians may continue just as it has within the American black community. It is clear that the Wounded Knee episode was as much about this kind of dispute over the nature of "red power" as it was about the Indians' dispute with white society.

In their dispute with white society, the Indians have lost unfairly time and again. White man's justice as much as white man's firepower ground them down.

The Indians' dispute is not just over the past—with awakening white society's conscience to such misdeeds as the original Wounded Knee massacre of 1890. American Indians continue to suffer the indignity of unequal treatment. Reservation land is still flooded against treaty terms for white society's power, and water demands. Their interests have not been represented adequately in Congress or the courts.

In conflict between Indian and white, the presumption has always been that the white man's civilization must predominate. It is ironic, of course, that there now is something of a renaissance among many Americans—in reaction to the environmental encroachments of industrial society—of what may loosely be called Indian values . . . that is, a sense of the integrity of a natural heritage and man's right to live in harmony with it.

But many of the Indians' grievances are more specific than a desire to live by the old ways. They have a point when they ask that a review be made by the Senate Committee on Intergovernmental Relations of Indian treatment by the Bureau of Indian Affairs, or that the Senate review whether the government has lived up to the terms of its 371 treaties with the Indians.

There is a danger that reviews would be used as a substitute for concrete action in settling future Indian claims. No one should be deluded into thinking that inquiries could make up for a lack of representative political power. After all, Indians account for only about 1 percent of the American population. American blacks make up a tenth of the population, and apart from their progress in the courts, consider the trouble they have had in getting federal representation.

But at least such formal review could begin to lay an objective framework for resolving future white man-Indian disputes, and help lift the problem above the dangerous conscience-stirring level represented by the return to Wounded Knee.

THE UNITED STATES AND SEATO

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a commentary written by Clayton Fritchey, entitled "Include the U.S. Out of SEATO" be printed in the RECORD.

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

[From the Chicago Tribune, Mar. 6, 1973]

INCLUDE THE U.S. OUT OF SEATO

(By Clayton Fritchey)

WASHINGTON.—Sen. Robert Byrd (D. W. Va.), is the assistant majority leader of the U.S. Senate. He is a capable politician. Hence, it is all the more astonishing to hear him make one of the most constructive of all Vietnamese post-ceasefire proposals.

He thinks it's time for us to withdraw from the Southeast Asia Treaty Organization—the mischievous SEATO that has meant nothing but trouble for the United States since former Secretary of State John Foster Dulles invented it almost 20 years ago to legalize American meddling in Asian affairs.

Sen. Byrd, stating it politely, says the treaty hasn't served U.S. interests. And he adds: "All SEATO has done is talk. The pact has no power to unite its members in efforts to maintain peace and security, and thus fails its basic purpose."

Actually, it has tempted the United States to disturb the peace rather than maintain it. So now is the time, following the lead of some of the treaty's other signatories, to get out—before it leads us into more Asian misadventures.

With possibly one or two exceptions, none of the other members of SEATO has ever had much use for the treaty. It has never really been what its name implies, for aside from Thailand, no Southeast Asian nation would join it. Britain and France reluctantly joined in order to humor Washington. Australia and New Zealand came in because they depend on the United States to protect them. Thailand and the Philippines are quasi-U.S. satel-

lites. Pakistan, at the time, was also one of our client states.

Altho Washington has for years invoked SEATO as legal authority for intervening in South Viet Nam, it should be noted that the Saigon government is not a signatory.

Indeed, the treaty doesn't even recognize the existence of a state of South Viet Nam, but only of a state of Viet Nam, which, under the 1954 Geneva peace agreement, meant Hanoi.

It wasn't until after the United States began sending in ground troops that former President Lyndon B. Johnson suddenly discovered [in 1966] that under SEATO we had to defend South Viet Nam.

"We are in Viet Nam," the late President proclaimed, "because the United States and our allies are committed to meet the common danger of aggression in Southeast Asia."

This was news to our allies. The other major signatories of the treaty—Britain, France, and Pakistan—have never recognized any obligation to help Saigon. Pakistan, in fact, has since withdrawn from SEATO. France is inactive.

The new prime minister of New Zealand, who feels SEATO has "atrophied," says, "We need an organization which brings countries together rather than separates them, as SEATO does." Australia also is close to withdrawal.

Sen. Byrd can render a real public service if he now goes on to show how the American people were deceived into thinking that SEATO imposed on them a sacred commitment to fight for South Viet Nam. That question ought to be clearly settled, so that it can never be exploited again.

The question first arose when the treaty was before the U.S. Senate in 1955 for ratification. The then chairman of the Foreign Relations Committee, Sen. Walter George, said, [with the approval of Secretary Dulles], "I cannot emphasize too strongly that we have no obligation to take positive measures of any kind. All we are obligated to do is consult together about it."

Dulles himself told the Senate, "We do not intend to dedicate any major elements of the U.S. military establishment to form an army of defense in this area. . ."

Yet, in the end, a willful President did just that—without consulting Congress, the public or even the other members of SEATO.

Before his election in 1968, Nixon described SEATO as a "somewhat anachronistic relic," while Henry Kissinger was calling it "moribund." Once in the White House, however, their criticism ceased.

Now that Nixon is disengaging from Viet Nam, it might be a good time for him to substitute for SEATO a policy he once enunciated in Manila. He said: "Peace in Asia cannot come from the United States. It must come from Asia. The peace of Asia, the governments of Asia—they are the ones who must lead the way to peace in Asia." Amen.

ORDER OF BUSINESS—INTRODUCTION OF BILLS

The PRESIDING OFFICER. The Senator from Montana is recognized.

(The remarks Senator MANSFIELD made at this point on the introduction of S. 1124, dealing with gun-crime laws, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER. Under the previous order, the Senator from Iowa is recognized.

(The remarks Senator HUGHES made at this point on the introduction of S. 1125, dealing with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the orders for the recognition of Mr. BELLMON and Mr. BUCKLEY be reversed.

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

Under the previous order, the Senator from New York (Mr. BUCKLEY) is recognized for not to exceed 15 minutes.

(The remarks Senator BUCKLEY made at this point on the introduction of S. 1126 and S. 1127 to amend titles 18 and 28, United States Code, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. NUNN) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, how much time does the Senator from New York have remaining?

The PRESIDING OFFICER. The Senator from New York has 10 minutes remaining.

Mr. ROBERT C. BYRD. I noted that the distinguished senior Senator from North Carolina (Mr. ERVIN) wanted to speak briefly.

Mr. ERVIN. Mr. President, I wanted to introduce a bill.

Mr. ROBERT C. BYRD. Will the Senator from New York yield a little time to the Senator from North Carolina?

Mr. BUCKLEY. Mr. President, I am delighted to yield.

(The remarks Senator ERVIN made at this point on the introduction of S. 1128, the Newsman's Privilege Act of 1973, and Senate Joint Resolution 72, dealing with the requirement for Federal officers and employees to inform the Congress are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the time allotted to the Senator from Oklahoma (Mr. BELLMON) may be transferred to the junior Senator from Michigan.

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

MEDICARE, MEDICAID, AND THE 1974 BUDGET

Mr. GRIFFIN. Mr. President, last Thursday the Senate was treated to a series of speeches concerning the present status and future of medicare and medicaid. The speeches were spiced with statistics calculated to alarm Senators and to panic the elderly of the Nation.

Those who expressed their disapproval of President Nixon's approach to the problem seemed almost to imply that the medicare and medicaid programs would be scrapped, and that the elderly will be denied medical care when they need it most.

This is not true. What are the facts?

THE FACTS OF THE SITUATION

President Nixon's 1974 budget schedules a massive 20-percent increase in the level of Federal spending for health, principally a $2.5 billion rise in medicare benefits. Yet, there are those who regard this as too little, since the increase would be even larger if President Nixon had proposed no changes in the medicare system.

If Congress rejects the changes which President Nixon proposes, then Federal health spending will be increased in fiscal 1974 by some $3 billion, instead of $2.5 billion. Obviously, medicare is an area where costs are spiraling. It is an area in which the President is seeking to achieve some measure of better control.

President Nixon is committed to improving medicare benefits; but he is also trying to improve the program and its administration at the same time. What are the changes the President is requesting?

Under existing law, a medicare patient pays $72 upon admission to a hospital. He pays nothing for the next 60 days of his stay; but thereafter his costs escalate rapidly.

Under President Nixon's proposal, a patient would pay the hospital's regular room and board rate for his first day as a patient, plus 10 percent of any additional charges, and only 10 percent of the total daily bill thereafter. his cost would be geared to the going rate. It will also be geared more closely to living costs in his area.

Importantly, the President's proposals are far better than existing law for patients with serious illnesses that keep them in hospitals and nursing homes over extended periods. At about 94 days, using the national average cost figure, the patient will be ahead under the new system. At the end of 150 days, his savings could amount to approximately $1,500.

In other words, a long-term serious illness will cost much less under the President's proposal than under the present system.

In short, the President is seeking to reform medicaid and medicare, to reduce financial burdens for aged and disabled patients who experience long hospital stays, to improve program management, and to increase incentives for the most effective use of services.

These are the facts, Mr. President.

THE COST TO THE TAXPAYERS

I indicated earlier that Federal spending for medicare only is scheduled to increase in fiscal 1974 by $2.5 billion, taking President Nixon's proposed changes into account. Overall, outlays for Federal health programs are estimated at $21.7 billion in fiscal 1974, an increase of $3.7 billion—or 21 percent—from 1973.

Under President Nixon's budget as submitted, health programs will account for 8.1 percent of the total Federal budget in fiscal 1974.

Outlays are expected to rise to $25.2 billion in 1975.

These are health programs, Mr. President. If we total all health expenditures, including those of the Defense Department and the Veterans' Administration, as the Special Analysis of the Budget does on page 135, then we find the Federal Government spending $30.3 billion in health outlays for fiscal year 1974.

To translate this, $30.3 billion for health alone is more than we spent last year on:

The Department of Agriculture;
The Department of Commerce;
The Department of Housing and Urban Development;
The Department of Interior;
The Department of Justice;
The Department of State;
The Atomic Energy Commission;
The Environmental Protection Agency; and NASA, all put together.

Again, Mr. President, nearly 5 million additional poor, aged, and disabled persons will benefit through substantially expanded financial support for health services. Let me emphasize, Mr. President, that this is 5 million more people than last year—5 million more than ever before.

These, Mr. President, are the valid statistics concerning what the Federal Government under President Nixon is attempting to do to improve the health and safety of our people. They are from the budget itself.

As I have indicated, these statistics show absolutely the reverse of the attitude implied by the partisan political attack made on the President last week. This administration is not the harsh and disinterested group that its opponents would have us believe. It is difficult to view the series of speeches on Thursday, all with the same monotonous refrain and virtually devoid of facts, as anything but an orchestrated, cynical polemic seeking to embarrass the administration.

But this administration does not want to squander the public purse. It does not want to waste the taxpayers' moneys. The President and those who are charged with developing policy for this administration seek an efficient and effective system of health care for those who need it. For this, the President is being criticized.

THE POLITICS OF THE ACCUSATIONS

Since there was little or no reference to the benefits of those facing the tragedy of long term illness, one wonders if the real concern of those participating in last Thursday's clinic was the dollar and cents increase in costs proposed for some persons using hospital facilities under medicare. Or was it something else?

What most of the public, and the doctors as well, have been demanding of late is some sort of national health insurance, particularly because of the high cost of long term illnesses.

Yet, these Democratic critics ignore completely the fact that the changes proposed by the administration would give more benefits to those over 65 who have the misfortune to be subject to long term, catastrophic illness.

THE EXPERIENCE OF MEDICARE

Medicare was enacted in 1965. Thereafter, hospital use and therefore payments steadily outstripped expectations. Harry Schwartz, member of the editorial board of the New York Times, notes in his excellent book, "The Case for American Medicine," (McKay, 1972):

". . . a lesson was deeply burned into Congressional consciousness: No major benefits can be extended to the population without very careful consideration of the costs involved, including those costs likely to be generated by additional inflationary pressure on the medical system.

He points out that between 1967 and 1971 the number of hospital admissions per thousand persons enrolled under medicare increased from 266 to 309, or better than 15 percent; that between 1967 and 1969 the total number of hospital days paid for by medicare jumped almost 25 percent.

Medicare officials had to demand tighter control over hospital utilization. While medicare hospital admissions continued to increase, the average stay was cut somewhat from a total of 81 million days of hospital care in fiscal year 1969 to 78 million days in fiscal year 1971.

Congress, a Democratic Congress, was aware of these problems, and seemed to accept the necessity of tighter control over hospital use.

But, Mr. Schwartz raises a hard question at this point:

Was all this vast amount of hospitalization necessary? Most of it undoubtedly was necessary and justified. But there have been significant abuses too.

He points out that hospitals rather than convalescent homes have been more and more used for extended care and recovery for medicare patients. Mr. Schwartz notes that this is not a medical but a social problem, but, nevertheless, as he points out, the availability of seemingly free or cheap hospital care encourages the people involved to use the medicare mechanism to meet the need.

Mr. Schwartz sees as another source of concern the sharp increase in the number of admissions per 1,000 persons 65 years and over.

The figure is astounding: A 40-percent increase in the rate of hospital admissions in less than a decade—that is from the mid-1960's to the early 1970's. Says Mr. Schwartz:

It is hard to believe that older Americans needed hospitalization 40 percent more frequently in the early 1970's than they did in the mid 1960's.

He does not accuse these people of wrong-doing, it should be noted. They are simply responding to a technicality in the law which gives them an advantage. They cannot be blamed. But, on the other hand, if some sort of minimum check is not put on execessive hospital usage, the entire medical delivery system will be endangered. We are already faced with the specter of old people refusing further hospitalization and going home to die after their 60 days have expired, because they refuse to place the otherwise increasingly huge financial burden on their children.

Thus, contrary to the critics we have heard here, what the Nixon administration is proposing is a program of reforms designed to save medicare.

Not hurt it, but save it.

I suggest that our concern may best be directed toward either how to bring medicare costs under better control on the one hand, or face up to even bigger social security tax increases than the public already is paying on the other hand.

Mr. President, I ask unanimous consent that an editorial from the New York Times of January 14, 1973, entitled "Medicarelessness," be inserted in the RECORD.

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

MEDICARELESSNESS

Congress, which voted last year to extend Medicare benefits to patients needing renal dialysis or kidney transplants, is learning to its dismay that in roughly a decade this provision may require annual expenditures of a billion dollars. Even so knowledgeable a Congressional specialist on health problems as Representative Paul G. Rogers of Florida has admitted publicly that "we in Congress had no idea that costs would be anywhere near that large."

This belated discovery is reminiscent of an earlier chapter in the growing history of Congressional fumbling with health matters. Much sad experience since the mid-1960's has revealed that the Congressmen who originally enacted Medicare and Medicaid had little understanding of the huge fiscal and other consequences that would flow from their action. One might have thought that these blunders might have encouraged caution, but now the record shows otherwise.

The point is not that victims of renal disease are unworthy of help, but that Government resources have to be allocated to meeting many needs. If a billion dollars has to go to prolonging the lives of thousands of kidney disease victims, that is a billion dollars that cannot go to eradicating slums, improving education or finding a cure for cancer. In a period when Congress is rightly fighting to protect its constitutional powers against White House usurpation, society has a right to expect that the legislators will understand what they are doing and know the magnitude of the commitment they are making when they pass special interest legislation, whether for kidney disease sufferers or anybody else.

ORDER OF BUSINESS

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that that order be vacated.

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

Under the previous order, the Senator from Virginia is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I be recognized under my own order at this time, without prejudice to the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.).

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

The Senator from West Virginia is recognized for 15 minutes.

PEARL S. BUCK

Mr. ROBERT C. BYRD. Mr. President, this past Tuesday, West Virginia lost one of its most illustrious native daughters, America lost one of its greatest writers, and the world lost one of its finest human beings.

During her 80 years, Pearl Buck—who was born Pearl Sydenstricker in Hillsboro, W. Va., on July 26, 1892—achieved great fame and considerable wealth. Her second and best-known novel, "The Good Earth," led to her winning both the Pulitzer Prize and Nobel Prize for literature. And her other novels with Chinese settings, including "Peony" in 1948 and "Kinfolk" in 1949, helped establish her as one of the world's foremost authorities on China and its people.

But she was more than just a China writer. Pearl Buck was also a teacher—one semester at her alma mater, Randolph-Macon, and 2 years each at Nanking, Southeastern, and Chung Yang Universities in China. And she was a keen observer and chronicler of American life, as well. Under the pseudonym John Sedges, Miss Buck wrote five novels set in the United States—"The Townsman," "The Long Love," "Voices in the House," "The Angry Wife," and "Bright Possession."

If these were her only accomplishments, they would provide reason enough for us to mourn her passing. But Miss Buck measured even larger in humanitarian terms than she did in literary terms.

The author had a deep concern and love for children throughout her life, and the fame and fortune she gained from her writings enabled her to bring happiness to the lives of those less fortunate than herself.

In 1949 she founded Welcome House, an adoption agency for Amerasian children; and, in 1964, she organized the Pearl S. Buck Foundation to take over the expanded duties of the agencies. Three years after the foundation was established, Miss Buck signed over her entire estate—more than $7 million—so that the work of caring for Amerasian children could go on. This gesture, and the work accomplished through her generosity, could prove to be more lasting monuments to Pearl S. Buck than any of her novels.

Mr. President, most people do not realize that Pearl Buck was also a poet—albeit an unpublished one. Yet, one of her unpublished verses, entitled "Essence," gives the most definitive clue to her character and to the philosophy that helped mold her exemplary life:

I give you the books I've made,
Body and soul bled and flayed.
Yet the essence they contain
In one poem is made plain,
In one poem is made clear;
On this earth,
Though far or near,
Without love there's only fear.

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

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Vermont.

Mr. STAFFORD. Mr. President, I would like to be associated with the remarks which the distinguished Senator from West Virginia has just delivered to the Senate concerning the death of Pearl S. Buck.

Interestingly enough, Miss Buck was a resident of Danby, Vt., which is in my home county in Vermont at the time of her death.

Another of her monuments to her industry and to her feelings for America was the fact that she had gone a long way toward restoring the original buildings of the little town of Danby, which date to prerevolutionary times, to the shape they were in at that time. She did a great deal for the people of this community in Vermont in the course of the restoration of the buildings.

So, we in Vermont loved her as did the people in West Virginia and all throughout the country.

We shall miss her, and we honor her memory.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Vermont (Mr. STAFFORD) for taking note of the humanitarian activities which Miss Buck continued to pursue while residing in his State. This was typical of her.

I appreciate very much the comments that have been made by my friend, the Senator from Vermont.

PHASE III CONTROLS AND THE PROBLEM OF SHARPLY RISING FOOD PRICES

Mr. ROBERT C. BYRD. Mr. President, in the early part of January the U.S. Department of Labor made the startling announcement that wholesale prices in general—measured in terms of the wholesale price index—had risen by a seasonally adjusted rate 1.6 percent during the month of December—marking the sharpest month-to-month rise in wholesale prices in 21 years. Translated to an annual rate, this amounted to a 19.2 percent increase in prices. For 1972 as a whole, this extraordinary rise in prices brought the inflation rate in wholesale prices to a level of 6.5 percent, which was more than double the goal set by the administration's anti-inflation program for 1972.

Despite this development, the Nixon administration, to the surprise of most Americans, including myself, announced on January 11 of this year that most sectors of the economy subject to mandatory wage and price controls under phase II would be placed under a voluntary or self-administering system of controls. The only areas which would remain under phase II type mandatory controls would be the food, health, and construction sectors of the economy.

Many students of stabilization policy contend that this action by the Nixon administration was premature. Based on developments since the beginning of this year, I find myself in general agreement with this criticism. My reservations about the dumping of phase II controls at this time stem largely from my deep concern about the behavior of food prices which have been a source of grave concern and irritation to all consumers in recent months. Of particular concern to me is the effect that rising food prices are having on the purchasing power of the average wage earner and those Americans living on relatively fixed incomes.

At the retail level we find, for example, that food prices in general—as measured by the consumer price index—have risen by close to 24 percent—or 4.3 percent compounded annually—since 1967. Expressed in dollar terms, this means that the same market basket of food items purchased for $10 in 1967 costs the American consumer $12.40 today—representing a loss of purchasing power of $2.40.

When we observe, in particular, movements in consumer prices during the second half of 1972—June–December 1972—we find that prices overall increased by a seasonally adjusted annual rate of 3.7 percent which substantially exceeded the 2–3 percent inflation rate sought by the Nixon Administration under phase II controls. Most of this increase was due, of course, to a 6.1-percent increase in food prices, which was more than double the increase recorded in the same period in 1971 (2.9 percent). This increase was due largely to an 11-percent increase in prices for meats, poultry, and fish and a 11.4-percent increase in fruit and vegetable prices.

A study of market conditions during the second half of 1972 shows that these sharp increases in food prices were due to a number of factors: bad weather conditions, heavy consumer demand for most food items, increased production costs—particularly in the case of livestock—and a sharp rise in U.S. grain exports which served to tighten supply conditions in grain markets at home.

Under the phase III stabilization program, the Nixon Administration has already taken a number of actions which it hopes will improve supply conditions in food markets and thereby reduce the rate of inflation in food prices. These include:

First, a comprehensive review of agricultural policies to determine what adjustments, if any, should be made to encourage further increases in farm production—particularly in those areas experiencing shortages;

Second, the sale of all Government-owned stocks of grain, except for emergency reserves, this spring in the hope that larger supplies will curb the present spiral in grain prices;

Third, the cancellation of quotas on meat imports for 1973;

Fourth, the elimination of all remaining export subsidies for lard, broilers and flour;

Fifth, increased acreage allotments for the production of feed grains; and

Sixth, an increase in acreage to be used by livestock producers for the year-around grazing of livestock.

These steps are indeed welcome. However, we should not overlook the fact that many of these actions could and should have been taken many months ago. You will recall, Mr. President, that skyrocketing grocery prices during the early part of last year brought a storm of protest from American consumers. Consequently, many critics of the administration's anti-inflation efforts argued that immediate steps be taken to ease tight supply conditions in food markets and thus to ease the upward pressure on prices. Others argued that prices of raw agricultural commodities, which remained uncontrolled up to that time, should be made subject to economic controls. The Nixon administration rejected such advice, expressing confidence that the phase II stabilization program would effectively control wholesale and retail food prices. However, history has shown that phase II failed to do this. Instead, we have had to contend with a virtual runaway inflation in food prices since mid-1972.

Despite the recent flurry of administration actions to increase farm production, it appears at this stage that food prices—given current administration anti-inflation policies—will continue their sharp climb through 1973. One reaches such a conclusion based on the findings of two government reports released in the past several days. In a report issued on February 13, the U.S. Department of Agriculture projects that 1973 food prices at the retail level will average 6 to 6.5 percent above 1972 levels. This would mark the sharpest 1-year increase in 22 years, with most of this gain resulting from record high meat prices. A second report released on February 15 by the U.S. Department of Labor shows that wholesale food prices during January of this year increased at an annual rate of 39.6 percent. This exceeded the 26.4 percent rate of increase in December and was the sharpest rise since 1951, the worst year of the Korean war inflation. The effects of the large December increase in farm and food prices is already being felt in our nation's supermarkets, and coupled with the sharp increase in prices during January, we can certainly expect these back-to-back increases in wholesale prices to cause continued sharp increases in retail food prices over the next several months.

Although price and pay adjustments by manufacturers, service organizations, wholesalers and retailers in the food industry are subject to mandatory rules under the phase III stabilization program, increased costs due to higher prices of raw agricultural commodities, which are exempt from economic controls, can be simply passed on to the consumer in higher prices. Hence, unless the nonfarm portion of the food industry can absorb these higher farm prices, which is highly unlikely under current economic conditions, there is no way of controlling the inflationary effects of spiraling farm prices under the phase III program, as presently structured. Thus, short of placing a freeze on raw agricultural commodities and at the same time rationing those food items in short supply, we can only hope for a marked improvement in supply conditions in the nation's agricultural markets. If supply can be increased to where it can be brought into better balance with present demand levels, we can hope for an improvement in the food price situation. Otherwise we can look forward to a continuation of runaway inflation in food prices for some time to come. Obviously, the American consumer, who spends on the average close to 16 percent of his take-home pay for food, will not stand for this much longer.

In addition to the problem of food prices, there are difficulties facing the nonfarm sector of the economy which could serve to intensify inflationary pressures during the rest of 1973, a major year for labor negotiations. Nearly twice as many workers will be involved in 700 or so union contracts slated for negotiation during 1973. This will involve the interests of 4.5 million wage earners, compared to 2.8 million workers involved in major settlements in 1972. With labor markets being much tighter than they were a year ago, and because of the effects of higher food prices on worker food budgets, most economists expect these conditions to force a rise in worker compensation which will exceed the 6-percent gain recorded in 1972. Moreover, there is widespread agreement among economic forecasters that productivity this year will not rise as rapidly as it did in 1972. Consequently, should gains in compensation substantially exceed increases in productivity during the remainder of 1973, this could cause a renewal of serious inflation in the nonfarm sector of the economy. This coupled with anticipation of continued sharp increases in food prices could therefore cause consumer prices in general to rise sharply—exceeding the rate of inflation experienced in 1972 when wage and price controls were being applied more rigorously to the economy.

Given these prospects, Mr. President, I am not at all convinced that the phase III program, as presently structured, can bring a halt to serious inflation in 1973. However, I am firmly convinced that the patience of the American people is reaching the breaking point. They do not want to see the purchasing power of their food dollar reduced by 6 percent in 1973—bringing the total decline in the value of their food dollar to 30 cents since 1967. They do not want to see a resumption of sharp increases in the prices of nonfood items. Let us not forget that we have suffered through 6 long years of serious inflation.

The continuing food price dilemma supports what I have said on previous occasions—namely, that the administration acted prematurely in lifting the phase II controls. Those controls never covered raw agricultural products, perhaps because prices in the food sector of the economy are the most difficult to control. But as long as there is going to be difficulty in controlling food prices, then it is essential to keep other sectors of the economy in line—and, given the rising costs of food and the strains placed on the budgets of the average taxpayers, it is just as essential that special efforts be made to stop the uncontrolled spiral of food prices.

Congress has given the President blanket powers to control prices in all sectors of the economy. I urge that the administration move to restore phase II controls, perhaps on a more selective basis than before, and with strong consideration being given to dealing with the food sector of the economy.

QUORUM CALL

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

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. HARRY F. BYRD, JR. 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 PRESIDING OFFICER. Under the previous order, the senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized for not to exceed 15 minutes.

VISIT TO THE CAPITAL BY RESIDENTS OF HENRICO AND CHESTERFIELD COUNTIES, VA.

Mr. HARRY F. BYRD, JR. Mr. President, today nearly 100 citizens from Henrico and Chesterfield Counties, in the State of Virginia, are in the Nation's Capital. They are here because of their deep interest and their deep concern about the compulsory busing of schoolchildren in order to create an artificial racial balance.

I know these people very well. They are a splendid group. They, and many others like them, came to the Nation's Capital last year. Some came many times. Many of them came through a blinding snowstorm last year in a 3,000-car caravan, in an effort to show the Nation's Congress that the private citizens of our country, the mothers and fathers of the schoolchildren, are deeply concerned about the forced and compulsory busing of their children.

These people from Henrico and Chesterfield Counties believe in the neighborhood concept for schools. The senior Senator from Virginia strongly favors the neighborhood concept. I think it is democracy in action when these young men and women take time from their businesses, from their work, and from their homes to come to Washington to make known their views and to attempt to encourage Members of Congress to take action on legislation now before it, dealing with our public schools.

Our schools are vitally important to the people of the Nation. Education becomes more and more important all the time. Neighborhood schools are a community, to a considerable extent, built around neighborhood schools. What some of the courts are attempting to do to the people of our Nation is clearly wrong.

I am glad to note in these remarks in the Senate today that a considerable group of Virginians are in Washington at this time to make their views known on this very important matter.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has approximately 12 minutes.

FEDERAL FINANCES AND THE DOLLAR

Mr. HARRY F. BYRD, JR. Mr. President, the American dollar continues to deteriorate in value.

Formally, by Presidential action it has been devalued twice within 14 months. Before the Senate Finance Committee yesterday, Under Secretary of Treasury Volcker termed devaluation "radical actions."

I do not oppose formal devaluation as it officially reflects what already has occurred; namely, a deterioration in value.

Devaluation in itself solves very little, as Secretary Volcker conceded under questioning Wednesday.

President Nixon says there will be further devaluation. He blames the latest run on the dollar in foreign markets on "speculators."

Whether there will be further devaluation remains to be seen. Foreign governments already, within the past several days, are calling on the United States to protect the dollar.

As to speculators being the cause of the problem, undoubtedly speculators play a part. But as private persons they have a limited bankroll. The real damage has been done by central bankers of various foreign nations and it results from a continuing and increasing lack of confidence in the American dollar.

This in turn results from the spending spree—the heavy deficit financing—of the Federal Government.

Using figures supplied by the Office of Management and Budget and the Treasury Department, the Federal funds deficit for the 5-year period ending June 30, 1974, will exceed $130 billion. Never before in history has this country run such smashing deficits—except during World War II when we had 12 million men in the military services and were fighting a war in Europe and another war in the Pacific.

Foreign governments, foreign bankers, speculators, multi-national businesses—all see clearly what the American people and the American Government seem blind to, namely, the Federal Government's desperately bad financial situation.

The interest on the national debt has doubled during the past 8 years. The taxpayers now must finance an annual interest cost of $26 billion.

To put it another way, of every personal and corporate income tax dollar paid into the Federal Treasury, 17 cents goes to pay the interest on the national debt.

During the past 20 years the Federal Government has balanced its Federal funds budget only 3 times: 1956, 1957, and 1960.

In other words, the Federal Government has run large deficits for the past 14 consecutive years beginning in 1961.

The Federal funds deficit for the current fiscal year is estimated by the Treasury Department to be $34 billion. It estimates next year's deficit at $28 billion.

Fifteen years ago our Government had total reserve assets of $24 billion and its liquid liabilities to foreigners totaled $16 billion.

Today, our reserve assets are down to $13 billion and our liquid liabilities to foreigners now totals a whopping $79 billion, plus $3.7 billion in nonliquid liabilities to foreign official agencies.

For the past 2 years the United States has run a trade deficit, the first in the century; and our balance-of-payments deficit for 1971 and 1972 total $41 billion.

There is just cause for lack of confidence in the American dollar.

We are not going to solve our international monetary problem in my judgment, until we solve our own financial problem at home, until we put the Federal Government's financial house in order. This is not being done. Indeed, the figures show that the situation has worsened.

Mr. President, I have prepared three tables: "Receipts and Expenditures for Fiscal Years 1968 Through 1974"; "Deficits in Federal Funds and Interest on the National Debt Including the Years 1955 Through 1974"; and "U.S. Gold Holdings, Total Reserve Assets and Liquid Liabilities to Foreigners." I ask unanimous consent to have these tables printed in the RECORD.

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

RECEIPTS AND EXPENDITURES FOR FISCAL YEARS 1968 THROUGH 1974

	Fiscal year—						
	1968	1969	1970	1971	1972	1973	1974 [1]
Receipts in billions:							
Individual income taxes	$69.0	$87.0	$90.0	$86.0	$95.0	$99.0	$112.0
Corporate income taxes	29.0	37.0	33.0	27.0	32.0	34.0	37.0
Total	98.0	124.0	123.0	113.0	126.0	133.0	149.0
Excise taxes (excluding highway)	10.0	11.0	10.3	10.5	9.1	9.4	9.6
Estate and gift	3.0	3.5	3.6	3.7	5.2	4.6	5.0
Customs	2.0	2.3	2.4	2.6	3.2	3.0	3.3
Miscellaneous	2.5	3.0	3.4	3.9	3.5	4.0	4.1
Total Federal fund receipts	116.0	143.0	143.0	134.0	149.0	154.0	171.0
Trust funds (social security, retirement, highway)	38.0	44.0	51.0	54.0	60.0	71.0	84.0
Total	154.0	188.0	194.0	188.0	209.0	225.0	256.0
Expenditures in billions:							
Federal funds	143.0	149.0	156.0	164.0	178.0	188.0	199.0
Trust funds	36.0	36.0	40.0	48.0	54.0	62.0	70.0
Total	179.0	185.0	196.0	212.0	232.0	250.0	269.0
Unified budget surplus (+) or deficit (−)	−25.0	+3.1	−2.0	−24.0	−23.0	−25.0	−13.0
Federal funds deficit	−27.0	−6.0	−13.0	−30.0	−29.0	−34.0	−28.0

[1] Estimated figures.

DEFICITS IN FEDERAL FUNDS AND INTEREST ON THE NATIONAL DEBT, 1955–74, INCLUSIVE

[In billions of dollars]

	Receipts	Outlays	Surplus (+) or deficit (−)	Debt interest
1955	58.1	62.3	−4.2	6.4
1956	65.4	63.8	+1.6	6.8
1957	68.8	67.1	+1.7	7.3
1958	66.6	69.7	−3.1	7.8
1959	65.8	77.0	−11.2	7.8
1960	75.7	74.9	+.8	9.5
1961	75.2	79.3	−4.1	9.3
1962	79.7	86.6	−6.9	9.5
1963	83.6	90.1	−6.5	10.3
1964	87.2	95.8	−8.6	10.7
1965	90.9	94.8	−3.9	10.3
1966	101.4	106.5	−5.1	12.0
1967	111.8	126.8	−15.0	13.4
1968	114.7	143.1	−28.4	14.6
1969	143.3	148.8	−5.5	16.6
1970	143.2	156.3	−13.1	19.3
1971	133.7	163.7	−30.0	21.0
1972	148.8	178.0	−29.2	21.8
1973 [1]	154.3	188.4	−34.1	24.2
1974 [1]	171.3	199.1	−27.8	26.1
20-year total	2,039.5	2,272.1	232.6	264.7

[1] Estimated figures.

Source: Office of Management and Budget and Treasury Department.

U.S. GOLD HOLDINGS, TOTAL RESERVE ASSETS AND LIQUID LIABILITIES TO FOREIGNERS (SELECTED PERIODS)

[In billions of dollars]

	Gold holdings	Total assets	Liquid liabilities
End of World War II	20.1	20.1	6.9
Dec. 31, 1957	22.8	24.8	15.8
Dec. 31, 1970	10.7	14.5	43.3
Dec. 31, 1971	10.2	12.2	64.2
Dec. 31, 1972	10.5	13.2	79.0

Source: U.S. Treasury Department.

ORDER OF BUSINESS

Mr. HARRY F. BYRD, JR. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. NUNN). The Senator has approximately 6 minutes remaining.

Mr. HARRY F. BYRD, JR. I thank the Chair.

ONE HUNDREDTH BIRTHDAY ANNIVERSARY FOR E. K. GAYLORD, NEWSPAPER PUBLISHER

Mr. HARRY F. BYRD, JR. Mr. President, a remarkable newspaper publisher in Oklahoma City, Okla., became 100 years old this past Monday. He is E. K. Gaylord, who is still active in the publishing business.

He is an extraordinary man. I have known him for many years. He still continues his daily activities as a publisher of two Oklahoma newspapers. He is beloved by the entire newspaper community throughout this Nation.

Mr. President, I have heard the two distinguished Senators from Oklahoma (Mr. BELLMON and Mr. BARTLETT) speak frequently and affectionately about Mr. Gaylord. Only a few days ago, they spoke in tribute to him, and I want to join them today in extending my congratulations to this uncommon individual.

On March 3, 1973, in the Rochester, N.Y., Times-Union, a signed editorial written by Paul Miller entitled "E. K. Gaylord Nears 100th Birthday, Still Active in Publishing, Other Fields," was published. Mr. Miller is also chairman of the board of the Associated Press, the world's largest news gathering organization and chairman and chief executive officer for the 53 Gannett newspapers. He is one of the ablest men in the newspaper business. He wrote this appraisal of Mr. Gaylord as Mr. Gaylord neared his 100th birthday.

I ask unanimous consent to have the editorial printed in the RECORD.

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

E. K. GAYLORD NEARS 100TH BIRTHDAY, STILL ACTIVE IN PUBLISHING, OTHER FIELDS

(By Paul Miller)

Twenty years ago, I was walking back to the Waldorf from the RCA building in New York City with E. K. Gaylord, head of the Oklahoma Publishing Co. of Oklahoma City. He was stepping briskly along. I was trying to keep up. We had been to a color television demonstration.

I said, "E. K., how do you do it? I mean stay on the go the way you do."

He said, "Paul, within 20 or 25 years there will be as many people active at 100 as there are now at 80."

It occurred to me then that Edward King Gaylord would be one of those proving his point. And so he is. Last night in Oklahoma City hundreds of friends and associates and admirers from near and far gathered to toast this remarkable man. He will be 100 on Monday. He continues "stepping briskly along" as the active head of major publishing, broadcasting and related enterprises.

The New York sidewalk exchange with Mr. Gaylord has been recounted in at least three Gaylord testimonial talks in the years since, and will be recounted again in the future—if I last.

STIMULATING CHANGES

Well, how does he do it?

You won't enjoy the answer if, like most of us, you are short on willpower where it counts—in dining rooms.

Slight of build and wiry, he eats well but sparingly, never was known to take an alcoholic drink, doesn't smoke and never rides anywhere unless it's too far to walk.

He is stimulated by word of new and better ways of doing things. He couldn't wait to get color TV into his own station at Oklahoma City. And that was one typical example of his eagerness to apply the new after seeing the demonstration when color TV was in its infancy.

Another: He became a charter subscriber, one of 25 among U.S. publishers to help underwrite inauguration of pictures-by-wire when The Associated Press first offered that revolutionary system in 1935.

VISIONS OF GOOD

As a boy, he learned to discipline himself before most kids are old enough to join the Boy Scouts. He was working at odd jobs at age 10 or 11. He was part owner of a small newspaper not long after reaching voting age.

Like Frank Gannett, founder of the Gannett group of newspapers, and indeed like many others in our field, E. K. Gaylord was attracted to newspaper in part by visions "of the good that they can do."

Four years before Oklahoma became a state, in 1907, he became business manager of the struggling Oklahoma City Daily Oklahoman, buying in with borrowed money. He had been attracted to the frontier town by exaggerated reports of "opportunities" in that new territory. He was prepared to work any hours and accept any sacrifices. And he did.

Well, all this and much, much more was reviewed in detail at last night's big testimonial dinner by E. K. Gaylord's peers and some of his former employes—I, for one, was his University of Oklahoma campus correspondent at $4 a column for two years at the beginning of the Depression.

He helped lead the fight that won Oklahoma City the state capital. And that was only a start. An Oklahoma City observer could not recall "any significant local development in my lifetime that Mr. Gaylord hasn't had a hand in."

NEXT TESTIMONIAL

The committee didn't have the easiest job when it called on E. K. some weeks ago to persuade him to sanction this latest testimonial. One can appreciate why. He wouldn't hear a thing that he hadn't heard or read about himself time without number. And his modest closing acknowledgment and expression of appreciation also would be just about what he's said at gatherings before.

But one can imagine he made good use of the time during our speeches—seeming to pay heed but perhaps thinking about new projects and proposals for his newspapers, or for his television and radio stations, or for what is now a major regional truck line which he started only to get better newspaper delivery around the state.

Some of the rest of us were making a mental note to once more place our remarks on file. They will be basically as appropriate at the next testimonial dinner to E. K., say in five, 10 or 20 years.

But they'll need updating. We don't think about saluting Mr. Gaylord because of his years. It's because of what he DOES with 'em. And goes right on doing year after year.

Mr. NUNN. Mr. President, I should like to comment briefly on the excellent remarks of the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) concerning Federal finances and the dollar.

We all know we face a crucial situation regarding foreign trade and our balance of payments. The distinguished Senator from Virginia has outlined, in his usual thorough and precise fashion, the nature of the problem. He has gone right to the heart of it.

What the Senate and Congress and the executive branch must recognize is that continued Federal deficits have undermined not only our own people here in this Nation, but have also played a major role in the current crisis concerning the lack of confidence in the American dollar. The Senator from Virginia has clearly demonstrated that our Nation must face reality about our crucial monetary problems in order to restore confidence in our ability to control inflation and also to restore confidence in the dollar.

Also, I should like to commend the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) for his excellent remarks concerning the intolerable situation imposed by the Federal courts on the question of forced busing to achieve an artificial racial balance.

We in Georgia are aware of this problem. There are many city and rural school systems in the State of Georgia which are already confronted with an educational crisis caused by the arbitrary orders of the Federal court.

Many places in Georgia have experienced severe disruptions in the educational systems because of court decisions which have no relation whatsoever to education but are strictly someone's sociological ideas about what should take place.

The black and white people of Georgia have recently, I think, joined as never before in opposing this kind of arbitrary action on the part of the Federal judiciary.

I should also like to comment on the constituents of the Senator from Virginia who are here today in the Capitol, who have expressed their opinions about this intolerable situation, and who in a clear, concise, and commonsense fashion are here at our Nation's Capitol expressing their support for constitutional amendments which the Senator from Virginia is supporting and which I am supporting—which we are both cosponsoring.

I commend the constituents of the Senator from Virginia for their polite attitude. They came by my office and expressed their opinions and asked me for mine. They did so in a polite and orderly way.

This is the kind of action, the kind of constituent participation in the government process that is indispensable to Senators in learning the viewpoints of our constituents.

I commend both the Senator from Virginia and his constituents for bringing this important matter to the attention of the Senate today, and I join with the Judiciary Committee and the Senate as a whole to deal with these constitutional amendments promptly.

Mr. HARRY F. BYRD, JR. Mr. President, I am very grateful to my fine friend, the able Senator from Georgia, for his most generous comments. I particularly appreciate his statement in regard to the Virginians who came to his office this morning. Senator Nunn told the Senate how well he was impressed with them and how nicely they handled the matter which they came to discuss with him.

I am grateful to the Senator from Georgia, and I join him in urging the Senate to take action—to take action soon—in regard to legislation outlawing the compulsory busing of children to achieve an artificial racial balance.

Proposed legislation presented to the Senate last year at one point lost by only one vote. I think the people of this country want some action from Congress in this matter. I think it is time that legislation is enacted and that a constitutional amendment is enacted, so that the mothers and fathers of our Nation will have some protection against the arbitrary rulings and decrees of various Federal courts.

In this connection, the junior Senator from Georgia (Mr. NUNN), the senior Senator from Georgia (Mr. TALMADGE), the senior Senator from South Carolina (Mr. THURMOND), the junior Senator from Alabama (Mr. ALLEN), and the senior Senator from Virginia have joined in presenting a constitutional amendment to do away with life tenure for Federal judges. This proposal provides that judges, including the Supreme Court Justices, be appointed for a fixed term; and at the end of that period of, say, 8 years, it would be necessary for them to be reconfirmed, thus bringing a degree of accountability to a group of men who now, once confirmed, are in office for life, accountable to no one. Why should any public official in a democracy have lifetime appointment? In the entire world, the only persons who have life tenure are kings, queens, emperors, maharajas, and U.S. Federal judges.

The Senator from Georgia and the Senator from Virginia want to do something about that. I hope the Committee on the Judiciary will soon take affirmative action in this matter.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. NUNN). Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes.

QUORUM CALL

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call th roll.

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

The PRESIDING OFFICER (Mr. BIDEN). Without objection, it is so ordered.

ORDER FOR ADJOURNMENT TO MONDAY, MARCH 12, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon on Monday next.

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

ORDER FOR RECOGNITION OF SENATOR BELLMON ON MONDAY NEXT

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

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, following the recognition of the distinguished Senator from Oklahoma (Mr. BELLMON) on Monday next, that there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

ORDER FOR COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS TO HAVE AUTHORITY TO REPORT S. 929 AND S. 776 BY MIDNIGHT TONIGHT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs have until midnight tonight to report S. 929 and S. 776.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when S. 929 is reported, it then be referred to the Committee on Foreign Relations.

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

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS DURING THE ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, during adjournment of the Senate over until 12 o'clock noon on Monday next, that all committees may be authorized to file reports.

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

AUTHORIZATION FOR SIGNING OF BILLS AND JOINT RESOLUTIONS DURING THE ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until 12 o'clock noon on Monday next, the Vice President, the President pro tempore, and the Acting President pro tempore may be authorized to sign all duly enrolled bills and joint resolutions.

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

EXTENSION OF TIME FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the remaining period for the transaction of routine morning business, statements therein be limited to 10 minutes and that the period be extended for an additional 30 minutes.

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

EULOGIES TO THE LATE SENATOR GUY GILLETTE ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday next, at the conclusion of the legislative business for the day and any executive calendar business, there be a period set aside for eulogies to the late Senator Guy Gillette, the period not to extend beyond an hour and a half, and the time to be controlled equally by the distinguished Senior Senator from Iowa (Mr. HUGHES) and the distinguished Senior Senator from Vermont (Mr. AIKEN).

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

ORDER OF BUSINESS—INTRODUCTION OF A BILL

(The remarks Senator KENNEDY made at this point on the introduction of S. 1136, the Public Health Service Act, and the ensuing debate are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRO AND CON ON AMNESTY

Mr. HARRY F. BYRD, JR. Mr. President, one of the best editorial pages in Virginia is the editorial page of the Northern Virginia Daily, published at Strasburg. The editor is J. J. Crawford. In its edition of Saturday, March 3, the Northern Virginia Daily published what appears to be as a very reasoned editorial, captioned "Pro and Con on Amnesty." In this editorial the Senator from New York (Mr. BUCKLEY) is quoted as stating:

To grant general amnesty now that the fighting is over would be to reward those who chose to escape their duty . . . I have no doubt that if the young men now living abroad will return home, acknowledge their errors, and face the music, they will find our courts and our society as compassionate as any in the world.

Mr. President, I agree with that view expressed by the distinguished junior Senator from New York. I also agree witn the editorial from the Northern Virginia Daily captioned "Pro and Con on Amnesty."

Mr. President, I ask unanimous consent that the editorial to which I have referred may be printed in the RECORD.

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

PRO AND CON ON AMNESTY

The amnesty torch is burning brightly. We can expect that the dialogue will grow in intensity as the passions of the anti-Vietnam war people are transferred from that burned-out issue to the amnesty issue which has all kinds of emotional possibilities.

Almost certainly, the anti-war militants will line up solidly behind the growing drive to obtain unconditional pardon for both draft evaders and deserters. At the other end of the scale the forces of the anti-amnesty people are gathering strength.

In between are the moderates. These are the people who have no brief for deserters, a question which they regard as a separate problem, but who feel that in the end amnesty will probably be granted draft-evaders, but not before a fight and not before a decent interval of time will have had a chance to heal still gaping sociological wounds.

The pro-amnesty people pursue the same line of reasoning as always. The war was wrong in principle from the beginning. It was a hideous mistake. Said one spokesman for the militants: "The question of criminality should turn on those who got us into the war." Or as Sen. Ted Kennedy put it, "Now, some ask, how can amnesty not be offered to those who were right about the war . . . ?"

But the pro-amnesty forces are presently outnumbered by the great majority of Americans who in the first heat of enjoying the peace and the return of our POW's have no stomach for easing the plight of those who chose to run rather than serve. As one anti-amnesty speaker commented, unconditional amnesty now would be an admission that those who served their country were wrong and the draft-dodgers were right.

President Nixon, no pro-amnesty advocate, summed it up neatly with this statement made following the signing of the peace agreement.

"Those who served paid their price. Those who deserted must pay their price, and the price is not a junket in the Peace Corps. The price is a criminal penalty."

The conflicting views of the pro and the anti-amnesty people express the feelings of the two extremes of the question. However, at the grass roots we think the preponderance of the people now feel that those who fled to avoid military service deserve no compassion.

But, Americans are a forgiving people. Compassion is a built-in quality of the American conscience which probably will in time assert itself permitting some compromise. It has happened after each of America's wars.

In the years ahead, whatever amnesty may be granted to draft-evaders—and under no circumstances should it include deserters—it will be done in an orderly, legal process, unhurried by militant demands.

At the war's end, Abraham Lincoln, who faced a widespread draft-evasion problem during the War Between the States, found the solution in granting amnesty if the offender would swear a special loyalty oath that implied penitence for his act.

Sen. James Buckley recently spoke what may be prophetic words when he commented:

"To grant general amnesty now that the fighting is over would be to reward those who chose to escape their duty—I have no doubt that if the young men now living abroad will return home, acknowledge their errors, and face the music, they will find our courts and our society as compassionate as any in the world."

Just as it has been following all previous wars America will find a solution which will satisfy the majority. But, in the annals of our nation those who fled to foreign shores to evade serving will never be, and should never be, on an equal footing with those who stood in defense of their country.

SUMMER PROGRAM FOR THE NEIGHBORHOOD YOUTH CORPS

Mr. JAVITS. Mr. President, on February 20, joined by 26 of my Senate colleagues, I asked the administration to submit a revised and amended budgetary request for fiscal year 1973 in order to provide an aggregate of $505,517,789 for the Neighborhood Youth Corps summer job program, and related transportation and recreational components. As Members know, this program provides work experience during the summer months for economically disadvantaged youth 14 to 21 years of age; recreational activities are conducted for poor youth 6 to 12 years of age.

Our request was based upon an extensive city-by-city survey conducted by the National League of Cities-U.S. Conference of Mayors, showing the need for 1,018,991 job opportunities for the summer as well as substantial needs in the transportation and recreational components.

The administration, in its original budget request for 1973 requested $256.5 million for the funding of 575,000 slots in the job program.

Last year $332,250,000 was provided nationwide for the funding of 740,200 opportunities and for related transportation and recreational activities.

Now the administration plans on the one hand to seek congressional rescission of its request for the Neighborhood Youth Corps program, bringing funding to zero, and on the other, to encourage State and local officials to use funds to be made available under the Emergency Employment Act of 1971 to fund jobs for youth. The latter funds would be made available under a continuing resolution approved by the Congress last week and now on the President's desk for signature.

The administration's position was suggested in testimony by Manpower Administrator Paul Fasser before the House Committee on Appropriations a week ago, and I am advised today that it is now their official policy.

It is suggested also in an article which appeared today in the New York Times. The article, entitled "Mayors Say Nixon is Firm on Funds," notes that the President is considering making $250 million in Emergency Employment Act funds available for summer job programs.

Mr. President, I can imagine nothing more contrary to congressional intent, inconsistent with the administration's own previous commitments, or inimical to the public interest than is the administration proposal.

It would be contrary to congressional intent because the Emergency Employment Act of 1971 was designed to provide transitional job opportunities for unemployed and underemployed persons in all socioeconomic groups, with particular emphasis on meeting the needs of returning veterans, those on welfare and other family heads displaced from jobs.

The purpose and intent of that authority is completely distinct from the authority for the Neighborhood Youth Corps summer program—contained in the Manpower Development and Training Act of 1962 and the Economic Opportunity Act of 1964—which is designed to provide temporary work experience between school years for a particular target group—economically disadvantaged youth in our inner cities and depressed rural areas.

It would be inconsistent with the administration's own commitments because in its original fiscal year 1973 budget submission it requested full funding for the Emergency Employment Act of 1971, at the $1.25 billion authorization level and as I indicated $256.5 million for the Neighborhood Youth Corps summer job program.

It would be inimical to the public interest because it puts on the back of the cities and the States a "Hobsons choice" between providing for returning veterans, welfare recipients, or other groups on the one hand and of EEA and poor youth out of NYC on the other.

Mr. President, in this connection I note that yesterday, a number of mayors representing the National League of Cities-U.S. Conference of Mayors testified before the Subcommittee on Employment, Manpower, and Poverty of the Senate Committee on Labor and Public Welfare regarding manpower legislation. They included Mayor Stanley A. Cmich of Canton, Ohio, Mayor Joseph Alioto of San Francisco, Calif., Mayor Russell Davis of Jackson, Miss., Mayor Richard

Hatcher of Gary, Ind., and Mayor Patricia Sheehan of New Brunswick, N.J.

They made it very clear that continued funding for the Neighborhood Youth Corp summer job program is a matter of life and death and that the administration's proposal to have it funded from the Emergency Employment Act was not acceptable.

In that connection, Richard Hatcher, mayor of Gary, Ind., said:

> The enactment of reform legislation, at the appropriation level that I have recommended, would allow us to absorb these programs at a level that approximates that of past years. But in the interim—for the summer 1973—what the President's Budget offers us is a cruel choice. If we want to undertake summer youth programs, we must either take funds from the already reduced monies available for manpower training services or we may be given the option to use some of the PEP monies for summer jobs. In effect, the option is to prevent a parent from receiving needed training or eliminate a parent's PEP job in order to provide a summer job of his children.

Mr. President, it has been a constant theme and policy of this administration that the responsibility for manpower programs, as in so many other areas, is to be given to State and local government.

But if we are going to pass the buck to the State and local level, we must pass the whole buck and not dismember it on the way.

The administration has emphasized that the Federal programs of the past have promised more than they have delivered.

Shifting responsibility without making full funding available can only result in the breach of a new promise and a feeling on the part of the poor, the unemployed and the underemployed that government—this time, State and local government—is unable to deliver.

Mr. President, the Emergency Employment Act cannot be regarded as an adequate source even for the groups it is intended to cover.

Under funds available for this year, only approximately 220,000 public service positions may be funded; in contrast there are approximately 4 million persons unemployed.

It is most improvident to redirect these funds when the groups for whom they were intended continue to suffer high unemployment rates.

If we permit this to happen what can we say to returning veterans—where the unemployment rate is approximately 10 percent—or to more than 10 million persons on aid to families with dependent children who are urged daily to work their way off the welfare rolls.

All of these groups must be considered within our highest priorities, not in competition with each other, and the administration should get back on the track that it was on originally—providing for each of them under the appropriate authority established under law.

And so I urge the administration to abandon any proposal that would "raid" one source in order to provide for another and to join with the Congress in an effort to provide adequate funding for both, along the lines urged in our letter to the President of February 20, 1973.

Mr. President, I ask unanimous consent that there be printed in the RECORD at this time, a copy of the letter dated February 20, 1973; the article from the New York Times of March 7, 1973, to which I referred earlier; as well as an additional article from the New York Times of today which describes the dismal summer job outlook which will obtain in New York City unless NYC funds are provided; and, the statement submitted by the Hon. Richard G. Hatcher, mayor of Gary, Ind., for the National League of Cities-U.S. Conference of Mayors before the Senate Subcommittee on Employment, Manpower, and Poverty on March 6.

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

DEAR MR. PRESIDENT: We are writing to urge you to submit revised and amended budgetary requests for fiscal year 1973 for an aggregate of $505,517,789 for the Neighborhood Youth Corps summer job program and related transportation and recreation components for the coming summer. The Administration's revised budget request for fiscal year 1973 does not request any funds for the program.

As you know, the Neighborhood Youth Corps summer jobs program, which is authorized under the Manpower Development and Training Act of 1962 and the Economic Opportunity Act of 1964, provides work experience opportunities with public and private non-profit agencies, and related transportation for economically disadvantaged youth, fourteen to twenty-one years of age; the recreational component of the program funds meaningful activities for poor youth six to twelve years of age.

Our request consists of the following elements:

$476,887,788 for the Neighborhood Youth Corps summer job program to make available an aggregate of 1,018,991 job opportunities, as outlined in detail below; last year the Administration provided 740,200 opportunities with an aggregate of $316,250,000.

$24,946,580 for the recreation component; last year a total of $14.8 million was provided.

$3,683,431 for the transportation element; last year, $1.2 million was made available.

These requests are documented on a city-by-city basis in the enclosed letter dated January 12, 1973 and attachments to Senator Javits from the National League of Cities-United States Conference of Mayors, which represent the Nation's cities.

As stated in the National League of Cities letter, the amounts requested are those which the cities may "effectively utilize". In fact, the overall needs are much greater, for example, the Department of Labor estimates that in the job program more than 1.8 million poor youth could benefit—almost twice the number which may be covered under our request.

The Administration's position is set forth in the enclosed letter dated February 2, 1973 from the Secretary of Labor, Peter J. Brennan, which states:

"Under the President's revised 1973 budget, the Manpower Training Services appropriations does not contain funds for the funding of a 1973 NYC Summer Program. Instead, local sponsors of EEA projects will be permitted to use, to the extent they desire, 1973 EEA funds for a summer employment program. In addition, States and local communities may elect to use existing Manpower Training Services funds available in the communities to supplement the EEA summer program."

While we recognize and share the Administration's general concern with respect to limiting federal expenditures during the current fiscal year, we believe that funding for the Neighborhood Youth Corps should be given the highest priority and attention. Although, the Administration has been successful in reducing unemployment nationally from six percent to five percent, disadvantaged youth in poverty areas continue to face unemployment rates ranging from thirty to forty percent. The Neighborhood Youth Corps program is designed for that group and provides a meaningful alternative to wasted summers of restlessness.

The Emergency Employment Act of 1971 (EEA) cannot be viewed as an adequate alternative source of funding to meet the employment needs of poor youth. As you know, the Act is designed to reach all ages and socio-economic groups and coverage is largely at the discretion of State and local sponsors. Unfortunately, experience indicates that coverage of poor youth will not be adequate to their needs. Of the 138,170 job opportunities presently funded under the $1.0 billion available nationally, only 14,150—or approximately 10.2 percent—are held by poor youth under the age of twenty-two; even if the Administration's request for an additional $250 million for fiscal year 1973 is appropriated, it is quite clear that the aggregate number of slots that could be made available to poor youth from these new sources will not begin to meet the needs which we have documented.

Similarly, manpower training services funds available in communities will not be satisfactory alternative sources of jobs for poor youth; in fact, if the Administration's new requests for fiscal year 1973 are appropriated, appropriations (not taking into account the Neighborhood Youth Corps summer program) will fall approximately $200 million below the actual level for fiscal year 1972.

We were very gratified by your support for a supplemental appropriation last summer and we urge you to respond to these needs at the earliest possible time so that youth can make plans for a profitable and meaningful summer and the communities and agencies responsible for administering the program may ensure the most effective use of funds.

Very truly yours,

Joining Senator Javits in signing the letter to the President were Senators:

James Abourezk, Quentin N. Burdick, Dick Clark, Floyd K. Haskell, Mark O. Hatfield, Hubert H. Humphrey, John E. Moss, Jennings Randolph, Lowell P. Weicker.

Alan Bible, Howard W. Cannon, Alan Cranston, William D. Hathaway, James E. Huddleston, Edward M. Kennedy, Edward S. Muskie, John V. Tunney, Harrison A. Williams, Jr.

Edward W. Brooke, Clifford P. Case, Mike Gravel, Philip A. Hart, Harold Hughes, Gale McGee, Gaylord Nelson, Walter F. Mondale.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 2, 1973.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: This is in response to your letter to Secretary Hodgson concerning the Neighborhood Youth Corps Summer Program.

The Summer NYC Program for the summer of 1972 provided a total of $332,250,000

of which $175,700,000 was in the basic appropriation and $156,550,000 was in the supplemental appropriation. These amounts funded a total of 740,200 enrollment opportunities.

Under the President's revised 1973 budget, the Manpower Training Services appropriation does not contain funds for the funding of a 1973 NYC Summer Program. Instead, local sponsors of EEA projects will be permitted to use, to the extent they desire, 1973 EEA funds for a summer employment program. In addition, States and local communities may elect to use existing Manpower Training Services funds available in their communities to supplement the EEA summer program.

Next year under the Manpower Revenue Sharing approach contained in the 1974 budget, elected officials will be able to plan the level of summer programs determined by them to best meet their local needs.

Sincerely,

PETER J. BRENNAN,
Secretary of Labor.

NATIONAL LEAGUE OF CITIES,
U.S. CONFERENCE OF MAYORS,
January 12, 1973.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: In response to your request for information, we have made inquiries as to the cities' 1973 needs for the summer Neighborhood Youth Corps slots. The information we have received from the 50 largest cities shows that the total number of slots these 50 large cities could effectively use this summer is 421,930.

On the basis of our contacts with a sample of smaller cities, we estimate that their needs and the number of slots these smaller cities could effectively utilize total 597,061.

Combining these figures—the total for the 50 largest cities with estimated needs for the balance of the Nation—the present real need for 1973 is 1,018,991 slots nationwide. mer Neighborhood Youth Corps.

We trust that these statistics will be helpful to you in pointing up the critical need for an adequate appropriation for the sum-

Sincerely,

JOHN J. GUNTHER,
Executive Director, U.S. Conference of Mayors.

ALLEN E. PRITCHARD, Jr.,
Executive Vice President, National League of Cities.

SUMMER NEIGHBORHOOD YOUTH CORPS

Area and rank in size	Population	Slots: 1972 need	Slots: 1972 actual [2]		Slots: 1973 need	Amount [1] 1973 need
Region I: Boston (16)	641,000	5,000	5,213	(4,692)	6,400	$2,995,200
Region II:						
Buffalo (28)	463,000	4,268	2,238	(2,014)	6,834	3,198,312
Newark (35)	382,000	14,563	7,000	(6,300)	14,563	6,815,484
New York (1)	7,868,000	77,500	54,800	(49,320)	77,500	36,270,000
Rochester (49)	296,000	4,650	1,030	(927)	4,650	2,176,100
Region III:						
Baltimore (7)	906,000	9,420	7,712	(6,941)	9,420	4,408,560
Norfolk (47)	308,000	2,625	2,200	(1,980)	3,500	1,638,000
Philadelphia (4)	1,949,000	12,500	8,571	(7,714)	15,000	7,020,000
Pittsburgh (24)	520,000	9,265	5,670	(5,103)	9,265	4,336,000
District of Columbia (9)	757,000	36,000	3,999	(3,599)	20,000	9,360,000
Region IV:						
Atlanta (27)	497,000	3,408	4,680	(4,212)	5,388	2,521,584
Birmingham (48)	361,000	2,135	2,757	(2,481)	2,774	1,298,232
Jacksonville (23)	529,000	1,735	637	(573)	2,500	1,170,000
Louisville (38)	361,000	3,500	2,250	(2,025)	3,500	1,638,000
Memphis (17)	624,000	2,394	1,935	(1,741)	2,394	1,120,392
Miami (Dade County) (42)	335,000	8,226	5,429	(4,886)	8,226	3,849,768
Nashville (30)	448,000	2,000	1,700	(1,530)	2,000	936,000
Tampa (50)	278,000	6,515	2,649	(2,384)	6,515	3,049,020
Region V:						
Chicago (2)	3,367,000	40,000	31,617	(28,455)	40,000	18,720,000
Cincinnati (29)	452,000	3,000	3,592	(3,233)	5,000	2,340,000
Cleveland (10)	751,000	11,100	12,457	(11,211)	12,500	5,850,000
Columbus (21)	540,000	2,000	1,650	(1,485)	1,800	842,400
Detroit (5)	1,511,000	25,000	18,488	(16,639)	25,000	11,700,000
Indianapolis (11)	745,000	2,500	2,100	(1,890)	3,000	1,404,000
Milwaukee (12)	717,000	3,000	3,379	(3,041)	3,379	1,581,372
Minneapolis (32)	434,000	2,735	1,800	(1,620)	3,080	1,441,440
St. Paul (46)	310,000	1,025	1,120	(1,008)	1,300	608,400
Toledo (34)	384,000	990	1,400	(1,260)	1,400	655,200
Region VI:						
Dallas(8)	944,000	2,280	1,505	(1,355)	2,280	1,067,040
El Paso(45)	322,000	3,000	1,168	(1,051)	4,672	2,186,496
Fort Worth (33)	393,000	1,507	155	(140)	1,507	705,276
Houston (6)	1,233,000	3,560	5,284	(4,756)	5,664	2,650,752
New Orleans (19)	593,000	5,000	3,085	(2,776)	5,000	2,340,000
Oklahoma City (37)	366,000	1,530	1,010	(909)	1,530	716,040
San Antonio (15)	654,000	5,514	5,080	(4,572)	6,000	2,808,000
Tulsa (43)	332,000	1,011	771	(693)	1,011	473,148
Region VII:						
Kansas City (26)	507,000	4,000	3,580	(3,222)	4,000	1,872,000
Omaha (41)	347,000	1,670	867	(780)	1,670	781,560
St. Louis (18)	622,000	5,910	8,060	(7,254)	9,000	4,212,000
Region VIII: Denver (25)	515,000	2,100	2,038	(1,834)	2,100	982,800
Region IX:						
Honolulu (44)	325,000	2,800	791	(711)	2,800	1,310,400
Long Beach (40)	358,000	432	384	(345)	432	202,176
Los Angeles (3)	2,813,000	24,568	25,319	(22,787)	27,491	11,700,000
Region IX—Continued						
Oakland (39)	362,000	5,850	2,050	(1,845)	5,850	$2,737,800
Phoenix (20)	582,000	17,000	3,964	(3,567)	17,000	7,956,000
San Diego (14)	697,000	4,510	4,733	(4,259)	5,500	2,574,000
San Francisco (13)	716,000	8,000	4,000	(3,600)	8,000	3,744,000
San Jose (31)	446,000	3,535	1,910	(1,719)	3,535	1,654,380
Region X:						
Portland (36)	382,000	5,000	2,500	(2,250)	5,000	2,340,000
Seattle (22)	581,000	5,000	2,163	(1,947)	5,000	2,340,000
SAMPLING OF CITIES OTHER THAN 50 LARGEST						
Akron, Ohio	275,425	1,216	1,190	(1,071)	1,351	632,268
Albany, N.Y.	114,873	540	449	(404)	600	280,000
Albuquerque, N. Mex.	243,751	1,000	815	(733)	1,000	468,000
Amarillo, Tex.	127,010	1,092	820	(738)	1,200	561,600
Baton Rouge, La.	165,963	225	150	(135)	250	117,000
Columbia, S.C.	113,542	1,825	2,030	(1,827)	2,030	950,400
Columbus, Ga.	154,168	1,820	1,720	(1,548)	2,200	936,000
Dayton, Ohio	243,601	1,500	1,320	(1,188)	2,500	1,170,000
Des Moines, Iowa	200,587	750	750	(675)	750	351,000
Erie, Pa.	129,231	950	950	(855)	950	444,600
Flint, Mich.	193,317	1,800	920	(828)	2,000	936,000
Fort Lauderdale, Fla.	139,590	540	600	(540)	600	280,800
Gary, Ind.	175,415	4,447	3,500	(3,150)	4,447	2,081,196
Greensboro, N.C.	144,076	871	880	(792)	968	453,028
Hartford, Conn.	158,017	2,730	2,495	(2,245)	3,000	1,404,000
Jackson, Miss.	153,968	757	403	(363)	757	354,276
Knoxville, Tenn.	174,587	1,520	1,520	(1,368)	1,520	711,360
Lansing, Mich.	131,546	900	460	(414)	1,000	468,000
Lincoln, Nebr.	149,518	350	386	(347)	400	187,200
Little Rock, Ark.	132,483	1,320	72	(65)	1,320	617,760
Mobile, Ala.	190,026	900	756	(680)	950	444,600
Montgomery, Ala.	133,386	500	557	(501)	570	266,760
Riverside, Calif.	140,089	150	75	(67)	150	70,200
Santa Ana, Calif.	156,601	2,550	1,900	(1,710)	2,800	1,310,400
Savannah, Ga.	118,349	600	550	(450)	650	304,200
Shreveport, La.	182,064	637	628	(565)	700	327,600
Syracuse, N.Y.	197,208	1,365	1,200	(1,080)	1,500	702,000
Tacoma, Wash.	154,581	600	588	(529)	600	280,800
Wichita, Kans.	276,554	980	1,075	(967)	1,075	503,100
Winston-Salem, N.C.	132,913	850	750	(675)	850	397,800
Worcester, Mass.	176,572	825	705	(634)	900	421,100
Total, 50 largest		410,831	278,490	(250,641)	421,930	197,463,240
Total, balance of cities		537,893	461,732	(415,559)	597,061	279,424,548
Total		948,724	740,222	(666,200)	1,018,991	476,887,788

[1] Dollar figures represent 10 week, 26-hour slots at $1.65 per hour.

[2] All figures in the above chart represent 10 week slots except the 1st column under "1972 actual" which are 9 week slots.

SUMMER RECREATION SUPPORT PROGRAM (RSP)

	1972 need	1972 actual	1973 need
Region I: Boston	$180,000	$168,000	$350,000
Region II:			
Buffalo	120,000	123,000	125,000
Newark	140,000	100,000	200,000
New York	2,934,000	2,336,000	2,934,000
Rochester	95,000	68,000	136,000
Region III:			
Baltimore	335,000	302,910	335,000
Norfolk	180,000	132,000	201,500
Philadelphia	700,000	543,000	1,000,000
Pittsburgh	165,000	168,000	200,000
District of Columbia	364,000	245,000	364,000
Region IV:			
Atlanta	$180,000	$143,000	$180,000
Birmingham	170,000	120,000	170,000
Jacksonville	175,000	150,000	250,000
Louisville	130,000	96,000	130,000
Memphis	305,000	264,000	305,000
Miami (Dade County)	192,000	126,000	192,000
Nashville	150,000	150,000	200,000
Tampa	175,000	132,000	175,000
Region V:			
Chicago	2,100,000	913,000	2,100,000
Cincinnati	175,000	135,000	175,000

SUMMER RECREATION SUPPORT PROGRAM (RSP)—Continued

	1972 need	1972 actual	1973 need
Region V—Continued			
Cleveland	$205,000	$230,000	$380,000
Columbus	211,000	132,000	211,000
Detroit	897,000	399,000	897,000
Indianapolis	195,000	130,000	260,000
Milwaukee	155,000	144,000	160,000
Minneapolis	96,000	63,000	130,000
St. Paul	58,000	36,000	58,000
Toledo	120,000	84,000	120,000
Region VI:			
Dallas	285,000	228,000	285,000
El Paso	200,000	194,000	250,000
Fort Worth	173,000	108,000	175,000
Houston	440,000	350,000	440,000
New Orleans	300,000	306,000	500,000
San Antonio	400,000	324,000	500,000
Tulsa	115,000	92,000	200,000
Oklahoma City	170,000	108,000	170,000
Region VII:			
Kansas City	130,000	118,000	200,000
Omaha	96,000	61,000	96,000
St. Louis	384,000	254,000	405,000
Region VIII: Denver	$170,000	$126,400	$170,000
Region IX:			
Honolulu	99,000	70,000	140,000
Long Beach	125,000	72,000	125,000
Los Angeles	650,000	552,000	650,000
Oakland	125,000	104,000	125,000
Phoenix	200,000	144,000	288,000
San Diego	200,000	164,000	825,000
San Francisco	250,000	180,000	250,000
San Jose	100,000	85,000	100,000
Region X:			
Portland	135,000	89,000	135,000
Seattle	129,000	89,000	129,000
Total, 50 largest	15,928,000	11,451,310	18,096,500
Balance of cities	6,030,000	3,548,690	6,850,080
Total	21,958,000	15,000,000	24,946,580

SUMMER YOUTH TRANSPORTATION PROGRAM (SYTP)

Region I: Boston	$20,000	$10,700	$20,000
Region II:			
Buffalo	13,000	7,500	13,000
Newark	39,500	23,437	69,300
New York	251,400	149,130	500,000
Rochester	12,000	7,500	15,000
Region III:			
Baltimore	35,000	21,100	35,000
Norfolk	12,000	7,500	25,600
Philadelphia	24,360	24,360	100,000
Pittsburgh	22,000	12,650	22,000
Washington, D.C.	38,700	22,960	100,000
Region IV:			
Atlanta	30,000	12,080	30,000
Birmingham	24,000	13,790	24,000
Jacksonville	14,000	6,300	14,000
Louisville	12,500	7,500	12,500
Memphis	18,000	11,860	18,000
Miami (Dade County)	23,000	12,000	23,000
Nashville	12,000	7,000	12,000
Tampa	17,000	7,500	0
Region V:			
Chicago	70,000	42,240	70,000
Cincinnati	15,000	7,920	15,000
Cleveland	35,000	19,310	35,000
Columbus	17,000	8,640	17,000
Detroit	75,000	36,560	75,500
Indianapolis	15,000	8,480	15,000
Milwaukee	65,000	47,280	66,192
Mineapolis	20,000	12,380	75,000
St. Paul	12,500	7,500	12,500
Toledo	15,750	7,990	20,000
Region VI:			
Dallas	$23,990	$19,340	$23,990
El Paso	58,900	38,900	77,800
Fort Worth	15,000	8,130	15,000
Houston	45,000	25,060	0
New Orleans	25,000	14,790	25,000
Oklahoma City	25,000	14,000	25,000
San Antonio	26,570	14,570	26,570
Tulsa	12,500	7,500	20,000
Region VII:			
Kansas City	50,000	13,970	50,000
Omaha	15,000	13,500	16,000
St. Louis	43,500	25,790	43,500
Region VIII: Denver	29,000	18,320	29,000
Region IX:			
Honolulu	15,000	7,500	15,000
Long Beach	16,000	7,500	16,000
Los Angeles	82,870	82,870	164,000
Oakland	28,000	15,000	28,000
Phoenix	23,000	11,740	25,000
San Diego	30,000	14,360	30,000
San Francisco	25,000	11,970	25,000
San Jose	8,160	7,500	9,000
Region X:			
Portland	13,000	25,000	25,000
Seattle	32,100	19,060	32,100
Total, 50 largest	1,608,940	979,487	2,155,552
Balance of cities	1,141,060	520,513	1,527,879
Total	2,750,000	1,500,000	3,683,431

Mayors Say Nixon Is Firm on Funds

WASHINGTON, March 6.—A dozen Mayors met today with President Nixon but failed to break the impasse over funds for social programs.

The Mayors talked with the President and several aides for more than an hour this afternoon, and the only apparent movement was a promise by the President that he would consider signing a continuing resolution that provides $250-million for summer youth employment, according to Mayor Roman S. Gribbs of Detroit.

"He said the continuing resolution would be before him soon and if it is signed it would make some $250-million available," the Mayor said during a news conference at the White House after the meeting.

"But he didn't promise to sign it," Mr. Gribbs added.

The mayors and other city officials were attending the annual Congressional conference of the National League of Cities and the United States Conference Of Mayors meeting at the Washington Hilton Hotel.

Following a morning session, at which Senator Hubert H. Humphrey, Democrat of Minnesota, delivered one of his strongest personal attacks against President Nixon, the officials went to Capitol Hill to lobby for restoration of fund losses for such programs as housing, poverty and heath.

But there was no budging at the White House, according to the Mayors.

Hard-hitting discussion

"We met in the conference room and had a very thorough and hard-hitting discussion," commented Mayor Gribbs, who is president of the League of Cities.

The Mayor said the President had reiterated his position that general revenue-sharing money was new money, not money shifted from some other use. Mr. Humphrey and others had charged that Mr. Nixon had gone back on his word and had not added money to the budget for revenue sharing and was being deceptive when he said that he had.

Regarding funds for programs during the transition to revenue sharing. Mayor Gribbs said that Mr. Nixon had told the Mayors that there would soon be some clarification and continued discussion.

In his speech, Mr. Humphrey accused Mr. Nixon of violating the law by refusing to spend money appropriated by Congress and by dismantling Congressionally sanctioned programs, such as the Office of Economic Opportunity.

"When you believe in law and order, you ought to believe in it for yourself, too," Mr. Humphrey said.

"Mr. President, the law is the Water Pollution Control Act," the Senator continued. "Mr. President, you violated the act, you cut it in half. I consider that a violation of the law, and it is."

Mr. Humphrey said he would propose a resolution that would mandate Congress to "pare the fat from a bloated military budget, begin a program of immediate tax reform and devote an estimated $14-billion saved and earned to the pressing domestic needs."

City Sees a Drop in Youths' Jobs

(By Francis X. Clines)

ALBANY, March 6.—Human Resources administrator Jule M. Sugarman outlined a dismal summer job outlook for New York City today, asserting that the city had no way of compensating for the expected loss of all 50,000 job slots in the federally funded summer Youth Corps.

Compounding the problem, Mr. Sugarman said, is that the private summer job market is "even worse."

"I think there's no question that it will lead to trouble this summer when you've got nothing constructive for these kids to do," Mr. Sugarman said in an interview following an appearance before the State Assembly Welfare Committee.

The Youth Corps program, which has served low-income youths in slum neighborhoods for the last seven years, was eliminated as part of the Federal budget economics ordered by Richard Nixon, the administrator said.

Not optimistic on bill

Although there is a bill in Congress designed to restore to needed funds, Mr. Sugarman said he was not optimistic of passage. The suggestion had been made by Federal officials

to use manpower funds from the Emergency Employment Program, but there are none, he added.

The summer program, which supplies jobs for an eight-week period, has been threatened in the past with fund shortages, and alarms from city politicians about a "long hot summer" have become almost a perennial cry, with the needed money found at the last minute.

This year is different, Mr. Sugarman said, because it involves the total elimination of the program and the city has no way of supplying the funds. Last year the program cost $21-million in Federal money and $2-million in state aid.

A spokesman for City Commissioner of Youth Services Amalia Betanzos said the agency was in a quandary. One alternative is to prepare all the paper work for a full program and hope for another last minute change, the spokesman, Carl Weisbrod said. The other alternative is to try to create some kind of massive summer recreation program, he said, but this, too, would cost money.

The jobs program was particularly effective in reaching the poor, he said, with 75 per cent of all funds spent in actual paychecks for youths. It is hardly a program misused for the middle class, as some critics of the poverty program have said in favoring reductions, Mr. Weisbrod said.

The program obtained jobs for youths 14 to 21 years old, paying $1.60 an hour for a 27-hour week. The jobs had to be with nonprofit corporations, and this included posts with poverty agencies and religious organizations.

City officials said that in addition to leaving about 55,000 youngsters with idle time and no money, the cut would mean a reduction in social services they performed. These include summer surveys of housing conditions and recreational supervision of younger children.

STATEMENT SUBMITTED BY THE HON. RICHARD D. HATCHER, MAYOR OF GARY, IND.

Mr. Chairman, members of the Committee:

I am Richard Hatcher, Mayor of Gary, Indiana. I appreciate this opportunity to testify on behalf of the National League of Cities and U.S. Conference of Mayors regarding manpower programs.

Mayors and city governments have emerged in a leadership role in manpower not only out of our concern and interest, but also out of our necessity to respond to the needs of the persons we serve.

We recognize that manpower problems transcend political boundaries—beyond the city, the county, the state, and even the nation. But it is at the local level that the impact of services and programs is felt; it is at the local level that the needs are most acutely perceived; it is on the steps of City Hall that the responsibility for program failures is laid.

In the end, it is the Mayor and city government which are held accountable.

The leadership role which Mayors have assumed began in the late Sixties, when a number of Mayors of large cities seized the initiative and began investigating their potential role in manpower.

However, the major impetus for city involvement did not come until early 1970 when the Department of Labor offered grants to approximately 140 cities. These grants enabled cities to hire professional staffs to work on manpower issues and the future manpower role of local elected officials. For the first time, city governments which had been almost entirely removed from earlier efforts in the manpower field, were given an opportunity to develop their organizational capacity to plan and coordinate manpower programs. Once given that opportunity, we responded.

We are here today to ask you to enact legislation to enable us to achieve the promise of our efforts to date.

We need the enactment of comprehensive manpower reform legislation. While we can support the current efforts of the Department of Labor to seek administratively the goals of program decategorization and decentralization, legislation is essential for several reasons.

First, the existing authorities (MDTA & EOA), even stretched to their legislative limits, confine the options and opportunities for local prime sponsors—most particularly in the area of job creation.

Secondly, the administrative moves in this direction has not been accompanied with funds adequate to maintain existing program levels. Thus as States, counties and cities receive greater authority, the exercise of that authority will, all too frequently, be to decide which program to cut or eliminate.

Third, I do not believe, while supporting the initiative, that such a major redirection of national policy should be undertaken without Congress taking part in that decision.

Finally, such a move to program decategorization and decentralization which is initiated administratively can be withdrawn administratively as well. Authority which is delegated today can be reclaimed tomorrow unless we have legislation.

As I mentioned, one reason why we urge the achievement of comprehensive manpower reform through legislation is to ensure a level of funding adequate to sustain existing programs. Although the administrative movement toward reform is praiseworthy in concept, the funds accompanying this decision are less than adequate.

In its FY 1974 budget the Administration proposes to reduce manpower training and job creation funds by over 50 percent. This is achieved by eliminating PEP by rescissions in FY 1973 funds of some 25 percent and by proposing a 16 percent reduction in FY 1974 manpower training funds from the anticipated FY 1973 figure.

In order to sustain existing levels of training and job creation programs under MDTA, EOA and EEA, an appropriation of at least $2.7 billion is required. This does not take into consideration cost of living increases, reallocation of funds which will accompany a formula distribution process and incentives for area-wide planning and program coordination.

As a result, we believe that an appropriation level of $3.0 billion should be considered as the base level for funding of manpower activities under reform.

The shift to a decentralization and decategorized manpower system will be accompanied by a non-discretionary formula for the allocation of funds. And that formula must include a "hold harmless" provision which protects the prime sponsor against major reductions in funds available compared to prior years program operations.

The principal factor in any formula, I believe, should be the numbers of unemployed. It is on the unemployed and underemployed that the manpower training services and job creation efforts will focus. There is no better index of need.

It is important to note here, even though it can only be parenthetical to your consideration of manpower legislation, that all of us have deep concerns about the adequacy and accuracy of unemployment (and other) statistics developed and used by the Federal government. We know that central city unemployment is usually almost double that of the SMSA of which it is a part. Yet it is the SMSA which forms the base of government information gathering, reporting, and ultimately funding.

Further the Bureau of Labor statistics unemployment data does not include those persons who have dropped out of the workforce—those whose frustration has led them to resignation from the Labor market. Also, there is no adequate measure of underemployment used by the Federal government. But each of us here can testify to the wasted human resources that result from underemployment in our cities.

The issue of a "hold harmless" provision in legislation is vital to local elected officials continuing in their leadership role. Without such a minimum figure, based upon past years' program operations, many of us will be penalized for our past efforts to obtain funds to meet the needs of our citizens.

Finally let me mention a very specific and critical problem that faces us all—summer youth programs.

The Administration's 1974 Budget purposes *no* summer program funds, be it for employment through the Neighborhood Youth Corps (NYC) program or assistance for recreational and cultural programs through the Recreation Support Program and the Summer Youth Transportation Program. During the past ten years, hard-pressed local governments and their constituents have come to rely heavily on the summer youth programs developed by the federal government. Admittedly, these programs were developed more often to forestall urban unrest than to meet carefully defined needs. They have frequently been inadequate in scope and substance, uncoordinated and predictably late—but they are nevertheless, a significant social initiative.

The enactment of reform legislation, at the appropriation level that I have recommended, would allow us to absorb these programs at a level that approximates that of past years. But in the interim—for the summer 1973—what the President's Budget offers us is a cruel choice. If we want to undertake summer youth programs, we must either take funds from the already reduced monies available for manpower training services or we may be given the option to use some of the PEP monies for summer jobs. In effect, the option is to prevent a parent from receiving needed training or eliminate a parent's PEP job in order to provide a summer job for his children.

The consequences of the elimination of these programs are obvious: last summer there were 740,000 nine-week jobs for young people, mostly disadvantaged youth; recreational and cultural programs which served over two million young people; transportation available for some one million young people to take advantage of jobs and recreational activities.

In the past, NYC has been the single largest youth employment program available in the summer. The need is even greater this year. A survey, conducted by the League of Cities and the Conference of Mayors, which we also submit for the record, documents the need of slightly more than a million jobs this summer. The cities surveyed were asked to tell how many youth they could effectively supervise and provide with worthwhile work. Thus, the figures we offer here are not a statement of total need—that figure is far higher—but a careful, conservative estimate of the cities' ability to provide (with federal funds) summer youth employment in 1973.

Despite a record NYC effort not everyone looking for a summer job will find one, many young people are not yet old enough to work, and a variety of additional services must be provided. In partnership with the cities the federal government has provided these services through the Recreation Support Program and the Summer Youth Transportation Project. These programs have been successful, and we have documented an increased need for RSP and SYTP funds.

I wish to take this opportunity to thank Senator Javits for taking the lead year after

year, as he is again this year, in helping us secure adequate funding for this vital city program.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

REFERRAL OF PRESIDENT'S MESSAGE, FIFTH PORTION OF THE STATE OF THE UNION REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President's message received today, which is the fifth portion of the State of the Union Report, be jointly referred to the Committees on Agriculture and Forestry, Banking, Housing and Urban Affairs, Commerce, Finance, Government Operations, and Public Works, inasmuch as the predominance of the subject matter covered therein falls within the respective jurisdictions of these standing committees.

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

The message from the President is as follows:

To the Congress of the United States:

Today, in this fifth report to the Congress on the state of the Union, I want to discuss the quality of life in our cities and towns and set forth new directions for community development in America.

Not long ago we became accustomed to the constant rhetorical drumbeat of the "crisis of our cities." Problems were multiplying so rapidly for our larger urban areas that some observers said our cities were doomed as centers of culture, of commerce, and of constructive change.

Many of these problems still persist, but I believe we have made sufficient progress in recent years that fears of doom are no longer justified.

What is needed today is calm reflection upon the nature of modern community life in the United States, a reassessment of the manner in which we are trying to solve our remaining problems, and a firm resolve to get on with the task.

America's communities are as diverse as our people themselves. They vary tremendously in size—from massive cities to medium-sized urban and suburban areas, to small towns and rural communities.

Just as importantly, each of our communities has built up strong individual characteristics over the years, shaped by region, climate, economic influences, ethnic orgins and local culture.

Of course, communities do share common needs and concerns. People in every community want adequate housing, transportation, and jobs, a clean environment, good health, education, recreation facilities, security from crime and fear, and other essential services. But local priorities differ; the intensity and order of local needs vary.

Clearly, no single, rigid scheme, imposed by the Federal Government from Washington, is capable of meeting the changing and varied needs of this diverse and dynamic Nation.

There is no "best" way, no magic, universal cure-all, that can be dispensed from hundreds or thousands of miles away.

What is good for New York City is not necessarily good for Chicago, or San Francisco, much less for smaller communities with entirely different economies, traditions and populations.

Too often in the past we have fallen into the trap of letting Washington make the final decisions for St. Louis, Detroit, Miami and our other cities. Sometimes the decisions were right, and programs have succeeded. Too often they were wrong, and we are still paying the price.

The time has come to recognize the errors of past Federal efforts to support community development and to move swiftly to correct them.

The results of past errors form a disturbing catalogue:

—They have distorted local priorities.

—They have spawned a massive glut of red tape.

—They have created an adversary climate between local communities and Washington whch has often led to waste, delay and mutual frustration.

—They have contributed to a lack of confidence among our people in the ability of both local and national governments to solve problems and get results.

—They have led to the creation of too many complex and often competing Federal programs.

—Perhaps worst of all, they have undercut the will and the ability of local and State governments to take the initiative to mobilize their own energies and those of their citizens.

The Federal policy that will work best in the last third of this century is not one that tries to force all of our communities into a single restrictive mold. The Federal policy that will work best is one that helps people and their leaders in each community meet their own needs in the way they think best.

It is this policy which binds together the many aspects of our community development programs.

THE BETTER COMMUNITIES ACT

In the near future, I will submit to the Congress the Better Communities Act to provide revenue sharing for community development. Beginning July 1, 1974, this act would provide $2.3 billion a year to communities to be spent as they desire to meet their community development needs. In the interim period before the legislation becomes effective, funds already available to the Department of Housing and Urban Development will be used to maintain and support community development.

The Better Communities Act is intended to replace inflexible and fragmented categorical grant-in-aid programs, and to reduce the excessive Federal control that has been so frustrating to local governments.

Rather than focusing and concentrating resources in a coordinated assault on a set of problems, the categorical system scatters these resources, and diminishes their impact upon the most needy. Excessive Federal influence also limits the variety and diversity of development programs. Local officials should be able to focus their time, their resources and their talents on meeting local needs and producing results, instead of trying to please Washington with an endless torrent of paperwork.

I first proposed such legislation in 1971, and although the Congress failed to enact it, significant support was expressed in both the Senate and the House. Since that time, members of my Administration have been consulting with Congressional leaders, mayors, Governors, other local officials and their representatives. Many constructive suggestions have been received and will be incorporated in my new legislative proposal. As a result, I believe the Better Communities Act will represent our best hope for the future of community development and will deserve rapid approval by the Congress.

Among the most significant features of the Better Communities Act are these:

—*Hold-Harmless Provision:* The flow of money to cities and urban counties is to be based on a formula reflecting community needs, as determined by objective standards. In the years immediately following enactment, funds would be used to assure that no city receives less money for community development than it has received under the categorical grant programs.

—*Assistance for Smaller Communities:* Funding is also to be provided for our smaller communities, recognizing the vital importance of small towns and rural communities to the future of the Nation.

—*The Role of State Government:* State governments have always played an important part in meeting the community development needs of their communities. The Act will recognize this role.

—*Local Decision Making:* While each of the activities now supported by categorical grants may be continued, it would be up to local leaders to determine how that money will be spent.

—*Minimizing Red Tape:* Recipients would be required to show the Federal Government only that they are complying with Federal statutes in the way they are spending their revenue sharing money.

—*Elimination of Matching:* Shared revenues would not have to be matched by local funds.

—*Protection for Minorities:* Under no circumstances could funds provided under the Better Communities Act be used for purposes that would violate the civil rights of any person.

A DEPARTMENT OF COMMUNITY DEVELOPMENT

One of the most serious deficiencies in the effort of the Federal Government to

assist in community development has been the fragmentation and scattering of Federal programs among a variety of departments and agencies. All too often State or local officials seeking help for a particular project must shuttle back and forth from one Federal office to another, wasting precious time and resources in a bureaucratic wild goose chase.

In order to coordinate our community development activities more effectively, I proposed nearly two years ago that we create a Department of Community Development which would pull under one roof various programs now in the Departments of Housing and Urban Development, Transportation, Agriculture, and other agencies.

After extensive hearings on this proposal, the Committee on Government Operations of the House of Representatives reached this conclusion:

"The Department of Community Development will be a constructive center in the Federal Government for assistance to communities, large and small. It will facilitate rational planning, orderly growth, and the effective employment of resources to build viable communities throughout the United States. It will help to strengthen the physical and institutional bases for cooperative action by Federal, State and local governments."

This Administration fully agrees, of course, and will continue to work with the Congress for the prompt creation of a Department of Community Development.

In the interim, I recently appointed a Presidential Counsellor on Community Development who will coordinate community development programs and policies in the executive branch. But only when the Congress approves the basic departmental reorganization proposed by the Administration can our efforts to eliminate waste, confusion and duplication, and to promote community betterment more efficiently, be fully effective.

THE RESPONSIVE GOVERNMENTS ACT

For nearly 20 years, the Federal Government has provided assistance to State and local governments in order to strengthen their planning and management capabilities.

This aid, provided under the Comprehensive Planning Assistance Program, has always been helpful, but the program itself has several major flaws. It has tended, for instance, to stress one aspect of public administration—planning—without adequately recognizing other essential features such as budgeting, management, personnel administration, and information-gathering. Planning has often been irrelevant to the problems and the actual decisions. State and local governments have also found it difficult to coordinate their planning because of the fragmented way in which funds have been sent from Washington.

This Administration proposed new planning and management legislation to the 92d Congress, but it was not approved. In the meantime, we took what steps we could to improve the existing program. Some progress has been made, but corrective legislation is still needed.

I shall, therefore, propose that the 93d Congress enact a new Responsive Governments Act. I shall also propose that we provide $110 million for this act in fiscal year 1974—almost one-fifth of the entire amount that has been spent under the present law in the last two decades.

This Responsive Governments Act would assist State and local governments in meeting several important goals:

—Developing reliable information on their problems and opportunities;
—Developing and analyzing alternative policies and programs;
—Managing the programs;
—And evaluating the results, so that appropriate adjustments can be made.

The ability to plan and manage is vital to effective government. It will be even more important to State and local governments as they are freed from the restraints of narrow categorical Federal programs and must decide how to spend revenue sharing funds. Thus the Responsive Governments Act is a vitally necessary companion piece to the Better Communities Act.

HOUSING

This Administration is firmly committed to the goal first set forth for America in the 1949 Housing Act: "a decent home and a suitable living environment for every American family." While we believe that some of our housing programs have failed and should be replaced, we should never waiver in our commitment.

During the past four years, the Federal Government has provided housing assistance to an additional 1.5 million American families of low and moderate income. This represents more housing assistance than the total provided by the Federal Government during the entire 34-year history of our national housing program preceding this Administration.

In addition, a healthy, vigorous, private housing industry has provided 6 million new unsubsidized units of housing for Americans in the last four years. Housing starts for each of the last three years have reached record high levels,—levels, in fact, that are more than double the average for the preceding 21 years.

Most importantly, the percentage of Americans living in substandard housing has dropped dramatically from 46 percent in 1940 to 37 percent in 1950 to 18 percent in 1960 to 8 percent in 1970. Americans today are better housed than ever before in our history.

At the same time, however, there has been mounting evidence of basic defects in some of our housing programs. It is now clear that all too frequently the needy have not been the primary beneficiaries of these programs; that the programs have been riddled with inequities; and that the cost for each unit of subsidized housing produced under these programs has been too high. In short, we shall be making far more progress than we have been and we should now move to place our housing policies on a much firmer foundation.

That is why we suspended new activity under Federal subsidized housing programs effective January 5th of this year. I would emphasize, however, that commitments that were made under these programs prior to their suspension will be honored. This will mean that approximately 300,000 units of new subsidized housing will be started in 1973.

In pursuing our goal of decent homes for all Americans, we know that better means are needed—that the old and wasteful programs, programs which have already obligated the taxpayer to payments of *between $63 billion and $95 billion* during the next 40 years, are not the answer.

One of my highest domestic priorities this year will be the development of new policies that will provide aid to genuinely needy families and eliminate waste.

A major housing study is now underway within the Government, under the direction of my Counsellor for Community Development. Within the next six months, I intend to submit to the Congress my policy recommendations in this field, based upon the results of that study.

TRANSPORTATION

To thrive, a community must provide for the efficient movement of its people and its products. Yet in recent years, the growing separation of the city from its suburbs and changing employment patterns have made transportation more of a community problem than a community asset. To improve community development we must meet the challenge of transportation planning and provide more flexible means for communities to meet their transportation needs.

Without better transportation, our communities will either stagnate or choke.

Four years ago we initiated programs to renew and redirect our transportation systems. We took action to expand the capacity of our airways, to preserve and improve intercity rail passenger service, to continue the Nation's highway program with greater emphasis on safety, and to bring needed progress to our surface public transportation. The Federal commitment has been substantial:

—The enlarged Airport Development Air Program established under the Airport-Airways Development Act of 1970 has quadrupled Federal assistance to airports to $295 million per year.
—Under the Rail Passenger Service Act of 1970 we have begun to rejuvenate rail service as part of a balanced transportation system.
—From 1970 through 1974 we will have invested some $23 billion in highways. In 1972 alone we committed $3.3 billion to the Interstate system, which is now 80 percent complete. In that same year, $870 million was designated for primary and secondary roads. Equally important, we have emphasized safety on our highways, both in their design and use.
—We have progressively increased the levels of Federal funding for transportation research, development, and demonstration projects. This support focuses on new transportation technology. It is designed to encourage private industry to join aggressively in the search for better transportation.

Concurrent with our programs to im-

prove transportation between our cities, we have undertaken programs to develop freeflowing corridors for people and commerce *within* our cities.

—Since 1970, when I proposed and the Congress passed the Urban Mass Transportation Assistance Act, we have committed more than 2 billion Federal dollars to preserve and upgrade public transportation. Nationally, urban public transportation has become a billion-dollar-a-year Federal program.

—Over the past four years, Federal dollars have helped 60 American cities to help those who depend on public systems for transportation to jobs, hospitals, shops and recreational centers. Now we must deal even more aggressively with community development challenges in transportation by building on the strong foundations we have laid.

Nothing can do more to lift the face of our cities, and the spirit of our city dwellers, than truly adequate systems of modern transportation. With the best highway system in the world, and with 75 percent of our people owning and operating automobiles, we have more transportation assets per capita than any other people on earth. Yet the commuter who uses a two-ton vehicle to transport only himself to and from work each day is not making the most efficient use of our transportation system and is himself contributing to our transportation and environmental problems.

Good public transportation is essential not only to assure adequate transportation for all citizens, but to forward the common goal of less congested, cleaner and safer communities. As I pointed out a few weeks ago in my message on the environment and natural resources, effective mass transit systems that relieve urban congestion will also reduce pollution and the waste of our limited energy resources.

As we build such systems, we must be aware of the two special challenges in coordinating the needs of the inner city and the suburb and in alleviating potential disruptions which new transportation systems can bring to neighborhood life.

To further these efforts I again continue to urge Congress to permit a portion of the Highway Trust Fund to be used in a more flexible fashion, thus allowing mass transit capital investments where communities so desire.

I recommend that the Congress authorize the expenditure by State and local governments of $3.65 billion over the next three years from the Highway Trust Fund for urban transportation needs, including capital improvements for bus and rapid rail systems. I also recommend continuing the rural highway program at the $1 billion a year level, and providing ample resources to advance the Interstate system as it approaches its 1980 funding completion date. This legislation can meet old needs while at the same time addressing new ones.

Some communities now feel unduly obligated to spend Federal monies on controversial Interstate highway segments in urban areas. I urge the Congress to allow States and localities to transfer such funds to the construction of other Federal-aid highways and mass transit capital improvements. In this way, we can help resolve controversies which have slowed work on a number of Interstate links in urban areas.

It is very important to recognize that this proposal does not represent an arbitrary Federal shift of funds from highways to transit. What it does stress is the right of local governments to choose the best solutions for their urban transportation problems.

This year, in a companion measure to our Federal Highway Bill, I am also proposing that funding for mass transit capital grants be increased by $3 billion, bringing the obligational authority for the mass transit program to $6.1 billion. This provision would maintain a forward looking mass transit program through at least 1977. I am also asking the Congress to amend the Urban Mass Transportation Assistance Act, increasing the Federal share for urban mass transit capital grant assistance programs to 70 percent and thereby achieving parity with Federal aid for urban and rural road building projects.

RURAL DEVELOPMENT

Community Development is sometimes thought of primarily in terms of urban areas. However, as this Administration has often pointed out—and will continue to emphasize—no element of our national well-being is more important than the health and vitality of our rural communities. Thus, in pursuing a policy of balanced development for our community life, we must always keep the needs of rural America clearly in sight.

Twice in the last two years, I have recommended legislation which would provide new revenues for rural development. Under my latest proposal, loans and guarantees would have been made for projects selected and prepared by the States.

While the 92nd Congress did not enact either of these proposals, it did enact the Rural Development Act of 1972, establishing additional lending authority for rural needs. Like the Administration's proposals, this lending authority provides for insured loans and guaranteed loans which allow maximum participation of the private sector.

Several new programs are proposed to be funded under the Rural Development Act. One is a $200 million loan program to assist communities with a population of less than 50,000 in developing commercial and industrial facilities. A previously existing loan program has been increased by $100 million—to a total of $445 million—and, under the new law, can now be used to construct a wide variety of essential community facilities. In addition, grants and other programs under the act will be funded at a level of $33 million.

This Administration will implement the Rural Development Act in a manner consistent with the revenue sharing concept, allowing major project selections and priority decisions to be made by the State and local governments whenever possible. It is our intent, after fully evaluating the effectiveness of this approach, to seek whatever additional legislation may be needed.

DISASTER ASSISTANCE

To a community suffering the ravages of a natural disaster, nothing is more important than prompt and effective relief assistance. As our population grows and spreads, each storm, earthquake, drought or freeze affects larger numbers of people.

During the past four years, we have tried to reduce personal injury, deaths, and property damage by emphasizing adequate preventive measures. During the same period, however, I have had to declare 111 major disasters in 39 States and three Territories. This past year alone set a tragic record for major disaster activity, as I had to declare 48 major disasters—43 caused by storms and floodings. There were a number of especially devastating disaster emergencies in this period: the flooding in Buffalo Creek, West Virginia; flash flood in Rapid City, South Dakota; and, of course, Tropical Storm Agnes which rampaged through the eastern United States. Agnes alone caused 118 deaths and some $3 billion in property damage.

Until now, disaster relief efforts have involved a number of different agencies and have been coordinated by the Executive Office of the President. The experience of the past few years has demonstrated that:

—We are not doing nearly enough to prepare in advance for disasters.

—States, local governments and private individuals should assume a larger role in preparing for disasters, and in relieving the damage after they have occurred.

—Responsibility for relief is presently too fragmented among too many authorities.

—At the Federal level, disaster relief should be managed by a single agency.

I intend to make 1973 a turning point in the quality of governmental response to natural disasters.

To achieve this goal, I have already proposed Reorganization Plan Number 1 of 1973, which is now before the Congress. It calls for the delegation of all responsibility for coordinating disaster relief to the Secretary of Housing and Urban Development, who is also my Counsellor for Community Development. This transfer of operations would take place at the beginning of the new fiscal year and would be carried out in such a way that the effective relations which now exist with State disaster officials would in no way be harmed, while a new sense of unity and mobility at the Federal level would be fostered.

If the Congress enacts my proposal for a new Department of Community Development, that new department would be responsible for directing *all* Federal disaster activities, including those of several other agencies which perform disaster roles.

In addition to the improvements I have proposed in Reorganization Plan Number 1, I will shortly submit a new Disaster Assistance Act to the Congress. This new act is designed to improve the delivery

of Federal assistance, to provide a more equitable basis for financing individual property losses, and to forge a more balanced partnership for meeting disasters head-on—a partnership not only among governments at all levels but also between governments and private citizens.

Under these proposals, each level of government would accept responsibility for those things it can do best. While the Federal Government would continue to assist with financing, State and local governments would have far more latitude and responsibility in the use of those funds. They would also be encouraged to assert stronger leadership in efforts to minimize the damage of future disasters.

For homeowners, farmers and businessmen who have suffered disaster losses, the Federal Government would continue to provide direct assistance.

I will also recommend to the Congress an expansion of the national flood insurance program to allow participation by more communities in flood-prone areas and to increase the limits of coverage.

CONCLUSION

As reflected by the proposals set forth here, I believe that we must strike out on broad, new paths of community development in America.

During the last few years, we have taken genuine, measurable strides toward better communities.

All of this is good; it is not good enough.

It is clear that we can and should be accomplishing more in the field of community development. There are too many programs that have been tried and found wanting. There are too many programs that strengthen the bureaucracy in Washington but sap the strength of our State and local governments.

People today want to have a real say in the way their communities are run. They want to feel that, once again, they can play a significant role in shaping the kind of world their children will inherit. And they expect their institutions to respond to their needs and aspirations.

That feeling will never flourish if the Federal Government, however vast its financial resources and however good its intentions, tries to direct the pattern of our lives. That feeling cannot be manufactured in Washington, it must come from within.

But the Federal Government can and should eliminate some of the barriers that have impeded the development of that feeling by returning resources and initiatives to the people and their locally elected leaders. It is in that spirit that I urge the 93rd Congress to give favorable consideration to my proposals for community development.

RICHARD NIXON.

THE WHITE HOUSE, *March 8, 1973.*

AUTHORIZATION FOR THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES DURING ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate may be authorized to receive messages from the House of Representatives and from the President of the United States during the adjournment of the Senate over until 12 o'clock meridian Monday next.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I assume and hope this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF SENATOR ROBERT C. BYRD ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, immediately following the remarks of the distinguished Senator from Oklahoma (Mr. BELLMON), I be recognized for not to exceed 15 minutes.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. 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 time for morning business has ended.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time for morning business be extended for 10 minutes.

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

THE RUSSIAN WHEAT SALES AND AGRICULTURE'S ROLE IN EXPANDING U.S. WHEAT EXPORTS

Mr. HUMPHREY. Mr. President, I rise to inform the Senate of a very important hearing that took place this morning and also to include in the RECORD, at the proper point, a statement that was delivered at that hearing.

The Senate, as well as the entire Nation, knows that there has been great concern about what has been called the Russian wheat deal. I have not been a severe critic of that deal or of that trade arrangement because I thought that, on balance, it was in the national interest. However, we have learned a good deal from it.

The Senator from Oklahoma (Mr. BELLMON) and I were commissioned by the Committee on Agriculture and Forestry to examine this matter. We journeyed to the Soviet Union to discuss it with Soviet officials, and we discussed it with American officials. We filed an appropriate report—we hope it will be helpful—with Congress, as a document of the Committee on Agriculture and Forestry. We have made some recommendations.

This morning, the distinguished Comptroller General of the United States, Elmer B. Staats, appeared before the Committee on Agriculture and Forestry and presented to us the results of a study conducted by the General Accounting Office on the Russian wheat sales and Agriculture's role in expanding U.S. wheat exports.

The report is very informative and exceedingly helpful for all persons who are interested in expanded agricultural exports. It contains some solid and reasonable recommendations. I ask unanimous consent that the statement of Mr. Staats, together with appropriate charts and other information, be printed at this point in the RECORD.

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

THE RUSSIAN WHEAT SALES AND AGRICULTURE'S ROLE IN EXPANDING U.S. WHEAT EXPORTS

(Statement of Elmer B. Staats, Comptroller General of the United States)

Mr. Chairman and Members of the Committee:

I appreciate your invitation to present the findings from our examination. Massive sales of U.S. wheat to Russia last summer, at what turned out to be bargain prices, focused national attention on a number of complex and controversial issues and led to requests by this Committee and several Members of Congress for the General Accounting Office's examination.

We sent to interested Members of the Congress an interim staff report on November 3, 1972 covering certain aspects of the wheat sales to Russia. Last week we sent to Agriculture a draft report on its management of the wheat export subsidy program. A final report to the Congress will be issued after we assess and consider Agriculture's comments.

My remarks today will focus on:

Agriculture's management of the wheat export subsidy program, and

whether Agriculture provided American farmers with current and meaningful foreign agricultural information so that they could adjust their operations and practices to world market conditions.

ROLE OF THE WHEAT EXPORT SUBSIDY PROGRAM

To understand the circumstances surrounding the sales of wheat to Russia, I will outline the role of the wheat export subsidy program in the sales. The program is designed to:

1. Insure U.S. wheats' competion in world markets.
2. Avoid disrupting world market prices.
3. Fulfill U.S. international obligations.
4. Aid price support programs by strengthening the domestic market price to producers.
5. Reduce the quantity of wheat taken into the Commodity Credit Corporation's (CCC) stocks under its price support program.
6. Promote the orderly liquidation of CCC stocks.

Export subsidy is discretionary with the Secretary of Agriculture as Director of the CCC. Wheat exports and subsidy payments for fiscal years 1969 through the first quarter of 1973 are shown in Enclosure I.

Mr. Chairman, I believe the most impor-

tant element brought out in our examination is that Agriculture had not developed an effective system for providing or analyzing information upon which to make the judgments and take actions needed for efficient administration of the subsidy program. We are making several recommendations to Agriculture for correcting what we believe is a serious gap in its management process. I will discuss them later in the statement.

Concerning the background to the Russian sales, from about the time the Secretary of Agriculture visited Russia in April 1972 to the signing of a credit agreement early in July, officials of both countries discussed a variety of subjects and issues including (1) most favored nation status for Russia, (2) repayment of Russia's World War II debt, (3) possible trade agreements, and (4) maritime matters.

The trade discussions centered around purchase of U.S. feedgrains, and credit arrangements to accommodate such purchases. Negotiations were finalized in the United States with the July 8, 1972 agreement whereby the United States made credit available of $750 million over a 3-year period for the purchase of U.S. grains (wheat, corn, barley, sorghum, rye, and oats). Agriculture officials were aware that the Soviet negotiating team, which arrived late in June included grain purchasing, financing, and shipping specialists, but stated that they were unaware of the Russians' simultaneous wheat negotiations with the U.S. grain trade.

We believe there were clear early signals from overseas and other sources concerning Russia's poor crop prospects and the dominant U.S. wheat supply situation. But, this information was not effectively used in Agriculture's decision making.

The program, which was designed by the Agriculture to assist U.S. exporters in competing with other suppliers under usual market conditions, was unable to cope with the disruptive nature of these purchases. The Russian Government entered a relatively stable market, and its huge, unanticipated orders, distorted prevailing supply-demand conditions and drove wheat prices up sharply. Although Agriculture stated that these were commercial transactions and officially kept a hands off attitude, these were not normal commercial transactions. Different ground rules appear appropriate for transactions involving purchases of substantial quantities of wheat by State procurement agencies.

In retrospect, assurances given to exporters by Agriculture that it would continue to provide subsidy on prevailing export target prices was a crucial factor in determining the amount of government-subsidy paid. The target price was maintained in the face of increasing indications of U.S. market dominance in the available supply of wheat. Perhaps more significant was the assurance given to exporters that they could, in effect, commit the U.S. Government to make up the difference between this artificial target price and whatever prices domestic wheat might rise to without establishing a limit of quantities.

The stage was thus set for the Russians to skillfully negotiate with individual exporters. The U.S. Government, not a participant in the negotiations, nevertheless subsidized the transactions much beyond what appeared necessary or desirable.

The Department of Agriculture, quite appropriately, points out that the United States stands to benefit substantially from wheat sales to Russia. These benefits include a positive impact on our balance of payments, the lessening of storage and inventory costs, reduced domestic subsidies, increased returns to a majority of farmers for their harvests, and the opening of new trade relationships. We estimate that balance-of-payments benefits will exceed $700 million.

COLLECTING AND DISSEMINATING FOREIGN AGRICULTURAL INFORMATION

Agriculture has fairly reliable data on general crop conditions and significant changes in worldwide supply and demand. But, this information was not effectively used or disseminated. Farmers were not generally provided timely information with appropriate interpretive comments to assist them in arriving at sound marketing decisions.

Agriculture disseminates, through publications and press releases to the news media, only that information it considers reliable and supportable. Virtually all unclassified information is indexed, listed, and available to the public upon request. Recipients include numerous colleges, businesses and agricultural groups but few individuals who might be farmers.

Agriculture also provides information daily to the news media, but its ability to keep farmers and farm groups fully informed has to be dictated by the information at its disposal. In the sales of wheat to Russia, for example, Agriculture officials stated they did not know the magnitude of sales made and did not attempt to find out, even though such information obviously was of great importance to wheat sellers. This coupled with an inaccurate assessment of Russian purchases, preclude Agriculure from realistically advising the public about wheat marketing prospects. Thus, Agriculture reports presented a distorted picture of market conditions.

Legislation directs Agriculture to acquire foreign agricultural information to assist "American farmers, processors, distributors and exporters to adjust their operations and practices to meet world conditions * * *." Agriculture has a conduit for informing the farm community of foreign agricultural developments through its Agricultural Marketing Division of the Federal Extension Service. But, because of limited staff, and emphasis on domestic matters, Service officials estimate that about 70 percent of U.S. farmers are not properly informed on foreign agriculture; those who are informed are usually the industry leaders.

The National Farmers Organization, a group that negotiates grain contracts for its members, stated last September that: "We, and others like us, can operate efficiently only if we are provided full, accurate information on policy and day to day operations in the Department that relate to grain programs." Other farm groups and members of the Congress expressed similar sentiments concerning the need for more effectively providing the data that farmers and farm groups need to direct their marketing activities.

Agriculture has not determined the specific intelligence needs of the agricultural sector. We believe the Secretary of Agriculture needs to consult with representatives of interested groups, including farmers, processors, distributors and exporters, and identify the information needs of each group.

This is a necessary first step in developing a more responsive information system that will provide farmers and other interested parties with current information on trade prospects.

IMPACT OF RUSSIAN SALES

Perhaps the most hectic period in U.S. wheat trading history occurred in the summer of 1972, as Agriculture sought to maintain its export subsidy program despite escalating domestic prices and consequent heavy subsidy burdens. The credit agreement with Russian and the subsequent disclosure of large wheat sales by private exporters seriously tested the efficacy of Agriculture's wheat export program.

These massive sales raised domestic wheat prices from about $1.68 per bushel in July to $2.49 a bushel in September. With almost every increase, Agriculture raised the subsidy to fill the gap between domestic prices and the presumed export market price. In September, Agriculture terminated its subsidy and let world wheat prices seek their own levels. Agriculture's estimates of 1972–1973 subsidy payments illustrates the impact of the Russian sales. The estimated subsidy of $67 million, based on exporting 650 million bushels of wheat, mushroomed to $300 million on exports of 1.1 billion bushels.

The Russian sales magnified imperfections in the wheat export subsidy program. From November 1971, Agriculture neither required nor received information from the grain export trade on contracted sales because "it had no commercial intelligence value." The principal information it had relative to probable U.S. exports was the registrations for export subsidy, but exporters often delay registering sales or register without sales, so this information could hardly be considered timely or accurate.

The Russians negotiated purchases of about 440 million bushels of wheat with private U.S. grain exporters during five weeks in July and August 1972 for deliveries through August 1973 at fixed prices at or slightly below the $1.63 to $1.65 target price range. Exporters were able to contract for these large quantities at these prices because Agriculture officials assured them that the subsidy program would continue at prevailing export target prices.

It is difficult to reconcile these assurances with Agriculture's knowledge of the market dominance of U.S. wheat and lack of knowledge of the quantities involved in the sales to Russia. As the domestic wheat price moved sharply higher, so did Agriculture's subsidy support. This culminated in a special subsidy rate of 47 cents a bushel from August 25 to September 1, 1972, when approximately 282 million bushels valued at about $128 million were registered for subsidy. These special registrations for six major exporters, together with their regular subsidy registrations, are shown in Enclosure II. See Enclosure III for export target and subsidy rates from July 3, to September 25, 1972.

Although the special subsidy was intended to equalize sales and purchase prices for exporters who had sold to the Russians at low prices, all export sales were eligible. Agriculture had no information on other higher sales made by the exporters. Sales were made at prices higher than the $1.63 to $1.65 target price, and, by delaying their registrations, exporters took advantage of the increased subsidy rates.

While Agriculture was attempting to make up the difference between the $1.63 target price and the going domestic price of about $2.10, the offered sales prices in Europe during the week were substantially higher. Even at the higher prices Europeans made advance-purchases of large quantities of U.S. wheat through April 1973 needs.

MANAGEMENT IMPROVEMENTS NEEDED

The key determinant in establishing daily wheat subsidy rates is the export target price. The difference between this target price and the prevailing domestic price becomes the basic subsidy rate for exporting a given type and grade of wheat. The export target price for Hard Red Winter wheat, the principal type of wheat sold to the Russians, was maintained at $1.63 to $1.65 a bushel from around October 1971 through mid-August 1972.

DOMINANT U.S. SUPPLY POSITION

As early as January 1972, the U.S. Embassy in The Netherlands commented that U.S. wheat, both Hard Winter and Spring, dominated the market because of its competitive pricing and because of shortages experienced by other supplier countries. The U.S. Embassy in The Netherlands reported

that buyers were unable to obtain wheat from Australia and Russia, and the Australian Wheat Board told prospective buyers that supplies might not be sufficient to satisfy traditional customers.

The first visible signs of Russia's wheat purchasing occurred in March 1972, when Canada sold it about 3.5 million tons (about 130 million bushels) with an option to buy 1.47 million tons of wheat and flour to be delivered from July 1972 to May 1973. Following this sale, the Canadian Wheat Board reportedly withdrew from the market for the remainder of the crop year (August 1972). Other data tended to confirm the dominant U.S. position.

A Foreign Agricultural Service study in April 1972, assessing the possible competition in supplying grains to Russia, observed that competing countries' stocks for exports were low, committed, or lacked the physical facilities for movement. The report commented:

"In the short-run, therefore, if the USSR were to enter the world market looking for a large tonnage of grains in addition to the wheat which it has already purchased from Canada, it would have to be content with relatively small quantities from several different suppliers, unless it were to buy from the United States."

Export Marketing Service officials told us that they recognized in the spring of 1972 that the world wheat picture was changing and that some increase in export prices might be possible. However, the export target price was not changed because:

World prices at $1.63 to $1.65 were not so high as to bring about excessive production from competing exporting countries.

Canada had made extensive future delivery commitments at low prices, many of which provided the buyer an option to take additional quantities at the same price.

The United States had large wheat stocks on hand and needed to increase exports.

Agriculture wanted to be fair to traditional U.S. customers who had come to depend on this price level.

It would have been illogical to allow wheat prices to rise before idle acreage was brought into production.

We could find no analyses of the effects a change in its pricing policy would have on the various reasons Agriculture offered for maintaining it. The representations seemed to reflect the intuitive judgment of its officials.

SPECULATIVE SUBSIDY REGISTRATIONS

A subsidy registration contract exists when wheat is offered for export and accepted by CCC. Exporters collect on subsidy registrations upon submitting documents that shipments have been made. An October 1967 change in the program's regulations allowed exporters to apply shipments to any open subsidy registration and to register for subsidy at any time, whether a sale had been made or not. Exporters, choosing to register before or after making sales could gain or lose on the subsidy, depending on whether it went up or down.

The speculative aspects of the subsidy registration system are illustrated by five examples noted where exporters delayed registering for up to 4 weeks after making sales. In these examples CCC will pay exporters subsidies totaling about $604,493, whereas had the exporters registered on the sales dates the subsidies would have totaled $286,188, or $318,305 less.

Several cases involved waivers of subsidy entitlement from one company to another. The ultimate export is bought at a net price (basically domestic price less subsidy) and rights to subsidy are waived to the seller. In some cases the company making the actual export lost on the transaction because it was unable to buy low enough to satisfy sales commitments while the company selling it obtained large subsidy payments for simply selling wheat domestically.

Agriculture rationalizes this practice on the basis that, although the subsidy recipient does not make the actual export, he causes an export to be made and is entitled to payment. We question the need for a further speculative element in wheat exports, but, more important, we believe total U.S. exports could be adversely affected. In some cases, the company waiving the subsidy already has an export sales commitment which must be honored. By accepting the domestic sales of the subsidy contractor, Agriculture relieves the contractor of his obligation to export and substitutes in its place an export which would have been made regardless of the subsidy. To the extent that this situation prevails, that much less wheat is exported.

CARRYING CHARGE INCREMENT

CCC pays exporters a carrying charge increment to cover the estimated costs of owning wheat for future delivery. Ownership of wheat is understood to cover insurance, interest, storage, and other costs which are passed on to the buyer.

The increment was designed to enable U.S. exporters to compete with Canadian and Australian Wheat Boards, who bear the carrying charges for future delivery of wheat. Payments are made to exporters of all classes of wheat exported on or after the 61st day following the *registration* for subsidy, for a maximum of 180 days.

To collect the carrying charge increment, exporters submit evidence of shipment and certification of sale showing the sales contract date, amount, buyer, and shipping date. Records showed that sales contracts cited as supports for payments frequently called for shipments within a few days. The registrations shipments were applied to, however, were sometimes dated up to 7 months earlier, resulting in significant payments.

Exporters view the carrying-charge increment as a cushion against possible losses or as additional profits. Two exporters estimated that they realized additional revenues of about 5 cents for each bushel exported. This compares with net profit in the trade of about 1.5 cents a bushel. In a cursory review of 1972 files, we found 28 instances totaling $360,000 where the sales contracts cited as support for payment called for shipment within a few days after the date of sale.

OTHER SUBSIDIES

CCC pays exporters a rail subsidy for Hard Red Spring and Durum wheat to compensate for the additional cost of shipping by rail when the St. Lawrence Seaway and upper Mississippi River are closed to water transportation because of winter ice conditions.

In addition to these subsidies, wheat exporters are eligible for benefits under the (1) CCC Export Credit Sales Program, (2) Barter Program, (3) Title I, Public Law 480 sales for long-term credit to foreign governments and (4) sale of government-owned commodities. U.S. wheat exports, therefore, are subsidized, under certain circumstances, up to 25 to 30 percent of the sales prices.

EXPORTERS' PROFITS ON RUSSIAN SALES

Grain company records do not segregate Russian sales from other sales. In an attempt to assess their profits on the sales to Russia, five of the six exporters provided us statements reflecting their approximation of profit or loss on these sales. None of the statements indicate that excessive profits accrued.

Because of the complexities involved in grain merchandise accounting, the difficulties in deriving a meaningful statement on the profitability of selected sales, and the fact that our review has not been completed, we are not in a position to express an opinion on the validity of exporters' representations at this time.

IMPORTANCE OF PROGRAM EVALUATION

Mr. Chairman, I was pleased with your January 17, 1973, remarks to this Committee underscoring the importance of program evaluation. You said that:

The key word of our committee this year * * * will be increased emphasis on oversight, using the most sophisticated cost-effectiveness and system analysis techniques to evaluate the worth of existing programs, and the way they are being administered by the Executive Branch. The Committee Staff has already laid the groundwork for this systematic program review with the GAO and the Congressional Research Staff * * *.

I have continuously stressed program evaluation as fundamental to effective administration and have urged the Congress to include appropriate language in legislation covering the various programs. The accountable agencies should be responsible for evaluation and I have instructed our staff to give particular attention to this need and to include in our advice to the Congress our appraisal of how well the agencies are performing their evaluations.

The weaknesses we observed in the wheat export subsidy programs are largely attributable to Agriculture's failure to develop a management evaluation system to ascertain whether subsidies involved in wheat exports were achieving program objectives effectively and economically.

Attempts to evaluate the program have been made only during crises, such as after the sales to Russia, and then only on a limited basis. Officials claimed that the complexity of the program precluded effective examination. We recognize the complexities involved. Nevertheless, the substantial expenditures of Government funds to meet wheat export objectives compels Agriculture to assess program results. In its absence effective management actions are impaired.

NEED FOR MANAGEMENT INFORMATION

Vital information on the operations of the subsidy program was generally unavailable. Agriculture had not deemed it necessary to develop information basic to program management. When data was available, meaningful summaries could be obtained only by manually reviewing voluminous files. This data void is crucial because, without key information, Agriculture is unable to make management decisions necessary to effectively and efficiently administer the subsidy program. Some important management information voids are discussed below.

BASIS FOR SUBSIDY CALCULATIONS

The estimated U.S. port price and the prices offered for U.S. and competing wheats on world markets are basic to developing subsidy rates. Domestic buyers and sellers are contacted daily to develop a single price which reflects the price for wheat delivered to designated U.S. ports.

We were unable to ascertain the rationale and judgments exercised and the relative weights given to the variety of factors involved in the calculation of subsidy. We observed this same lack of documentation in our July 1967 report "Review of Certain Aspects of the Wheat Export Program Conducted by the Commodity Credit Corporation (B–160340)."

LACK OF INFORMATION ON SUBSIDY PAYMENTS

Agriculture does not require information from exporters on purchase and sale prices of export transactions, nor does it ascertain that subsidy payments are reasonable and result in additional wheat exports.

Other important data, obtainable only by detailed examination of voluminous files, included—

Subsidies paid to individual export companies;

Subsidy payments by type, i.e., basic, carrying-charge increment, and rail;

Penalties assessed for nonperformance, by company, value, reason, and number involved; and

Administrative decisions absolving exporters from penalties for nonexport by number and type involved.

We are exploring with Agriculture several proposals for improving management of the wheat export subsidy program and for developing a more responsive system for collecting and analyzing foreign agricultural information.

With respect to Agriculture's role in wheat exports, we believe the Secretary of Agriculture should:

Review the entire program and determine the need for subsidies and, if needed, how they can be used more effectively and efficiently in world market competition.

Develop a coordinated system for negotiating the sale of wheat to nonmarket economies (such as those of Communist countries) and other Government-directed procurements.

We believe that a mechanism can be devised within the system of using private capital for marketing agricultural products while recognizing that foreign government directed procurements exceed normal supply-demand considerations.

In anticipation of the possible renewal of wheat exports subsidy payments, the Secretary of Agriculture should establish a system for:

Providing for periodic evaluations of program effectiveness and efficiency, including periodic checks on end-users of wheat and countries of ultimate destination.

Documenting the basis and rationale used in establishing the daily subsidies.

Directing that timely reports on subsidy recipients, and administrative decisions on penalty foregoings are prepared.

Directing that sales and cost data on wheat transactions be obtained and used in establishing subsidy levels.

Revising the basis for computing entitlement to the carrying-charge increment.

Several of the major grain companies involved in the sales to Russia have offered to discuss with us their views of the operation of the subsidy program, but, as yet, we have not had the opportunity to meet with them. In the process of refining and firming up our recommendations to Agriculture, my staff plans to take advantage of their offer.

This concludes my testimony. I shall be pleased to try and answer your questions.

U.S. EXPORT SUBSIDY RATES AND RELATED EXPORT PRICES FOR HARD RED WINTER WHEAT [1] FOR THE PERIOD JULY 1–SEPT. 25, 1972

[Amounts per bushel]

Date, 1972	Delivered shipboard at U.S. port	Export subsidy [2] rate		Export target price	
		I [3]	II	I [3]	II
July:					
3	$1.68¼	$0.05			$1.63¼
5	1.69	.06			1.63
6	1.71⅛	.07			1.64⅛
7	1.69⅛	.07			1.62⅛
10	1.71⅛	.09			1.62⅛
11	1.76¼	.13			1.63¼
12	1.76⅛	.13			1.63⅛
13	1.76⅛	.13			1.63⅛
14	1.73¼	.10			1.63¼
17	1.74¼	.11			1.63¼
18	1.76⅞	.13			1.63⅞
19	1.79¼	.15			1.64¼
20	1.77⅝	.14			1.63⅝
21	1.76¼	.13			1.63¼
24	1.78¾	.14			1.64¾
25	1.79⅛	.15			1.64⅛
26	1.77⅞	.14			1.63⅞
27	1.76⅝	.13			1.63⅝
28	1.78	.14			1.64
31	1.79¾	.16			1.63¾
August:					
1	1.80½	.16			1.64½
2	1.80¾	.17			1.63¾
3	1.88	.21			1.67
4	1.95	.31			1.64
7	2.05	.31			1.74
8	2.04	.31			1.73
9	1.96¼	.31			1.65¼
10	2.02	.36			1.66
August—Continued					
11	$2.04¾	$0.36			$1.68¾
14	2.05	.36			1.69
15	2.02¾	.35			1.67¾
16	2.04	.36			1.68
17	2.08	.38			1.70
18	2.10¼	.38			1.72¼
21	2.10½	.38			1.72½
22	2.11¾	.38			1.73¾
23	2.14¼	.38			1.76¼
24	2.12	.38			1.74
25	2.09¾	$0.47	.38	$1.62¾	1.71¾
28	2.10¼	.47	.37	1.63¼	1.73¼
29	2.13¼	.47	.35	1.66¼	1.78¼
30	2.14¼	.47	.32	1.67¼	1.82¼
31	2.12	.47	.30	1.65	1.82
September:					
1	2.17¼		.30		1.87¼
5	2.18½		.30		1.88½
6	2.17¼		.30		1.87¼
7	2.17⅛		.29		1.88⅛
8	2.18⅜		.30		1.88⅜
11	2.21		.29		1.92
12	2.27		.28		1.99
13	2.25½		.26		1.99½
14	2.29¾		.25		2.04¾
15	2.38⅛		.25		2.13⅛
18	2.49⅛		.23		2.26⅛
19	2.46½		.21		2.25½
20	2.40¼		.19		2.12¼
21	2.39¾		.14		2.25¾
22	2.43⅜		.00		2.43⅜
25	2.39½		.00		2.39½

[1] No. 2 Hard Red Winter, Ordinary Protein, f.o.b. gulf/east ports.

[2] Rate announced effective 3:31 p.m. that day applicable through 3:30 p.m. the following day.

[3] On Aug. 25, 1972, Agriculture announced a two-tier system which provided a special subsidy rate of $0.47 a bushel through Sept. 1 for contracts entered into prior to Aug. 24, and a subsidy in later sales at new rates which did not maintain the $1.63–$1.65 base.

Source: Wheat and wheat flour export programs payment rate announcements and wheat market information and subsidy work sheets, export marketing service, Department of Agriculture.

Mr. HUMPHREY. Mr. President, I hope that those who are writing about the Russian wheat sales and those who comment on that matter would take time to read this report. It makes no wild accusations. It charges no corruption. It simply presents a detailed analysis of what transpired and the information the Department had prior to the wheat sale.

It is an excellent report on the problems that relate to export subsidies and poses the question as to what we should do in the days ahead about export subsidies. It also poses the question, which we will examine in the Subcommittee on Foreign Agricultural Policy, as to how the Department is equipped by manpower, research data, personnel, and other facilities to encourage and properly handle export activities.

The Government is depending a great deal on our exports for the coming year, particularly in agriculture, and we need to be equipped properly to meet this situation and to take advantage of the export market if it is there.

I hope that all of us will read very carefully not only the report we filed but also the statement of Mr. Staats.

DEVALUATION OF THE DOLLAR

Mr. HUMPHREY. Mr. President, I have some information that I think is of interest to the American people and, I hope, to Congress.

The matter of dollar devaluation has bothered many of us. It is a complicated subject. The average citizen does not understand its implications. I do not claim to understand all of them, myself. But I came across some information that tells me in rather vivid terms what it has meant to us.

A writer for the Christian Science Monitor, Paul Wohl, has summarized it very well. I have been informed of certain matters relating to the Soviet bloc countries and the dollar devaluation, but I have never found the matter so well stated as in the article that appeared recently in the Christian Science Monitor.

Mr. Wohl states that the dollar devaluation has been a boon, a bonanza, to the Soviet bloc countries. This may come as rather startling information, because we generally think of Soviet bloc countries as dealing in European currencies rather than dollars, and we have never judged that we had too much trade with the Soviet bloc countries—countries such as Czechoslovakia, Poland, and Rumania. But what we call Eurodollars—that is, dollars in the possession of our European friends and neighbors—are a form of currency that is widely used in all of Western and Eastern Europe for trade negotiations.

So here is what we see. We see that the dollar devaluation has indirectly more than paid for all of Moscow's massive emergency purchases of grains and fodder, wheat and feed grains. First, the Russians received a good deal on the wheat at a price of a little over $1.60 a bushel. In light of the short supply in the world; this was an unusually favorable price.

Now, on top of the very favorable price which the Russians obtained for the purchase of the 11.5 million tons of wheat from the United States, we find out that because of the devaluation, without regard to what happened to the price of gold, the Russians have made enough, they and their allies, to more than pay for all of the purchases of feed grains and wheat.

With respect to the price of gold, the price of gold is now over $90 an ounce. The Russians are the second largest gold producing country in the world. We do not know how much gold the Russians have in official reserve, but undoubtedly they have large quantities. They have been able to pay in gold bullion on many occasions for imports from western European countries. To put it directly, the Russians have a substantial gold reserve insofar as anyone is able to ascertain.

They are the second largest gold producing nation in the world. That means when the price went from $35 an ounce to where it is today, primarily because of the devaluation and the monetary uncertainty in the world today, the Russians had a harvest in the money market that far exceeded any trouble they had in the grain market.

The bonus to which I refer is the result of Communist country borrowing. Over the past 6 months or so, according to Mr. Wohl, Soviet bloc banks have been granted Eurodollar loans totaling roughly $40 billion by European financial institutions. This is money the Soviet bloc countries have used to make purchases in the West. Now that the dollar has been devalued, and, of course, it has

had two devaluations in the last 2 years, the Communist countries, according to this article, will save 10 percent in the repayments. Already these countries have netted $4 billion and they expect more dollar devaluations to add to that sum.

The total purchase price of wheat which the Russians made was under $1 billion. By the way, we provided them with loans through the Commodity Credit Corporation for a substantial amount of that purchase at the going rate of interest of the Commodity Credit Corporation.

Mr. President, I rise today to mention this because it demonstrates to the American people what devaluation means, and that is a lowering of the value of our money. The Soviet bloc countries have more than enough to pay about four times for all the wheat they purchased at one of the best and lowest prices this country has ever offered. The 40 billion Eurodollars they have borrowed in the last 6 or 8 months from European financial institutions has enabled them to net over $4 billion in American dollars in the past year.

One might ask where this information comes from and whether it can be verified. That is a good question because this is a matter of importance.

The information, according to my knowledge, that tells us about $40 billion of borrowing between European financial institutions and the Soviet bloc countries, comes from reliable sources reported by Franz Pick, noted international currency analyst. Dr. Pick has just returned to New York from a tour of European financial institutions. The article by Paul Wohl states:

The initiative for these transactions is said to have come from West European financial institutions, whose representatives assiduously visited the East bloc's central banks in Moscow, Warsaw, Budapest, etc., offering easy Eurodollar credits.

These institutions hold a large part of the more than $100 billion Eurodollars floating in the world. Their loans to the Communist bloc are a means of obtaining a reasonable interest (7 to 8 percent) on these Eurodollars.

In a related move, Japanese banks—

Because we have a trade deficit with Japan—

have extended a substantial Eurodollar credit to Deutsche Notenbank, the central financial institution of East Germany.

Most of these transactions were negotiated by the Soviet Union's banks abroad—the Moscow Narodny Bank of London, the Banque Commerciale des Pays de l'Europe du Nord of Paris, the Ost-West Handelsbank of Frankfurt, the Voskhod Handelsbank of Zurich, and the Moscow Narodny banks of Beirut and Singapore.

Every one of these banks enjoys an excellent financial reputation, which in the case of the London and Paris banks has been built up over a half a century.

Mr. President, I ask unanimous consent that the entire article by Mr. Wohl may be printed in the RECORD at this point.

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

U.S. DOLLAR SLIPPAGE MEANS A BIG BOON FOR SOVIET BLOC

(By Paul Wohl)

Dollar devaluation has been a boon for the Soviet bloc.

Indirectly it has more than paid for all Moscow's massive emergency imports of grain and fodder.

This bonus is the result of Communist borrowing. Over the past six months or so, Soviet-bloc banks have been granted Eurodollar loans totaling roughly $40 billion by European financial institutions—money which the bloc nations have used to make purchases in the West.

Now that the dollar has been devalued, the Communist countries will save 10 percent on the repayments.

Already these countries therefore have netted $4 billion. And they expect more dollar devaluations to add to the sum.

INSTITUTIONS VISITED

The $40 billion borrowing figure comes from reliable sources reported by Franz Pick, noted international currency analyst. Dr. Pick has just returned to New York from a tour of European financial institutions.

The initiative for these transactions is said to have come from West European financial institutions, whose representatives assiduously visited the East bloc's central banks in Moscow, Warsaw, Budapest, etc., offering easy Eurodollar credits.

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Every one of these banks enjoys an excellent financial reputation, which in the case of the London and Paris banks has been built up over a half a century.

POLITICAL IMPACT EXPECTED

The Soviet bloc expects the currency crisis to affect political relations between the United States and the Common Market countries, as well as with Japan.

Should the Europeans succeed in setting up a West European currency pool, as has been repeatedly suggested, the dollar might cease to be the West European accounting unit, Soviet analysts believe. A similar zone for Japan's yen would further deepen the dollar's predicament.

Soviet commentators, cautiously reporting such trends, gloat at the West's financial difficulties and claim that none of these measures would bring lasting relief.

Actually, however, financial trends are not all to the advantage of the Soviet bloc. The bloc's central banks still use dollars in their foreign-trade dealings with third-world countries. Most of the credits which the bloc has extended to these countries are to be repaid in the now less valuable (paper) dollars.

Mr. HUMPHREY. Mr. President, the Soviet Union is very careful to keep its banks located in Paris, London, Frankfurt, Germany, Beirut, Singapore, and other parts of the world as solid financial institutions. They have the highest reputation for their fiscal integrity.

I just want us to keep in mind as we look ahead to trade policy in this country, and other matters related to monetary and fiscal matters, what happens in the real world of commonsense that ordinary people can understand when we get devaluation.

Devaluation does two things. It raises prices at home and it lowers the prices of our exports abroad which means that people overseas today get goods at lower prices and it means that people that buy them here in America pay higher prices. That is what devaluation means. It is very, very sour medicine, Mr. President. That would be bad enough, but in this instance we have given interest-free, as if it were a grant or a gift, $4 billion in the last 6 months to the Soviet-bloc countries—$4 billion.

They not only have gotten our wheat for nothing; they have been able to get another $3 billion out of the devaluation that they can use for whatever purposes they wish. I hope it is all for peaceful purposes. They have plenty of needs on the civilian front, but, Mr. President, when we read in the newspapers about devaluation, let us not think that it is something that happens to someone else. I want to say to fellow Americans, and sometimes it is difficult to get the attention of the people on these matters, that devaluation does not help you one bit. They can make it sound good, sweet, nice, and cozy. Bankers understand it and generally do pretty well with it, but for the average American citizen devaluation raises our prices, lowers prices other people pay for American goods and takes away the value of our currency, giving many countries that have these Eurodollars and can lend them out on what we call second-tier lending, a bonanza, a handout.

Mr. President, can you imagine this Senate voting $4 billion foreign aid to Communist bloc countries? Mr. President, can you imagine what would happen if we came into the Senate with a bill for $4 billion of foreign assistance to any country? We are having a big argument now as to whether we are going to have $2.5 billion foreign aid to Hanoi. Within 6 months we have had a $4 billion grant program—not loans, but grants—of the American dollar to the Soviet bloc countries and the Soviet Union—$4 billion by a simple devaluation procedure.

I want to also note—and I am not going to be critical about this—that devaluation, under the law, is supposed to be done under act of Congress. The law under the Roosevelt administration, when we had the first devaluation in the 20th century, provides that if the American currency is to be devalued, it must be done by the American Congress. But because of the peculiar circumstances in which we live today, with other currencies floating up, and not very many of them going down, and because of possible rampant speculation if Members of Congress started debating devaluation on the news media, we have blinked our eyes and closed our eyes to what the law requires, and we have permitted the President to devalue at his convenience.

I am not trying to be critical of the President, because he has done this with

the full knowledge of the Members of Congress, but we ought to change the law—either that or hold to it. I do not believe in having a lot of laws on the books that seem to mean nothing. But the law requires that devaluation be done by Congress.

Mr. President, this is just another way of saying the American dollar is in serious trouble. It is only another way of saying when you devalue, you do not help yourself. Devaluation is like a lost weekend, an expensive hangover which causes trouble at home.

It may give some other people who are holding some of the "juice" a little pleasure abroad, but do not tell me that devaluation is going to help anybody in this country. It might help a little on export, but the export provides in this instance a bonanza for those Europeans who hold $100 billion American dollars in their banks. Along with the Japanese, these European bankers have used those dollars in the Western and Soviet bloc countries. Many of them can use devalued dollars in the United States to pick up American property.

I am no expert on devaluation, but I know when I have a backache and I know when I have a headache and I know when I am not feeling good, and I know what it is like to feel good and be well and healthy.

What I am trying to tell you, Mr. President, is that devaluation is another indication of American economic sickness. You can continue to take all the economic aspirins from now until doomsday—it is not going to cure the disease; it is going to take more than a sign-off every other year by saying, "We have devalued the dollar."

I have brought this matter to the attention of my colleagues in the hope that it may be subject to their attention. I do not claim to be an expert on this subject, but I know some arithmetic. I know when we lose $4 billion in devaluation, it is not something to cheer about and have a 21-gun salute and say we have had a great victory.

The PRESIDING OFFICER. The time for the transaction of morning business has expired.

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be an additional period for the transaction of additional morning business for not to exceed 15 minutes.

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

MILITARY WEATHER MODIFICATION

Mr. PELL. Mr. President, the Federation of American Scientists announced today that it has formally requested President Nixon to make a full public disclosure of any offensive military weather modification activities by the United States during the war in Southeast Asia.

I hope very much that the administration will give careful consideration to the request by the federation and will decide to inform the public of any weather modification activities that were in fact conducted.

I have on several occasions brought to the attention of the Senate the dangers to our own country, and indeed to all of humanity, that would be posed by unbridled development and use of environmental and geophysical modification warfare techniques.

On February 22, I introduced for myself and 18 of my colleagues in the Senate, a resolution (S. Res. 71) urging the negotiation of an international agreement to prohibit the development and use of environmental and geophysical modification techniques as weapons of war.

I believe a full and frank public discussion of this problem, including any activities of our own Government, would be an important step toward an international agreement to prohibit the development and use of environmental warfare technology. And it is in that context that I hope the administration would consider the request of the Federation of American Scientists.

I would emphasize that this is not a partisan political issue. What public evidence exists of the use of weather warfare by the United States indicates the activities were carried out under a previous administration.

I think it is significant to note that the spokesmen for the federation on this issue are Dr. Herbert Scoville, Jr., a former Deputy Director of the CIA under Presidents Eisenhower and Kennedy, and former Assistant Director of the Arms Control and Disarmament Agency under Presidents Kennedy and Johnson; and Dr. Gordon J. F. MacDonald, one of the original members of the Council on Environmental Quality under President Nixon.

Mr. President, the Federation of American Scientists has a membership of 4,500, including many of our country's most distinguished scientists. The federation's request to the President, in addition, is supported by petition of 750 nonmembers scientists.

I ask unanimous consent that the text of the federation's letter to President Nixon, signed by Dr. Marvin L. Goldberger, FAS chairman, be printed at this point in the RECORD, along with the federation's news release, and the list of signatories to the request.

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

FEDERATION OF AMERICAN SCIENTISTS,
Washington, D.C., March 1, 1973.

Hon. RICHARD M. NIXON,
President of the United States, the White House, Washington, D.C.

DEAR MR. PRESIDENT: As you know, there has been considerable speculation about the possibility that weather modification was used, at one time or another, during the Vietnamese conflict, as a weapon of war.

These charges have appeared on the front pages of leading newspapers and in testimony before Congressional committees, but they have not been denied. Indeed, United States Senator Claiborne Pell, who presided over Foreign Relations Committee hearings on weather modification said, on the Senate floor on February 22, that "In my own mind, there is no doubt that the United States did indeed conduct weather modification operations in Southeast Asia."

Many American scientists are concerned about the precedent that such actions would pose. There are many different kinds of geophysical warfare which, if they were to be engaged in by ourselves and by opponents, would be to the clear disadvantage of mankind. The use of weather modification as a weapon of war is an opening wedge to the use of climate modification, the inducement of earthquakes, and other still more terrible methods. We see geophysical warfare as a "Pandora's box" to which the seemingly inoffensive weather modification may be the disastrous key.

Especially now that the cease-fire is taking effect, we believe that the Government should disclose the facts concerning U.S. activities in this area. The right of the public to know of the activities of its Government is fundamental to our way of government, to our ability to make appropriate policy, and to our liberty itself.

This public right to know is as unqualified, and needs as little explanation, as our right of petition. But in explanation of our strong interest, we note that these revelations are critical to permit the public to understand the importance of international agreements prohibiting weather modification. And we can conceive of no valid national security reason for denying these disclosures about the past.

With this in mind, our elected National Council has voted formally to urge the Administration to disclose what it knows about any such activities under this or previous Administrations. Under our Federation's constitution, our Council can speak for our 4,500 members on such issues. But, in addition, we have compiled a petition signed by over 750 non-members, as an indication of the depth of feeling of the scientific community at large, that full disclosure of weather modification activities by our Government should now take place.

Sincerely,

MARVIN L. GOLDBERGER,
Chairman.

SCIENTISTS PETITION PRESIDENT FOR FULL DISCLOSURE OF WEATHER MODIFICATION ACTIVITIES

At a press conference today, two officials of the Federation of American Scientists (FAS) released a statement calling upon President Nixon to disclose details concerning any American use of weather modification as a weapon of war in Vietnam. The request was backed by a resolution of the FAS National Council (26 elected members) speaking for the FAS membership of 4,500. In addition, a petition was provided signed by 750 nonmembers.

Speaking for the Federation at the press conference were:

Dr. Herbert Scoville, Jr., FAS Secretary; former Deputy Director of the CIA under Presidents Eisenhower and Kennedy, and former Assistant Director for Science and Technology of the Arms Control and Disarmament Agency under Presidents Kennedy and Johnson; and

Dr. Gordon J. F. MacDonald, a member of the FAS Executive Committee, and a former charter member of the President's Council on Environmental Quality under President Nixon. Dr. MacDonald is, perhaps, the nation's leading authority on the dangers of geophysical warfare.

They were introduced by the Federation's Director, Dr. Jeremy J. Stone.

The Federation's concern about weather modification was tied to widespread and

often authoritative[1] reports which the Administration had pointedly refused to deny, indicating that:

Weather modification was first used in 1963 by the CIA over *South* Vietnam to control demonstrations and to cover covert operations;

Rainfall was deliberately enhanced over Laos in 1966 in an experimental program;

In 1967, the Joint Chiefs successfully urged an operational program;

Denials by then Secretary Laird were carefully and repeatedly restricted to weather modification activities over *North* Vietnam.

It had even been suggested in some newspaper articles that:

Rainfall enhancement over Laos and the Ho Chi Minh trail may have been responsible for the unusually heavy rains that devastated parts of North Vietnam by flooding in 1971.

Furthermore, it was a matter of record and fact that:

On September 8, 1972, a commercial weather modification firm filed suit for $95 million in Washington claiming that the Government has used in Indo-China a cloud-seeding device called "weathercord" in violation of the firm's patent rights.

Administration witnesses before Congress refused to discuss the matter but opposed efforts to formulate treaty bans of weather modification.

The Administration sought to water down weather modification prohibitions proposed at the Stockholm Environmental Conference.

The Administration belatedly dropped from its program of cooperative discussions with the Soviet Union any mention of weather modification.

Weather modification can have quite uncontrollable and unpredictable effects at the present or foreseeable stage of knowledge.

The Federation council feared that weather modification would be a dangerous precedent leading to other innovations in geophysical warfare such as the steering of storms, the manipulation of climates, the inducing of earthquakes, and so on.

It noted that, at the Stockholm environmental conference, 113 countries agreed that nations were responsible "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States." Thus there was little doubt that such activities would offend the conscience of mankind.

LIST OF NAMES OF NON-FEDERATION MEMBERSHIP OF SIGNATORIES

Jeffrey N. Stallard, Richard J. Carter, Mark A. Boroush, Gordon P. Rands, Johanna R. Van Wert, Tom Wulf, Dorothy Adkins, Chase Kimball, Nancy Maurer, Kathleen Shordt.

Robert Brumbaugh, Noah E. Jameson, Mary-Ann Cateforis, Stephen Lewis, Claudia Strauss, Jane Goodwill, Kenton K. Brubaker, Erich H. Werner, Tom Owen, J. Malakoff,

Richard D. Siegel, Thomas Lee Mansir, Lester L. Zimmer, Sherman L. Quinlan, Jr., Donald R. Clerico, Carl C. Swann, Jr., Frank C. Ruf, Judy Spira, Ron Henricks, Linda J. Schlegel,

Riley E. Dunlap, Viki Gaydosik, Robert L. Janiskee, Faye Berrong, Jack Gutkin, William H. Van Den Berg, Carl Andersen, Stephen Jennings, Dan Powell, Paul B. Martin,

P. Daugherty, David L. Dozark, Deborah Wilcock, Philip Shoemaker, Kathryn Kistler, Herbert T. Hendrickson, Thomas A. Seaver, Warren Winalski, Jr.,

Barbara Dempsey, Eric B. Partee, David B. Kearney, Deborah E. Marshall, Jerry Lantz, Gene Gardner, Vicki Evons, Joan Newell, Robert J. Kanzler, David Gordon, Watson Morris,

John Prenis, Gerald H. Ricci, Anne Cloutier, Mathew Odom, Karen E. Smith, Deborah B. Hill, James C. Shaeffer, Marcia L. Vance, Juanita Kasza, Robert G. Speidel,

Karl K. Boggs, Pamela McFarlin, Jay Perlman, Stanley L. Cummings, Jr., Scott Wadler, Arthur H. Buhl III, Frank Barnhart, John Davidson, Palmer W. Schoch, Harold Sandstrom.

Jean Arrowsmith, Alfred Wilson, Gregory W. Evans, William D. Fried, William B. Saffrin, Jon Perica, John F. Wheeler, Rita Jards, Henry Brenner.

Roland D. Bahret, Amy E. Patterson, Hal C. Dorst, Charles N. Barrett, David Barnett, Rennie Jenkins, Mark Goodman, Dwight H. Cosper, Lin McElroy.

Hughes M. Rumball-Petre, Ellen L. Shoun, Dan Manson, Daen E. Tornquist, Richard Reisig, Theodore Trevail, Alan A. Day, Robert Itardi, Elizabeth Jester, Valerie Pistole.

Kimberly Weir, Steven C. Jasinski, Steve Bibby, Jeanne Roy, Gregory C. Stanford, Jane E. Bunin, Thomas A. Watters, Janet N. Ryan, E. L. Dunk, Pasquale Vitiello.

Laura Michel, Judy Barrasso, Cathy McLaughlin, Alvan Hengee, Nicholas M. Romano, R. Wayne Brown, Jr., Harlan Kredit, Brad Cullison, David Oswald.

Frank Pontillo, Mr. and Mrs. Robert Brewer, Patricia L., Harper, Lawrence D. Crowley, Bruce Matheson, Blair Brumley, Frank K. Green, Charles Orlon, James M. Sachels, Ron Rizzo.

Norman Loofbourrow, Alice E. Zekdis, M. Pertz, James H. Shaddy, Keith W. Irwin, Dona Oyler, Charles R. Carroll III, Robert W. Wightman, Floyd Miner, Nikki Koehler.

Joel L. Hammer, Lynn Bronikowski, Laura Lindley, Ernest H. Greene, Sr., Ralph E. Kennedy, Mary Kemen, James E. Wuenscher, Robert Dorough, David A. McNabb, Janet B. Carroll.

Robert K. Stiles, Joshua Kaufman, W. E. Browning, Jr., James L. Lorentz, Mr. and Mrs. Jon Drossos, Richard C. Henderson, Richard W. Chapin, Brett Laidlaw, Jacki Cochrane, Theodore G. Haley.

E. Thompson Smith, Sr., Randall Swanson, Timothy G. Kuss, Richard Morgan, Don Michaelsen, Eric Martz, Robert V. Kennedy, Holly J. Mullendore, Margaret B. Torrey, Bruce E. Ferguson.

David W. Meikle, David Pozzi, Maria Middleton Skinner, Florence Pendo, David L. Ranta, James W. Steer, Leif W. Welde, Victoria R. Wark, E. Melvin Jewett, Herter W. Kali II.

David E. Jacobs, Jean Ingold, Paul T. Gilbert, L. H. Carey, Karen Green, James X. Farish, H. Bruce Vandegrift, David W. Towle, Tonia W. MacNeil, Edgar G. Johnston, Carl A. Linde, Jr., Warren L. McNeely, Roger C. Sturtevant.

Fairfield Porter, Robert A. Shaw, Larry J. Stevens, Lilliam Nagel, Helen C. Black, Elizabeth Evans May, Phillip C. Gardos, H. J. Kurska, Elizabeth W. Hagewood, Richard R. Quick,

Michael A. Andrews, Mark J. Van Raden, Peter Jolowicz, Virginia B. Heck, Gay D. Maher, Ralph M. Pestrue, Wendell C. Leach, Mary Wise, Jerry M. Schmucker, John M. McCrimmon,

Arthur Hemmendinger, Lesley L. Williams, Sulanne M. Lea, Robert A. Stryk, Ralph H. Lovberg, Swegn D. Hamren, Burns MacDonald, Neal D. Newby, Albert Rose, Leonard C. Feinstein,

Joseph P. Martin, William Morse, Jeffrey E. McClintock, Charles M. Richards, Elliot Syner, Richard H. Boyd, B. Lawergren, E. Marquit, Edward L. Grissing, Jr., Jerome J. Long,

William A. Ferrando, Chizuko Matsubara, F. H. M. Faisal, Bruce R. Patton, Fred C. Newman, A. P. Balachandran, Samuel Silver, Ambey Mukerji, Samuel I. Baker,

Samuel W. MacDowell, Carl Eckart, W. D. Harrison, Arthur F. Kip, Burton Bernstein, Donald Neville, Fred H. Tenney, Frederick Crownfield, Jr., Benjamin Liebowitz, S. E. Darden,

C. F. Robinson, Donald C. Haueisen, Lester Lipsky, Randall Caton, Eric Kay, Harris L. Mayer, Peter Robrish, Leon Blitzer, Ronald G. Lecander, Richard L. Conklin,

Clark S. Robinson, Edwin G. Kemble, Bruce Steiner, George B. Collins, Michael M. Broido, Rosemary A. MacDonald, Rolf Pauli, U. Gonser, W. Wade Sapp, Joseph J. Murray,

F. Y. Sorrell, Frank V. Nolfi, Jr., H. Wiedersich, Richard Sigal, Georg Knorr, Robert L. McCarthy, Ivan Tolstoy, Robert W. Stanley, Patrick J. Roache, Christopher M. Wilson,

Max Chretien, Thomas W. Burrows, Eugene Helfand, Robert B. Randels, Ralph G. Wells, Michael Chanowitz, W. J. Tomlinson, Ryukiti R. Hasiguti, Evelyn C. H. Parker, Carl A. Kocher, James R. Hooper, Jr.,

Des Cloizeaux Jacques, Carl Ribbing, G. R. Plattner, V. Buonomano, T. Uyasa, Daniel Felds, S. Aranoff, Lewis Ryder, Douglas S. Fielder, Michael Grosman, A. Coulson,

Andre Bruaux and Mrs. Lowell J, Sage, B. G. Saunders, Robert P. Guertin, Donald C. Kelly, Donald Raskin, Michael Rosenthal, H. Henry Stroke, J. C. Vander Velde, Hyman Goldberg,

Ira Hammerman, John Harte, Larry V. East, John Lewis, Terry W. Smith, Martin Breidenbach, David Edwards, Anthony M. Marques, George Thomas Fekete, Ronald Christiansen,

Robert Swanson, William R. Moninger, Morris W. Firebaugh, Harry E. Spencer, G. N. Panagis, Frederick W. Ochs, Jr., Michael Arons, Ephraim Fischbach, R. L. Kaufmann, L. M. Simmons, Jr.,

David M. Henderson, Keith C. Richards, John P. Rutherford, James W. Simmons, Charles N Judice, Mitchell S. Moskowitz, Snoden Taylor, Lawrence A. Harris, Daniel Klempner,

E. O. Thorland, Frederick Petty, Donald D. Foster, Bruce O. Cozzini, Walter Rollier Thorson, William J. Ristey, John M. Holt, Richard Rothschild, B. Kent Harrison, R. Ronald,

John Onffroy-White William M. Fairbank, W. J. Cocke, Jerome J. Wesolowski, James D. Prentice, G. M. Temmer, Leonard H. W. Bradfield, Jerry Millstein, Stanislaw Kocimski, Mauricio Schoijet,

J. Borch, Gary Dean Cable, Paul Kisliuk, William E. Frye, R. Bruce Weisman, Dan Dill, David Loper, Leon West, R. A. Formato, W. David Shambroom,

E. Scott Kirkpatrick, Martin O. Stern, Robert A. Rudin, Leon Sutton, Lloyd Motz, C. H. Schultz, Robert G. Glasser, Richard J. van Brunt, James Samuel McKnight,

Ronald Sheinson, William A. Conrad, W. R. Cox, Michael J. Bielefeld, S. M. Blinder, J. Wilson Mills, David R. Hearn, Vernon W. Myers, George W. Clark, C. G. Montgomery,

Mary Robert Grandfield, Henry A. Kierstead, James J. Murphy, II, N. Russell Roberson, Henry A. Fairbank, Melvyn L. Goldstein, James Morgan, James F. Bridges, Vianney K. Cheng, Robert S. Hornady,

R. D. Huntoon, Bertram Stiller, Kevin J. McCann, Philip P. Crowley, Avtar S. Ahuja, D. R. Koehler, Emile A. Hyman, Shyam M. Khanna, John A. McIntyre, John H. Hall,

Barrett H. Ripin, Jeffrey M. Dunnow, Benjamin W. Woodard, John O. Rasmuseen, Robert A. Beyerlein, Howard Weisberg, John M. Gault, J. Norton Wilson, Ronald C. Kammerud, Haskell Taub, Robert E. Lundin,

R. C. Hopkins, Paul H. Barrett, Charles D. Bunchanan, James A. Dela Valle, Herbert J. Bernstein, Andre H. Rausch, N. R. Brubaker, Norman Septimus, John M. Parson,

James P. Walsh, David Simons, Donald K. Coles, John J. LeBrecque, Michael Haftel, Douglas P. Karo, Arnold E. Vlieks, William T. Ford, Marcel Margulies, Haywood Blum, Alexander J. Elwyn,

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[1] See, for example, The New York Times, July 3, 1972, page 1, "Rainmaking is Used as Weapon by U.S.," Seymour M. Hersh, and the "Pentagon Papers"—in particular, page 421, Vol. 4, Gravel Edition.

A. D. Panagiotou, Sven T. Lagerwall, Donald F. Clifton, Arthur Soinski, Andrew J. Van Horn, J. W. Van Laar, Lincoln Ekstrom, Leigh B. Bangs, Armand Seigel, Thomas Chapuran, Martin H. Edwards, Alan G. Marshall, W. R. Coker, Donald M. Gray, Robert S. Cowen, Donald R. Rhodes, Edwin A. Karlow, Harry F. Remed, Jerry P. Gollub, James C. North, David A. Vroom, Robert A. Lad, Alfred H. Lawrey, E. R. Siciliano, George E. Ioup, Michael E. Fein, Paul A. Zucker, Norton M. Hintz, Donald F. Cowgill, Peter D. Gianino, Murray Dryer, Richard J. Jacob, Donald R. Croely, Jr., Gary H. Sanders, H. M. A El-Sum, W. M. Hartmann, David L. Speeny, George Theodosiou, Richard S. Mazzarisi, Victor J. Belanger, Michael B. Simmonds, K. L. Ngai, Mark Hollanbaugh, Steven Frautschi, Dewitt Coffey, Jr., F. P. Baldwin, Lloyd Smith, Morris L. Perlman, Linton R. Corruccini, Louis W. Kunz.

Richard N. Boyd, Michael F. Shlesinger, Joel Koplik, Michael D. McCormack, A. J. Howsmon, Forrest Glick, B. W. DuVall, Joel A. Cohen, Costas Papaliolios, Richard T. Kouzes.

Joseph Becker, Judah Melawed, David Goss, Franz Kress, Richard H. Welch, Jr., L. F. Cook, Larry Stewart, R. Y. Cusson, George Salzman, F. K. Lamb.

Tim Keiderling, Sheldon D. Softky, Jerry Gerber, Aaron J. Owens, Albert A. Bartlett, P. Cannon, J. R. Woodyard, John C. Nickerson, III, Walter G. Vincenti, Alwyn Scott.

Paul H. Citrin, Michael Marmor, John G. Mowat, John P. Hervey, Francis Birch, David Markowitz, David Kline, Robert J. Schermer, John Weymouth, Robert Savit.

Philip B. Russell, Philip Lucht, H. L. Weissberg, Jack Finzi, David E. Fredrick, M. W. Moos, Jerry Goodisman, John Telle. Lowell F. Smith, Paul Harris.

Mark S. Gordon, See Chen Ying, Harvey Rarback, Charles V. Strain, John R. Magan, Benjamin Thomas Waak, Philip J. Bray, Patrick J. Kendellen, David F. Burch, Erling N. Jensen.

Percy H. Carr, Eric S. Johnson, A. Jay Palmer, G. Donald Frey, Steven Danyluk, M. D. Harmony, Stanley R. Almaney, Chilukuri Santaram, Brian, J. Doyle, John R. Terrall.

Arthur R. Clawson, John E. Drumheller, William J. Podolsky, David M. Stupin, Thomas Jervis, Robert E. Cookingham, Harry W. Woodcock, Murray Welkowsky, David C. Montgomery, Harvey S. Picker.

David L. Book, Allen Miller, M. T. Raiford, Crawford MacCallum, T. Dan Bracken, Robert A. Weiner, Walter E. Baker, Robert Wald, Ralph A. Llewellyn, Joseph Cerny.

Jerry Nelson, Forrest Mozer, Steve Schanzer, Howard Maccabee, Lloyd G. Mann, Roger L. Douglass, Ronald R. Ross, D. Walton, A. H. White.

A. H. White, C. Manus, Peter N. Vukasin, Eduardo Cantoral-Uriza, D. H. Lowndes, Daniel E. Prober, Thomas G. Moore, K. Brugger, Michael Kriechbaum, Marian Lowe,

George W. Brandenberg, Nicholas E. Rehler, C. W. Von Rosenberg, Christoph G. Schlier, Gerald E. Hite, Seigfied Othmer, Supriya Ray, Dominique M. Gresillon, William M. Gelbart, P. N. Scharbach,

Michael B. Dowell, Phillips R. Jones, William J. Mullin, Jeffrey S. Jalbert, Donald O. Smith, Robert Schwartz, Bruce Hawkins, Robert M. Stubbs, Don Q. Lamb, Jr., Edwin S. Campbell,

Edwin S. Campbell, Charles Marzzacco, Basil Swanson, Joseph D. Gettler, Richard D. Pizer, Thomas W. Davis, Arthur M. Halpern, David I. Schuster, James N. Sarmovsakis, John C. Lang, Jr.,

Donald C. Lorents, Torrence J. Sejnowski, Carl R. Pidgeon, E. E. Schneider, Thomas G. Masterson, Roger L. Burnley, Juergen von Kroch, J. L. LeRay,

Ulrich T. Hochli, George W. Hinman, J. Deltour, C. Rosenzweig, Ronald A. Javitch, William Galati, Peter W. James, Jacques Friedel, Edward G. Harris, M. Elton Hendricks,

P. Frank Winkler, Sidney Leibovich, Jose Lopez-Cervantes, M. E. Oakes, N. W. Eddy, Joseph Silverstein, Robert Kelly, Patrick Argos, Monica Healea, David G. Boulware,

Jens N. Oddersheoe, Bruce C. Brown, William W. Wood, Wildon Fickett, Kip S. Thorne, John K. Pribram, Robert Hellwarth, Ira W. Herbst, S. G. Buccino, Allan R. Hoffman,

John David Carlson, K. W. McVoy, P. J. Kuntz, Richard E. Slusher, Charles Thomas Roche, Martin Barmatz, Axel Meyer, Vernon H. Head, R. Maciejko, John W. Philbrick,

David B. Beard, David Ehst, Donald Baker Moore, David C. Baxter, Edwin Norbeck, John R. Donaldson, Jonathan Weiss, Robert J. Landman, F. B. Khambatta, D. L. Vanderhart,

Michael Steinitz, Joseph K. Lee, Lawrence S. Wall, David L. Hecht, Lawrence W. Davis, Willial E. Good, Jr., Dennis E. Grady, James W. Harrell, Jr., William J. Camp, Michael K. Barnoski,

A. Gray, S. Gasidrowicz, Lee Kean, Charles C. Baker, William W. Morey, Donald D. Snyder, Donald Lindstrom, Arthur W. Martin, Benjamin M. Axilrod, D. P. Balmuth,

Morton Masius, Edgar F. Vandivere, Jr., Robert Reasenberg, James H. Burgess, Roger W. Finley, Alan Luther, John F. Derlin, S. J. Rothman, Marion E. Schillaci, Peter E. Siska,

Cathy Meyer, P. J. Duke, Stephen C. Perrenod, Anthony S. L. Parson, P. J. A. Buttle, Roberto L. Columbo, R. B. Stincombe, Herbert Seitz, Joseph H. Eberly, D. F. Abell,

Lewis D. Muhlestein, Gray Ward, Marin E. Ebel, M. A. Afromowitz, Thomas C. Rich, Roy G. Gordon, Bruce Johnson, Walter Joseph Dehner, Randall Bluemer, Peter M. Caplan.

Dwight R. Platt, Rose Wonzinak, Peter C. Wegman, Robert Boehm, Richard J. Barr, A. L. Raich, James Beauchamp, Daniel E. Meyer, Joseph A. Colwell, Jim Vergin.

Jeffrey L. Barnickol, Virginia C. Jones, Mark A. Libke, Micki Braverman, Glenn Banks, Lynn Owen, Margaret O. Moyer, Charles P. Enz, John M. Wade, Mike Rogers.

Robert E. Wolf, H. Bush, Jr., D. A. Daugheroy, Susan Abram, Paul K. Grooger, Ivan Modrovich, Angela Michaels, Lawrence Jacob, David R. Sacks, Robert L. Hershberger.

Erasmo Recami, William P. Kyle, Richard G. Ludeman, John Krebs, John Dzialo, Cindy Dwyer, Larry Hands, Richard G. Cook, Marvin Brummel, Richard C. Field, Bruce William Kenney.

Diego Alonso, Sayge H. Anthony, Martin Fruchtman, Peter L. F. Haberler, Eduardo Greaves, J. C. Buzzell, Jr., Mark Durand, E. R. Martinson, Paul Chuberka, M. H. Zoffel, Sung Ho. Choh.

Lew Wunderlich, John M. MacDonald, Robert B. Smythe, Joyce E. Howland, Milton Love, David Kraus, G. Ver Strate, Larry G. Bradford, Otto Lippman, J. Stevens Lanich.

THE MOTION PICTURE "SOUNDER"

Mr. PELL. Mr. President, it is all too seldom that the entertainment industry of our country succeeds in reaching beyond commercialism, and in stretching itself beyond mere entertainment to produce a work of art. When it does happen, such a work deserves recognition.

The motion picture "Sounder" is just such a work of art. "Sounder," to be sure, is commercial and indeed a great commercial success in terms of box office. As one who has seen the motion picture, I also know that it is indeed entertaining. There are a goodly number of motion pictures that can claim commercial success and entertainment value. There are very few motion pictures, however, that manage to attain the difficult-to-define extra quality that marks a work of art.

"Sounder" is a black film, but it transcends easily and gracefully the barriers of race and appeals to all of us human beings. It is a highly sensitive film—but not maudlin. And what emerges from the film is a statement of the warmth and richness of human life and the strength of the human spirit.

One element important in the artistic success of "Sounder" lies in its restraint—restraint in the use of filming technology, restraint in the acting and directing, restraint in the entire presentation of a warm and moving human story.

As with the entire production of "Sounder," the acting performances also were marked by extraordinary sensitivity and restraint. Cicely Tyson portrayal of Rebecca Morgan has won for her a lasting place in any listing of great motion picture performances. And, in addition, there were excellent performances by Paul Winfield, Kevin Hooks, and Janet MacLaughlin.

Mr. President, I believe "Sounder" is an outstanding artistic achievement and I congratulate all who contributed their skills and talents to it. They have reason to be very proud indeed. "Sounder" has set a standard of excellence toward which I hope the motion picture industry will strive.

ADMINISTRATION'S BUDGETARY PROPOSALS AS THEY AFFECT THE ELDERLY

Mr. PELL. Mr. President, the administration has submitted its 1974 budget request to us. Its Secretary of Health, Education, and Welfare has given able and erudite testimony in support of President Nixon's proposals. I agree that inflation must be brought under control, that unsuccessful and inefficient Federal programs must be eliminated, and more efficient ones substituted for them. But to place additional financial burdens, in the form of increased payments for medicare benefits, on our Nation's elderly is not the way to achieve these aims.

According to the proposed administration budget, Federal outlays for the elderly will constitute almost one-fourth of total Federal spending for fiscal 1974. It must however, be remembered that out of approximately $63.5 billion in Federal funds earmarked for the elderly, about $41 billion comes from payments from the Social Security Trust Fund for the retired, widowed, and disabled. Keeping the above in mind, it is apparent that the elderly receive no more than their fair share of Federal outlays.

Yet, to speak in terms of mathematical proportions of budget outlays which go to our Nation's senior citizens does not address this problem. Our country's elderly have a right—in fact, I believe, almost a constitutional right—to have adequate hospital and medical care provided for them. This is not a matter which can be approached solely on a cost-accounting basis. We, in the Congress, have a duty to see that, if anything, the elderly are provided with adequate health and medical care, at reduced, not increased, costs to them.

The administration's spokesmen indicate that the medicare system inherently encourages the elderly to overutilize hos-

pital facilities, and physicians' services. They imply that the elderly do in fact overuse these facilities and services, and that by increasing the medicare patient's share of coinsurance for hospital care, and raising the deductible for physicians' bills, these abuses will be curtailed. But nowhere do these spokesmen present any concrete evidence that our Nation's senior citizens are making unfair use of medicare benefits. From the data available to us there is no indication that the elderly are abusing the medicare system. If this administration has contrary evidence, let them produce it for us.

It seems to me that the administration's proposed changes in the medicare system are feeble substitutes for its own failure to actively seek the enactment of a comprehensive program of national health insurance. Such a program would benefit all our Nation's citizens—including the elderly. It would also do much more toward controlling the rapid increases in the cost of hospital and physicians' services which have occurred over the past few years. The elderly are not responsible for these increasing costs, and they should not have the burden of them fall on their shoulders.

I resent an administration whose spokesmen indicate that its budget proposals will limit the use of in-patient hospital facilities, while the same budget proposals provide no funding for construction of much-needed ambulatory and out-patient facilities. Such inconsistencies raise serious doubts that this administration is really interested in making the medicare system more effective and efficient in its delivery of health and medical care to our Nation's elderly.

Once again the real issue is one of determining national priorities. I, for one, would like to see this administration apply some of its sophisticated cost-accounting techniques in the area of Pentagon spending. Although it shows no reluctance to ask our Nation's senior citizens to pay for alleged inefficiencies in the medicare program, I have not heard this administration ask major defense contractors to always shoulder the burdens of the cost overruns which seem to occur on a regular basis in that area; and, although we are given no real evidence that the elderly are overutilizing medicare facilities, there is often evidence that defense contractors are inefficient and wasteful in their carrying out of Government contracts.

This Congress has and will have many serious social and economic problems with which it must attempt to deal legislatively. I will oppose any administration budgetary proposals which appear to make our Nation's elderly the scapegoats for these problems. I hope to work with the administration in eliminating waste and in promoting efficiency in Government, but I will give no support to any legislation which imposes additional financial burdens on our senior citizens.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. 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 time for routine morning business has expired.

EXTENSION OF PERIOD FOR ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a further period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 10 minutes each.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF THE FARM CREDIT ADMINISTRATION

A letter from the Governor of the Farm Credit Administration, transmitting, pursuant to law, the 39th Annual Report of the Farm Credit Administration on the work of the cooperative Farm Credit System, which includes the report of the Federal Farm Credit Board, for the fiscal year ended June 30, 1972 (with an accompanying report); to the Committee on Agriculture and Forestry.

REPORT OF SECRETARY OF DEFENSE

A letter from the Secretary of Defense, reporting, pursuant to law, on certain disbursements made by that Department during the first 6 months of fiscal year 1973; to the Committee on Appropriations.

REPORT OF INDIAN CLAIMS COMMISSION

A letter from the Chairman, Indian Claims Commission, transmitting, pursuant to law, a report of its final determination in the cases of the Seneca Nation of Indians and the Tonawanda Band of Seneca Indians against the United States of America (with an accompanying report); to the Committee on Appropriations.

REPORT ON RESERVE FORCES FOR FISCAL YEAR 1972

A letter from the Secretary of Defense, transmitting, pursuant to law, a report on Reserve Forces for fiscal year 1972 (with an accompanying report); to the Committee on Armed Services.

REPORT ON MILITARY MANPOWER REQUIREMENTS

A letter from the Secretary of Defense, transmitting, pursuant to law, a report on military manpower requirements for fiscal year 1974 (with an accompanying report); to the Committee on Armed Services.

REPORT ON SPECIAL PAY FOR DUTY SUBJECT TO HOSTILE FIRE

A letter from the Deputy Secretary of Defense, transmitting, pursuant to law, a report on amount expended on special pay for duty subject to hostile fire for calendar year 1972; to the Committee on Armed Services.

PROPOSED LEGISLATION RELATING TO A NEW COINAGE DESIGN

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to provide a new coinage design and date emblematic of the bicentennial of the American Revolution for dollars and half-dollars (with accompanying papers); to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION TO AMEND THE SMALL BUSINESS ACT

A letter from the Administrator, Small Business Administration, transmitting a draft of proposed legislation to amend the Small Business Act governing the amount of loans, guarantees, and other obligations or commitments which may be outstanding at any one time from the Business Loan and Investment Fund (with accompanying papers); to the Committee on Banking, Housing and Urban Affairs.

REPORT ON MOBILE TRADE FAIR ACTIVITIES

A letter from the Secretary of Commerce, transmitting, pursuant to law, a report of Mobile Trade Fair Activities for fiscal year 1972 (with an accompanying report); to the Committee on Commerce.

REPORT OF NATIONAL RAILROAD PASSENGER CORPORATION

A letter from the Vice President, Public and Government Affairs, National Railroad Passenger Corporation, transmitting, pursuant to law, its report for November 1972 (with an accompanying report); to the Committee on Commerce.

REPORT ON FINANCIAL CONDITION OF HIGHWAY TRUST FUND

A letter from the Fiscal Assistant Secretary, the Department of the Treasury, transmitting, pursuant to law, a report on the financial condition and results of the operations of the highway trust fund, dated June 30, 1972 (with an accompanying report); to the Committee on Finance.

PROPOSED LEGISLATION TO PROVIDE RULES FOR THE TAX TREATMENT OF SURVIVOR BENEFIT PLANS OF THE UNIFORMED SERVICES

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to amend the Internal Revenue Code of 1954 to provide rules for the tax treatment of survivor benefit plans of the uniformed services (with accompanying papers); to the Committee on Finance.

PROPOSED LEGISLATION TO AUTHORIZE CHARGES FOR CERTAIN SERVICES PERFORMED BY INTERNAL REVENUE OFFICERS

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to amend the Internal Revenue Code of 1954 to authorize charges for certain services (with accompanying papers); to the Committee on Finance.

PROPOSED LEGISLATION TO AUTHORIZE APPROPRIATIONS FOR THE DEPARTMENT OF STATE

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting a draft of purposes legislation to authorize appropriations for the Department of State, and for other purposes (with accompanying papers); to the Committee on Foreign Relations.

PROPOSED LEGISLATION TO REFORM THE MINERAL LEASING LAWS

A letter from the Acting Secretary of the Interior, transmitting a draft of proposed legislation to reform the mineral leasing laws, and for other purposes (with an accompanying paper); to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION RELATING TO NATIONAL RESOURCE LANDS

A letter from the Acting Secretary of the Interior submitting proposed legislation to provide for the management, protection, development, and sale of the national resource lands, and for other purposes (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION TO AMEND THE NATIONAL HISTORICAL PRESERVATION ACT

A letter from the Assistant Secretary of the Interior submitting proposed legislation to amend the Act of October 15, 1966 (80 Stat. 915), as amended, establishing a program for the preservation of additional historic properties throughout the Nation, and for other purposes (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT FOR RESEARCH TO ANALYZE ORE HANDLING SYSTEMS IN UNDERGROUND METAL MINES

A letter from the Deputy Assistant Secretary of the Interior, transmitting a proposed contract for a research project to analyze ore handling systems in underground metal mines for improved safety and efficiency (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT OF AGRICULTURAL HALL OF FAME

A letter from the Assistant Secretary, the Agricultural Hall of Fame and National Center, transmitting, pursuant to law, its annual audit and report for their fiscal year ended August 31, 1972 (with an accompanying report); to the Committee on the Judiciary.

PROPOSED LEGISLATION TO INCREASE BENEFITS PROVIDED TO AMERICAN CIVILIAN INTERNEES IN SOUTHEAST ASIA

A letter from the Acting Assistant Secretary for Congressional Relations, transmitting a draft of proposed legislation to increase benefits provided to American civilian internees in Southeast Asia (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATION FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Services, Department of Justice, transmitting, pursuant to law, reports concerning third preference and sixth preference classification to certain aliens (with accompanying papers); to the Committee on the Judiciary.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, copies or orders granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

ADMISSION INTO THE UNITED STATES OF A DEFECTOR ALIEN

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a copy of an order entered granting admission into the United States of a defector alien (with an accompanying paper); to the Committee on the Judiciary.

NATIONAL ADVISORY COUNCIL ON SUPPLEMENTARY CENTERS AND SERVICES

A letter from the Chairman, National Advisory Council on Supplementary Centers and Services, transmitting, pursuant to law, its fifth annual report (with an accompanying report); to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION RELATING TO THE NATIONAL SEA GRANT COLLEGE AND PROGRAM ACT

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to extend and make technical corrections to the National Sea Grant College and Program Act of 1966, as amended (with accompanying papers); to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION RELATING TO CERTAIN PUBLIC WORKS PROJECTS

A letter from the Department of the Army, transmitting a draft of proposed legislation authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control and other purposes (with accompanying papers); to the Committee on Public Works.

PROPOSED LEGISLATION RELATING TO THE NAMING OF THE DWIGHT D. EISENHOWER HIGHWAY

A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to designate Interstate Route I–70 from Washington, D.C., to Denver, Colo., Interstate Route I–25 from Denver to Cheyenne, Wyo., and Interstate Route I–80 from Cheyenne to San Francisco, Calif., as the Dwight D. Eisenhower Highway (with an accompanying paper); to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A joint resolution of the Legislature of the State of New York; to the Committee on Foreign Relations:

"JOINT RESOLUTION OF THE LEGISLATURE OF THE STATE OF NEW YORK MEMORIALIZING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES TO CONSIDER THE PLIGHT OF SOVIET JEWS PRIOR TO GRANTING FAVORED NATION STATUS TO THE SOVIET UNION

"Whereas, In the Soviet Union men and women are denied freedoms recognized as basic by all civilized countries of the world and indeed by the Soviet Constitution; and

"Whereas, Jews and other religious minorities in the Soviet Union are being denied the means to exercise their religion and sustain their identity; and

"Whereas, The government of the Soviet Union is persecuting Jewish citizens by denying them the same rights and privileges accorded other recognized religions in the Soviet Union and by discrimination against Jews in cultural activities and access to higher education; and

"Whereas, The right freely to emigrate, which is denied Soviet Jews who seek to maintain their identity by moving elsewhere, is a right affirmed by the United Nations Declaration of Human Rights, adopted unanimously by the General Assembly of the United Nations; and

"Whereas, These infringements of human rights are an obstacle to the development of better understanding and better relations between the people of the United States and the people of the Soviet Union; now, therefore, be it

"Resolved, That the Legislature of the State of New York memorialize the President and the Congress of the United States to consider the plight of Soviet Jews when granting most favored nations status to the Soviet Union, and to call upon the Soviet government to end its persecution of the Jews and other minorities and to permit the free exercise of religion by all its citizens in accordance with the Soviet Constitution; and be it further

"Resolved, That the Legislature of the State of New York, in the interest of justice and humanity, memorialize the President and the Congress of the United States to call upon the Soviet government to permit its citizens to emigrate from the Soviet Union to the countries of their choice as affirmed by the United Nations Declaration of Human Rights; and be it further

"Resolved, That the Legislature of the State of New York petition the United States government to use all appropriate diplomatic means to engender the fullest support possible among other nations for such a request to the Soviet Union; and be it further

"Resolved, That in order to effectuate the purposes of this resolution, copies of this resolution be transmitted to the President, Vice President and Secretary of State of the United States, to the Secretary of the Senate and the Clerk of the House of Representatives of the United States, and to each member of the Congress of the United States from the State of New York."

A joint resolution of the General Assembly of the State of Virginia; to the Committee on Agriculture and Forestry:

"SENATE JOINT RESOLUTION NO. 101

"Joint resolution memorializing the Congress to restore the Rural Environmental Assistance Program

"Whereas, the Rural Environmental Assistance Program administered by the United States Department of Agriculture has been effective in dealing with the real environmental problems in the rural areas of the nation and this Commonwealth; and

"Whereas, the farmers of Virginia did participate actively in the program to the benefit of all Virginians as we share an equal stake in the preservation of our natural surroundings; and

"Whereas, the United States Department of Agriculture is planning to discontinue such program; now, therefore, be it

"Resolved by the Senate of Virginia, the House of Delegates concurring, That it is the sense of the General Assembly of Virginia that the discontinuance of the Rural Environmental Assistance Program is not in the best interests of the nation and this Commonwealth, and the Congress of the United States is hereby memorialized to take such legislative action as will assure the continuance of this Program.

"Resolved further, That the Clerk of the Senate is directed to forward a copy of this resolution to the United States Secretary of Agriculture, the Clerks of the Senate and the House of Representatives of the Congress of the United States, and to each member of the Virginia delegation to the Congress."

Three joint resolutions of the General Assembly of the State of Virginia; to the Committee on Public Works:

"SENATE JOINT RESOLUTION NO. 97

"Joint resolution memorializing Congress to provide legislation for reimbursement to localities for certain water pollution control works

"Whereas, the Congress has provided funds to assist localities in the construction of water pollution control works which have been of great assistance to localities seeking to reduce the hazard to our health and environment; and

"Whereas, the federal grants for water pollution control works formerly operated in such fashion that those localities which waited to install these necessary facilities until federal funds were available were reimbursed in part, but now those localities which proceed with such construction have had to bear the entire expense when federal funds were not available; and

"Whereas, it would appear to be the better part of wisdom to provide that a locality which proceeds with the construction of water pollution control works should be entitled to be reimbursed for a portion thereof when federal funds became available in the same manner that such grants are made available for future construction: now, there fore, be it

"Resolved by the Senate of Virginia, the House of Delegates concurring, That the Con-

gress of the United States is hereby respectfully requested to change such federal statutes and regulations as may be necessary to provide the means whereby a locality which constructs its water pollution control works at a time when federal funds are not available may be reimbursed for its proper share when such funds do become available and on the same basis as grants are made for future construction of such works. Resolved further, That such action would tend to advance the public health, improve the environment and constitute a most progressive step.

"Resolved finally, That the Clerk of the Senate is hereby instructed to send a copy of this resolution to the Clerk of the Senate of the United States, to the Clerk of the House of Representatives, and to each member of the Virginia delegation in the Congress of the United States.

"SENATE JOINT RESOLUTION No. 98

"Joint resolution memorializing the President and the Congress to restore cuts in the appropriations for certain pollution control grants

"Whereas, the Congress of the United States has adopted stringent legislation for the cleaning up of our rivers and streams and freeing them from pollution in which program Virginia has long taken an active part; and

"Whereas, in order to expedite the reduction and elimination of water pollution, the Congress appropriated funds from which grants could be made to localities for assistance in the construction of pollution control works which have been of great help in advancing such work; and

"Whereas, the funds which heretofore were made available to the States for allocation to localities for use in constructing pollution control works have been reduced or held back even though the reduction of pollution is essential to the protection of the public health, the improvement of our environment, and restoration of our rivers and streams as places of enjoyment rather than open sewers; now, therefore, be it

"Resolved by the Senate of Virginia, the House of Delegates concurring, That the President of the United States and the Congress of the United States are respectfully requested to restore and make available again funds from which grants for the construction of local pollution control works can be paid in order to make our world a better place in which to live.

"Resolved further, That the Clerk of the Senate of Virginia is instructed to send copies of this resolution to the President of the United States, to the Clerk of the Senate of the United States, to the Clerk of the House of Representatives, and to each member of the Virginia delegation in the Congress as evidence of the deep alarm and concern which this General Assembly has concerning this matter.

"SENATE JOINT RESOLUTION No. 102

"Joint resolution urging the Secretary of the Army through the Chief of the United States Army Corps of Engineers to complete expeditiously a survey of Chowan River and tributaries in the Commonwealth of Virginia for flood control and allied purposes

"Whereas, the Blackwater, Meherrin and Nottoway Rivers in Virginia, tributaries to the Chowan River, have through the years experienced frequent and damaging floods; and

"Whereas, these rivers were visited during nineteen hundred and seventy-two as a result of heavy rainfall; and

"Whereas floods on these rivers have caused loss of life, damage to property and great inconvenience; and

"Whereas, there remains great hazard to life and property along these rivers; and

"Whereas, the Congress of the United States, pursuant to § 204 of the Federal Flood Control Act of nineteen hundred forty-eight, has directed the Secretary of the Army through the Chief of the United States Army Corps of Engineers to make a survey of Chowan River and tributaries for flood control and allied purposes; now, therefore, be it

"Resolved by the Senate, the House of Delegates concurring, That the General Assembly hereby urges the Secretary of the Army, through the Chief of the United States Army Corps of Engineers to complete expeditiously the study authorized and directed pursuant to § 204 of the Federal Flood Control Act of nineteen hundred forty-eight.

"Resolved further, That the Clerk of the Senate is directed to send a duly attested copy of this resolution to the Secretary of the Army of the United States, the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, and to each member of the Congress from this State."

A joint resolution of the Cities of Anchorage and Fairbanks, Alaska, praying for the enactment of legislation relating to pipeline construction from Prudhoe Bay to Baldez, Alaska; to the Committee on Commerce.

A joint resolution of the Congress of Micronesia, expressing the sense of the Congress that the High Commissioner of the Trust Territory of the Pacific Islands should be permitted to continue in his present position; to the Committee on Interior and Insular Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs, without amendment:

S. 776. A bill to authorize the striking of medals in commemoration of the 100th anniversary of the cable car in San Francisco (Rept. No. 93–57).

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs, without amendment:

S. 929. A bill to amend the Par Value Modification Act (Rept. No. 93–58), together with individual views.

Mr. SPARKMAN. Mr. President, from the Committee on Banking, Housing and Urban Affairs, I favorably report without amendment, S. 929 to amend the Par Value Modification Act.

In addition, Mr. President, I ask that S. 929 be referred to the Senate Committee on Foreign Relations so that that committee may look over the measure as it may pertain to matters falling within the legislative jurisdiction of that committee.

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

SUPPLEMENTAL REPORT OF COMMITTEE ON VETERANS' AFFAIRS (S. REPT. NO. 93–56, PART II)

Mr. CRANSTON, from the Committee on Veterans' Affairs, pursuant to section 133(e) of the Legislative Reorganization Act of 1946, as amended, submitted a supplemental report, to correct certain technical errors in its previous report on S. 284, which report was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. CURTIS, from the Committee on Agriculture and Forestry:

Robert W. Long, of California, to be an Assistant Secretary of Agriculture.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. MANSFIELD:

S. 1124. A bill to amend title 18, United States Code, so as to authorize a more severe penalty to be imposed in connection with certain crimes involving the use of, or unlawful carrying of, firearms. Referred to the Committee on the Judiciary.

By Mr. HUGHES (for himself, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. HATHAWAY, Mr. INOUYE, Mr. JAVITS, Mr. MCGEE, Mr. MCGOVERN, Mr. MATHIAS Mr. MONDALE, Mr. MOSS, Mr. NELSON, Mr. PASTORE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. SPARKMAN, Mr. STEVENSON, and Mr. WILLIAMS):

S. 1125. A bill to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act and other related acts to concentrate the resources of the Nation against the problem of alcohol abuse and alcoholism. Referred to the Committee on Labor and Public Welfare.

By Mr. BUCKLEY:

S. 1126. A bill to amend title 28, United States Code, so as to grant a priority in the trial or other disposition of any case involving a violation of the laws of the United States relating to narcotic drugs, marijuana, or depressant or stimulant substances; and

S. 1127. A bill to provide for pretrial detention in certain narcotics cases. Referred to the Committee on the Judiciary.

By Mr. ERVIN (for himself, Mr. BROOKE, Mr. FULBRIGHT, Mr. JACKSON, Mr. MANSFIELD Mr. MCGEE, Mr. METCALF, Mr. MOSS, Mr. PEARSON, Mr. PELL, Mr. PROXMIRE, and Mr. SPARKMAN):

S. 1128. A bill to protect the freedom of speech, and of the press and to secure the flow of information in interstate and foreign commerce by protecting the newsman against the compulsory disclosure of confidential sources of information and the compulsory production of unpublished information. Referred to the Committee on the Judiciary.

By Mr. RIBICOFF:

S. 1129. A bill to amend the Internal Revenue Code of 1954 to increase the credit against tax for retirement income. Referred to the Committee on Finance.

S. 1130. A bill to amend the Federal Food, Drug, and Cosmetic Act to require that the appointment of the Commissioner of Food and Drugs be subject to the advice and consent of the Senate. Referred to the Committee on Labor and Public Welfare.

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

S. 1131. A bill to provide for the establishment of the Eugene O'Neill National Historic Site and the Las Trampas Ridge National Park. Referred to the Committee on Interior and Insular Affairs.

S. 1132. A bill to authorize a study of the feasibility and desirability of establishing a Channel Islands National Park in the State of California. Referred to the Committee on Interior and Insular Affairs.

By Mr. METCALF (for himself, Mr. MANSFIELD, Mr. ALLEN, Mr. BIBLE, Mr. BURDICK, Mr. MCINTYRE, Mr. THURMOND, and Mr. TOWER):

S. 1133. A bill to provide additional funds to the States for carrying out wildlife restoration projects and programs, and for other purposes. Referred to the Committee on Commerce.

By Mr. METCALF (for himself, Mr. BIBLE, Mr. FANNIN, Mr. HANSEN, Mr. HATFIELD, Mr. BELLMON, Mr. STEVENS, and Mr. BARTLETT):

S. 1134. A bill to provide the Secretary of the Interior with authority to promote the conservation and orderly development of the hard mineral resources of the deep seabed, pending adoption of an international regime therefor. Referred to the Commitee on Interior and Insular Affairs.

By Mr. BARTLETT:

S. 1135. A bill to amend the Internal Revenue Code of 1954 to reduce the excise tax based on investment income of private foundations. Referred to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. MONDALE, Mr. EAGLETON, Mr. CRANSTON, Mr. HUGHES, Mr. HATHAWAY, Mr. JAVITS, Mr. DOMINICK, Mr. SCHWEIKER, Mr. BEALL, and Mr. STAFFFORD):

S. 1136. A bill to extend the expiring authorities in the Public Health Service Act and the Community Mental Health Centers Act. Placed on the calendar, by unanimous consent.

By Mr. JAVITS:

S. 1137. A bill to provide for the public safety and to increase the deterrent potential of the federal criminal law; by requiring the imposition of certain penalties for persons convicted of offenses involving the trafficking of narcotic drugs, to provide for an assessment of the effect of federal sentencing provisions and practices generally and for other purposes. Referred to the Committee on the Judiciary.

S. 1138. A bill to promote more effective management of certain related law enforcement functions of the executive branch by reorganizing and consolidating those functions in a new Office of Drug Abuse Investigation and Enforcement in the Department of Justice. Referred to the Committee on Government Operations.

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

S. 1139. A bill to amend the Urban Mass Transportation Act of 1964. Referred to the Committee on Banking, Housing and Urban Affairs.

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

S. 1140. A bill to prohibit the making of clad strip from which slugs can be cut for use in coin-operated machines and to prohibit misrepresentation as to proof and uncirculated coins. Referred to the Committee on Banking, Housing and Urban Affairs.

S. 1141. A bill to provide a new coinage design and date emblematic of the bicentennial of the American Revolution for dollars and half-dollars. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. MUSKIE (for himself, Mr. BIBLE, Mr. CHILES, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. KENNEDY, Mr. METCALF, Mr. MONDALE, Mr. PERCY, and Mr. RIBICOFF):

S. 1142. A bill to amend section 552 of title 5, United States Code, known as the "Freedom of Information Act." Referred jointly, by unanimous consent, to the Committee on the Judiciary and the Committee on Government Operations.

By Mr. HUMPHREY:

S. 1143. A bill entitled the "Social Security and Medicare Reform Act of 1973." Referred to the Committee on Finance.

By Mr. SCHWEIKER (for himself, Mr. SCOTT of Pennsylvania, and Mr. HUMPHREY):

S. 1144. A bill to establish a national program of Federal insurance against catastrophic disasters. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. McGOVERN:

S. 1145. A bill to amend and extend the Economic Stabilization Act of 1970. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. WEICKER (for himself and Mr. LONG):

S. 1146. A bill to provide for repayment of certain sums advanced to providers of services, under XVIII of the Social Security Act. Referred to the Committee on Finance.

By Mr. DOMINICK (for himself and Mr. FANNIN, Mr. TOWER, Mr. BENNETT, Mr. BROCK, Mr. COOK, Mr. DOMENICI, Mr. EASTLAND, Mr. ERVIN, Mr. GOLDWATER, Mr. HANSEN, Mr. HATFIELD, Mr. MCCLURE, Mr. SCOTT of Virginia, Mr. TAFT, and Mr. THURMOND):

S. 1147. A bill to amend the Occupational Safety and Health Act of 1970. Referred to the Committee on Labor and Public Welfare.

By Mr. CRANSTON (for himself and Mr. WILLIAMS):

S. 1148. A bill to provide authorization for the ACTION Agency to operate domestic volunteer service programs, and for other programs. Referred to the Committee on Labor and Public Welfare.

By Mr. MAGNUSON (for himself and Mr. BENNETT, Mr. BURDICK, Mr. CLARK, Mr. DOLE, Mr. DOMENICI, Mr. DOMINICK, Mr. EASTLAND, Mr. GRAVEL, Mr. HART, Mr. HARTKE, Mr. HATFIELD, Mr. HANSEN, Mr. HATHAWAY, Mr. HUGHES, Mr. HUMPHREY, Mr. JACKSON, Mr. JAVITS, Mr. MANSFIELD, Mr. MUSKIE, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MOSS, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, and Mr. YOUNG):

S. 1149. A bill to increase the supply of railroad rolling stock and to improve its utilization to meet the needs of commerce, users, shippers, national defense, and the consuming public. Referred to the Committee on Commerce.

By Mr. FONG:

S. 1150. A bill for the relief of Burgos Jose Maglav;

S. 1151. A bill for the relief of Manuel Paris Guerrero;

S. 1152. A bill for the relief of Zosima Batoon;

S. 1153. A bill for the relief of Felipe Cardinas Mejia; and

S. 1154. A bill for the relief of Pedro Dela Cruz Aqui. Referred to the Committee on the Judiciary.

By Mr. PELL (by request) (for himself and Mr. CASE):

S. 1155. A bill to provide for participation by the United States in the United Nations Environment Program. Referred to the Committee on Foreign Relations.

By Mr. PERCY (for himself and Mr. TAFT):

S. 1156. A bill to amend title III of the Trade Expansion Act of 1962 so as to provide more effective adjustment assistance thereunder, and for other purposes. Referred to the Committee on Finance.

By Mr. GURNEY (for Mr. ALLEN and himself, and Mr. TALMADGE, Mr. SPARKMAN, Mr. NUNN, and Mr. CHILES):

S. 1157. A bill to authorize the Secretary of the Interior to conduct a study with respect to the feasibility of establishing the Bartram Trail as a national scenic trail. Referred to the Committee on Interior and Insular Affairs.

By Mr. MATHIAS:

S. 1158. A bill for the relief of Maria Salvacion Olmedo; and

S. 1159. A bill for the relief of Gloria Emilia Portillo. Referred to the Committee on the Judiciary.

By Mr. ALLEN (for himself and Mr. SPARKMAN, Mr. TALMADGE, Mr. BENNETT, Mr. THURMOND, and Mr. HELMS):

S. 1160. A bill to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes. Referred jointly to the Committees on Commerce and Government Operations with the proviso that when one committee reports the bill the other will have 45 days to report or the other committee will be deemed discharged from said bill.

By Mr. JAVITS (for himself, Mr. BUCKLEY, Mr. STEVENSON, and Mr. SCOTT of Pennsylvania):

S. 1161. A bill to amount the act of August 13, 1946, relating to Federal participation in the cost of protecting the shores of the United States, its territories and possessions, to include privately owned property. Referred to the Committee on Public Works.

By Mr. ERVIN:

S.J. Res. 72. A joint resolution to insure the separation of federal powers and to protect the legislative function by providing a procedure for requiring Federal officers and employees to inform the Congress. Referred to the Committee on the Judiciary.

By Mr. BARTLETT:

S.J. Res. 73. A joint resolution to authorize the President to proclaim April 16, 1973 as "Jim Thorpe Day." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MANSFIELD:

S. 1124. A bill to amend title 18, United States Code, so as to authorize a more severe penalty to be imposed in connection with certain crimes involving the use of, or unlawful carrying of, firearms. Referred to the Committee on the Judiciary.

THE GUN CRIMINAL: DANGEROUS SPECIAL OFFENDER

Mr. MANSFIELD. Mr. President, on February 7, I voiced my concern to the Senate about the mandatory sentencing sections of the gun-crime laws and the fact that there was little evidence indicating the extent of their application by the Nation's Federal courts. I then noted that while certain leeway should be preserved in the trial courts concerning first-offender sentences, no discretion was in order in the case of second or subsequent offenders since the criminal who chooses a second time to resort to a weapon of violence and death deserves no leeway.

A first offender may deserve a second chance. If confined, a second chance is not available because of the current status of our penal institutions. They do not rehabilitate. They breed more crime. Discretion in these matters is and should be retained by the trial court.

At the same time, the second offender gun criminal deserves nothing short of prison. His resort to a firearm is inexcusable.

There is still another concern in the matter of gun crime that for too long has been ignored. To protect society, it is my opinion that the gun criminal should be considered a dangerous special

offender. The dangerous special offender category was written into the criminal laws as a means of protecting society from those whose actions are most likely to cause harm and injury. No one would dispute the fact that one who chooses to use a gun or firearm in committing a crime must be labeled and treated as a dangerous special offender. Up to now, however, he has not been. Up to now, the criminal who carries a gun has not been placed in this category reserved for special criminal cases.

But he should be. In the case of a dangerous special offender, the law gives the Federal prosecuter a vital additional tool. It permits an appellate court to review the sentence imposed by the lower court.

I would hope this matter would be remedied and submit a bill, Mr. President, that classifies the gun criminal for what he is: A dangerous special offender.

My bill, if adopted, will first provide a sentence of 5 to 10 years in the case of a first offender who resorts to a firearm in committing a crime. This sentence would be imposed in addition—I repeat, in addition to the sentence imposed for the underlying crime itself. It strengthens the 1970 law which contains the Mansfield provision that I authored. In the case of a second or subsequent offender my bill would impose a sentence of from 10 to 25 years and no leeway could be granted; there could be no probation, no suspension, and the sentence would have to be served separately.

The major distinction in my new proposal is that the sentence, in the case of a first or second offender, may be appealed by the Federal prosecutor should he feel that a stiffer sentence is in order, or that the trial judge erred by not imposing a prison term at all. On appeal, the court of appeals could make the sentence more severe; it could impose any sentence which the sentencing court could have originally imposed, or it could simply affirm the sentencing action taken by the lower court.

In practice, I feel that this procedure will prove necessary and vital in our system of criminal justice. It is necessary simply because the prosecutor too often confronts a criminal whose actions present a particular threat to society at large, but who, for whatever reason, escapes the penalty of confinement—or sufficient confinement—the only penalty that offers true protection to society.

I recognize that this proposal—allowing the prosecutor to appeal from a sentence that is too lenient—may be greeted as of dubious validity under the Constitution. As neither a lawyer nor an expert on constitutional problems, I enter this arena of criminal law and sanctions rather reluctantly. It is out of a deep sense of outrage over violence with firearms generally that I believe something has to be done—something that serves notice on the criminal who resorts to weapons of violence that he will pay an additional price for doing so. Allowing a court of appeals to impose an even stiffer sentence against a gun criminal will provide, I think, the price increase needed for this type of crime. Such a procedure, I might add, is not without some constitutional foundation. My attention has been directed, for example, to at least one precedent. It is the case of Robinson against the Warden of the Maryland House of Corrections where the Fourth Circuit Court of Appeals of the United States ruled that an increased sentence given on appeal to a criminal convicted under Maryland law did not violate constitutional guarantees against double jeopardy, nor did it offend due process considerations or fall in the category of cruel or unusual punishment.

In short, I believe there is an added safeguard owing to society where gun crime is involved. The criminal ought to be considered a "dangerous special offender" and the sentence against him should be open to review if there is any danger at all that society is not adequately protected from his threatened acts of violence.

In the case of the gun criminal my bill would give society the added protection it needs. For the gun criminal, it adds to the price he already pays for choosing a weapon of violence in committing his crime.

I would hope that this bill would be considered with utmost dispatch and that it might be reported expeditiously along with the many other recommendations to update the criminal laws that are now before the Committee on the Judiciary.

Mr. President, I send the bill to the desk and ask that it be appropriately referred.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred.

By Mr. HUGHES (for himself, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. HATHAWAY, Mr. INOUYE, Mr. JAVITS, Mr. MCGEE, Mr. MCGOVERN, Mr. MATHIAS, Mr. MONDALE, Mr. MOSS, Mr. NELSON, Mr. PASTORE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. SPARKMAN, Mr. STEVENSON, and Mr. WILLIAMS):

S. 1125. A bill to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act and other related acts to concentrate the resources of the Nation against the problem of alcohol abuse and alcoholism. Referred to the Committee on Labor and Public Welfare.

Mr. HUGHES. Mr. President, I introduce for myself and Senators BIBLE, BROOKE, CHURCH, CLARK, CRANSTON, EAGLETON, GRAVEL, HATHAWAY, INOUYE, JAVITS, MCGEE, MCGOVERN, MATHIAS, MONDALE, MOSS, NELSON, PASTORE, RANDOLPH, RIBICOFF, SCHWEIKER, SPARKMAN, STEVENSON, and WILLIAMS, a bill to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act and other related acts to concentrate the resources of the Nation against the problem of alcohol abuse and alcoholism.

During the past 3 years the Congress has enacted legislation to mount a major attack on the nationwide problems created by the irresponsible use of alcohol and other drugs and the tragic addictions that often result from such use. Our measures have reflected a rising national concern, to which we have tried to respond, perhaps not always successfully, by developing rational and compassionate governmental policies and programs.

We have authorized funds to finance research, preventive education, treatment, and rehabilitation. Many hundreds of talented biological, behavioral, and social scientists are conducting research, and thousands of the victims of addiction are receiving help.

There is progress. Yet, no one can claim to have final answers. We do not know how to prevent experimentation with dangerous substances, and we do not have a sure cure for any addiction. In fact, as a society, we are just beginning to recognize certain essential truths and to question some of our comfortable illusions about drugs.

Perhaps the most foolish and dangerous of these illusions has been that it is the law rather than physiological fact which defines the term "drug" and determines whether a substance is safe or dangerous. Thus, we have avoided recognizing alcohol as a drug because it is legal and socially acceptable. Yet, medical scientists know that there is little difference in the effects of alcohol and such drugs of abuse as the short-acting barbiturates. Both can be addicting, intoxicating, liver-damaging, and life-threatennig when taken in excessive amounts.

Another of our myths has been that users of excessive amounts of alcohol and users of illicit drugs are always entirely separate classes of people. Yet, survey after survey reveals that a high proportion of barbiturate and heroin addicts began as heavy drinkers.

These illusions have fostered some curious parental attitudes. Because alcohol is legal and it is their own drug of choice, we are finding that parents who are justifiably dismayed at teenage abuse of illicit pills are relieved when their son or daughter turns from pills to excessive drinking, which can be at least as harmful to health.

Mr. President, the March 5, 1973, issue of Newsweek contains an article which should command the attention of every parent and of all who are concerned with the problem of addiction. It is entitled "The Latest Teen Drug: Alcohol."

The article contains this statement:

> From nearly every quarter of the nation, school authorities and teen-agers themselves report that the latest fad in juvenile drug abuse is one that has a familiar ring to the older generation: the drug of choice these days, they say, is alcohol.

The article offers no comfort to the adult reader who may feel some relief at this teenage trend. It discusses reports of heavy drinking even among sixth and eighth graders, and Saturday evening binges of 15- to 17-year-olds. It goes on to say:

> But alcohol, of course, is a drug with a high potential for addiction, according to Los Angeles's Southerby, (of the Los Angeles County Alcohol Safety Action Program) one teenager out of every twenty in southern California has "a drinking problem", and the National Council on Alcoholism reports that in 1972, the age of the youngest alcoholics who came to their attention dropped from 14 to 12.

Mr. President, this is appalling information. If there is anything at all encouraging in the articles, it is its frank description of alcohol as an addictive drug. We know that prohibition is not the answer for this particular drug, and we know that young people as well as adults will continue to drink. But we must learn to face honestly the fact that the potential for addiction is high. Some researchers tell us that at least one in 10 drinkers is likely to become addicted to alcohol.

In its report entitled "Alcohol and Health," issued early in 1972, the National Institute on Alcohol Abuse and Alcoholism estimated that there are at least 9 million abusers of alcohol and alcoholics in the Nation. I suspect that this estimate is a low estimate, given the total number of drinkers in our society. Regardless of the precise number, however, we know that alcoholism is one of the Nation's most serious and widespread diseases. It therefore requires a strong and sustained governmental response.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 provided a good start. It authorized the creation of the National Institute on Alcohol Abuse and Alcoholism and directed it to conduct research on prevention and treatment and to administer contracts and project grants and a program of formula grants to the States. The Institute came into existence less than 2 years ago, and as funds were appropriated, it began to carry out its responsibility to fund prevention and treatment programs.

In my opinion, we have made a good start. But it is only a start, and it would be tragic to become complacent, or to cut the already limited grant funds in the name of economy.

I am today introducing a bill to amend the act of 1970 and to extend the project and formula grant authorities of the act for another 3 years. Under the 1970 act both authorities would have expired at the end of the current fiscal year. Last fall in an effort to facilitate budget planning at both the State and the Federal levels, the Congress passed a bill extending the State formula grant authority for 1 year, through June 30, 1974. This bill would extend both the formula grant and the project grant authority through June 30, 1976.

The formula grant authority would continue in fiscal 1974 at the present figure of $80 million. It would then rise to $100 million for each of the next 2 fiscal years.

The bill authorizes contract and project grant authority of $100 million in fiscal 1974 and $120 million for each of the next 2 fiscal years.

I wish to emphasize here, Mr. President, that these contract and project grant figures do not represent an enormous increase over the authorization for the current fiscal year. The 1970 act authorized $50 million for the current year, and part E of the Community Mental Health Centers Act authorized a total of $80 million for construction and staffing of facilities for both alcoholism and drug programs. Assuming that one-half of the $80 million would be available for alcoholism and the other half for drug programs, we find that a total of $90 million is authorized for contracts and project grants for alcoholism in fiscal 1973. My bill would increase this to $100 million in fiscal 1974 and to $120 million in each of the next 2 fiscal years.

As the States have developed their plans as required by the act of 1970, and treatment programs have begun to be more readily available, the word has spread that alcoholism is a preventable and treatable disease. Enlightenment and new hope on the part of the individual problem dinker and those close to him have intensified the demand for local treatment programs.

Further pressure on program funds has resulted from changes in the law, which are now requiring a more humane and more realistic handling of problem drinkers. Supreme Court decisions of the last several years have emphasized that addiction, whether to alcoholism or to other drugs, is not in itself a punishable offense. Consequently, State and local governments have been forced to find alternatives to the age-old, revolving-door practice of incarcerating the alcoholic, forcing him to sober up, and releasing him with no effort to treat his addiction, only to repeat the process again and again.

To meet this challenge, the Commissioners on Uniform State Laws have recommended the adoption of the Uniform Alcoholism and Intoxication Treatment Act, which establishes the principle that alcoholism must be trebled as a public health problem and sets forth detailed standards to guide the States in setting up treatment programs.

Several States have either adopted the Uniform Act or are now actively considering it. We are finding that some State legislatures would be willing to adopt it but are delaying because of the expense of setting up the treatment facilities required by the Uniform Act as an alternative to the all too common system of simply throwing the alcoholic into the local jail. Over the long run, treating the alcoholic is far less expensive than devoting a large proportion of law enforcement man-hours and facilities to him over his adult lifetime. But the immediate cost of setting up treatment facilities is high.

To meet this practical problem and to encourage the States to adopt the Uniform Act, my bill would authorize additional grants to those States which have adopted the basic provisions of the act and need financial help in making the transition from a criminal justice to a community care approach in their treatment of alcoholics. The grant would be a basic $100,000 plus 10 per cent of the State's formula allotment.

Mr. President, as we all know, the administration's budget for fiscal 1974 calls for the dismantling of the Office of Economic Opportunity and the transfer of some of its responsibilities to other agencies. The transfer of alcoholism programs funded by OEO began last year and will be completed during the current fiscal year. The National Institute on Alcohol Abuse and Alcoholism will then have full responsibility for these programs, which have served such minorities as Indian tribes and Spanish-speaking communities, and have been a part of many community action programs funded by OEO.

The fiscal 1974 budget would also eliminate any funds for new project grants for alcoholism, leaving only the formula grant funds, which would be limited to $30 million. Thus, demands on the funds for alcoholism programs are multiplying at the very time when the administration proposes to eliminate new project funds and to hold formula grant funds at current low levels.

The bill contains a provision to insure that representatives of the poor and of minority groups will be included in State alcoholism councils. We will give careful consideration to any additional provisions which may be needed to safeguard the interests of these groups.

I feel confident that the Senate will understand the need for continuing the fight against the disease of alcoholism. It is a fight that has only begun. This bill is designed to carry it forward for the next 3 years.

Mr. President, I point out that this is a bill that would make taxpayers out of tax users; it would take people out of jail, people who have been before the courts hundreds of thousands of times; it would reduce the overall expense of our country. By no means could this measure be considered to be inflationary. It is designed to help people who have been dying for years in the alleys and byways of our Nation. Not to go forward with this program at a time when there is hope is one of the most inconsiderate things I have seen done in the last 4 years while I have been a Member of the Senate. It is time for action by this Congress in order to assure that these needs are met in our country and to assure that the millions of children in this country who are becoming addicted to this drug have some opportunity to prevent that addiction, and if they are addicted, to find hope and a way out.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the text of the bill, a summary of its provisions, a section-by-section analysis, and the article from the March 5, 1973, issue of Newsweek entitled, "The Latest Teen Drug: Alcohol."

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

S. 1125

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 "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1973."

TITLE I—COORDINATION AND PERSONNEL

SEC. 101. Section 101(a) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act is amended—

(1) by adding a period immediately after "by this Act" and by striking out "and part C of the Community Mental Health Centers Act."; and

(2) by adding at the end of said section: "The Secretary, acting through the institute, shall coordinate efforts, in carrying out the

purposes of all other Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity legislation, to deal with alcohol abuse and alcoholism."

SEC. 102. Section 101 of such Act is further amended by adding the following new subsections:

"(c)(1) The Director may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the programs and authorities under this Act.

"(2) The Director may appoint a Deputy Director, four Associate Directors, an Executive Officer, and four Division Directors. Compensation for such appointees may be at grades 16, 17, and 18 of the General Schedule, or in grades 07 and 08 established by Act of July 1, 1944 (42 U.S.C. 207).

"(3) In addition to the number of positions which may be placed in grades GS–16, 17, and 18 under section 5108 of title 5, United States Code, and without prejudice to the placement of other positions in the Institute in such grades under any authority other than this subsection, not to exceed 11 positions in the Institute may be placed in grades GS–16, 17, and 18, but in accordance with the procedures prescribed under such section 5108."

SEC. 103. Section 102(1) of such Act is amended by striking out "and part C of the Community Mental Health Centers Act" immediately after "under this Act".

SEC. 104. Section 102(2) of such Act is amended by inserting "and every three years thereafter" after "Act" and immediately before "a report".

SEC. 105. Section 102 of such Act is further amended by adding the following new subsection:

"(5) submit to Congress on or before the end of each calendar year, beginning during fiscal year 1974, a report on the extent to which other Federal programs and Departments are supporting and dealing with the problems of alcohol abuse and alcoholism."

TITLE II—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

PART A—GRANTS TO STATES

SEC. 201. Title III, Part A—Formula Grants of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act is amended—

(1) by striking out "Formula Grants" after "Part A—" and inserting in lieu thereof "Grants to States"; and

(2) by striking out immediately thereunder "authorization" and inserting in lieu thereof "formula grants".

SEC. 202. Section 301 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act is amended by inserting immediately after "for each of the next two fiscal years" the following: "ending June 30, 1974, and $100,000,000 for each of the next two fiscal years ending June 30, 1976,".

SEC. 203. Section 302 of such Act is amended by adding the following new subsection:

"(d) On the request of any State, the Secretary is authorized to arrange for the assignment of officers and employees of the Department or to provide equipment or supplies in lieu of a portion of the allotment to such State. The allotment may be reduced by the fair market value of any equipment or supplies furnished to such State and by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of an officer or employee to the State. The amount by which such payments are so reduced shall be available for payment of such costs (including the costs of such equipment and supplies) by the Secretary, but shall for purposes of determining the allotment under Section 302(a), be deemed to have been paid to the State."

SEC. 204. Section 303(a) of such Act is amended—

(1) by striking out in subparagraph (3) "or groups," immediately after "nongovernmental organizations" and inserting in lieu thereof,", "of groups to be served with attention to assuring representation of minority and poverty groups,";

(2) by striking out "and" at the end of subparagraph (9);

(3) by redesignating "(10)" as "(11)"; and

(4) by adding after subparagraph (9) the following new subparagraph (10):

"(10) set forth, in accordance with the criteria and no less than the minimum standards to be set by the Secretary, standards for construction and licensing of public and private treatment facilities, as well as standards for other community services or resources available to assist individuals to meet problems resulting from alcohol abuse. Such establishment of standards and licensing must include enforcement procedures and penalties; and".

SEC. 205. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act is amended by adding a heading "Special Grants" after Sec. 303(b) and as an introduction to the following new sections:

"SEC. 304(a). The Secretary, for each fiscal year, acting through the Institute, is authorized during the period beginning July 1, 1973, and ending June 30, 1976, to make grants to States (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) for the implementation of the Uniform Alcoholism and Intoxication Treatment Act. The purpose is to help States who have adopted the basic provisions of the Uniform Act to utilize fully the protections of this legal framework in their efforts to approach alcohol abuse and alcoholism from a community care standpoint.

"(b) These grants may be made on application by States whose statutes include at minimum:

"(1) A declaration of policy and/or in fact of other statutes representing that it is the policy of the State that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages, but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. The intent of this declaration and provision must be to preclude the handling of drunkeness under any of a wide variety of petty criminal offense statutes, such as loitering, vagrancy, disturbing the peace, and so forth, and therefore to require that it be handled under the civil provisions and not under the criminal law.

"(2) Specific repeal of all relevant portions of the criminal statutes under which drunkness is the burden of the offense, except that nothing in this repeal affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times in places or by a particular class of persons.

"(3) Incorporation of the standards of acceptance for treatment contained in section 10 of the Uniform Act as follows:

"(i) If possible a patient shall be treated on a voluntary rather than an involuntary basis;

"(ii) a patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment;

"(iii) a person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment;

"(iv) an individualized treatment plan shall be prepared and maintained on a current basis for each patient; and

"(v) provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

"(4) Specific restrictions on the use of involuntary commitment to at least the standard contained in section 14 of the Uniform Act; and

"(5) Such additional assurances as the Secretary may find necessary to carry out the purposes of this part.

"(c) Organization of the State program must be in accordance with section 303(a) of this Act and shall not require the specific organizational structure contained in the Uniform Act.

"(d) For each fiscal year that a State applies and qualifies under the provisions of this section, a grant may be made available based on a sum of $100,000 plus an amount equal to 10 percent of said State's formula allotment.

"(e) There are authorized to be appropriated such sums as necessary to carry out the provisions of this section."

PART B—PROJECT GRANTS AND CONTRACTS

SEC. 211. Section 240 of the Community Mental Health Centers Act is deleted.

SEC. 212. Sections 241 through 247 under part C of such Act and all authorities pertaining to alcohol abuse and alcoholism contained in other provisions of such Act are transferred to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, and said part C is substituted therein for and redesignated "Part B—Project Grants and Contracts", in Title III.

SEC. 213(a). Section 241 of said part is amended—

(1) by striking out "from appropriations under section 261" immediately after "(a) Grants";

(2) by inserting in (a) "alcohol abuse and" immediately after "treatment of" and before "alcoholism";

(3) by inserting in (a)(1) the word "following" immediately before "requirements";

(4) by inserting a ":" immediately after "approval" in (a)(1), and by striking out in the same sentence "under clauses (1) through (5) and clauses (A) and (B) of section 205(a),"

(5) by adding immediately after "approval:" of (a)(1) the following subparagraph:

"(A) a description of the site for such project;

"(B) plans and specifications therefore in accordance with the regulations prescribed by the Secretary for general standards of construction and equipment for facilities of different classes and in different types of locations;

"(C) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or other nonprofit agency which is to operate the facility;

"(D) reasonable assurance that adequate financial support will be available for the construction of the project and for its maintenance and operation when completed;

"(E) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction of the project will 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. 276a–276a–5); and the Secretary of Labor shall have with respect to the labor standards specified in this para-

graph the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176; 5 U.S.C. App. 133z–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c);

"(F) a certification by the State agency of the Federal share for the project;

"(G) that the application contains reasonable assurance as to title, financial support, and payment of prevailing rates of wages and overtime pay; and

"(H) that the plans and specifications are in accord with the regulations prescribed pursuant to section 303(a) of this Act."

(6) by striking out "and (2) which contains—" in (a) and inserting in lieu thereof "An application must also (2) contain—";

(7) by inserting in (a)(2)(A) and twice in (B) "alcohol abuse and" immediately after "treatment of" and before "alcoholism";

(8) by striking out in (a)(2)(B) "at least those essential elements of comprehensive mental health services and" after "situated," and inserting in lieu thereof "comprehensive";

(9) by striking out in (a)(2)(C) everything after "designated" and inserting in lieu thereof "under section 303(a) of this Act;";

(10) by inserting in (a)(2)(D) "alcohol abuse and" immediately after "treatment of" and before "alcoholism"; and

(11) by striking out in (a)(2)(E) "prescribed under section 203(4)" immediately after "Secretary".

SEC. 213(b). Section 311 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act is amended by striking out everything after "Section 311.", and section 241 of the transferred part C is redesignated section 311.

SEC. 214(a). Section 242 of this part is amended—

(1) by striking out in (a) "from appropriations under section 261" immediately after "Grants";

(2) by inserting twice in (a) "alcohol abuse and" immediately after "treatment of" and before "alcoholism";

(3) by inserting in (c) "alcohol abuse and" immediately after "States for" and before "alcoholism"; and

(4) by striking out in (d) "upon an application which meets the requirements for approval under section 221(a), other than paragraph (3) thereof, and only if (1) a grant was made under part A or section 241 to assist in financing the construction of the facility, or (2)" immediately after "may be made only" and inserting in lieu thereof "if".

SEC. 214(b). Section 242 of the transferred part C is redesignated section 312.

SEC. 215(a). Section 243 of this part is amended—

(1) by striking out in (a) "from appropriations under section 261" immediately after "Grants";

(2) by striking out in (a) "such" immediately after "initial operation of";

(3) by inserting in (a) "of the Community Mental Health Centers Act" immediately after "part A";

(4) by striking out in (b) "(1) facilities which are a part of or affiliated with a community mental health center providing at least those essential elements of comprehensive community mental health services which are prescribed by the Secretary, or (2) where there is no such center serving the community in which such facilities are to be situated, facilities with respect to which" and inserting in lieu thereof "facilities where", and by inserting "alcohol abuse and" immediately after "treatment of" and before "alcoholism";

(5) by striking out in (c) "242" immediately after "section" and inserting in lieu thereof "312"; and

(6) by striking out in (d) "205(a)(5)" immediately after "section" and inserting in lieu thereof "311(a)(1)(5)".

SEC. 215(b). Section 243 of the transferred part C is redesignated section 313.

SEC. 216(a). Section 244 of this part is amended—

(1) by inserting "of the Community Mental Health Centers Act" immediately after "B";

(2) by inserting "alcohol abuse and" immediately after "treatment of" and before "alcoholism"; and

(3) by adding at the end of said section: ", provided the application is consistent with the State plan approved under section 303(a) of this Act.".

SEC. 216(b). Section 244 of the transferred part C is redesignated section 314.

SEC. 217. Section 245 of this part is deleted.

SEC. 218(a). Section 246 of this part is amended—

(1) by striking out "June 30, 1973" immediately after "ending" and inserting in lieu thereof "June 30, 1976"; and

(2) by inserting in (1) and (3) "alcohol abuse and" immediately after "treatment of" and before "alcoholism".

SEC. 218(b). Section 246 of the transferred part C is redesignated section 315.

SEC. 219(a). Section 247(a) and (b) of the transferred part C is redesignated section 316.

SEC. 219(b). Section 247(c) is redesignated section 317 and amended—

(1) by striking out in (1) "this section" immediately after "the provisions of" and inserting in lieu thereof "part B"; and

(2) by striking out in (2) "this section" immediately after "contract under" and inserting in lieu thereof "part B".

SEC. 219(c). Section 247(d) is deleted.

SEC. 220. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act is amended by adding the following new section:

"SEC. 318(a). There are authorized to be appropriated to carry out the purposes of part B, sections 311 through 316 $100,000,000 for the fiscal year ending June 30, 1974, and $120,000,000 for each of the next two fiscal years ending June 30, 1976. Sums so appropriated for any fiscal year shall remain available for obligation until the close of the next fiscal year.

"(b) There are also authorized to be appropriated for the fiscal year ending June 30, 1974, and each of the next nine fiscal years such sums as may be necessary to continue to make grants for staffing with respect to sections under this part for which a staffing grant was made from appropriations under subsection (a) of this section for any fiscal year ending before July 1, 1976.

"(c) Not to exceed five per centum of the amount appropriated pursuant to the preceding provisions of this section for any fiscal year shall be available to the Secretary to make grants to local public or nonprofit private organizations to cover up to 100 per centum of the costs (but in no case to exceed $50,000) of projects for assessing local needs for programs of services for persons needing help with problems of alcohol abuse and alcoholism, obtaining local financial and professional assistance and support for such programs in the community, and fostering community involvement in initiating and developing such programs in the community. In no case shall a grant under this subsection be for a period in excess of one year; nor shall any grant be made under this subsection with respect to any project if, for any preceding year, a grant under this subsection has been made with respect to such project.

PART C—ADMISSION TO HOSPITALS

ADMISSION OF ALCOHOLIC ABUSERS AND ALCOHOLICS TO PRIVATE AND PUBLIC HOSPITALS

SEC. 331. Section 321 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act is amended to read as follows:

"(a) Alcohol abusers and alcoholics who are suffering from medical conditions shall not be refused admission or treatment solely because of their alcohol abuse or alcoholism, by any private or public general hospital which receives support in any form from any programs supported in whole or in part by funds appropriated to any Federal department or agency.

"(b) The Secretary is authorized to make regulations for the enforcement of the policy of subsection (a). Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital has violated subsection (a) and such violation continues after an opportunity has been afforded for compliance, the Secretary is authorized to suspend, or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital receives support of any kind, with respect to the suspension or revocation of Federal support for such hospital."

COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION TREATMENT AND REHABILITATION ACT AMENDMENTS OF 1973

SUMMARY

First, this bill would continue the project grant and contract program and the formula grant program originally authorized by the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616) as follows: it would authorize appropriations for project grants and contracts of $100 million for F.Y. 1974 and $120 million for each of the following two years; it would continue the formula grant authorization to the States in F.Y. 1974 at $80 million, and would authorize $100 million for each of the following two years.

Second, it would create a small additional State grant program to help States implement the Uniform Alcoholism and Intoxication Treatment Act and to encourage more States to adopt the Uniform Act.

Third, it would assure representation on the alcoholism State advisory councils of minority and poverty groups.

Fourth, it would transfer the project and contract authorities administered by the National Institute on Alcohol Abuse and Alcoholism currently part C of the Community Mental Health Centers Act to the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act.

Fifth, it would provide for additional personnel for the National Institute on Alcohol Abuse and Alcoholism.

Sixth, it would strengthen the lead agency responsibility of the National Institute on Alcohol Abuse and Alcoholism in the alcoholism efforts of other Federal Departments or Agencies.

Seventh, it would strengthen the provision that prohibits the exclusion from hospitals of alcohol abusers and alcoholics who are suffering from medical conditions.

Eighth, it would require a report to the Congress every three years on the health consequences of using alcohol and on legislative changes which might be considered desirable.

COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT AND REHABILITATION ACT AMENDMENTS OF 1973

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill gives the legislation the short title the "Comprehensive Alcohol

Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act Amendments of 1973.

The substantive provisions of the legislation are set forth in two titles as follows:

TIle I—COORDINATION AND PERSONNEL

Section 101(1) would delete in section 101 (a) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act the reference to part C of the Community Mental Health Centers Act as section 212 of this bill transfers said part C to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act.

Section 101(2) would add a provision to section 101(a) to reduce the fragmentation of the Federal efforts in alcohol abuse and alcoholism. The new provision makes explicit that the Secretary, acting through the institute, shall coordinate efforts by other agencies and programs of the Department and other Departments of the Federal Government, in carrying out the purposes of all other Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity legislation, to deal with alcohol abuse and alcoholism.

Section 102 would further amend section 101 of the Act to provide the Institute and its Director the personnel and the flexibility with regard to personnel needed to administer the Institute.

New subsection (c)(1) would give the Director standard authority to select and employ such officers and employees, including attorneys, as are necessary to administer the Institute's programs and authorities.

New subsection (c)(2) would permit the Institute to employ personnel for top positions, and at a salary that would attract the needed high-level scientific, technical, and medical personnel.

New subsection (c)(3) would provide that, in addition to the number of positions which may be placed in supergrades under normal Civil Service Commission procedures, not to exceed 11 positions in the Institute may be placed in grades GS–16, 17, and 18, in accordance with procedures, prescribed under section 5108 of title 5, U.S.C. This authority would permit the Institute to employ the personnel they need for top positions, while preserving the jurisdiction of the Civil Service Commission and the Congressional committees having an interest in this subject.

Section 103 is related to section 212 of this bill which would transfer said part C to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act.

Section 104 would amend section 102(2) to require the submission to the Congress every three years of an alcohol consequences type of a report similar to the first special report to the U.S. Congress on *Alcohol and Health* prepared by the National Institute on Alcohol Abuse and Alcoholism and submitted by the Secretary of Health, Education, and Welfare, December 1971, as required by section 102(2), before the expiration of the one-year period beginning on the date of the 1970 enactment of the Act.

Section 105 would amend section 102 to require an annual report to Congress on the extent to which Federal programs other than the National Institute on Alcohol Abuse and Alcoholism are supporting and dealing with the problems of alcohol abuse and alcoholism. Prior to the establishment of the Institute, the Senate Committee on Labor and Public Welfare expressed its dissatisfaction with the failure of Federal Departments and agencies to use existing legislative authority to combat alcoholism. The Institute now has a lead responsibility in the stimulation of such efforts and the amendment to section 101(a) above is designed to strengthen that responsibility. This report would direct the Institute to report on progress in these efforts.

TITLE II—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

PART A—GRANTS TO STATES

Section 201 modifies the heading in part A to incorporate a new "Special Grants" section added by section 205.

Section 202 would amend section 301 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act to extend and increase amounts authorized to be appropriated for these grants for an additional two years. The $200 million in formula grants requested for two years is based on the experience with this program in fiscal years 1972 and 1973, and considering other economic priorities what the States can effectively use and need at minimum to deal with alcohol abuse and alcoholism from a community care standpoint.

Section 203 would amend section 302 of the Act to authorize on the request of any State the assignment of officers or employees of the Department, or to provide equipment or supplies in lieu of a portion of the allotment to such State. This authority is similar to the section 102 amendment to provide the Director the flexibility with regard to personnel needed to administer the Institute, and in this instance, to increase the Institute's capacity to respond to State efforts to develop more effective State and local programs. The authorization is similar to that provided under sections 214 and 314 of the Public Health Service Act, as well as under other legislative authorities.

Section 204(1) would amend section 303 (a)(3) of the Act to assure representation on the alcoholism State advisory council of minority and poverty groups.

Section 204 (2), (3), and (4) would amend section 303(a) to require States as part of their State plan requirements to set forth standards for construction and licensing of public and private treatment facilities, as well as standards for other community services or resources available to assist individuals to meet problems resulting from alcohol abuse. Further, these would be established in accordance with the criteria and at a level of quality no less than the minimum standards to be set by the Secretary for such facilities, services, and resources.

Section 205 would add to Federal assistance to States a special grant in addition to the formula grants. This new grant would provide funds to help States implement a Uniform Alcoholism and Intoxication Treatment Act. Progress in the field of treating alcohol abuse and alcoholism from a community care standpoint has been inhibited by the existence of antiquated civil and criminal laws providing for punitive incarceration rather than rehabilitation. As a result of recent legal developments, an appropriate statutory framework can now be provided by the adoption in all the States of a Uniform Alcoholism and Intoxication Treatment Act, promulgated by the National Conference of Commissioners on Uniform State Laws. This Uniform Act regards alcohol abuse and alcoholism as public health problems, and removes alcoholism from the criminal justice system, while in no way altering the provisions of the criminal law that protect public safety. Adoption of this Act by all the States has been encouraged by this Committee, former Secretary of Health, Education, and Welfare, Elliot L. Richardson and the former Attorney General, John N. Mitchell. Several States have passed this Act and a majority of the States are preparing such a bill or have already introduced a bill in their legislatures.

PART B—PROJECT GRANTS AND CONTRACTS

Section 211 would amend the Community Mental Health Centers Act by deleting section 240, declaration of findings and purposes. It is expected that the Committee will prepare and include in the bill a new section on findings and purposes, based on hearings and reports to the Congress submitted by the Secretary of Health, Education, and Welfare, in accordance with the requirements of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970.

Section 212 would transfer the project grant and contract authorities administered by the National Institute on Alcohol Abuse and Alcoholism from the Community Mental Health Centers Act to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act. The original Act did not incorporate these authorities and their continued location in the Centers Act has caused a good deal of confusion around the Country, and works against a more focused and coordinated program approach to this problem. Their incorporation in the Act would be administratively more sound, and reduce any confusion over the purposes of these authorities.

Sections 213 through 219 would make the various specific amendments needed to modify, update, and to actually transfer the authorities in part C of the Community Mental Health Centers Act to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, and have said part C substituted therein and redesignated "Part B—Project Grants and Contracts" in Title III.

Section 220 would amend the Comprehensive Alcohol Abuse and Alcoholism Prevension, Treatment, and Rehabilitation Act by adding a new section 318, establishing a separate provision for the authorization of appropriations for the Project Grant and Contract authorities under the amended Act.

New subsection (a) of section 318 would authorize $340 million over three years in project grant and contract support. This is considered a modest sum compared to the needs of communities; however, many communities are only starting to address this problem and to develop coordinated community-based programs in close association with their respective State agencies. This amount is therefore thought to be reasonable at this point and will do a great deal to bring the problems of alcohol abuse and alcoholism under control.

New subsection (b) would merely update and provide the same authority as the Institute presently has under section 261 of the Community Mental Health Centers Act. This new subsection is required with the transfer of all authorities pertaining to alcohol abuse and alcoholism from the Act to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act.

New subsection (c) would transfer another funding authority to this Act from the Community Mental Health Centers Act. This provision provides for one year, one time, initiation and development support to local public or nonprofit private organizations.

PART C—ADMISSION TO HOSPITALS

Section 301 would amend section 331 of part C of the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment, and Rehabilitation Act to strengthen the provision that requires admission to hospitals of alcohol abusers and alcoholics who are suffering from medical conditions.

Under the present provision, violators are only threatened by a cut off of Federal financial assistance under this Act, and would have little influence. This amendment follows the precedent set by the adoption of a similar provision in relation to drug abusers in the recently enacted Public Law 92–255, the Drug Abuse Office and Treatment Act of 1972. It is designed to prevent the exclusion of individuals who have alcohol drinking problems from obtaining needed medical care. Individuals with alcohol

drinkinig problems should be able to obtain needed medical care in routine care facilities but are often excluded. This discrimination has contributed to the development of many special and unnecessary facilities, often far removed from other community resources. The amendment to section 331 is important to obtaining the help that could and should be provided by private and general hospitals.

THE LATEST TEEN DRUG: ALCOHOL

Every parent of adolescent children knows that in recent years, increasing numbers of teen-agers have been experimenting with dangerous drugs—LSD, speed, barbiturates, even heroin. Perhaps the most frightening aspect of this trend is that in well-to-do suburban communities and inner-city ghettos alike the age of the youthful drug experimenters has been steadily dropping; there have even been cases of heroin addiction among elementary-school children. Now, however, the trend seems to be away from these drugs. From nearly every quarter of the nation, school authorities and teenagers themselves report that the latest fad in juvenile drug abuse is one that has a familiar ring to the older generation: the drug of choice these days, they say, is alcohol.

Youthful drinking, of course, has always been an important rite of passage, and for a time it looked as if the use of marijuana might be replacing alcohol as an expression of rebellion against the older generation. Now, according to youngsters like Steven Brodsky, a senior at Brooklyn's Franklyn Delano Roosevelt High School, many teenagers are discovering that alcohol is just as much fun as grass, and a lot easier to obtain. "A lot of us used to smoke," Brodsky told Newsweek's Barbara Davidson, "but we gave that up a year or two ago. Now my friends and I drink a lot—and in my book, a high is a high."

Most youngsters today confine their drinking to weekend parties. At Levittown Memorial High School on Long Island, N.Y., for example, one 17-year-old member of the football and lacrosse teams reports that on Saturday evenings in good weather, about a hundred 15- to 17-year-olds regularly congregate in the bleachers of Memorial's playing fields to consume a six-pack of beer apiece. After these weekend binges, says Frank Trezza, the school's director of student organizations, the playing area may be littered with as many as 250 empty beer cans, fifteen wine bottles and several whisky bottles.

SWEET

Not surprisingly, most parents are relieved to discover that their children are using alcohol rather than less familiar drugs. But many adults who are themselves connoisseurs of fine wines and good whisky are appalled by some of the alcoholic beverages their offspring favor. Besides beer, the most popular intoxicants are the heavily advertised sweet wines such as Boone's Farm Strawberry Hill and Ripple. "That stuff is advertised on TV in a party atmosphere," comments Levittown's superintendent of schools, Dr. Robert Niedich, "and it looks like fun. The sweet wines are almost entirely a youth market—you won't find many adults who can stomach them."

The most serious aspect of the drinking revival, authorities believe, is that the use of alcohol is now spreading down to schoolchildren in the lower grades. In a recent study of youthful drinking habits in the upper-middle-class Boston suburb of Brookline, 36 per cent of the eighth-grade pupils reported having been drunk on wine or beer—and so did 14 per cent of the sixth-grade class. In Stony Brook, N.Y., says Frank Trezza, "older students are literally pushing booze for younger kids." As a result of student drinking, many schools have instituted alcohol-education programs. Los Angeles County, for example, has just completed a film called "99 Bottles of Beer," which will be shown in the schools.

Clearly, one reason for the proliferation of young drinkers is widespread tolerance by their parents, most of whom are drinkers themselves. "Parents who hassled their kids about other drugs are willing to look the other way on alcohol," notes Norm Southerby of the Los Angeles County Alcohol Safety Action Program. One couple in California's Newport Beach, Southerby says, had experienced such anguish as a result of their 19-year-old daughter's use of pot and pills that when their younger daughter started drinking they were deeply relieved. "She'd get so drunk that she would be throwing up in the morning," Southerby recalls, "yet her parents were happy." Levittown's Niedich agrees. "I get parents in here to talk about an incident involving their kid drinking," he comments, "and the first thing they say is, 'Thank God, it's not drugs!' "

PROBLEM

But alcohol, of course, is a drug with a high potential for addiction. According to Los Angeles's Southerby, one teen-ager out of every twenty in southern California has "a drinking problem," and the National Council on Alcoholism reports that in 1972, the age of the youngest alcoholics who came to their attention dropped from 14 to 12. And for those who add alcohol to an existing drug habit, the result can be tragic: last year a top student and member of the swimming team at San Francisco's Woodrow Wilson High School popped some pills, washed them down with several drinks—and was found dead the next morning.

But despite the risks, teen-agers are taking to the bottle in growing numbers. Tacit parental acceptance is one reason for the trend; so are peer pressure, family and school problems and the ubiquitous desire to appear grown up. "Teen-agers have always used alcohol," points out Milton Wolk of the alcoholism division of the Massachusetts Department of Public Health, "and they always will. And because teen-age use is patterned after adult use, there's no way kids are going to stop drinking until adults do."

By Mr. BUCKLEY:

S. 1126. A bill to amend title 28, United States Code, so as to grant a priority in the trial or other disposition of any case involving a violation of the laws of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances; and

S. 1127. A bill to provide for pretrial detention in certain narcotics cases. Referred to the Committee on the Judiciary.

Mr. BUCKLEY. Mr. President, if we have learned anything at all in recent years about the war against drug abuse it is that it is a war with many fronts. Treatment and rehabilitation, law enforcement, research, education—all of these are deserving of our attention if drug abuse is to be effectively dealt with on a national level.

Too often we have heard—from well-intentioned persons—that one given approach is infinitely more important than any other and that the single-minded embrace of such an approach is the key to success. Some stress law enforcement. Others stress rehabilitation. Still others emphasize education. And while the debate goes on, drug abuse continues to wreak havoc in our streets and to destroy the very human essence of the young and the troubled and the bewildered victims of heroin.

According to the Wall Street Journal the Government spends over $700 million on drug abuse control.

It is my belief—based on conversations with experts in the field and with high-ranking administration officials—that although we cannot say that every penny is being spent wisely, on the whole our tax dollar is being spent with efficiency, given the size and the nature of the problem. The Federal dollar is used in a multifaceted approach to drug abuse, one which does not ask us to choose one approach over another but to realize that only by attacks on all fronts can this struggle against drug abuse be carried out.

I mention all of this, Mr. President, because today I am introducing two bills which I am convinced can play an important role on one front of this complex struggle.

I offer no panacea by the introduction of these bills. Drug abuse is rooted, in the final analysis, in causes so intimately connected with the mysteries of the individual human psyche that to even hint that one program or one approach will "solve" the drug problem is to play a cruel game of deception.

No, I offer these bills because they will, if passed, have a specific effect on a specific part of this multifaceted problem. They apply to the judicial process, which too often has proven to be a dead end, rather than a continuation of the war against drug abuse. Too often the time and effort spent by law enforcement officers goes to waste because of the inadequacies of our present methods of dealing with accused drug pushers once they appear in court. What I want to see happen—and what I am convinced these two bills would help bring about—is an untangling of the judicial process so as to give judges a chance to use their discretion in matters of pretrial detention and to give the accused a certainty that they will swiftly get their day in court. Certainty and swiftness—these two are prime virtues in any areas of justice, and are especially important in matters relating to drug offenders.

First, Mr. President, I wish to introduce for appropriate reference a bill to amend title 28, United States Code, so as to grant a priority in the trial or other disposition of any case involving a violation of the laws of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances.

One of the great problems that our law enforcement agencies contend with today is the length of time that transpires between indictment and trial. In the case of narcotic pushers, this period is often utilized by the accused to sell narcotic drugs more diligently than before in order to raise the funds required for legal fees and to put aside a sum of money that will serve as a nest egg for the pusher during a possible period of imprisonment.

It is true, of course, that any person charged with a crime ought to be entitled to a speedy trial. But as those charged with narcotic related crimes are charged with especially destructive crimes, it is proper that they be given a prompt trial so that if found guilty, they will be isolated from society as speedily as possible.

Mr. President, I also introduce for

appropriate reference a bill to amend title 18, United States Code, so as to provide for pretrial detention in certain narcotics case.

This bill would allow a judicial officer, on the basis of clear and convincing evidence, to order pretrial detention for a person charged with unlawful distribution of, or possession with intent to sell, heroin. I want to emphasize that only when there is sufficient reason to believe that the person would continue to be a menace to the community while free on bail would such pretrial detention be operative.

The bill further provides that the case of such persons will be placed on an "expedited calendar"—in accordance with the principles set forth in my bill to amend title 28, referred to above—so as to assure priority to his case.

Pretrial detention is a serious matter under our system of justice. It is not to be imposed lightly and I want to assure you that only because of the extraordinary circumstances surrounding drug abuse—especially drug pushing—do I offer this bill.

The hard-core pusher with many customers and no scruples can, at the present time, be brought before a court and, upon being given bail, be freed again to continue his vicious trade while awaiting trial. I want to make it possible to remove that kind of person from the streets when sufficient evidence to support such removal is available to a judge.

One key to slowing down the spread of drug addiction is to dry up the most readily available sources of narcotics. This is particularly important in the case of those who are beginning to experiment with drugs but have not yet become addicted. The evidence suggests that if the price of a "fix" becomes too high, and if it takes too long to find a pusher willing to sell one to a new customer, many will give up the chase. Thus the sequestration and early trial of those whom a judge finds will meet the criteria for preventive detention will do much to dry up the most readily available sources of supply.

Mr. President, as I said, we are engaged in a long, often seemingly fruitless struggle against drugs. We should not delude ourselves that because we want the epidemic to end that it will end. Americans are eternal optimists about the troubles of the world. We too often believe that where there is a "problem" there must be a "solution." Mr. President, drug abuse is not just a problem. In a deeper sense it is a tragedy beyond the ministrations of even the most well-intentioned programs. But we must try.

We must attempt to do what we think is best, even if we know that our best is not—cannot—get to the hidden, twisted roots of the human spirit where the ultimate secrets of drug abuse lie.

David Laventhol, editor of Newsday, commenting on a series of articles in his newspaper on heroin said in an interview recently:

> The depressing conclusion is that it's almost impossible to stop the importation of heroin. Contrary to myth, there is no one Mr. Big; there are hundreds of independent operators to take the place of every one put behind bars. So, if you come to the end of the trail with the realization that you can't stop it, then what?

My bills do not satisfactorily answer Mr. Laventhol's question, but they will, if passed, have a specific impact on one important part of the drug problem.

Just because we cannot do everything is no reason to say we should do nothing. We must continue the fight on all fronts. I offer these two bills in the firm conviction that if passed and implemented they will add new and effective weapons in the cause of liberating our society—especially the young—from the bitter slavery of drug addiction.

By Mr. ERVIN (for himself, Mr. BROOKE, Mr. FULBRIGHT, Mr. JACKSON, Mr. MANSFIELD, Mr. MCGEE, Mr. METCALF, Mr. MOSS, Mr. PEARSON, Mr. PELL, Mr. PROXMIRE, and Mr. SPARKMAN):

S. 1128. A bill to protect the freedom of speech, and of the press and to secure the flow of information in interstate and foreign commerce by protecting the newsman against the compulsory disclosure of confidential sources of information and the compulsory production of unpublished information. Referred to the Committee on the Judiciary.

NEWSMAN'S PRIVILEGE ACT OF 1973

Mr. ERVIN. Mr. President, today I introduce a bill entitled the Newsman's Privilege Act of 1973, which is designed to protect the free flow of information to the public. Senators BROOKE, FULBRIGHT, JACKSON, MANSFIELD, MCGEE, METCALF, MOSS, PEARSON, PELL, PROXMIRE, and SPARKMAN have joined with me in cosponsoring this measure.

This new bill represents my third attempt at drafting legislation which will accommodate both the interest of society in law enforcement, and the interest of society in preserving a free flow of information to the public. I have been attempting to draft a bill which would strike this balance, and as everyone who has attempted the task knows, this is no easy exercise. While I am certain that it can be improved, in my judgment this bill strikes a reasonable balance between these necessary, if at times competing objectives.

The bill provides qualified protection for a newsman's sources and for his unpublished materials. A newsman, under the bill, is entitled to refuse to reveal to a governmental body the name of his source of information if he gave a contemporaneous assurance to the source, either express or implied, that the identity of the source would not be disclosed. Furthermore, the information must have been obtained in the course of the newsman's occupation. Unpublished information is also protected from disclosure if it was gathered in the course of the newsman's occupation.

It is important to note that, despite these provisions, the newsman is not excused from testifying to the identity of any person who commits a crime in his presence. This provides a clear standard which puts both newsmen and sources on notice that where the newsman has viewed a criminal act, whether or not as a result of his pledge of confidentiality, he may later be compelled to identify the perpetrator of that act. This provision provides a small qualification to the general privilege conferred by the bill. But it is a necessary and reasonable exception. No newsman would take lightly concealing a crime from public authorities, and no newsman should have a right to keep this information from the police. Yet to conform to the exception will require little imposition on the part of the newsman. He need only tell his source:

> The law will protect against my having to disclose your name. But I cannot hide your identity if you are committing a crime.

These terms are reasonable to any man, and will not interfere with the normal and necessary reporting and informing function of the journalist.

I should also make special mention, Mr. President, that the provisions of this new bill would apply to both Federal and State governments. This represents a departure from my earlier bills which applied only to Federal jurisdictions. I have been convinced during the course of the hearings on this subject by the Subcommittee on Constitutional Rights, that inclusion of the States is within the power of Congress to regulate interstate commerce and, moreover, is desirable. A shield law which only applied to the Federal courts would not fulfill its objective of protecting the free flow of information. If a uniform shield law were not in effect, neither sources nor newsmen could be assured that they would not be subpenaed before State tribunals where the testimonial privilege was different or did not apply.

I would point out that the States would be free, under my bill, to provide greater protection for the newsman if they so desire. My bill only sets minimum standards.

Mr. President, as I stated at the outset, this legislation represents an attempt to reconcile two sometimes competing interests of society: The preservation of a free flow of information to the public, and the administration of justice. Giving the newsman the right to withhold the identity of all sources of information, however obtained, as some bills provide, would seem to weigh the balance too strongly in favor of the newsman, and carry a great potential for abuse. There is no need to allow the newsman to protect a source if the source did not ask for protection. Nor is any interest served by allowing a newsman to refuse to testify about an event which he saw while not performing his job. Similarly, the interest of society in identifying and punishing violators of its laws is too vital to allow newsmen to refuse to testify about a crime committed in their presence. To be sure, there is value in informing the public about the perpetration of a crime in the community, but as Justice White so succinctly stated in the Caldwell decision: "Is it better to write about crime than to do something about it?" It is my opinion that where the newsman has personal and eyewitness knowledge of a crime, society has a greater interest in having the perpetrator of that crime identified and punished, than simply in being made aware of it.

I am just as persuaded, nonetheless,

that law enforcement should not be able to make the newsman its tool, when to do so would destroy his effectiveness and his credibility. The newsman is dependent upon confidential disclosures made by inside sources of information. Practically no information is made public concerning corruption and mismanagement in government, business, labor, organized crime, and the military, except by virtue of inside sources who feel compelled to reveal it. If these sources are allowed to "dry up" for fear of ultimate exposure, the public loses information which is necessary to the improvement of its social and political processes. The detriment to society is potentially devastating.

Of similar concern to newsmen is the Government's ability to obtain their unpublished notes, tapes, pictures, and stories. These "work products" may be unreliable and uncorroborated. They may simply represent poor work and for that reason were never published. To allow the Government to obtain them may well undermine the newsman's credibility and integrity. To make them subject to exposure might well result in newsmen simply not taking notes or quickly destroying them, as many reporters have been doing since the Caldwell case. A newsman's job, as was forcefully presented at our hearings, is to report news, not conceal it. The unpublished notes represent matter which is unsubstantiated, irrelevant, rumor, or not newsworthy. It is rare that the notes might contain information of any use at a trial. Making them subject to disclosure involves a high price of interference with the first amendment, for a very low, and uncertain return in law enforcement.

In conclusion, Mr. President, this bill takes a balanced approach to resolving this issue. Its provisions are simple and direct. Under it, newsmen and their sources obtain protection which they can rely upon. Law enforcement officials are not unduly restrained. I commend it to the Senate.

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

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

S. 1128

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

SECTION 1. This Act may be cited as the Newsman's Privilege Act of 1973.

SEC. 2. The Congress hereby finds and declares that compelling newsmen to disclose their confidential sources of information impairs the willingness of persons having information the people need to know to communicate the same to newsmen and deters many of them from so doing; that jailing or otherwise punishing newsmen who refuse to disclose their confidential sources of information or to produce unpublished information tends to intimidate them in the exercise of their occupation and deters many of them from collecting and disseminating to the public information the people need to know; that for these reasons the right of the people to know what is occurring in our land or elsewhere is seriously impaired; and that this Act is necessary to protect the freedom of speech and of the press and to secure the full flow of information in interstate and foreign commerce.

SEC. 3. As used in this Act—

(a) "Newsman" means an individual who is regularly engaged in the occupation of collecting information or making pictures for dissemination to the public by any means of communication.

(b) "person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(c) "State" means any State of the United States or the Commonwealth of Puerto Rico, or the District of Columbia, or any territory or possession of the United States.

(d) "Legislative body" means the Congress or the legislature of a State or any committee or subcommittee acting under the authority of the Congress or the legislature of a State.

(e) "Unpublished information" means any memorandum, note, manuscript, transcript, picture, negative, recording, tape, or other record whatsoever which was made or obtained by a newsman while engaged in his occupation and which has not been disseminated to the public by any means of communication.

SEC. 4. A newsman shall not be compelled to disclose to a court, a grand jury, a legislative body, or other investigatory or adjudicative agency of government, which acts under the authority of the United States or any State, the identity of any person who supplies information to him while he is engaged in his occupation if he expressly or impliedly gives the person supplying the information a contemporaneous assurance that the source of the information will not be disclosed by him. Nothing contained in the preceding sentence or any subsequent provision of this Act shall be construed to excuse a newsman from testifying to the identity of any person who commits a crime in his presence.

SEC. 5. A newsman may invoke the provisions of Section 4 of this Act in either or both of the following ways—

(a) When a newsman appears before a court, grand jury, legislative body, or other investigatory or adjudicative agency of govgernment as a witness in obedience to a subpoena, as a party to a civil or criminal action, or otherwise, he may invoke the provisions of Section 4 of this Act by an oral or written objection, and the court, the grand jury, the legislative body, or the investigatory or adjudicative agency shall thereupon enter such order or take such action as may be necessary or appropriate to insure that the newsman shall not be compelled to disclose the source of information received by him contrary to the provisions of Section 4 of this Act. If the grand jury overrules his objection, the newsman must be accorded a review of its ruling by the judge presiding in the court in which the grand jury sits before he testifies further before the grand jury.

(b) When a newsman is served with a subpoena or other order to testify as a witness before a court, grand jury, legislative body, or other investigatory or adjudicative agency of government prior to the time designated for his appearance, he may invoke the provisions of Section 4 of this Act by moving that the court in which he is ordered to appear or in which the grand jury sits, or the legislative body, or the investigatory or adjudicative agency quash the subpoena or order or limit the testimony he is required to give under it, and the court, legislative body, or investigatory or adjudicative agency shall thereupon hear and determine the motion in camera and enter such order or take such action as may be necessary or appropriate to insure that the newsman shall not be compelled to disclose the source of information received by him contrary to Section 4 of this Act.

SEC. 6. Neither a newsman nor any other person having custody or control of the same shall be compelled to produce before a court, grand jury, legislative body, or other investigatory or adjudicative agency of government, which acts under the authority of the United States or any State, anything which constitutes unpublished information within the purview of the definition set forth in Section 2(e) of this Act.

SEC. 7. The provisions of section 6 of this Act may be invoked in either or both of the following ways—

(a) When a newsman or any other person having custody or control of unpublished information is ordered to produce the same before a court, grand jury, legislative body, or other investigatory or adjudicative agency of government, he may invoke the provisions of section 6 of this Act by an oral or written objection, and the court, grand jury, legislative body, or other investigatory or adjudicative agency shall thereupon enter such order or take such action as may be necessary or appropriate to insure that the newsman or other person is not compelled to produce the unpublished information contrary to the provisions of section 6 of this Act. If the grand jury overrules his objection, the newsman or other person must be accorded a review of its ruling by the judge presiding in the court in which the grand jury sits before any production on his part can be required by the grand jury.

(b) When a newsman or any other person having custody or control of unpublished information is served with a subpena duces tecum or other order commanding him to produce such information before a court, grand jury, legislative body, or other investigatory or adjudicative agency of government prior to the time designated for its production, he may invoke the provisions of section 6 of this Act by moving that the court before which the information is ordered to be produced or in which the grand jury sits, or the legislative body, or the investigatory or adjudicative agency quash the subpena duces tecum or order, and the court, legislative body, or investigatory or adjudicative agency shall thereupon hear and determine the motion in camera and enter such order or take such action as may be necessary or appropriate to insure that the newsman or other person having custody or control of the same shall not be compelled to produce unpublished information contrary to the provisions of section 6 of this Act.

SEC. 8. Any person invoking the provisions of section 4 or section 6 of this Act shall have the right to the assistance of counsel of his own choosing.

SEC. 9. Nothing in this Act shall be construed to impair or pre-empt the enactment or application of any State law which secures the minimum privileges established by this Act.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SEC. 11. This Act shall take effect upon its enactment.

By Mr. RIBICOFF:

S. 1129. A bill to amend the Internal Revenue Code of 1954 to increase the credit against tax for retirement income. Referred to the Committee on Finance.

RETIREMENT TAX CREDIT

Mr. RIBICOFF. Mr. President, I am introducing a bill that will benefit many of our older citizens by making our income tax system more equitable in the treatment of their retirement income.

Millions of public employees in a number of States throughout the country are not covered by social security, belonging

instead to their own local or State public employee retirement systems. These retirement plans may be perfectly adequate to meet the needs of these citizens in their later years. But, because benefit payments under these retirement systems are taxable, these public employees are placed in a weaker economic position than regular social security beneficiaries.

Present law provides a retirement income credit to taxpayers age 65 or older or who retired under a public retirement system. The credit is 15 percent of eligible retirement income up to $1,524 for single persons and up to $2,286 for married taxpayers, both of whom are age 65 or over for a maximum credit of $228.60 and $342.90 respectively. The maximum base for the credit is reduced by the amount of social security, railroad retirement, and other tax exempt benefits received. In addition, the maximum base of the credit for persons between age 62 and 72 is reduced by earned income in excess of $1,200 and $1,700, and on the basis of a dollar for each dollar of earnings above $1,700.

When the retirement income credit was enacted into law in 1954, the maximum amount of retirement income which could then qualify for the credit—$1,200—was equal to the annual maximum amount which could be received in social security benefits. Although social security benefits were subsequently increased, the maximum amount of retirement income available for the credit was not changed until 1962. In 1962, the maximum limit of the credit for an individual was increased to $1,524 to correspond with the maximum social security benefits enacted in 1958. In 1964, a corresponding increase in the maximum limit of the credit to $2,286 was provided for married couples. Since then the maximum and average social security benefits have been raised substantially, while the retirement tax credit has remained the same, thereby increasing the difference between social security benefits and the maximum base for the retirement income credit.

The time to update and simplify the retirement tax credit of the Internal Revenue Code is long overdue. Millions of older Americans who live on fixed income continue to find themselves threatened by inflation. The retirement tax credit for the elderly should be changed to keep pace with the rise in these living costs.

The legislation I am introducing today would narrow the excessive gap between the rising level of social security benefits and the base for the retirement income credit. This would benefit those people who receive retirement income from sources other than social security and railroad retirement.

A similar measure, which I introduced in 1970, was accepted by the Finance Committee; and in 1971, the provision was accepted by the House and Senate in slightly different versions as an amendment to the Social Security Amendment of 1972. Unfortunately, the provision was dropped in the Senate-House conference, because of the magnitude of the other social security measures. This year I am hopeful that the legislation can be considered promptly on its own merits.

My bill updates and substantially simplifies the retirement income credit—renaming it the tax credit for the elderly—by increasing the maximum amount on which the credit is computed to $2,500 for single persons age 65 or over—or for married couples filing joint returns where only one spouse is age 65 or over—and to $3,750 for married couples filing joint returns where both spouses are age 65 or over—$1,875 in the case of a married individual age 65 or over filing a separate return. These maximum amounts for computing the credit are reduced, as under present law, by social security benefits and other exempt pension income. In addition, the bill reduces these amounts by one-half the earnings over $2,000 received by a single taxpayer or by each spouse in the case of a married couple filing a joint return—in excess of $1,000 for married couples filing separate returns.

In addition, the bill eliminates the requirement that to be eligible for the credit, a taxpayer must have met the test of earning $600 a year for 10 years. Further, the variation in treatment of married couples depending on whether they are separately eligible for the credit is eliminated.

The bill also liberalizes the credit somewhat in the case of individuals under age 65 receiving public retirement pensions. Here, too, the maximum amount on which the credit is computed is increased to $2,500 for single persons or where only one person is eligible for the credit. Where both a husband and wife receive public retirement income, the maximum is $3,750. The other principal change made here is that the earnings for those under age 62 allowed before the credit is reduced on a dollar-for-dollar basis is raised from $900 to $1,000 per person.

All of us have worked through the years to see that social security benefits have increased with the cost of living. We must now extend similar protection to those relying upon retirement income from sources other than social security.

By Mr. RIBICOFF:

S. 1130. A bill to amend the Federal Food, Drug, and Cosmetic Act to require that the appointment of the Commissioner of Food and Drugs be subject to the advice and consent of the Senate. Referred to the Committee on Labor and Public Welfare.

CONFIRMATION OF THE COMMISSIONER OF FOOD AND DRUGS

Mr. RIBICOFF. Mr. President, I am today introducing for appropriate reference a bill to make the appointment of the Commissioner of Food and Drugs subject to the advice and consent of the Senate.

The Food and Drug Administration regulates products used every day by every man, woman, and child in America. It is responsible for assuring that the American public is protected from unsafe foods, drugs, and cosmetics. By law, it must assure all the following conditions:

That food is pure, wholesome, safe to eat, and produced under sanitary conditions;

That chemicals added to foods are proven safe before they are permitted in use;

That food, drug, and cosmetic labeling is truthful and not misleading;

That dangerous residues of animal drugs are not present in meat or eggs;

That drugs and therapeutic devices are safe;

That new drugs are not marketed unless they have been shown to be both safe and effective in use;

That drug labeling includes all warnings necessary for safe use;

That drugs not safe for self-treatment are restricted to sale by prescription;

That antibiotic drugs, insulin drugs, and colors used in foods, drugs, and cosmetics are tested in FDA laboratories before they can be sold;

That vaccines are shown to be safe, pure, potent, and effective before they can be sold;

That blood and products are safe and pure; and

That cosmetics are safe.

This is only a partial listing of the FDA's extensive responsibilities.

It can be said, without exaggeration, that the Food and Drug Administration is the preeminent consumer protection organization in the entire Federal Government.

Over the years, Congress has passed laws giving the FDA increasing responsibility for consumer protection. But no law enforces itself: A statutory mandate is given meaning only when the agency enforcing the law is willing and able to act vigorously.

In recent years, the FDA has been the subject of continuing controversy. Consumer advocates have argued that its actions do too little to protect the public. Spokesmen for industry have argued that the agency has gone too far in regulating business. One thing is clear: Whatever FDA does has important and far-reaching effects.

Both consumer groups and industry have urged Congress to increase its involvement in matters within the FDA's jurisdiction: To change or clarify the FDA's statutory mandates, to provide it needed resources, to evaluate the way the agency discharges its responsibility.

The FDA's performance depends in large part upon the direction and tone set by the Commissioner of Food and Drugs, who heads the agency. The outgoing Commissioner, Dr. Charles Edwards, has performed with distinction one of the most difficult jobs in the Federal Government. He fully deserves the promotion he has received to become Assistant Secretary of Health, Education, and Welfare for Health. It is essential, however, that the person who succeeds him as Commissioner be fully qualified to fill this demanding position.

The Congress should have a role in the choice of the Federal Government's most important consumer protection official. Accordingly I am introducing legislation to provide that the appointment of the Commissioner of Food and Drugs be made subject to the advice and consent of

the Senate. Enactment of this bill will for the first time give Congress the ability to evaluate the qualifications of a proposed Commissioner, to discuss with the appointee how he views his role, and to raise important policy questions with him before he assumes his position. It is essential that Congress have a voice in determining the direction of important regulatory policies before those policies are adopted by the agency. Making the appointment of the Commissioner subject to Senate confirmation would significantly contribute to our ability to assure that the FDA will perform its important duties effectively.

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

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

S. 1130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Chapter IX of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof a new section, as follows:

"APPOINTMENT OF THE COMMISSIONER OF FOOD AND DRUGS

"SEC. 903. The Commissioner of Food and Drugs shall be appointed by the President by and with the advice and consent of the Senate."

SEC. 2. The amendment made by the first section of this Act shall apply to any Commissioner in office at the time this Act takes effect and any person appointed to that office thereafter.

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

S. 1131. A bill to provide for the establishment of the Eugene O'Neill National Historic Site and the Las Trampas Ridge National Park. Referred to the Committee on Interior and Insular Affairs.

EUGENE O'NEILL NATIONAL HISTORIC SITE AND THE LAS TRAMPAS RIDGE NATIONAL PARK

Mr. CRANSTON. Mr. President, I rise to introduce for appropriate reference a bill to provide for the establishment of the Eugene O'Neill National Historic Site and the Las Trampas Ridge National Park in the State of California. This legislation is identical to S. 737, which Senator TUNNEY and I introduced in the last Congress. I am pleased that Senator TUNNEY has again joined me as a cosponsor of this proposal.

Tao House in Danville, Calif., was the residence of Eugene O'Neill for more than 6 years—from 1937 to early 1944—longer than he lived anywhere else. He called Tao House his "final home and harbor." O'Neill and his wife, the beautiful Actress Carlotta Monterey, designed and built the house with the cash award O'Neill received when he won the Nobel Prize for Literature in 1937. Tao House, for O'Neill, was a symbol of the "sufficiency of contentment" expounded in the religious writings of the Chinese philosopher, Laotze.

It was here at Tao House that O'Neill wrote all of his last and probably best plays, including "The Iceman Cometh," 1939; "Long Day's Journey Into Night," 1940; "Hughie," 1941; and his final play, "Moon for the Misbegotten," 1943. While at Tao House, he also wrote scenarios for a number of plays and revised "A Touch of Poet."

Taoism, the Chinese philosophy after which the House was named, stresses the natural life of harmony, simplicity, and peace. Not only in its name does the Tao House invoke a kind of oriental magic. Its architecture also reveals a strong Chinese influence. Although the House faces east across the valley toward Mount Diablo, its hall was designed so that the mountain could only be seen reflected in darkened mirrors. In this setting, O'Neill turned inward to interpret the tragedies of his own early life and to create his own tragic drama, "Long Day's Journey Into Night."

There is always some danger in proclaiming an artist's greatness too soon after his death. The ages have a way of discovering the genius overlooked by his peers and, conversely, of deflating the excesses of a period's adulation for its passing heroes.

Regardless, however, of where time eventually ranks Eugene O'Neill in the hierarchy of American literature, there is no question that he is a solid literary figure of great creativity and that his works will remain important in the field of American letters.

Tao House is a significant element in the American literary heritage of the 20th century. I believe it should be preserved for future generations. Accordingly, I am proposing that there be established a Eugene O'Neill National Historic Site.

Tao House sits high on the eastern slope of Las Trampas Ridge. Behind the house and over the ridge into the watershed of Bollinger Canyon, there is a primitive area of several thousand acres which, I believe, should be maintained as an open space. Here within 15 miles of the urban core of Oakland and Alameda can be found open hills of oak and mountain laurel.

Unless this area is set aside for the benefits of the general public, I fear that it may be lost to a not-too-distant subdivision. Consequently, I am proposing that the Secretary of the Interior establish a Las Trampas Ridge National Park, which will include the Eugene O'Neill National Historic Site. This 4,000-acre stretch of open space, so near to the urban centers of the East Bay, would be a unique national resource: Honoring the contributions of one of America's most memorable writers while at the same time preserving some of the most beautiful primitive acres of the bay area.

Mr. President, I ask unanimous consent that the text of this 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. 1131

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall acquire on behalf of the United States (by gift, purchase, condemnation, or otherwise) (1) the grounds and buildings at Danville, California, formerly owned by Eugene O'Neill, which, when acquired, shall be designated as the Eugene O'Neill National Historic Site and set aside as a National public memorial in commemoration of the contribution of Eugene O'Neill to American literature; and (2) such acreage on the Las Trampas Ridge (which runs north and south, roughly from Alamo to Danville, California, and is bounded on the west and north by Bollinger Canyon and Rossmoor Valley) as he determines necessary to establish the Las Trampas Ridge National Park, and, when so acquired, such property shall be designated as the Las Trampas Ridge National Park.

SEC. 2. The Secretary of the Interior, acting through the National Park Service, shall administer, protect, develop, and maintain the Eugene O'Neill National Historic Site and the Las Trampas Ridge National Park in accordance with this Act and the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (16 U.S.C. 1), and in the case of the Eugene O'Neill National Historic Site, the provisions of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461–467).

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

S. 1132. A bill to authorize a study of the feasibility and desirability of establishing a Channel Islands National Park in the State of California. Referred to the Committee on Interior and Insular Affairs.

Mr. CRANSTON. Mr. President, I rise to introduce for appropriate reference a bill to authorize the feasibility and desirability of establishing a Channel Islands National Park in the State of California. This bill is identical to legislation which I introduced in the 91st and 92d Congresses. I am delighted to be joined again by Senator JOHN V. TUNNEY in sponsoring this legislation.

The area comprising the study area includes five islands off the coast of Santa Barbara. These five are San Miguel, Santa Rosa, Santa Cruz, Anacapa, and Santa Barbara Islands. Together, these islands comprise approximately 132,000 acres of land. They are essentially a group of mountain peaks which were connected to the mainland as part of the Santa Monica mountain chain perhaps a million years ago.

San Miguel Island is the third largest of the five islands, comprising some 14,000 acres, and is now under the jurisdiction of the U.S. Navy. It is thought to be the burial place of Juan Rodriguez Cabrillo, who discovered California in 1542. There are 50 known Indian village and burial sites on the island, and numerous fresh water springs which host the small, native San Miguel Island fox which roams the canyons, knolls, and eroded sandstone formations of the island. San Miguel's 24 miles of sandy beaches and sea caves host hundreds of sea birds, and extensive colonies of two species of sea lions. Sea otters occasionally visit and, in recent years, the rare fur seal has established a breeding colony on the island. In addition, one of the largest known colonies of elephant seals resides there. There is perhaps no place in the world near so many people where as wide a range of marine mammals can be observed as on San Miguel Island.

The second largest island, Santa Rosa, is a cattle ranch operated by the Vail & Vickers Co. It comprises approximately 53,000 acres, with 45 miles of shoreline varying from high rocky bluffs with sea caves, to beaches with 400-foot sand dunes and long, bright, white sand spits. Santa Rosa's mesas and steep mountain slopes are covered with tall grasses and the ridges near the center of the island reach an elevation of 1,589 feet. Santa Rosa Island has one of the two living stands of Torrey pines remaining in the world, in addition to a few stands of island oaks, cast live oaks, scrub oaks, and a small stand of unique Santa Cruz Island pines. Willows grow in the canyon bottoms along the streams.

Archeologically, Santa Rosa Island is a rich but dwindling resource. One of the more than 200 known Indian village and burial sites was destroyed during construction of the Air Force Station at Johnson's Lee, which is now abandoned. Other village sites have been destroyed as a result of continuing exploratory oil drilling operations.

One of the most interesting and important aspects of Santa Rosa Island is the fossil remains of the Dwarf Mammoth. Radiocarbon dating of these fossils has shown that man lived on Santa Rosa Island, almost 30,000 years ago, a fact which has caused considerable interest in the scientific community.

Santa Cruz Island, the largest, loftiest, and most densely wooded of the five islands, has been called "the jewel of the island chain." It consists of 62,000 acres, is 21 miles long and reaches a 7-mile width. Many peaks soar to over 2,400 feet. Santa Cruz has the most varied topography of any of the channel islands, with sheer cliffs, rolling hills, magnificent stream valleys, and steep canyons.

At present, the Santa Cruz Island Co. operates a cattle ranch on 55,000 of the 62,000-acre island. The remaining 7,000 acres, on the eastern end of the island, is operated as a sheep ranch by the Gherini family.

The rare Santa Cruz Island ironwood, a tree with no immediate relatives, blooms in the spring with tiny white blossoms. Unique Santa Cruz Island pines stand along the steep ridges, line the canyons, and in some places grow almost to the shoreline. Also unique is the Santa Cruz Island fox, about the size of a large house cat. Ravens, the Santa Cruz Island jay, the bald eagle, sea birds, and marine mammals all populate the island and its surrounding waters.

Anacapa and Santa Barbara Islands are the remaining two of the channel island chain. They were set aside in 1938 as the Channel Islands National Monument to provide sanctuary for their numerous marine animals and nesting sea birds, and to allow their carpets of wildflowers to recover from the overgrazing of sheep. They were not open to the public until 1959.

These two islands constitute a veritable museum of geological structures and processes, with examples of faulting, volcanism, fossils, canyon development, and erosion. Anacapa and Santa Barbara Islands also have the largest stands of giant coreopsis in the world. When in full bloom, the brilliant golden masses are visible to ships more than 10 miles away.

Anacapa Island is the nearest of the five islands to the mainland, being only 10 miles off the coast from the cities of Oxnard and Ventura. Tiny, 650-acre Santa Barbara Island is located in the outer Santa Barbara Channel about 35 miles from both the mainland and Anacapa Island. It is the southernmost and easternmost of the five islands.

Mr. President, the unique and beautiful channel islands constitute a rare resource that must be preserved and protected. If there were any guarantee that the two, privately owned islands, Santa Rosa and Santa Cruz, will be maintained in their present undeveloped state indefinitely, there would be little incentive for considering Federal acquisition. But land values and deveolpment pressures being what they are, especially in California, I believe we must begin planning now if we are to preserve these islands for their recreational, scenic and scientific values. Indeed, our experience at Point Reyes National Seashore demonstrates that any cattle ranch is a potential commercial development.

To date, the major proposal for protecting the islands has been a national park designation. However, as I have commented in the past, a case can be made that such a designation might be the catalyst for the over-use of the recreational aspects of the islands, to the detriment of other fragile resources. Furthermore, I know of no recent, up-to-date appraisal of the cost of acquiring the two big islands. Congress clearly needs to know what it will cost to acquire the two privately owned islands before it can balance the merits of a national park at the channel islands against other priorities for land acquisition. And until we know whether the Channel Islands National Park proposal is feasible and desirable, public planning for the islands' future will continue to languish.

My bill would authorize and direct the Secretary of Interior to conduct a study of the feasibility and desirability of establishing a Channel Islands National Park. The report summarizing the findings of this study would be required to be submitted to Congress and the President no later than 1 year after the date of enactment of this bill.

Mr. President, I am convinced that we must proceed with a study to determine the best use of the Santa Barbara Channel Islands, and I hope that this proposal receives early action in this Congress. I ask unanimous consent that the 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. 1132

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Secretary of the Interior (hereinafter referred to as the "Secretary") is hereby authorized and directed to study, investigate, appraise, and form recommendations on the feasibility and desirability of establishing the Channel Islands in California as a unit of the national park system. The study shall include those lands comprising the islands of Anacapa, Santa Barbara, San Miguel, Santa Cruz, and Santa Rosa, and surrounding adjacent water areas. In conducting the study, the Secretary shall consult with other interested Federal agencies, and interested State and local bodies and officials.

SEC. 2. Not later than one year after the effective date of this Act, the Secretary shall submit to the President and to the Congress a report of the results of the study, including any recommendations for legislation. The report of the Secretary shall contain, but not be limited to, findings with respect to the scenic, scientific, and natural values of the lands and waters involved, and the estimated cost of any recommended land acquisition, development, and operation of the Channel Islands as a unit of the national park system.

SEC. 3. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. METCALF (for himself, Mr. MANSFIELD, Mr. ALLEN, Mr. BIBLE, Mr. BURDICK, Mr. MCINTYRE, Mr. THURMOND, and Mr. TOWER):

S. 1133. A bill to provide additional funds to the States for carrying out wildlife restoration projects and programs, and for other purposes. Referred to the Committee on Commerce.

Mr. METCALF. Mr. President, with my distinguished colleague from Montana, the majority leader and Senators ALLEN, BIBLE, BURDICK, MCINTYRE, THURMOND, and TOWER, I introduce today a bill that seeks to expand our national capability to restore and enhance wildlife. This would be done by building on the successful foundation of the Federal Aid in Wildlife Restoration Act of 1937.

This program, administered by the U.S. Bureau of Sport Fisheries and Wildlife, has been a tremendous force in acquiring and developing key areas of wildlife habitat, in the stimulation of research to gain insights into the biology and needs of our wildlife, in the upgrading wildlife conservation programs in every one of our 50 States. It can be said without exaggeration that no other single program has contributed so fully to the restoration and improved management of America's wildlife.

Financial support for this outstanding program comes entirely from the American sportsman. Through his payment of special excise taxes, he pays for the entire program, including its administration by the BSF&W.

The Federal Aid in Wildlife Restoration Act was signed by President Franklin D. Roosevelt on September 2, 1937. It dedicated a then 10-percent excise tax on sporting arms and ammunition for the restoration of the wildlife resources of the Nation under a formula for apportioning the revenue collected to the respective States and Territories. The money is deposited in a Federal Aid in Wildlife Restoration Fund. The program was initiated on July 1, 1938, through an appropriation of $1,000,000, as a reimbursable contract grant program. Other than the initial appropriation, the entire program has been supported wholly by America's sportsmen ever since.

During World War II, the Congress imposed new excise taxes on many articles and raised the tax on items already taxed by 10 percent. Thus the excise tax on arms and ammunition became 11 percent. Also during World War II more money was being collected than could be fully used by the States and the Congress permitted the tax collections to accumulate in the fund.

Although there have been several amendments to the act, its basic principle remains unchanged. In fiscal year 1948, the Congress authorized the amount of the tax collected by the Treasury in each fiscal year to be automatically appropriated in total in the succeeding fiscal year. This increased efficiency of fiscal administration for the Federal departments and the authorized grantees.

The backlog of $13.5 million which had accumulated during World War II was authorized under Public Law 84–375 to be apportioned in five annual equal amounts under the statutory formula beginning with fiscal year 1956.

Public Law 91–503, approved by President Nixon on October 23, 1970, provided that the long-standing—1932—10-percent excise tax on pistols and revolvers be credited to the wildlife restoration program. One-half of the funds apportioned from this additional revenue may be used by the grantees for improved outdoor safety programs. A similar amendment imposing an 11-percent excise tax on certain types of archery gear was signed by President Nixon on October 25, 1972. My bill would impose a similar tax on the remaining logical source of support for this vital program, the powder, shot, and other components of handloaded ammunition.

During its 34 years, the program accomplishments are legend. In fact, during the post World War II period of excise tax cancellations, it was the sportsmen paying the tax that implored the Congress to maintain this successful program. They wanted to pay for it so they must have recognized that they were getting their money's worth.

At the close of fiscal year 1972, the U.S. Treasury had collected $518,048,-664.38 through this tax; and, through fiscal year 1973, $493,111,125.45 has been apportioned in support of wildlife programs in the 50 States. Only $24,937,-538.93, 4.8 percent, has been retained by the Secretary of the Interior as provided by the statute and about 3 percent has been used in direct program administration. Gross program expenditures including the States' share exceed $650 million.

An outstanding contribution of the program was the professional upgrading of the staffs of State wildlife conservation departments. A recent review of the wildlife profession, including appropriate positions in universities and colleges, revealed that about 75 percent of the wildlife resource professionals are or were at one time employed under this program. Thus, in addition to providing a greatly expanded employment opportunity, the percentage of professionally trained people on all agency staffs increased from as low as zero to almost 100 percent. The proof of the value of this program is the dramatic increase in America's wildlife, many species of which were at a very low point.

Physical accomplishments include: Acquisition in fee of almost 3.5 million acres of wildlife habitat at a cost of over $100 million; additional land control through lease, easement, license, agreement, and so forth, of over 36 million acres; development, operation, maintenance, and management of 3,000 game management areas; successful introduction or reintroduction of over 50 species of game birds and mammals providing some huntable populations in every State and Territory. Nonhunted species also invariably benefit from the purchase, development, and protection of wildlife management areas in all States.

During the early years of the program, one of the major activities was the initiation of an inventory of "what do we have, how many, and where." These investigations were coupled with research into techniques for maintaining the status of the respective populations and included such methods as: Age and sex criteria; habitat evaluation systems; population thresholds; and trapping, tagging and monitorng methods. As staff capability and the flow of dollars increased the emphasis toward practical research advanced. The need for pooling sophisticated equipment and ever increasing specialists in widening interrelated fields results in multistate cooperative research ventures utilizing the expertise available for specific problems normally beyond the economical capability of individual grantees.

Thus a program that was introduced in fiscal year 1939 at $1,000,000 level of funding has grown to over $40,000,000 in fiscal year 1973. It has permitted the State fish and game agencies to pull themselves up by their own bootstraps. It has helped put the United States in the undisputed position of the foremost and most sucecssful practitioner of wildlife management in all of the world.

The bill I have introduced would provide still more of America's sportsmen an opportunity to contribute to this most worthwhile program. My bill would authorize use of some of the funds for the purchase and operation of public shooting ranges as did the recent handgun and archery tax amendments.

By Mr. METCALF (for himself, Mr. BIBLE, Mr. FANNIN, Mr. HANSEN, Mr. HATFIELD, Mr. BELLMON, Mr. STEVENS, and Mr. BARTLETT):

S. 1134. A bill to provide the Secretary of the Interior with authority to promote the conservation and orderly development of the hard mineral resources of the deep seabed, pending adoption of an international regime therefor. Referred to the Committee on Interior and Insular Affairs.

THE DEEP SEABED HARD MINERAL RESOURCES ACT

Mr. METCALF. Mr. President, in the 92d Congress, I introduced the Deep Seabed Hard Mineral Resources Act, to authorize the Secretary of the Interior to promote the conservation and orderly development of the hard mineral resources of the deep seabed, pending adoption of an international regime therefor.

My remarks upon introduction of the bill, including the text and summary, begin at page S–17491 of the CONGRESSIONAL RECORD of November 2, 1971.

S. 2801 died with the 92d Congress after time permitted only a single day of hearings on June 2, 1972. That hearing was devoted mainly to an explanation of the bill, and argument for it by industry representatives.

Today I am reintroducing that measure, for myself and Senators BIBLE, FANNIN, HANSEN, HATFIELD, BELLMON, STEVENS and BARTLETT.

The same bill, H.R. 9, was introduced on January 3 in the other body by Mr. DOWNING, for himself, Mr. MAILLIARD, Mr. RUPPE, Mr. GOODLING, Mr. BRAY, Mr. STUBBLEFIELD, Mr. JONES of North Carolina, and Mr. ANDERSON of California.

As I said when I introduced S. 2801, this bill was drafted by the American Mining Congress at my invitation during hearings of the Special Subcommittee on the Outer Continental Shelf. At those hearings, which I chaired, I told industry witnesses that I would introduce their proposals for circulation and discussion.

I emphasize that I am not wedded to any section of this particular bill. Already there have been serious questions raised about some of its provisions—which will be taken up at future hearings. While we may disagree on specifics, I believe that there is general agreement that the question of who owns two-thirds of the earth is of importance, and now.

The discussion of S. 2801 has resulted in recommendations by some that the U.S. Congress not enact such legislation, but instead rely on a future international agreement to solve the ocean mining problem. Those who take this position do so because they believe that agreement will come out of the United Nations Law of the Sea Conference now scheduled for next year in Santiago, Chile.

Let us assume that this conference is held on schedule—after noting that it has already been delayed for 1 year. Let us further assume that out of the conference will come an international agreement—after noting that the members of the U.N. Seabed Committee have been unable, after 2 years of negotiations to agree on even one substantive paragraph of the draft seabed treaty. Presumably, the result of the Conference will be a treaty, which would take years to ratify and enter into force.

This is reality, as recognized by some who are knowledgeable in this complex area. For example, the lead article in the November-December 1972 issue of the SFI Bulletin, published by the Sport Fishing Institute, 608 13th Street N.W., Washington, D.C., was headlined "Marine Fisheries and Law of the Sea."

The article referred to "the probability that any LOS—Law of the Sea Conference—outcome could not come into force before another decade and a half have passed by."

The State Department, which chairs the Interagency Law of the Sea Task Force responsible for U.S. participation in U.N. Seabed Committee activities, continues to question the need—at this time—for ocean mining legislation. It

would prefer to see the ocean mining problem solved by an international treaty rather than by legislation—but it recognizes that some kind of legislation may be necessary.

Evidently to enhance its bargaining position in the preparatory talks for the 1974 Law of the Sea Conference, the State Department continues to advise the Congress: Now let us just wait and see how well negotiations proceed toward development of an acceptable seabed treaty. We are being advised not to pass legislation, but not to forget the legislation.

This may well be the ideal position for the Congress to take insofar as enhancement of the State Department's international negotiating position is concerned. But I question the State Department's "on the one hand this, but on the other hand that" approach to this or any ocean mining legislation. I think the time has come to give this bill, or any substitute legislation offered, a fair hearing and then decide whether we want to pass legislation, and if so, what that legislation should contain.

Regardless of what action or inaction takes place in the United Nations Seabed Committee, it seems certain that ocean mining companies will continue to develop deep ocean mining techniques. One such company, Hughes Tool Co., reportedly is preparing to undertake a full-scale commercial mining operation sometime next year. The Japanese have already begun experimental ocean mining operations. The facts therefore show that mining of manganese nodules on the deep ocean floor is very nearly a reality.

I believe we have just about reached the point in time, so far as ocean mining legislation is concerned, where we fish, cut bait, or haul for shore.

By Mr. BARTLETT:

S. 1135. A bill to amend the Internal Revenue Code of 1954 to reduce the excise tax based on investment income of private foundations. Referred to the Committee on Finance.

Mr. BARTLETT. Mr. President, today, I have introduced a bill to reduce from 4 percent to 1 percent the excise tax on investment income of private charitable foundations. This bill, if enacted, will significantly add to the total amount of funds available for charitable purposes.

The excise tax on private charities was designed to cover administrative costs of Government audits on foundation books. However, the present 4 percent tax can represent several hundred thousand dollars annually on large charities. Obviously, this is far in excess of the amount necessary to maintain annual audits.

The 1 percent tax provided in this bill will more than cover all administrative costs of supervising private foundations. I believe we should make every effort to encourage charitable foundations. They are fulfilling on a voluntary basis functions which Government would otherwise have to finance and perform.

By Mr. KENNEDY (for himself, Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. MONDALE, Mr. EAGLETON, Mr. CRANSTON, Mr. HUGHES, Mr. HATHAWAY, Mr. JAVITS, Mr. DOMINICK, Mr. SCHWEIKER, Mr. BEALL, and Mr. STAFFORD):

S. 1136. A bill to extend the expiring authorities in the Public Health Service Act and the Community Mental Health Centers Act. Placed on the calendar, by unanimous consent.

Mr. KENNEDY. Mr. President, as chairman of the Senate Health Subcommittee, I am today introducing the Public Health Act of 1973 with broad based bipartisian cosponsorship. This bill is cosponsored by 15 of the 16 Members of the Senate Labor and Public Welfare Committee, including the ranking minority member of the committee, Mr. JAVITS, the ranking minority member of the Health Subcommittee, Mr. SCHWEIKER, and the former ranking minority member of the Health Subcommittee, Mr. DOMINICK.

Mr. President, I intend in a moment to ask unanimous consent that this bill be placed on the calendar, but I do not do so now.

I want to briefly describe for my colleagues the provisions contained within the committee's bill, and also describe why it is necessary that it be acted on as quickly as possible. Virtually all of the authority contained in the Public Health Service Act expires June 30, 1973. In order to avert the monumental legislative logjam we now face, the Senate passed legislation extending and including most of these expiring programs in September of last year. That bill, S. 3716, was favorably reported to the Senate by the Health Subcommittee and it was passed by the Senate 78 to 0. Regrettably, companion legislation did not emerge from the House of Representatives. And now only 4 months remain before these programs expire.

Mr. President, this is a crisis situation. For the first time, serious questions have been raised with respect to the effectiveness of several of these programs by the President. To cite several examples, the President's budget for fiscal year 1974 proposes the total elimination or radical restructuring of the Hill-Burton hospital program, the allied health training program, the regional medical program for heart, cancer, and stroke, the public health training program, and the community mental health centers program.

The plain truth is that the President is in effect legislating via the budget process. Some of the concern the President has with respect to the way in which some of these programs are working are valid. But the point is that the Congress must have an opportunity to work its will regarding the shape of the legislation in this regard. It is quite clear that it is not possible for the Congress to do an adequate job of restructuring and updating and consolidating these legislative authorities in 4 months.

The Health Subcommittee has for some time now been involved in an effort aimed at the recodification and restructuring of the whole of the Public Health Service Act. I am hopeful that that effort will enable us to consolidate several of the categorical authorities currently contained within the act. This project is one of the highest priority items before the Health Subcommittee. And I am going to do everything I can to assure that legislation in this regard is favorably reported from the committee to the Senate by next winter.

In order to permit an orderly transition and in order to avert the disastrous effects of the President's budget, I believe it is necessary to extend all of these legislative authorities for 1 year. That is exactly what the bill does. It makes no substantive changes in the law at all. It adds no new money to the act. It simply extends the life of the act from June 30, 1973, to June 30, 1974.

The specific program extended by this bill are: Health services research and development, health statistics, public health training, migrant health, comprehensive health planning, Hill Burton, allied health training, regional medical programs, medical libraries, and community mental health centers.

Mr. President, I believe this measure must pass if the Congress is to have an opportunity to perform its constitutionally guaranteed right to legislate. I am delighted with the broad bipartisan support for this bill. This is not and should not be a partisan measure. I particularly want to compliment the help and assistance I have received from the distinguished chairman of our committee, Senator WILLIAMS, and from Senators JAVITS, SCHWEIKER, and DOMINICK who have been more than willing to cooperate with me in this measure.

I urge my colleagues, at the appropriate time, to vote in favor of this essential health bill.

Mr. President, I ask unanimous consent that the bill be placed on the Calendar.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. KENNEDY. I see the distinguished majority leader in the Chamber, and I am hopeful that, as always, he will expedite the consideration of this measure and that we will have some opportunity to consider it in the very near future. At the appropriate time, and at the convenience of the leadership, I would like to get a vote on the measure.

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

Mr. KENNEDY. I yield.

Mr. MANSFIELD. I wish to say first that I appreciate the fact that the Senate has agreed under unanimous consent to place the legislation introduced by the distinguished senior Senator from Massachusetts on the calendar. I am glad that there is comity on both sides in that respect because if I recall correctly, this legislation passed by a vote of 79 to nothing last year. It would be my hope, the distinguished minority leader concurring, that if at all possible we might bring it up around the middle or the latter part of next week because there is a time limitation factor and if there are any obstacles or roadblocks this would allow enough time to elapse before action is taken.

Mr. KENNEDY. I thank the leadership for its assurances. As always the distinguished majority leader has been ac-

commodating and helpful. We will look forward to action on this matter next week.

Mr. JAVITS subsequently said. Mr. President, I wish to identify myself with the introduction of a measure extending certain authorities in the Public Health Service by the chairman of the Subcommittee on Health of the Committee on Labor and Public Welfare, the Senator from Massachusetts (Mr. KENNEDY). I am the ranking member of the committee. These programs are urgently required. They should not be tied up in long, delaying proceedings, when the only necessity at this time is a simple extension.

I am very pleased to take this initiative with the Senator from Massachusetts (Mr. KENNEDY). I very greatly appreciate, as I am sure he does, the willingness of the Senate, at least in the absence of objections, to go that route. I hope that next week these authorities may be extended and certainty given to the program which is urgently necessary for it to be successfully prosecuted.

SENATOR RANDOLPH SUPPORTS EXTENSION OF EXPIRING AUTHORITIES UNDER PUBLIC HEALTH SERVICE ACT

Mr. RANDOLPH. Mr. President, a multitude of worthwhile and beneficial programs which are contained in the Public Health Service Act will expire on June 30 of this year unless the Congress acts to extend them. The President's budget for fiscal year 1974 leaves no doubt that the administration intends to let many of these expire.

While it is probably true that some of the programs need to be altered or consolidated, there is very little time between now and June 30 for Congress to give them the careful study that will be required to update and improve these vital health programs. Therefore, it is essential that we adopt a measure which will extend these expiring authorities for another year at the same funding levels authorized for fiscal year 1973.

Among those programs which would expire in the absence of the pending legislation are a number which immediately and vitally affect the people of my own State of West Virginia. The Hill-Burton Act has proved to be an eminently successful means for providing hospital facilities to many areas of the country which otherwise would not have had them. Unlike the administration, I do not believe this is a program which has outlived its usefulness. The administration contends that many hospital beds are empty, and that this fact in itself justifies the elimination of further hospital construction under Hill-Burton. If the administration bothered to scratch the surface, it might find that some maldistribution of facilities exist because of demographic changes. It might also discover that many hospital facilities badly need repair, improvement, and modernization.

Another program is the regional medical program, or RMP. It has brought vital, innovative research and health care delivery projects to States such as West Virginia. The administration finds the program useless—I most emphatically do not. It may require some alteration in emphasis, but there is no basis for its dissolution.

The programs under the general category of allied health professions are terribly important to the future health of this nation, as are the public health support programs. Community mental health centers provide essential grass roots services which are not, in so many cases, otherwise available. Medical library assistance is also important, as is the migrant health program.

Manpower, planning, research and development, facilities and health services—all must be continued and strengthened if America is to find its way out of the health care crisis. First, these programs must be continued. That is our current task. Only then can we move forward to improve the programs and start our nation on the road to better health.

Mr. President, I commend the very able Senator from Massachusetts (Mr. KENNEDY) for moving forward on this vital issue and it is my hope that his measure will receive quick approval.

Mr. JAVITS. Mr. President, I speak in support of the "Public Health Service Assistance Extension Act of 1973," of which I am a cosponsor along with 15 of the 16 members of the Labor and Public Welfare Committee, and urge its immediate consideration and passage. The issue that the Senate faces today—by its immediate consideration of this measure—is much more important than the health programs encompassed in the legislation. The issue at stake is whether Congress will permit the executive by its power of the purse—through zero budget appropriations requests or requesting funding support for expiring programs—to determine what laws Congress shall pass, and how they shall be implemented.

The bill now under consideration has one purpose: to reaffirm the intention of Congress that the Congress will determine whether and which of the health programs extended for 1 year by the bill will continue. Executive budget action which has certain health programs wither, vanish, or be effectively terminated by lack of adequate funding, is not the appropriate mechanism to determine the fate of vital substantive health programs affecting millions of Americans.

In the last Congress, the Labor and Public Welfare Committee—of which I am ranking minority member—realized the legislative logjam potential for this Congress of the more than 40 provisions under the Public Health Service Act due to expire this year. The committee reported a bill (S. 3716) to the Senate which dealt with the substantive nature of practically all of these expiring provisions now encompassed by the pending bill. Notwithstanding the absence of administration testimony on the then pending bill, the Senate endorsed the action of the committee by a 79-to-0 vote and passed S. 3716. Unfortunately, time constraints and administration's efforts in the House did not permit the House to act on the legislation.

Now the committee, which has almost unanimously on a bipartisan basis cosponsored the pending bill, urges its immediate Senate consideration and passage. The bill does not seek any substantive changes in law—which as I previously indicated, the Senate supported—but merely provides a 1-year extension at existing authorization levels. Thus, Congress will determine that the health programs included in this bill will remain on the statute books until Congress has the opportunity to work its will on the substantive nature of expiring law, including congressional determination of their viability.

Mr. President, the importance of this particular measure is not any one or more of the health programs, but the total constitutional issue of how our laws are to be made.

On the detailed provision, I have long indicated my dissatisfaction with the grant allocation formula of the included expiring Hill-Burton program and the need to redirect this program to meet the $12.7 billion needs of modernization and upgrading of outmoded and overburdened public hospitals—whose lives are in a fiscal crisis—and for emphasis to be put upon innovative outpatient treatment facilities that might keep many out of the expensive hospital treatment setting.

It is perfectly appropriate for the President to urge Congress to terminate any one or more of the existing health programs and provide the evidence to Congress to justify his recommendation. Though I might parenthetically note evidence is woefully lacking to date on, for example, the regional medical program, where the HEW evaluation report provided Congress, required under the law enacted by Congress, does not, I believe, make the case and my requests for further data have drawn little or no response.

But the action of the executive must be checked and balanced by the Congress, which is also of the people's elected officials. That is the genius of the American political system. I believe that is the way we should proceed, rather than upon action taken solely by the President. The legislative extensions of the Public Health Service Act now being considered are not intended to be indicative of any Senator's opposition or support of the President's position regarding a particular provision. Rather, the consideration and passage of this bill will provide the necessary time-frame for Congress to work its will regarding all of the provisions and to bar an executive budget recommendation from determining either what health programs are to live or die, or how these programs are to be modified, improved, and implemented.

By Mr. JAVITS:

S. 1137. A bill to provide for the public safety and to increase the deterrent potential of the Federal criminal law; by requiring the imposition of certain penalties for persons convicted of offenses involving the trafficking of narcotic drugs, to provide for an assessment of the effect of Federal sentencing provisions and practices generally and for other purposes. Referred to the Committee on the Judiciary.

S. 1138. A bill to promote more effective management of certain related law enforcement functions of the executive branch by reorganizing and consolidating those functions in a new Office of Drug

Abuse Investigation and Enforcement in the Department of Justice. Referred to the Committee on Government Operations.

DRUG ABUSE, TREATMENT, AND LAW ENFORCEMENT

Mr. JAVITS. Mr. President, there is widespread agreement today that a profoundly complex problem of drug abuse reaches deep into the whole structure of America. Throughout every strata of our society, the American people are intensely worried about drug abuse and about the individuals who sustain it, the drug pushers and dealers.

It is a problem that has brought frustration, agony, and heartbreak to many. The issue is suffused with uncertainty and misinformation; it frightens and angers, for drug abuse seems to call into question the process by which our society derives and affirms its values.

No full or easy solutions have yet appeared.

We must recognize that law enforcement, treatment, and rehabilitation, education and prevention efforts can make important inroads on the problem but, together or separately, they may not be able finally to resolve it. Such resolution may be possible only when we, as a society, successfully deal with the underlying causes which have activated drug-taking on such a grand scale.

But in the meantime, the terror of crime in our home and on our streets attributable to drug abuse must be abated—for it represents a crisis of public order for society.

At the Federal level, we took a significant step toward achieving that objective last year in the treatment and rehabilitation area of drug abuse policy—the so-called "demand side"—when Congress established the Special Action Office on Drug Abuse Prevention in the White House. Headed by the very able Dr. Jerome H. Jaffe, this office has sought to bring together the frequently disparate, uncoordinated, and conflicting activities of nine different Federal agencies in the areas of medical and program research into the causes and cures of drug abuse, education, and training to reduce the abuse of drugs and treatment and rehabilitation of drug users so that they can be returned as productive members of society.

On the supply side of the drug abuse problem, I am not convinced that all that can be done is being done and it is this subject that I wish to explore also today: the capability of our laws and our Federal drug enforcement agencies to reduce supply, and to operate most effectively in interdicting the domestic, interstate, and international commerce in illicit drugs.

The dramatic increase in the incidence of illicit drug use, particularly among children and young people, is proof enough that supplies to sustain such drug use are readily available. We know that these supplies are derived from illicit drugs which are roughly divided into categories: those of clandestine origin, such as heroin, cocaine, marihuana, and LSD; and those diverted from legitimate origin, such as barbiturates, amphetamines, and tranquilizers.

With some important exceptions, most of the drugs of clandestine origin are surreptitiously brought into the United States from abroad, whereas a large portion of the diverted drugs are of domestic manufacture. In all cases, the drugs are ultimately made available to the drug abuser through criminal activity.

Illicit, international drug traffic is a booming business. It is a business rooted in international affairs and linked to rapidly expanding demand.

Who is the "pusher"? He is a tourist, a migrating laborer, a businessman, student, transportation worker, he is the professional hijacker diverting shipments of tens of thousands of amphetamine tablets, he is the serviceman mailing pounds or ounces of heroin into the continental United States, and, he is the diplomat taking advantage of his generally unrestricted movement across international boundaries.

He is the organized crime syndicate director, who runs a heavily financed and broadly based enterprise. While the latter may be moving and marketing heroin across continents and oceans for millions of dollars in profit, the pusher is also the neighborhood street peddler who may be the 10th man in the chain, as he sells a heavily diluted drug which has passed through many hands.

Nor is illicit drug traffic a matter of smuggling alone, for it is carefully joined with purportedly honest commerce. It can arise out of licit agricultural and chemical production, and it can be tied in with major financial enterprises. Indeed, it is this simultaneously licit—in one place—and illicit—in another—aspect which poses some of the most important international questions as far as cooperative drug enforcement efforts are concerned.

There are sanctuaries for production, for warehousing and transhipment, for holding cash and for protecting criminal figures who may be wanted by other governments. Our drug trafficking problems are thus enormously complex on both the national and international levels.

The social and economic costs of this traffic in the United States are extraordinary. Recent surveys of the National Commission on Marihuana and Drug Abuse—of which I am a member—reflect the fact that drug abuse has increased rapidly, and that the use of hard narcotics such as heroin and cocaine has reached alarming proportions.

One drug, heroin, is the single greatest cause of death for all people between the ages of 15 and 35 in New York City. In many urban areas, the nonaddict is the prisoner of the addict, as they confront a standing challenge to safety. Across the country there have been increasingly frequent accounts of heroin use by preteenage children. Heroin does not respect age, sex, or class.

It is present in factories, and on college campuses. Some of our high schools and elementary schools have become supermarkets for drugs. It is widespread in the military and can be purchased openly in many American cities. The National Commission has reported the astounding fact that the number of young people between the ages of 12 and 18 who have tried heroin is 1½ million and increasing.

Heroin is perhaps the most profitable contraband commodity, with one ounce sometimes costing almost eight times as much as an ounce of gold. The following chart illustrates the price range of illicit drugs in New York City and other communities in New York State:

ILLICIT DRUG PRICE CHART

	Low	High	Usual
NEW YORK CITY			
Heroin:			
1 gr.	$2	$7	$5
⅛ oz. (54 grs.)	50	300	200
¼ oz.	75	500	350
1 oz.	250	1,800	1,000
8 ozs.	4,000	8,000	6,000
16 ozs.	5,000	20,000	10,000
Marihuana:			
⅛ oz.	4	7	5
¼ oz.	8	12	10
1 oz.	20	40	30
8 ozs.	80	175	125
16 ozs.	100	300	150
Amphetamine:			
10 tablets (1 tablet equals 250–300 mg. with 5–25 mg. amphetamine)	8	12	10
100 tablets (approximately 1 oz.)	40	70	50
300 tablets (approximately 3 ozs.)	120	210	150
600 tablets (approximately 6 ozs.)	240	420	300
Hashish:			
1 gram	8	15	12
¼ oz.	20	40	30
1 oz.	80	120	100
OTHER NEW YORK COMMUNITIES			
Heroin:			
1 gr.	4	11	7
⅛ oz. (54 gr.)	63	112	88
¼ oz.	92	158	124
1	485	870	652
8 oz.	3,676	7,820	,152
16 oz.	7,400	15,840	11,400
Marihuana:			
⅛ oz.	3	5	4
¼ oz.	5	11	8
1 oz.	14	27	19
8 oz.	78	131	107
16 oz.	139	213	173
Amphetamine:			
10 tablets (1 tablet equals 250–300 mg. with 5–25 mg. amphetamine)	2.90	4.75	3.93
100 tablets (approximately 1 oz.)	24	49	33
300 tablets (approximately 3 ozs.)	46	134	93
600 tablets (approximately 6 ozs.)	108	258	171
Hashish:			
1 gram	5	10	7
¼ oz.	30	50	39
1 oz.	82	137	108

Note: The above was compiled from information obtained from the New York City Police Department and other law-enforcement sources.

I commend the Governor of my own State of New York for his determination to confront these extraordinary realities and to reduce sharply the impact of drug-related crime. His initiative in stimulating the debate on this subject with his mandatory life sentence proposal has been critically important. The point is that if treatment is available—and this is an absolute prerequisite—and if the addict will not take it, then such treatment must be mandated. If he commits a crime, then he must be removed from society until he ceases so dangerously to menace society.

While I prefer a system of criminal penalties which allows more flexibility in their application, I strongly agree that we must have more stringent enforcement of the laws and more certain penalties for upper echelon dealers, and, for the drug abuser guilty of violent crimes. But this last point presupposes the availability of adequate treatment.

At the Federal level, I propose the following new efforts to improve Federal, State, and local law enforcement capability in the drug area:

A total reorganization and upgrading of Federal enforcement agencies at the highest level of the Justice Department.

New, Federal mandatory minimum sentencing provisions for serious drug traffickers.

The authorization of a special fund of $30 million to assist local law enforcement agencies confronting special investigative problems.

A comprehensive review by the Justice and State Departments of our existing extradition treaties dealing with drug offenses with a view toward expanding the scope of extraditable offenses and facilitating the extradition process.

A strengthening of bilateral agreements with individual source nations aimed at more effective international control of illicit narcotics trafficking.

Despite significant increases in Federal resources allocated to combat drug trafficking—$257 million in 1974—the organization of this response has lacked overall direction, coherence, planning and a fully coordinated approach. More importantly, the two principal Federal drug enforcement agencies—the Bureau of Narcotics and Dangerous Drugs in the Justice Department, and the U.S. Bureau of Customs in the Treasury Department—are alleged over the years to have developed a rivalry which has almost become legend; and it has not been without substantial cost. It is said to have resulted in the compromise of important investigations and in the loss of what might have been successful cases against major traffickers.

In spite of the dedicated efforts and excellent work of many BNDD and Customs agents, this institutional rivalry has reportedly not been resolved. Reporting on the major problems of heroin enforcement in New York City, the General Accounting Office found that the two agencies "fail to share intelligence and other information," and that there existed, "untimely notice of arrest and seizure, lack of communications, misunderstandings and personality conflicts." These findings have been corroborated by independent studies of the American Bar Association and the Drug Abuse Council.

There is widespread agreement among law enforcement officials that the fact that these two agencies and others in the drug enforcement field are not in a single governmental organization seriously undercuts the potential success of the Federal enforcement effort. The offices of Drug Abuse Law Enforcement and National Narcotics Intelligence in the Justice Department have also been operating without overall coordination.

The dispersion among these several agencies, and others outside of the Justice Department, of law enforcement programs aimed at controlling illicit drug trafficking has had other harmful consequences. It has been difficult to place responsibility for success or failure. The comparative data on similar programs in these different agencies are insufficient to permit rational strategic planning and budget allocation decisions. State and local law enforcement agencies have not been able to utilize to the full potential combined resources of the Federal Government in their efforts at the local level.

Conflicts in overlapping jurisdictions among many agencies has resulted in duplicative and sometimes conflicting investigative work, while other desirable work may have gone undone. The similarity of orientation and skills of the law enforcement officers in each of these agencies favors the collocation of all such activities devoted to a single purpose in a new, integrated drug enforcement agency.

I am, therefore, today proposing a broad program of executive reorganization to deal with the duplication and fragmentation in Federal drug enforcement programs and activities. It is not designed merely to move boxes on Government flow charts. It is designed to shake up a seriously encumbered Federal effort and to make more cases—with more significant defendants and greater impact on the overall problem. It is intended to upgrade significantly the capacity of the total Government system to integrate and coordinate its response to this urgent problem.

PROPOSAL FOR A SINGLE DRUG ENFORCEMENT AGENCY

The bill I introduce today, "The Federal Drug Abuse Enforcement Reorganization Act of 1973," will assign overall policy responsibility and control over all agencies dealing in the area of drug abuse enforcement, directly or indirectly, to a newly authorized Deputy Attorney General.

In addition to acquiring such policy control, the Deputy would acquire operational authority for the execution of statutory functions now delegated to the Directors of the Bureau of Narcotics and Dangerous Drugs, and the drug investigation division of the Bureau of Customs, which would be transferred to Justice from the Treasury Department. BNDD would retain its identity and be relocated in the new Office, while the Customs unit would lose its identity and become part of the operational structure of BNDD. Statutory responsibility for all other violations of Federal law under current Bureau of Customs jurisdiction would be retained in Treasury.

Also transferred to the new Office would be the enforcement functions of the Food and Drug Administration of the Department of Health, Education, and Welfare relating to the enforcement of administrative regulations concerning the manufacture and use of methadone and other controlled dangerous drug substances. The Cabinet Committee on International Narcotics Control would be transferred from the State Department to the Department of Justice, and, as mentioned above, ODALE and ONNI would become merged in the new Office.

I believe it is imperative that the Federal Government undertake a much more aggressive and active role in cracking down on the upper and middle level dealers and pushers in New York City and in other cities. It is important that we have a new partnership of purpose in getting at these very persistent problems. This bill would aid such efforts by:

Requiring at the Federal level and encouraging at the local level objective, independent evaluation of all drug enforcement activities, particularly in terms of quality of cases and real impact of effort.

Developing new legal weapons and investigative techniques for earlier intervention in the trafficking process both in the United States and abroad.

Developing new means for dealing with police and other official corruption in narcotics enforcement. There is a need for public demonstration that all levels of government are genuinely committed to rooting out such corruption. Independent inspections capabilities in all enforcement organizations are critically important in this regard.

Defining attainable goals, while building more relevant and useful data and intelligence capabilities both at the Federal level and the local level.

Expanding the use of mobile joint Federal, State, and local task forces of law enforcement and other personnel to reduce trafficking.

One of the most important aspects of this proposed legislation is that it would enlist the active participation of the Nation's No. 1 law enforcement agency, the Federal Bureau of Investigation, in major narcotics trafficking cases. It would do so without burdening it with total responsibility for drug enforcement.

In the past, the FBI has not exercised jurisdiction in drug enforcement cases, but rather has devoted its considerable resources to the wide range of other Federal law enforcement problems. In so doing, it has developed a world renowned system of agent recruitment and training.

Its expertise in the conduct of after the fact investigations into crimes is second to none. Its sophisticated intelligence work in organized crime cases is also highly regarded. Unlike BNDD, however, it has not extensively utilized its personnel in undercover operations and in other specialized aspects of drug enforcement.

My bill would authorize use of the experience, expertise, extensive manpower, laboratory facilities and other resources of the FBI in major cases involving organized trafficking in hard drugs. Such participation would be on a fully coordinated, ad hoc basis upon the special request of the Deputy Attorney General.

In my judgment, the utilization of the FBI on this basis will bring substantial new strength to the Federal drug enforcement effort without unnecessarily weakening its capability in other areas. Because the drug dealer and his user-victim share a community of interest, drug trafficking offenses are highly resistant to traditional law enforcement techniques. Techniques that are effective in this area are more expensive, more time consuming and more likely to conflict with other societal values. Therefore, we would be well advised to retain the primary responsibility for drug enforcement within the newly constituted BNDD.

The bill would also require the new Deputy Attorney General to evaluate the international—in careful and close coordination with the State Department and the Cabinet Committee on Interna-

tional Narcotics Control—and domestic capabilities and activities of Federal agencies, as well as to provide an analysis of drug trafficking patterns, drug cultivation and distribution and the development of sophisticated techniques for identifying and seizing illicit drugs.

A PROPOSAL TO INCREASE THE DETERRENT POTENTIAL OF DRUG LAWS

As we survey the impact of our national drug abuse problem, one cannot help but reflect upon our failure effectively to deter the drug trafficker from continuing his devastating activity.

The consequences of drug abuse are not limited to the shattered lives of the addicts themselves. The law abiding citizen has become victimized by the high frequency of drug induced crime; and by the high cost of enforcing laws against drug traffickers and maintaining vitally necessary drug treatment, rehabilitation and prevention services. At the root of these unacceptable costs—human and economic—is the narcotics dealer.

The basic approach to the drug problem that I have always supported is still, in my judgment, correct:

First, providing comprehensive treatment and rehabilitation to help addicts to return to productive lives;

Second, strengthening the system of criminal justice so that it has the capability to dispose of cases rapidly involving illicit drugs, while effectively reducing supplies;

Third, protecting society itself from the pervasive fear about drug related crime which has undermined the quality of life in so many communities and homes throughout the Nation; and

Fourth, providing for an extensive law enforcement effort against drug traffickers which is both severe and credible.

The fact is that today the great majority of drug pushers do not go to jail at all—and that when they do, they go for relatively brief periods of time. This is particularly true for the people at or near the top of the pyramid: The organized crime figure who is engaged in a continuing criminal enterprise.

Out of 100,000 felony arrests of all types in New York City last year, only 3,000 defendants received felony sentences of a year or more. The New York State Department of Corrections has reported that the average length of time served in all facilities dropped from only 31 months in 1965 to 22 months in 1973.

Restoration of respect for the law—among criminals and law abiding citizens—and dispelling the climate of fear which prevades almost every aspect of modern urban life are the most pressing priorities of the criminal justice system. The law must become a credible deterrent again.

The present Federal law includes a few instances of legislatively prescribed minimum sentences of substantial length without probation, but for the most part Congress has vested judges with discretion to impose any penalty within the limits of the legislative maximum. In the past we have had debates as to whether legislatively directed minimum sentences ought to be used.

The troublesome issue posed in this area comes down to the question: Does a possible gain in deterrence from such legislatively fixed mandatory minimum sentences overbalance the cost of potential excessive detention? Is it appropriate to remove from judges and prosecutors the broad discretion that they should rightfully exercise on such matters?

I conclude that the general interests of society in increasing the deterrent potential of the criminal law as to drug abuse are so significant that the question should be resolved on the side of a system of reasonable mandatory sentences for drug trafficking offenses. Accordingly, I am today introducing the Federal Narcotic Drug Trafficking Offenses and Sentencing Act of 1973.

In 1960, the penalty for possession of hard drugs was a felony under Federal and State law, punishable by a minimum mandatory sentence of 2 years for the first offense.

In 1970, Congress eliminated the mandatory provision in the Federal possession offense and reduced it to a misdemeanor, thereby endorsing the general trend that referral of drug users, particularly drug dependent persons, to treatment services was best for the public and the individual. I continue to support that policy.

Penalties for trafficking in narcotic drugs are another matter. I realize that the law generally functions as a poor deterrent, dependent entirely upon how credible the enforcement agencies can make the threat of punishment. My bill is designed to strengthen that potential.

Present law provides for no minimum mandatory sentences for drug-related offenses, with the exception of the so-called continuing criminal enterprise. Discretionary sentences of up to 30 years are available for trafficking offenses.

In title II of this proposal, a mandatory minimum sentence of 5 years with a possible sentence of 15 years, in the discretion of the court is applicable for a first trafficking offense in less than 10 ounces of a narcotic drug, provided that in cases involving less than one-eighth of 1 ounce of drugs, the court, in its discretion may sentence the defendant to less than the mandatory minimum. In first offenses involving more than 10 ounces, a minimum mandatory sentence of 5 years, and a possible sentence of up to life, in the discretion of the court is applicable.

For narcotics traffickers with a prior conviction, or for such persons convicted of such crimes while free on trial a mandatory minimum sentence of 5 years, and not more than 30 years—less than 10 ounces—and a minimum sentence of 7 years and up to life—more than 10 ounces—are provided. Increased fines are also proposed and probation cannot be granted.

Title III of my bill provides for the development of research on the impact and effect of various Federal, State, and local sentencing practices, including the impact of mandatory minimum sentences and their relationship to recidivism.

Traditional aims of sentencing have included deterrence of prospective offenders, deterrence of those already convicted, rehabilitation of convicted offenders, reduction of crime by physical incapacitation of convicted offenders and the answer to moral outrage in the community as a whole.

Prosecutors, judges, parole board members, legislators, and the general public can disagree on the relative importance of these various aims and on their application in specific categories of criminal offenses. These are questions of great importance to the general public, and they have received wholly inadequate attention. Indeed, the empirical data needed to answer most of them is unavailable.

Many have noted that our approach to the problems of sentencing at all levels of government has not been adequate. We need rational sentencing laws, with carefully considered rules and guidelines. We need rational sentencing laws, with continuing basis to the purpose of studying, discussing and formulating the objectives, policies, standards, criteria, and effect of sentencing. This is the objective of title III of the bill.

Mr. President, the extraordinary concern and fear about narcotic drugs is based in large part upon the fear of crime associated with addiction. An equally important concern is the fear that use of such drugs is spreading throughout society. Our best information is that it is. Although heroin itself may not cause criminal behavior in any literal sense, the need to maintain a habit frequently does.

The fact is that the addict will do anything to obtain money to get the drug. To do this he may deal in drugs, or engage in the commission of this crime. The need for that drug can be the physical and psychological center of his existence.

Consequently we have estimates of drug related thefts in New York City ranging up to almost $2 billion annually. The incidence of violent crime and death associated with drug addiction and the extraordinary harm done by major, commercial drug pushers preying on society is a moral outrage.

We must continue to strengthen our law enforcement capability to alleviate the shocking injury which continues to be inflicted upon our society and, in particular, upon the innocent people of our urban areas. I will continue to do all I can to achieve that objective.

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

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

S. 1137

A bill to provide for the public safety and to increase the deterrent potential of the federal criminal law; by requiring the imposition of certain penalties for persons convicted of offenses involving the trafficking of narcotic drugs, to provide for an assessment of the effect of federal sentencing provisions and practices generally and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Federal Narcotics Drug Trafficking Offenses and Sentencing Act of 1973.

TITLE I

DECLARATION OF PURPOSE

SEC. 101. The Congress hereby finds and declares that narcotic addiction in the United States is a significant factor in the commission of serious crimes against persons and property, particularly in large urban areas; that narcotics trafficking promotes a tragic cycle of increased narcotics addiction and further commission of crime at extraordinary human cost; while the nation must remain committed to long-range solutions to the crime problem which include (A) a comprehensive approach to the causes of crime and the conditions which breed despair and social and economic deprivation, (B) comprehensive reform of federal, state and local criminal justice systems, and (C) effective programs of drug abuse treatment, rehabilitation, education and prevention at all levels of government and in both the public and private sector, it is the purpose of this Act to insure the public safety more effectively by:

(a) reducing on an emergency basis the incidence of illicit narcotics trafficking through the deterrent influence of the criminal penalties hereinafter provided; and

(b) requiring the Attorney General to collect, analyze and report regularly information and data on the operation of the federal, state and local sentencing systems and the relationship between minimum-maximum sentencing, and deterrence and recidivism.

TITLE II—INCREASED PENALTIES AS A DETERRENT

SEC. 201. Section 401(b)(1)(A) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1261; 21 U.S.C. 841 (b)(1)(A)) is amended to read as follows:

"(1)(A)(i) In the case of a compound, mixture, or substance containing less than ten ounces of a controlled substance in Schedule I or II which is a narcotic drug—

"(a) such person shall be sentenced to a term of imprisonment of not less than 5 years nor more than 15 years and may in addition be fined not more than $25,000, provided that in the case of such compound, mixture or substance containing less than one-eighth of one ounce of such controlled narcotic drug, such person may be sentenced, in the discretion of the Court, to less than the mandatory minimum. The sentence may include a special parole term of not less than 3 years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted.

"(b) if such person has been convicted of one or more felonies under any provision of this title or title III or other law of the United States relating to controlled substances or any offense under state or foreign law relating to a narcotic drug in Schedule I or II which offense would be a felony under this title or title III and one or more of the convictions have become final, he shall be sentenced to imprisonment for a term of years of not less than 5 years nor more than 30 years, and may in addition be fined not more than $50,000. The sentence may include a special parole term of not less than 6 years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted.

"(c) if the crime was committed while such person was released pursuant to section 3146 of title 18, United States Code, on a charge of violating subsection (a) (1) of this section, he shall be sentenced to imprisonment for a term of years of not less than 5 years, nor more than 30 years, and may in addition be fined not more than $50,000. The sentence may include a special parole term of not less than 6 years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted.

"(ii) In the case of a compound, mixture, or substance containing more than ten ounces of a controlled substance in Schedule I or II which is a narcotic drug—

"(a) such person shall be sentenced to imprisonment for a term of years of not less than 5 years, or for life and may in addition be fined not more than $100,000. The sentence, if for a term of years, may include a special parole term of not less than 6 years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

(b) if such a person has been convicted of one or more felonies under any provision of this title or title III or other law of the United States relating to controlled substances or for an offense under state or foreign law relating to a narcotic drug in Schedule I or II which offense would be a felony under this title or title III and one or more of the convictions have become final, he shall be sentenced to a term of imprisonment for a term of years of not less than 7 years, or for life and may in addition be fined not more than $200,000. The sentence, if for a term of years, may include a special parole term of not less than 6 years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended, and probation shall not be granted.

"(c) if the crime was committed while such person was released pursuant to section 3146 of title 18, United States Code, on a charge of violating subsection (a) (1) of this section he shall be sentenced to a term of imprisonment for a term of years of not less than 7 years, or for life and may in addition be fined not more than $200,000. The sentence, if for a term of years, may include a special parole term of not less than 6 years in addition to such term of imprisonment. Imposition or execution of such sentence shall not be suspended and probation shall not be granted.

SEC. 202. Section 406 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1265; 21 U.S.C. 846) is amended to read as follows:

"SEC. 406. Any person who attempts or conspires to commit any offense defined in this title shall be punished as prescribed for the commission of the offense which was the object of the attempt or conspiracy."

SEC. 104. (a) Section 1010 (b) (1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1290; 21 U.S.C. 960 (a) (1) is amended to read as follows:

"(b) (1) (A) In the case of a violation under subsection (a) of this section with respect to a compound, mixture, or substance containing less than ten ounces of a controlled substance in Schedule I or II which is a narcotic drug, the person committing such violation shall be imprisoned not less than 5 years nor more than 15 years, or be fined not more than $25,000 or both, provided that in the case of such compound, mixture or substance containing less than one eighth of one ounce of such controlled narcotic drug, such person may be sentenced, in the discretion of the Court, to less than the mandatory minimum. The sentence may include a special parole term of not less than three years in addition to such term of imprisonment.

(B) In the case of a violation under subsection (a) with respect to a compound, mixture or substance containing more than ten ounces of a controlled substance in Schedule I or II which is a narcotic drug, the person committing such violation shall be imprisoned for a term of years of not less than 5 years or for life, and may in addition be fined not more than $100,000. The sentence, if for a term of years, may include a special parole term of not less than six years in addition to such term of imprisonment.

"(C) In the case of any sentence under subsection (b) (1), imposition or execution of such sentence shall not be suspended and probation shall not be granted."

TITLE III—DEVELOPMENT OF RESEARCH ON IMPACT AND EFFECT OF FEDERAL, STATE AND LOCAL SENTENCING PRACTICES

SEC. 401. (a) The Attorney General shall direct the Institute for Criminal Justice of the Law Enforcement Assistance Administration (1) to collect, synthesize and formulate information and data and to conduct research on a continuing basis relating to the operation and effect of federal, state and local sentencing systems, and to evaluate the general and specific deterrent effect of—

(a) legislatively prescribed minimum sentences of substantial length without probation, particularly in terms of their deterrent value; (b) the use of indefinite sentences with a maximum within limits set by statute and a minimum chosen by the Court;

(c) probation without imprisonment for first offenders;

(d) consecutive and concurrent sentencing for multiple offenses;

(e) sentencing practices and incidence of recidivism in cases involving violation of federal, state and local drug abuse control laws, and

(2) to develop and recommend guidelines and standards for federal, state and local Courts in sentencing, probation, parole and other forms of release of offenders.

(b) Research and other information developed pursuant to subsection (a) of this section shall be incorporated into the annual Report of the Law Enforcement Assistance Administration and shall be disseminated upon request to federal, state and local governmental and private agencies.

S. 1138

A bill to promote more effective management of certain related law enforcement functions of the executive branch by reorganizing and consolidating those functions in a new Office of Drug Abuse Investigation and Enforcement in the Department of Justice

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 "Federal Drug Abuse Enforcement Reorganization Act of 1973."

FINDINGS

SEC. 2. (a) The Congress hereby finds—

(1) that illegal drug traffic and drug abuse is rapidly increasing in the United States and in and among other nations and now afflicts all areas of this Nation;

(2) that the effectiveness of law enforcement efforts in the area of drug abuse control by State and local governments and by agencies of the Federal Government and within the international community are hindered by a lack of coordination among those levels of government; that because of this lack of coordination, agencies at the State, local, and Federal levels have found it difficult to mobilize existing law enforcement resources to mount more effective efforts to control illicit drug trafficking and that the increasing rate of such activities constitutes a threat to national public safety, health and welfare, and requires a new Federal Government response.

(b) Therefore, the Congress declares it to be the purpose of this Act to provide a mechanism for improved performance, coordination, and evaluation of drug enforcement functions at the Federal level, more effective coordination between Federal, State, and local law enforcement agencies, and the development of innovative approaches to the problems of controlling international and interstate commerce in licit and illicit drugs.

ESTABLISHMENT OF THE OFFICE OF DEPUTY ATTORNEY GENERAL FOR DRUG ABUSE INVESTIGATION AND ENFORCEMENT

SEC. 3. There is established in the Department of Justice an Office of Drug Abuse Investigation and Enforcement (hereinafter

referred to in this Act as the "Office") which shall be headed by a Deputy Attorney General (hereinafter referred to as the "Deputy") appointed by the President, by and with the advice and consent of the Senate. He shall receive compensation at the rate hereafter prescribed for offices and positions at level II of the Executive Schedule (5 U.S.C. 5313).

CONCENTRATION OF FEDERAL DRUG ENFORCEMENT EFFORT

SEC. 4. (a) The Deputy shall provide overall direction, planning, and policy, and shall establish objectives and priorities, for all Federal drug abuse law enforcement investigations, joint task force operations, programs, activities, and legal proceedings.

(b) In addition, he shall (1) review the investigative practices and capabilities, regulations, guidelines, and procedures for the several agencies under his direction and control, as provided in section 5 of this Act, in terms of their adequacy and consistency with the policies and priorities he provides or establishes; (2) recommend changes in organization, management, and personnel, which he deems advisable to implement the policies, priorities, and objectives he provides or establishes, and (3) conduct or provide for the conduct of evaluation and studies of the performance and results achieved by all Federal agencies working in the areas of drug abuse enforcement.

(c) In exercising his authority under this Act the Deputy shall, from time to time, consult with the heads of Federal law enforcement agencies both within and without the Department of Justice, United States Attorneys, the Secretary of State, the Director of the Special Action Office on Drug Abuse Prevention, State and local law enforcement officials and such other persons as he may deem advisable.

TRANSFERS

SEC. 5. (a) (1) There are hereby transferred to and vested in the Attorney General all of the functions of the Secretary of the Treasury which are administered through or with respect to the Bureau of Customs and which involve investigations by the Office of Investigations of such Bureau leading to seizures and arrests for violations of any Federal law relating to trafficking in narcotics and dangerous drugs.

(2) All other functions of the Customs service and the Commissioner of Customs determined by the Director of the Office of Management and Budget to be directly related to functions transferred by paragraph (1) of this section shall also be transferred. Nothing in this section shall be construed to prevent the Customs Service from making seizures and arrests relating to smuggling of contraband other than narcotics and dangerous drugs.

(b) There is hereby transferred to and vested in the Attorney General certain functions of the Secretary of Health, Education, and Welfare which are administered through or with respect to the Food and Drug Administration relating to the enforcement of administrative regulations concerning the manufacture and use of methadone and other controlled dangerous substances.

(c) There is hereby transferred to and vested in the Attorney General all functions of the Secretary of State which are administered through or with respect to the Cabinet Committee on International Narcotics Control.

DELEGATION OF AUTHORITY WITHIN THE JUSTICE DEPARTMENT

SEC. 6. (a) The Attorney General shall delegate to the Deputy.

(1) authority over functions transferred by Section 5 (a) and (b) of this Act;

(2) authority over functions performed by the Bureau of Narcotics and Dangerous Drugs under Reorganization Plan I of 1968;

(3) authority over functions performed by the Office of Drug Abuse Law Enforcement under Executive Order 11641 of 1972;

(4) authority over functions performed by the Office of National Narcotics Intelligence under Executive Order 11676 of 1972.

(b) The Attorney General shall assign to the Office of the Deputy the positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, under terms and conditions that the Attorney General shall designate, (1) of the Bureau of Narcotics and Dangerous Drugs, (2) of the Office of Drug Abuse Law Enforcement and (3) of the Office for National Narcotics Intelligence.

(c) (1) The Bureau of Narcotics and Dangerous Drugs, including the Office of the Director shall remain intact and shall become a part of the Office of Drug Abuse Investigations and Enforcement.

(2) The Office of Drug Abuse Law Enforcement and the Office of National Narcotics Intelligence, including the Offices of the Directors of each of these agencies are hereby abolished. The Attorney General shall make such provisions as he may deem necessary with respect to terminating the operations of these agenices not otherwise provided for in this Act.

(d) The Deputy may, without being relieved of his responsibility, redelegate any or all of the authorities delegated to him pursuant to section 6(a) of this Act to the Director, Bureau of Narcotics and Dangerous Drugs.

PARTICIPATION OF THE FBI IN MAJOR NARCOTICS TRAFFICKING CASES

SEC. 7. In view of the experience, expertise, extensive manpower, laboratory facilities, and intelligence and investigative resources of the Federal Bureau of Investigation, it is the intent of this Act that such Bureau exercise investigative jurisdiction in cases involving alleged violations of Federal narcotics and drug abuse laws when it is determined by the Deputy and the Director of the Federal Bureau of Investigation, upon request of the Deputy that such exercise will facilitate the successful investigation and prosecution of such cases or the development of useful intelligence information, either independently or in concert with other Federal, State, and local law enforcement agencies. Such jurisdiction should be exercised primarily in cases involving major domestic and international trafficking and organized crime operations. In cases where a disagreement may arise between the Deputy and the Director of the Federal Bureau of Investigation as to whether jurisdiction shall be exercised, the decision shall be made by the Attorney General.

COORDINATION OF OTHER DRUG ENFORCEMENT ACTIVITIES

SEC. 8. (a) In carrying out his functions under this Act, the Deputy shall strengthen coordination among all Federal departments and agencies engaged in law enforcement investigations, programs and activities, and activities which relate to drug abuse enforcement and control functions, including those carried out by the Internal Revenue Service and the Secret Service of the Department of the Treasury, the military intelligence agencies of the Department of Defense, the Food and Drug Administration of the Department of Health, Education, and Welfare, the Central Intelligence Agency, and the Department of State, including the Agency for International Development and other offices and activities dealing with efforts to coordinate control of international narcotics traffic with foreign governments.

(b) To facilitate such coordination, the Deputy may require departments and agencies, including those listed in subsection (a) of this section to submit such information and reports, and to conduct such studies and surveys as are reasonably necessary to carry out the purposes of this Act.

ANNUAL REPORT ON INTERNATIONAL DRUG ABUSE ENFORCEMENT ACTIVITIES

SEC. 9. (a) The Deputy shall prepare for the Attorney General and the Cabinet Committee on International Narcotics Control an annual report on the use of the resources and personnel of the Federal Government and international organizations in which the United States is a member in controlling illicit narcotics traffic.

(b) Such report shall provide—

(A) A detailed summary of such activities;

(B) An assessment and evaluation of the capability and specific programs and activities of the Federal Government to bring about a reduction in the illicit importation and diversion of controlled dangerous substances, with detailed emphasis upon the nature, extent, and effect of Federal drug related intelligence and enforcement operations in foreign countries;

(C) An analysis of (1) the nature, character, origin, and extent of the licit and illicit traffic in controlled dangerous substances, as defined by Public Law 91–513, particularly the opiates and other narcotics drugs, and the drug related activities of international law enforcement and nonlaw enforcement organizations, institutions, and agencies, including, but not limited to the World Health Organization, the Food and Agricultural Organization, the United Nations Commission on Narcotic Drugs, Interpol, and international lending agencies, (2) the scope, functioning, utilization, and reliability of information systems and specific data and information relating to licit and illicit drug trafficking patterns, and drug cultivation, processing production and distribution, and (3) sophisticated techniques for identifying and seizing controlled dangerous substances in foreign, domestic, and international commerce, and

(D) Recommendations for the improvement of such activities.

(c) Such report shall be forwarded to the National Drug Abuse Strategy Council for consideration in connection with the annual review and revision of such strategy, pursuant to section 305, Drug Abuse Office and Treatment Act of 1972, (Public Law 92–255).

TECHNICAL ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES AND ESTABLISHMENT OF SPECIAL FUND

SEC. 10. (a) The Deputy shall coordinate or assure coordination and cooperation of Federal drug enforcement functions with functions of State and local governments and agencies.

(b) In carrying out his functions under this section, the Deputy may provide technical or investigative assistance through—

(A) advice and consultation relating to local enforcement cases and programs;

(B) the use of Federal or joint Federal, State and/or local task forces of law enforcement and other personnel. He may request the assignment of any individual employed by any Federal department or agency and engaged in any law enforcement function to serve as a member of any such Task Force, including personnel from departments and agencies referred to in section 8 of this Act, except that no one person shall be so assigned during any one fiscal year for more than ninety days, unless extended by the parent agency.

(c) (1) There is established a special fund (hereinafter referred to as the "fund"), under the direction and control of the Deputy, in order to provide—

(A) incentives to Federal, State, and local law enforcement and other criminal justice agencies and international organizations, to develop innovative concepts, methods, and techniques in the investigation and successful prosecution of narcotics trafficking cases generally; and tactical and strategic intelligence information relating to the nature, extent, and impact of such trafficking, and to evaluate and improve the effectiveness of

local law enforcement efforts in this area; and

(B) funding assistance to such agencies, particularly local law enforcement agencies, to complete successfully specific cases against major narcotics traffickers, and to expedite the disposition of narcotics trafficking cases within local judicial systems.

(2)(A) Sums appropriated to the fund shall be administered by and through the Office and may be utilized only upon the order of the Deputy to any Federal, State, or local public or nonprofit criminal justice agency, organization, or institution or duly constituted public international organization: *Provided*, That any grant to such international organization shall be subject to the approval of the Cabinet Committee on International Narcotics Control. All grants to State and local criminal justice agencies shall be fully coordinated with the Law Enforcement Assistance Administration of the Department of Justice.

(B) To the extent he deems it appropriate the Deputy may require the recipient of a grant under this section to contribute money, facilities or services for carrying out the program, case, project, or activity for which the grant was made.

(d) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated $30,000,000 for the fiscal year beginning July 1, 1973 and $30,000,000 for each of the next succeeding fiscal years.

SPECIAL PLAN OF THE DEPUTY

SEC. 11. The Deputy shall develop and submit to Congress within ninety days of the enactment of this Act, a written plan for the administration of the fund established in section 10 of this Act, the coordination, evaluation, and carrying out of international, Federal, State, and local narcotics enforcement programs and activities and execution of his other responsibilities under this Act. Such plan shall describe how such programs and activities are to be coordinated and evaluated, and describe the steps taken or to be taken to insure that such programs and activities will be administered so as to encourage the broadest and most effective action to curtail illicit narcotics trafficking on a cooperative basis at all levels of government.

TRANSFER MATTERS

SEC. 12. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this Act by the Treasury Department and the State Department any functions of which are transferred by this Act; and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Justice Department, by any court of competent jurisdiction, or by operation of law.

(b) The provisions of this Act shall not affect any proceedings pending at the time this Act takes effect before any department or agency, functions of which are transferred by this Act; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Justice Department. Orders shall be issued in such proceedings, appeals shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Justice Department, by a court of competent jurisdiction or by operation of law.

(c) The provisions of this Act shall not affect suits commenced prior to the date this Act takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted; except that if before the date on which this Act takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Justice Department, then such suit shall be continued by the Justice Department. No cause of action, and no suit, action, or other proceeding, by or against the Treasury Department and the State Department (or officer thereof in his official capacity) functions of which are transferred by this Act shall abate by reason of the enactment of this Act. Causes of actions, suits, or other proceedings may be asserted by or against the United States or the Justice Department as may be appropriate and, in any litigation pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(d) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers provided in this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

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

S. 1139. A bill to amend the Urban Mass Transportation Act of 1964. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I introduce for myself and Senator TOWER (by request) a bill to amend the Urban Mass Transportation Act of 1964.

This bill is recommended to the Congress by the Secretary of the Department of Transportation.

The proposed bill would make several significant changes in the 1964 act. They are designed to provide greater resources for and flexibility in the administration of the Federal program of assistance to mass transportation systems serving the urban areas of the nation and will enable us to aid localities in a more responsive manner. These proposed amendments would not change the basic substance or direction of the Federal urban mass transportation program.

Section 1 of the bill states that it may be cited as the "Urban Mass Transportation Amendments of 1973."

Section 2 of the bill increases from two-thirds to 70 percent of the maximum share of the cost of an urban mass transit capital improvement project which the Federal Government is authorized to contribute. This change will serve to equalize the Federal share of project costs available for both highway and transit projects.

Section 3 of the bill would amend section 4 of the 1964 Act to increase the amount authorized for obligation for urban mass transportation improvement projects from $3.1 billion to $6.1 billion. This request for an increase of $3 billion is designed to fulfill the purpose stated in section 4(d) of the 1964 Act of assuring program continuity and orderly development of new projects by providing at least $10 billion for urban mass transportation over a 12-year period. Early availability of this authority is essential in order that localities can undertake the long and difficult process of planning, developing, and financing major urban mass transportation improvement projects with confidence that they will be able to obtain a binding Federal commitment when they are actually ready to commence the projects.

Section 4 of the bill would amend section 9 of the 1964 act to increase from two-thirds to 70 percent the share of the cost of technical study grant projects which the Federal Government is authorized to contribute. Section 4 would also amend section 9 to clarify the authority to undertake projects for the evaluation of completed projects as a part of the technical study activity.

Section 5 of the bill would amend section 10 of the 1964 act to remove several restrictions which undesirably limit the manner in which funds available to assist in improving the skills of persons employed in managerial positions in the transit industry may be distributed. The new flexibility which the bill would permit would enable the Department to allocate grants to those areas where the need for training is greatest.

Section 6 of the bill would amend the 1964 act to delete provisions which no longer have any significant operative effect and would renumber several remaining sections in order to clean up the act.

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

S. 1140. A bill to prohibit the making of clad strip from which slugs can be cut for use in coin operated machines and to prohibit misrepresentation as to proof and uncirculated coins. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, for myself and for Senator TOWER, I send to the desk a bill to prohibit the making of clad strip from which slugs can be cut for use in coin operated machines and to prohibit misrepresentation as to proof and uncirculated coins. This legislation has been recommended to us by the Secretary of the Treasury. In general the purpose of the proposed legislation is to: first, prohibit, except under the authority of the Secretary of the Treasury, the importation, manufacture, possession, sale or use of clad strip from which slugs can be cut susceptible of use in coin operated machines, and second, prohibit falsely representing that packages of U.S. coins are proof coin or mint sets prepared by a U.S. Mint.

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

S. 1141. A bill to provide a new coinage design and date emblematic of the bicentennial of the American Revolution for dollars and half-dollars. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I send to the desk for myself and Mr. TOWER a bill to provide a new coinage design and date emblematic of the bicentennial of the American Revolution for dollars and half-dollars. This bill is recommended to the Congress by the administration. In general the administration believes it

would be highly appropriate and desirable to recognize the bicentennial of the birth of the United States on its coinage. The proposed legislation is designed to accomplish that purpose.

By Mr. MUSKIE (for himself, Mr. BIBLE, Mr. CHILES, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. KENNEDY, Mr. METCALF, Mr. MONDALE, Mr. PERCY, and Mr. RIBICOFF):

S. 1142. A bill to amend section 552 of title 5, United States Code, known as the "Freedom of Information Act." Referred jointly, by unanimous consent, to the Committee on the Judiciary and the Committee on Government Operations.

FREEDOM OF INFORMATION ACT

Mr. MUSKIE. Mr. President, I introduce today a bill to amend the Freedom of Information Act of 1967 and ask unanimous consent that it be referred to the Committee on the Judiciary and the Committee on Government Operations.

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

Mr. MUSKIE. Mr. President, these amendments which are cosponsored by 13 Senators from both sides of the aisle respond to a call many of us have heard for full implementation of the people's right to know the way in which they are governed. This bill, the result of intensive investigation in the 92d Congress by Representative WILLIAM MOORHEAD'S Subcommittee on Foreign Operations and Government Information, is a major contribution to answering that demand.

We are the best-informed of nations and the worst-informed. Americans in 1973 have access to more data, statistics, studies and opinions than the citizens of any other democracy, including their own, have ever had before. In theory, our people have available to them all the information they need to make wise and intelligent choices on public policy.

In practice, however, the flow of vital information from the governors to the governed is controlled and restricted by considerations that are alien to our concept of open democracy. The Executive asserts the power to withhold from the people and from the Congress some or all of the expert advice it receives and acts on. A President or his spokesman can make public those facts which best support a decision he has already made and can conceal arguments for alternatives he has rejected.

One branch of the Armed Forces can keep its research secret from the others, putting its competitive drive for appropriations ahead of the public interest in efficiency. Officials in charge of regulating prices or communications or pollution or consumer safety can be subjected to secret influences whose power to affect decision is increased by their ability to operate behind closed doors and to lock their advice into closed files.

Arguments made in private may be persuasive. They may even be correct. But where the public interest is at stake, argument must be open so that it can be rebutted. To be enforceable in a society built on trust, decisions must be reached in a manner that permits all those concerned to have equal access to the decisionmakers.

These amendments go far to remove obstructions which many Federal agencies have put in the way of those citizens who seek to know. They provide that judges shall question the reasons asserted by an executive agency for claiming the privilege of secrecy for its records and shall examine the records themselves to see how reasonable each claim is. They affirm the right of Congress to have access to the information on which the Executive deliberates and acts.

I am proud to bring this legislation before the Senate at the same time it goes before the other body. Together we can examine the problems which have arisen in implementing the sound purpose of the Freedom of Information Act and can work to strengthen that purpose and our democracy.

Mr. President, I ask unanimous consent that an analysis of these amendments and the text of the bill be printed in the CONGRESSIONAL RECORD at this point.

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

ANALYSIS OF AMENDMENTS TO THE FREEDOM OF INFORMATION ACT OF 1967

Amendments to Section 552(a)—

(1) agencies would be required to "publish and distribute" their opinions made in the adjudication of cases, policy statements and interpretations adopted, and administrative staff manuals and instructions to staff that affect the public, rather than merely making them "available for public inspection and copying," as provided in the present law.

(2) agencies would be required to respond to requests for records which "reasonably describes such records." This language is substituted for the term "identifiable records," which has been used by the bureaucracy in many cases to avoid making information available.

(3) agencies would be required to respond to requests under the Act within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request and within 20 days (with the same exceptions) on administrative appeals following denials to the requesting party. These time periods are the result of a 1971 study and recommendations on improving the operation of the Act as adopted by the Administrative Conference of the United States and would provide a positive mechanism to correct one of the most glaring deficiencies uncovered during oversight hearings—that of agency stalling and foot-dragging tactics to avoid public disclosure.

(4) the Government could be required by the courts to pay "reasonable attorney fees and other litigation costs" of citizens who successfully litigate cases under the Act. This amendment is directed toward another major deficiency of the present law revealed during the hearings—the high costs to the average citizen when attempts to obtain records under provisions of the Act are frustrated by arbitrary or capricious acts of the bureaucracy or by foot-dragging tactics. Such assessment would be at the option of the court and has been successfully used in numerous civil rights cases in past years.

(5) agencies would be required to file answers and other responsive motions to citizens' suits under the Act within 20 days after receipt. Under normal rules of Federal civil procedure, the Government is given 60 days to file such responses, although the private citizen has only 20 days to respond to Government motions; this amendment would plug a major loophole used by the Government and revealed in the hearings, involving cases where repeated filing of delaying motions by the Government stalled court consideration of Freedom of Information Act cases for as long as 140 days. Such stalling tactics make a mockery of the law and often make the information, if finally made available to the citizen, virtually useless to him.

(6) new provisions proposed to Section 552(a) would clarify the original intent of Congress in connection with the interpretation of the "de novo" requirements placed on the courts in their consideration of cases under the Act. Such amendment is made necessary by the Supreme Court's decision in the case of *Mink* v. *EPA*, (410 U.S. —) decided on January 22, 1973, when the Court held that judges *may not* examine *in camera* documents in dispute where the Government claims secrecy by virtue of exemption 552(b)(1), dealing with the national defense or foreign policy, and are *not required* to exercise such *in camera* judgment in cases involving exemption 552(b)(5), dealing with inter-agency or intra-agency memorandums. The amendments make it clear that Congress intended and still intends that "de novo" as used in the law means that since the burden of proof for withholding is on the Government, courts *must* examine agency records *in camera* to determine if such records as requested by the plaintiff in a suit under the Act, or any part thereof, should be withheld under any of the nine permissive exemptions of 552(b). It also makes it clear in cases where exemption 552(b)(1) is claimed by the agency, the court *must* examine such classified records to see if they are a proper exercise of such Executive Order classification authority and that disclosure of the information requested would actually be "harmful to the national defense or foreign policy of the United States."

Amendments to Section 552(b)—

(1) permissive exemption (b)(2) would be amended to require disclosure of information about an agency's internal personnel rules and internal personnel practices, so long as such disclosure would not "unduly impede the functioning of such agency."

(2) permissive exemption (b)(4) would be amended to modify the exemption for trade secrets by requiring that such types of information be truly privileged and confidential, as is already provided in the case of commercial or financial information under this exemption.

(3) permissive exemption (b)(6) would be amended to limit its application to medical personnel "records," instead of "files" as in the present law; this would close another loophole in the Act whereby releaseable information is often commingled with other types of information in a single "file", and therefore withheld.

(4) permissive exemption (b)(7) would also be amended to substitute the word "records" for "files" as in (b)(6), for the same reason—to curb agency commingling of information to avoid public disclosure. The amendment would also narrow the exemption to require that such records be compiled for a "specific law enforcement purpose, the disclosure of which is not in the public interest." It also enumerates certain categories of information that *cannot* be withheld under this exemption such as scientific tests, reports, or data, inspection reports relating to health, safety, or environmental protection, or records serving as a basis for a public policy statement of any agency, officer, or employee of the United States, or which serve as a basis for rule-making by an agency.

Amendment to Section 552(c)—

(1) the amendment proposed to Section (c) clarifies the position that Congress, upon written request to an agency, be furnished all information or records by the Executive

that is necessary for Congress to carry out its functions. Language in the present law merely states that the Freedom of Information Act does not authorize "withholding of information from Congress."

New Section 552(d)—

(1) establishes a mechanism for Congressional oversight by requiring annual reports from each agency on their record of administration of the Act, requiring certain record of administration of the Act, requiring certain types of statistical data, changes in their regulations, and similar types of information.

S. 1142

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

SECTION 1. (a) The fourth sentence of section 252(a)(2) of title 5, United States Code, is amended by striking out "and make available for public inspection and copying" and inserting in lieu thereof ", promptly publish, and distribute (by sale or otherwise) copies of".

(b) Section 552(a)(3) of title 5, United States Code, is amended by striking out "on request for identifiable records made in accordance with published rules stating the time, place, fees, to the extent authorized by statute, and procedure to be followed," and inserting in lieu thereof the following: "upon any request for records which (A) reasonably describes such records, and (B) is made in accordance with published rules stating the time, place, fees, to the extent authorized by statute, and procedures to be followed,".

(C) Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

"(A) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor;

"(B) in the case of a determination not to comply with any such request, immediately notify the person making such request that such person has a period of twenty days (excepting Saturdays, Sundays, and legal public holidays), beginning on the date of receipt of such notification, within which to appeal such determination to such agency; and

"(C) make a determination with respect to such appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal.

Any person making a request to an agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with subparagraph (A) or subparagraph (C) of this paragraph. Upon any determination by an agency to comply with a request for records, such records shall be made available as soon as practicable to such person making such request."

(d)(1) The third sentence of section 552(a)(3) of title 5, United States Code, is amended by inserting immediately after "the court shall determine the matter de novo" the following: "including by examination of the contents of any agency records in camera to determine if such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) and the burden is on the agency to sustain its action."

(2) Section 552(a)(3) of title 5, United States Code, is amended by inserting the following new sentence immediately after the third sentence thereof: "In the case of any agency records which the agency claims are within the purview of subsection (b)(1), such in camera investigation by the court shall be of the contents of such records in order to determine if such records, or any part thereof, cannot be disclosed because such disclosure would be harmful to the national defense or foreign policy of the United States."

(e) Section 552(a)(3) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, the United States or an officer or agency thereof shall serve an answer to any complaint made under this paragraph within twenty days after the service upon the United States attorney of the pleading in which such complaint is made. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the United States or an officer or agency thereof, as litigant, has not prevailed."

SEC. 2. (a) Section 552(b)(2) of title 5, United States Code, is amended by inserting "internal personnel" immediately before "practices", and by inserting "and the disclosure of which would unduly impede the functioning of such agency" immediately before the semicolon at the end thereof.

(b) Section 552(b)(4) of title 5, United States Code, is amended by inserting "obtained from a person which are privileged or confidential" immediately after "trade secrets", and by striking out "and" the second time that it appears therein and by inserting in lieu thereof "which is".

(c) Section 552(b)(6) of title 5, United States Code, is amended by striking out "files" both times that it appears therein and inserting in lieu thereof "records".

(d) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) investigatory records compiled for any specific law enforcement purpose the disclosure of which is not in the public interest, except to the extent that—

"(A) any such investigatory records are available by law to a party other than an agency, or

"(B) any such investigatory records are—

"(i) scientific tests, reports, or data,

"(ii) inspection reports of any agency which relate to health, safety, environmental protection, or

"(iii) records which serve as a basis for any public policy statement made by any agency or officer or employee of the United States or which serve as a basis for rulemaking by any agency;".

SEC. 3. Section 552(c) of title 5, United States Code, is amended to read as follows:

"(c)(1) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section.

"(2)(A) Notwithstanding subsection (b), any agency shall furnish any information or records to Congress or any committee of Congress promptly upon written request to the head of such agency by the Speaker of the House of Representatives, the President of the Senate, or the chairman of any such committee as the case may be.

"(B) For purposes of this paragraph, the term 'committee of Congress' means any committee of the Senate or House of Representatives or any subcommittee of any such committee or any joint committee of Congress or any subcommittee of any such joint committee."

SEC. 4. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Each agency shall, on or before March 1 of each calendar year, submit a report to the Committee on Government Operations of the House of Representatives and the Committee on Government Operations of the Senate which shall include—

"(1) the number of requests for records made to such agency under subsection (a);

"(2) the number of determinations made by such agency not to comply with any such request, and the reasons for each such determination;

"(3) the number of appeals made by persons under subsection (a)(5)(B);

"(4) the number of days taken by such agency to make any determination regarding any request for records and regarding any appeal;

"(5) the number of complaints made under subsection (a)(3);

"(6) a copy of any rule made by such agency regarding this section; and

"(7) such other information as will indicate efforts to administer fully this Section; during the preceding calendar year."

SEC. 5. The amendments made by this Act shall take effect on the 90th day after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, James Madison once wrote:

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.

These words were quoted upon introduction and reporting of what is now the Freedom of Information Act, legislation intended to provide the citizenry with the "means of acquiring" information from its government.

Congress' overriding concern in passing the Freedom of Information Act—FOIA—was that disclosure of information be the general rule, not the exception. The act reversed previous law and practice in that it provided that all persons have equal rights of access and that the burden be placed on government to justify refusal to disclose information, not the person requesting it. Finally, the act allowed persons wrongfully denied access to documents the right to seek injunctive relief in the courts.

After almost 6 years of operation, the FOIA has not fulfilled Congress' objectives or aspirations. Bureaucrats who simply feel more comfortable laboring behind closed doors and officials who desire to cover up inefficiency, ineffectiveness, laziness, and even corruption have joined to frustrate the intent and circumvent the mandates of the act. Vague or ambiguous exemptions have been stretched to shield disclosure of even the most innocuous documents, while delays and runarounds are employed to dampen the ardor of public inquirers.

Clearly the time has come for a new look and update of the FOIA. The amendments developed from extensive hearings in a House Government Operations Subcommittee during the last Congress provide an excellent starting point to initiate this revision. I am pleased to join with Senator MUSKIE and others today in introducing these amendments.

The original FOIA was developed from extensive hearings and deliberations by the Senate Subcommittee on Administrative Practice and Procedure, which I now chair. Because the amendments being introduced here cover not only areas

presently included in the FOIA, but also matters relating to disclosure of previously classified materials and to access by Congress to documents in agency files, a joint referral has been arranged to both the Judiciary and the Government Operations Committees. I will look forward to coordinating the efforts of my subcommittee with those of Senators MUSKIE and ERVIN, so that we might develop unified positions with regard to the important problems addressed by these amendments.

By Mr. HUMPHREY:

S. 1143. A bill entitled the "Social Security and Medicare Reform Act of 1973." Referred to the Committee on Finance.

SOCIAL SECURITY AND MEDICARE REFORM ACT OF 1973

Mr. HUMPHREY. Mr. President, I am today introducing the Social Security and Medicare Reform Act of 1973. This legislation is designed to accomplish one prime objective: bring fairness to the social security and medicare systems.

Title I of this legislation would reduce and eventually eliminate the supplementary medical insurance deductible. Presently, this deductible requires a medicare patient to pay the first $60 of the hospital bill.

The Nixon administration has recently proposed that the $60 payment be increased to $85. I am opposed to such an increase. The Nixon administration's proposal would place an almost unbearable financial strain on the elderly—generally those persons without sufficient resources to pay the cost.

Under my legislation, the deductible would be gradually reduced and eliminated over a 5-year period. This legislation would recognize that the United States has a public commitment to good health care for its elderly—without depleting their resources or forcing them to pay extra for quality medical care.

Title II of my legislation eliminates the payment of the premium under the supplemental medical insurance program.

Once again, with the increased cost in the medical insurance premiums, the elderly have been forced to pay even more for getting sick. Almost every year, there is an increase in the medical insurance premium. Last year, the Congress enacted a provision that would increase the premium as the cost of living increases. It seems that our Government wants to play a cruel hoax on the elderly. On one hand, the elderly receive a cost of living increase in social security benefits; on the other, the cost of their medical insurance is also increased.

I think it is time to call a halt. It is time to be financing more of this cost from general revenues—not asking the elderly, most of whom have fixed incomes, to bear the burden of inflation.

Title III of the legislation would begin a system of one-third general revenue financing for the social security system. This amendment changes the financing mechanisms of social security from the present excessively regressive payroll tax to a method that is at least more equitable, and also maintains the actuarial integrity of the trust fund. It means that one-third of total cost of social security would come from general funds of the Government. It means that the tax burden on low-income and moderate income families will be reduced.

At one time, it made sense to finance social security benefits entirely from the payroll tax. But lately, with the welcome expansion of benefits, the social security payroll tax has become extremely burdensome.

In the Nixon administration's proposed fiscal year 1974 budget, 29 cents of every tax dollar collected by the Federal Government will come from social security payroll taxes, while only 14 cents will come from corporate sources. Under the changes enacted last year, the rate of payroll taxes is 5.5 percent—paid by the employer and employee—for a combined tax of 11 percent on individual income up to $10,800. The 1972 social security tax maximum payment of $468 will increase to $594 for 1973 and $660 in 1974. Ten years ago, this same tax was $174.

Under a system of one-third general revenue financing, both the rate and the amount of tax would be cut for the average payroll taxpayer by more than $150.

General revenue financing at the level I have proposed will not come overnight. It could be phased in over a period of years or it could apply to the first $100 or $200 of payroll taxes. How it is done is not the crucial point. That it is done is what is crucial.

We simply must reduce the payroll tax burden on the average working family.

Title IV of the legislation would eliminate the earnings limitations for social security retirement benefits. During the last Congress, the amount of money that a social security recipient could earn without a reduction in his benefits was increased from $1,680 to $2,100. If a social security recipient earns more than $2,100, his social security benefits are reduced by $1 for every dollar earned over the $2,100 limit.

Eliminating the earnings limitation would encourage senior citizens to continue to work if they are able to do so. That should be the policy of our Government.

To my mind, there is no reason why a person should be denied the opportunity to work or be penalized for working because of age.

Finally, title V of the legislation would provide that individuals who are entitled to receive widow's or widower's benefits would receive 100 percent of such benefits.

This title is directed toward a particular problem enacted by last year's social security amendments. In that legislation, a provision was added that only widows would receive 100 percent of their husband's benefits.

Unfortunately, many of us felt that the direction of that provision was to provide that all widows, upon becoming eligible at age 62, would receive 100 percent of their husband's benefits. This, however, was not the case. An eligibility age limit of 65 was added—allowing only certain widows to receive 100 percent of benefits.

I have received literally hundreds of letters and phone calls from disappointed widows who expected to receive 100 percent of benefits but found their hopes reversed.

Under title V of this bill, widows who began drawing benefits at age 62 would be entitled to the full 100 percent of their husband's rightful benefit.

Mr. President, I believe that my bill is dedicated to pure and simple equity. It clearly draws the line as to who should pay and how much for retirement and medical benefits. It does not attempt to place dollar barriers between the patient and adequate health care. It does not attempt to strain the pocketbook of the average payroll taxpayer.

This legislation attacks head on the proposals of the Nixon administration to force the poor and the elderly to pay more for their medical care. It attacks head on the proposition that when Federal income taxes are not raised there is, in effect, no tax increase—even though you and I know, Mr. President, that when payroll taxes go up, that is the most unfair form of tax.

And it attacks head on the inequities built into the social security retirement system through artificially limiting productivity of our citizens or promising the widows of social security beneficiaries something they will not get.

I believe that these amendments are necessary. I have submitted other amendments; for example, an amendment which provides that with the increase of 20 percent in social security benefits, the other benefits that were previously added to social security would not be withdrawn or reduced. Last year we saw a 20 percent increase in social security, only to find that many a person on social security had his or her rent increased and other benefits reduced. Food stamps were taken away from them. In many instances, the increase resulted in a loss of income or income benefits that are related to income.

That is unfair. It is unkind. It was not intended; and that kind of administrative policy must be corrected by legislation.

I have previously introduced such legislation. Last year my distinguished senior colleague (Mr. MONDALE) and I presented such a bill to the Senate. It was passed here overwhelmingly, but it was dropped in conference. Simple, plain justice and equity require that when you increase the social security benefits, you do not rob the people of other benefits at the same time; but that is exactly what has been going on.

So, Mr. President, I believe that these amendments are not only necessary but just. They provide the elderly a more realistic opportunity to enjoy life and obtain the health care that they need. And they offer the working man relief from his crushing payroll tax burden.

I send the bill to the desk, Mr. President, for appropriate reference, and ask unanimous consent that the full text of the bill be printed in the RECORD with my remarks.

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

S. 1143

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

TITLE I

REDUCTIONS IN, AND EVENTUAL ELIMINATION OF, THE SUPPLEMENTARY MEDICAL INSURANCE DEDUCTIBLE

SEC. 101. (a)(1) Effective January 1, 1974, section 1833(b) of the Social Security Act is amended by striking out "shall be reduced by a deductible of $60" and inserting in lieu thereof "shall be reduced by a deductible of $50".

(2) Effective January 1, 1975, section 1833 (b) of such Act is amended by striking out "shall be reduced by a deductible of $50" and inserting in lieu thereof "shall be reduced by a deductible of $40".

(3) Effective January 1, 1976, section 1833 (b) of such Act is amended by striking out "shall be reduced by a deductible of $40" and inserting in lieu thereof "shall be reduced by a deductible of $30".

(4) Effective January 1, 1977, section 1833 (b) of such Act is amended by striking out "shall be reduced by a deductible of $30" and inserting in lieu thereof "shall be reduced by a deductible of $15".

(5) Effective January 1, 1978, section 1833 (b) of such Act is repealed.

(b)(1) Section 1835(c) of such Act is amended by striking out "but only if such charges for such services do not exceed $60" and inserting in lieu thereof "but only if such charges for such services do not exceed the supplementary medical insurance deductible (if any) which is in effect for the calendar year in which such services are provided".

(2) The amendment made by paragraph (1) shall take effect January 1, 1972.

TITLE II

"AUTOMATIC COVERAGE (WITHOUT PAYMENT OF PREMIUM) UNDER SUPPLEMENTAL MEDICAL INSURANCE PROGRAM

"SEC. 201. (a) Section 1831 of the Social Security Act is further 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 aged and disabled individuals who elect to enroll in such program or who are entitled to hospital insurance benefits under the program established by part A. The costs of the insurance program established by this part shall be financed from funds appropriated by the Federal Government, and the benefits under such program shall be paid from the Federal Supplementary Medical Insurance Trust Fund.'

"(b) Section 1836 of such Act is further amended by striking out 'is eligible to enroll in the insurance program' and inserting in lieu thereof 'is covered under the insurance program'.

"(c) Section 1837(a) is amended to read as follows:

"'SEC. 1837. (a)(1) Any individual who for the month of July 1973, or any succeeding month, is covered by the hospital insurance program established by part A shall also be covered by the insurance program established by this part for each month for which he is covered by such program.

"'(2) Any individual who is not covered by the program established by this part for the month of July 1972, or any succeeding month, by reason of the provisions of subsection (a), shall, if he is eligible under section 1836 for coverage in the program established by this part, secure coverage by enrolling therefor in such manner and within such time period as the Secretary shall prescribe by regulations.'

"(d) Section 1838(a) of such Act is amended by inserting immediately before the first sentence thereof the following new sentence: 'Any individual who is entitled to hospital insurance benefits under part A shall be covered by the insurance program established by this part for each month for which he is entitled to such benefits, except that no individual shall, by reason of this sentence be deemed to be covered by the insurance program established by this part for any month prior to July 1973, and the succeeding provisions of this section shall not be applicable to any individual to whom this sentence applies.'

"(e)(1) Section 1839 (b)(1) of such Act is amended by inserting 'and before July 1, 1973,' after '1967'.

"(2) Section 1839(b)(2) of such Act is amended by striking out 'thereafter' and inserting in lieu thereof 'ending on or before December 31, 1970'.

"(f) Section 1840 of such Act is repealed.

"(g) Section 1844 is amended to read as follows:

"'SEC. 1844. Effective for months after January 1974, there are authorized to be appropriated, from time to time, out of any moneys in the Treasury not otherwise appropriated to the Federal Supplementary Medical Insurance Trust Fund such sums as may be necessary to assure that there will be, at all times, a sufficient sum of money in such Trust Fund to make prompt payment of (A) benefits provided under this part, (B) the administrative expenses incurred thereunder, and (C) all other financial obligations of such Trust Fund.'

"(h) The amendments and repeals made by this section shall be applicable to coverage, under the insurance program established by part B of title XVIII of the Social Security Act, for months after June 1973."

TITLE III

"GENERAL REVENUE CONTRIBUTIONS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND

"SEC. 301. Section 201 of the Social Security Act is amended by adding after subsection (i) thereof (as added by section 139(c) of this Act) the following new subsections:

"'(j) In addition to the funds appropriated under subsection (a) to the Federal Old-Age and Survivors Insurance Trust Fund for any fiscal year (commencing with the fiscal year ending June 30, 1972), there is authorized to be appropriated to such fund for such fiscal year an amount equal to 50 per centum of the amount of the funds appropriated to such fund under subsection (a) for such fiscal year.

"'(k)(1) Funds authorized to be appropriated under subsection (j) shall be appropriated for any fiscal year on the basis of estimates by the Congress of the amounts which will be expended for such year from the trust fund to which funds are being appropriated, reduced, or increased to the extent of any overappropriation or underappropriation under this section to such fund for any preceding year with respect to which adjustments has not already been made.

"'(2) The Secretary of Health, Education, and Welfare shall furnish to the Congress such information, data, and actuarial studies as may be appropriated to enable the Congress to make the estimates referred to in paragraph (1).'."

TITLE IV

That subsections (b), (d), (f), (h), (j), and (k) of section 203 of the Social Security Act are repealed.

SEC. 401. (a) Subsection (c) of section 203 of the Social Security Act is redesignated as subsection (b); and such subsection as so redesignated is amended—

(1) by striking out "Noncovered Work Outside the United States or" in the heading;

(2) by striking out paragraph (1);

(3) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;

(4) by striking out "For purposes of paragraphs (2), (3), and (4)" and inserting in lieu thereof "For purposes of paragraphs (1), (2), and (3)"; and

(5) by striking out the last sentence.

(b) Subsection (e) of such section 203 is redesignated as subsection (c); and such subsection as so redesignated is amended by striking out "subsections (c) and (d)" and inserting in lieu thereof "subsection (b)."

(c) Subsection (g) of such section 203 is redesignated as subsection (d); and such subsection as so redesignated is amended by striking out "subsection (c)" each place it appears and inserting in lieu thereof "subsection (b)."

(d) Subsection (i) of such section 203 is redesignated as subsection (e); and such subsection as so redesignated is amended by striking out "subsection (b), (c), (g), or (h)" and inserting in lieu thereof "subsection (b) or (d)."

(e) Subsection (l) of such section 203 is redesignated as subsection (f); and such subsection as so redesignated is amended by striking out "subsection (g) or (h)(1)(A)" and inserting in lieu thereof "subsection (d)."

SEC. 402. (a) Section 202(n)(1) of the Social Security Act is amended by striking out "Section 203 (b), (c), and (d)" and inserting in lieu thereof "Section 203(b)."

(b)(1) Section 202(q)(5)(B) of such Act is amended by striking out "section 203(c)(2)" and inserting in lieu thereof "section 203(b)(1)."

(b) Section 202(q)(7)(A) of such Act is amended by striking out "deductions under section 203(b), 203 (c)(1), 203(d)(1), or 222 (b)" and inserting in lieu thereof "deductions on account of work under section 203 or deductions under section 222(b)."

(c)(1) Section 202(s)(1) of such Act is amended by striking out "paragraphs (2), (3), and (4) of section 203(c)" and inserting in lieu thereof "paragraphs (1), (2), and (3) of section 203(b)."

(2) Section 202(s)(3) of such Act is amended by striking out "the last sentence of subsection (c) of section 203, subsection (f)(1)(C) of section 203.".

(d) Section 202(t)(7) of such Act is amended by striking out "Subsections (b), (c), and (d)" and inserting in lieu thereof "Subsection (b)".

(e) Section 208(a)(3) of such Act is amended by striking out "under section 203 (f) of this title for purposes of deductions from benefits" and inserting in lieu thereof "under section 203 for purposes of deductions from benefits on account of work".

(f) Section 215(g) of such Act is amended by striking out "and deductions under section 203(b)".

(g) Section 3(e) of the Railroad Retirement Act of 1937 is amended by striking out "under subsections (g) and (h)(2) of section 203 of the Social Security Act" and inserting in lieu thereof "under subsection (d) of section 203 of the Social Security Act".

(h) Section 5(l)(1) of the Railroad Retirement Act of 1937 is amended by inserting "or" after the semicolon at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).

SEC. 403. The amendments made by this Act shall be effective with respect to taxable years ending after December 31, 1973.

TITLE V

SEC. 501. That (a) section 202(q)(1) of the Social Security Act is amended—

(1) in the matter preceding subparagraph

(A), by inserting "(in the case of any benefit other than a widow's or widower's benefit) and for any subsequent month prior to the month in which such individual attains retirement age (in the case of a widow's or widower's benefit)" immediately after "subsequent month"; and

(2) in subparagraph (B)(ii), by striking out "such individual attains retirement age" and inserting in lieu thereof "such individual (in the case of any individual other than an individual who is entitled to a widow's or widower's benefit) attains retirement age".

SEC. 502. The amendments made by this Act shall apply with respect to monthly benefits under title II of the Social Security Act for months after the month following the month in which this Act is enacted.

By Mr. SCHWEIKER (for himself, Mr. SCOTT of Pennsylvania and Mr. HUMPHREY):

S. 1144. A bill to establish a national program of Federal insurance against catastrophic disasters. Referred to the Committee on Banking, Housing and Urban Affairs.

NATIONAL CATASTROPHIC DISASTER INSURANCE ACT OF 1973

Mr. SCHWEIKER. Mr. President, on behalf of myself, the distinguished senior Senator from Pennsylvania (Mr. SCOTT), and the distinguished Senator from Minnesota (Mr. HUMPHREY), I introduce a bill to establish a national program of Federal insurance against catastrophic disasters and ask that it be appropriately referred.

In June 1972, this Nation suffered the worst natural disaster in the history of the country. Hurricane Agnes caused over $3 billion in property damage, flooded 5,000 square miles of land area, and caused 118 deaths; $2.6 billion of the damage was suffered by private individuals and about $400 million was caused to publicly owned facilities.

In addition, there was severe flooding in other parts of the country, including the particularly disastrous flood in South Dakota only shortly before the Agnes storm.

Of the States involved in the Agnes disaster, Pennsylvania was hardest hit. About 70 percent of the total damage occurred in Pennsylvania. Of that, 70 percent occurred in the area of Wilkes-Barre. Many other communities, including the capital city, Harrisburg, were very hard hit.

The Office of Emergency Preparedness has said that hundreds of cities, towns, and rural communities along 4,500 miles of major rivers and 9,000 miles of streams and tributaries were flooded. Over 500,000 people suffered losses, 116 dwellings and mobile homes, and 2,400 farm buildings were damaged or destroyed and 5,800 businesses were destroyed.

What lessons have we learned from this terrible storm? First of all, I think it is entirely clear that the existing framework of grants and loans to individuals suffering flood damage is simply not adequate. Although the Office of Emergency Preparedness, the Small Business Administration, the Farmers Home Administration, and other cooperating agencies, did a tremendous job in a short time in assisting disaster victims, we were not prepared for the scope and intensity of Hurricane Agnes. Last August, Congress responded to the storm by passing new legislation increasing the amount of SBA and FHA "grants" or loan cancellations to $5,000, and decreasing the interest rate on loans to 1 percent. While this assistance has been very helpful to disaster victims, it does not do the job that needs to be done under such circumstances.

Although at the time of Hurricane Agnes Federal flood insurance was available, only a few people had it. Nobody in Harrisburg, Pa., for example, was covered. Only two people in Wilkes-Barre had flood insurance. Although 93 communities in Pennsylvania had qualified for flood insurance, very few individual citizens had obtained it. On August 14, 1972, I introduced legislation to amend the National Flood Insurance Act, and I reintroduced my bill as S. 390 on January 16, 1973. The National Flood Insurance Act Amendments of 1973 broaden the availability of flood insurance, increase the coverage, provide additional incentives for communities to participate, and guarantees that every individual wanting flood insurance can obtain it.

I am convinced, however, that it is absolutely essential that we revise our whole approach to the problem of disasters. What we need is a national program of Federal disaster insurance which covers all risks and is available to every city.

Therefore, I introduce today, along with my distinguished senior colleague, Senator SCOTT, and the distinguished Senator from Minnesota (Mr. HUMPHREY), the National Catastrophic Disaster Insurance Act of 1973.

This bill is identical to H.R. 4772, introduced in the House of Representatives by Congressman DANIEL J. FLOOD, whose congressional district, which includes Wilkes-Barre, received the greatest impact of Hurricane Agnes. I strongly commend my colleague for his work in developing this important legislation.

Here is what the National Catastrophic Disaster Insurance Act of 1973 does:

First, it creates the Office of Federal Disaster Insurance within the Federal Insurance Administrator's Office in the Department of Housing and Urban Development. This Office is responsible for administering the act and implementing a national catastrophic insurance program.

Second, my bill covers all catastrophic disasters. The term "catastrophic disaster" is defined to mean any flood, high waters, windstorm, hurricane, tornado, tidal wave, drought, snowstorm, blizzard, earthquake, atomic accident, or other catastrophe as defined by the Secretary of Housing and Urban Development. If any such disaster reaches such magnitude that it is defined as a major disaster or a natural disaster, or a disaster under which loans may be made under section 7(b) of the Small Business Act, and is declared to be a catastrophic disaster by the President, the Secretary of Agriculture, or the Small Business Administration, the insurance program becomes operative.

Third, the bill creates a national disaster insurance fund which will function as a pool from which the Administrator will disburse funds for claims under the disaster insurance law, and into which premium payments and other collected funds will be channeled. The National Disaster Insurance Fund will be funded as follows:

First, a surcharge will be added to all property and liability insurance premiums written nationwide, with the exception of workmen's compensation, bonds, and health insurance.

Second, 1 percent of all repayments to the Farmers Home Administration and the Small Business Administration of their outstanding disaster recovery loans would be put in the fund. That is, 1 percent of the repayments received by FHA and SBA would be transferred into the fund.

Third, additional sums may be authorized and appropriated by Congress. When necessary, the Administrator would have authority to issue treasury notes and other obligations as necessary to maintain the fund at an appropriate level.

Fourth, the amount of the surcharge as established by the Secretary, could vary to reflect regional, statewide, or national variations in risk. In other words, property owners living in areas which historically are not as subject to catastrophic disasters as other areas, would have a smaller surcharge on their premiums. However, under no circumstances could the surcharge exceed 5 percent. The amount of the coverage also could vary, covering either the full amount of property insurance in effect or a percentage thereof, depending on the size of the national insurance fund. As soon as the fund is large enough to cover expected losses, the extension of coverage could reach the full face value of the property insurance in effect.

Fifth, the program takes advantage of the availability of existing private insurance pools, and existing insurance policies. In other words, no new insurance policy will be issued to cover disasters. The surcharge is applied to policies already in effect. Policyholders would automatically be covered, and would not be surcharged until the next premium became due.

Sixth, the States and municipalities would be consulted by the Administrator regarding the particular kinds of disasters to be covered under the act; the nature of and limits of loss or damage to be covered, zoning and other land use provisions, and other similar matters.

Seventh, no catastrophic disaster insurance would be made available for any property failing to meet land use regulations designed to restrict land development or occupancy in disaster-prone areas.

Reasonable efforts would have to be made to preclude excessive losses in such areas, defined as "special catastrophic disaster risk areas."

Eighth, if private insurance companies establish a similar catastrophic disaster insurance program before June 30, 1975, the Federal program established by this legislation would be phased out.

Ninth, and this is highly important, the legislation includes a provision mak-

ing benefits retroactive to June 1, 1972. Therefore, Hurricane Agnes would be covered. Of course, loss payments made to Agnes victims would be reduced by any State or Federal disaster assistance grants paid to such individuals.

Mr. President, under Public Law 92–385, the President is charged with a responsibility of reviewing the existing disaster relief legislation and giving his recommendations to Congress. These recommendations are expected to be sent to Congress shortly. I am hopeful that the President will agree that the establishment of a national catastrophic disaster insurance program is what is needed. In any case, I urge my colleagues in Congress to give thoughtful consideration to the legislation I have introduced today. We should take advantage of lessons learned through the terrible tragedy of Hurricane Agnes and set up a national catastrophic disaster insurance program now, before the next disaster strikes.

Mr. President, I ask unanimous consent that the full text of the National Catastrophic Disaster Insurance Act of 1973 be printed in the RECORD at this point.

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

S. 1144

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Catastrophic Disaster Insurance Act of 1973".

PURPOSE

SEC. 2. It is the purpose of this Act to establish a program of Federal insurance against catastrophic natural disasters and other catastrophic disasters, utilizing the private insurance industry (particularly risk-sharing pools of insurance companies and preserving State regulation, with the central objective of minimizing post-disaster governmental expense and maximizing the protection of those exposed to losses from catastrophe.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "catastrophic disaster" means any flood, high waters, windstorm, hurricane, tornado, tidal wave, drought, snowstorm, blizzard, earthquake, atomic accident, or other catastrophe as defined by the Secretary under this Act which constitutes—

(A) a major disaster (within the meaning of that term as determined by the President pursuant to the Act entitled "An Act to authorize Federal assistance to State and local governments in major disasters, and for other purposes", as amended (42 U.S.C. 1855–1855g)),

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), or

(C) a disaster with respect to which loans may be made under section 7(b) of the Small Business Act (15 U.S.C. 636(b)),

and which is declared by the President, the Secretary of Agriculture, or the Small Business Administration, as the case may be, to be a catastrophic disaster for purposes of this Act;

(2) the term "catastrophic disaster insurance" means insurance against losses and damage resulting from catastrophic disaster as provided in or specified under this Act;

(3) the terms "property insurance" means all insurance issued by insurance companies in force in any State on any real property or personal property located in any State, other than insurance on motor vehicles;

(4) the term "insurance company" means any insurance company or group of companies under common ownership which is authorized to engage in the insurance business under the laws of any State, and also includes any pool or association or insurance companies formed, associated, or otherwise created for the purpose of sharing risks;

(5) the term "premium surcharge" means a percentage of property and liability insurance premiums, as specified by the Secretary under this Act, on all types of property and liability insurance except workmen's compensation, bonds, and health insurance;

(6) the terms "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virginia Islands, American Samoa, and the Canal Zone;

(7) the term "jurisdiction" means the smallest unit of government in any State or political subdivision which the Secretary finds has the legal authority to adopt and effectively enforce local land use and control measures to reduce the potential for covered catastrophic disasters; and

(8) the term "Secretary" means the Secretary of Housing and Urban Development (acting through the Federal Disaster Insurance Administrator as provided in section 4).

FEDERAL DISASTER INSURANCE ADMINISTRATOR

SEC. 4. (a) There is hereby established within the office of the Federal Insurance Administrator, in the Department of Housing and Urban Development, the position of Assistant Insurance Administrator for Disaster Insurance. The Assistant Insurance Administrator for Disaster Insurance shall head an Office of Federal Disaster Insurance and shall be known as the Federal Disaster Insurance Administrator (hereinafter in this section referred to as the "Administrator").

(b) The Secretary shall carry out all of his functions and duties under this Act through the Administrator.

(c) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(132) Assistant Insurance Administrator for Disaster Insurance, Department of Housing and Urban Development."

ESTABLISHMENT OF FEDERAL CATASTROPHIC DISASTER INSURANCE PROGRAM; FUNCTIONS AND POWERS OF THE SECRETARY

SEC. 5. (a) The Secretary shall establish and carry out a program of Federal catastrophic disaster insurance in accordance with the purpose and provisions of this Act.

(b) In carrying out the program under this Act, the Secretary shall—

(1) impose and collect a premium surcharge as provided in section 6, and take such other actions as may be necessary or appropriate to assure the provisions of the funds required to fulfill the purpose of this Act;

(2) determine and prescribe the terms, conditions, and limitations of the catastrophic disaster insurance provided under this Act, and the extent of the coverage thereunder, as provided in section 7;

(3) purchase reinsurance to the extent deemed appropriate and available;

(4) make such disbursements (from the fund established by section 9) as may be necessary to reimburse insurance companies in full for claims paid by them on account of covered losses under the program and for other operating expenses incurred by such companies in the performance of functions under the program; and

(5) make such other disbursements, and take such other actions, as may be necessary or appropriate to carry out the purpose of this Act.

(c) In the performance of his functions under this Act, the Secretary shall have authority (1) to make and enforce such rules and regulations as may be necessary or appropriate to carry out the purpose or provisions of this Act; (2) to make and perform contracts, agreements, and commitments; (3) to prescribe and impose fees and charges for services by the Secretary; (4) to settle, adjust, and compromise, and with or without consideration or benefit to the Secretary to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Secretary; (5) to sue and be sued, complain and defend, in any State, Federal, or other court; (6) to acquire, take, hold, and own, and to deal with and dispose of any property; and (7) to take any and all other actions necessary for the performance of such functions.

(d) The Secretary may appoint such special staff and technical experts, permanent or temporary, as he may consider necessary for the performance of his functions under this Act.

(e) The Secretary shall submit annually to the President for transmission to the Congress a full and complete report of his activities under this Act, together with any recommendations he may have for necessary additional legislation related to the purpose of this Act.

PREMIUM SURCHARGE

SEC. 6. (a) The Secretary shall from time to time, after a public hearing thereon, and after consideration of actuarial data and the financial requirements of the program under this Act, determine and specify the premium surcharge. The surcharge may not exceed 5 percent, and may vary on a statewide basis, a regional basis, a countrywide basis, or any combination thereof in order partially to reflect variation in risk and control measures.

(b) Each insurance premium shall be surcharged, and the amount of the surcharge shall not be subject to agents' or brokers' commission or company expense but shall be paid in its entirety by the insurance companies to the Secretary (for deposit in the fund established by section 9) at such times as he shall specify.

TERMS, LIMITATIONS, AND COVERAGE OF INSURANCE

SEC. 7. (a) The Secretary shall from time to time, after consultation with appropriate representatives of the insurance authorities of the States and after reasonable notice and opportunity for hearing to all interested persons, specify—

(1) the particular kinds of catastrophic disasters (with emphasis upon those which are typically uninsured or uninsurable and of such a nature as to generate losses that are likely to result in a Federal disaster declaration) which are to be covered by insurance under this Act;

(2) the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such insurance;

(3) the classification, limitation, and rejection of any risks which may be necessary;

(4) the extent to which such insurance shall be subject to deductibles or coinsurance provisions, or to other terms and conditions in order to achieve the purpose of this Act and the soundness of the financing arrangements; and

(5) any other terms and conditions relating to insurance coverage or exclusion which may be necessary to carry out the purpose or provisions of this Act.

(b) The amount of catastrophic disaster insurance may be limited to a percentage of the property insurance in force for each owner. Such percent shall be established by the Secretary after consultation with representatives of State and local insurance authorities and representative of local consumer interests, and may later be increased

or decreased as the Secretary deems appropriate.

MANDATORY COVERAGE

SEC. 8. Each property insurance policy now in effect or hereafter issued, other than a motor vehicle property insurance policy, shall be endorsed to extend coverage to catastrophic disasters as specified by the Secretary.

FINANCING

SEC. 9. (a) There is established in the Treasury of the United States a fund to be used by the Secretary for his operating and capital expenses under this Act.

(b) The fund established by subsection (a) shall be credited with—

(1) all premium surcharges imposed and collected under section 6;

(2) all amounts appropriated to the fund pursuant to subsection (c) of this section;

(3) all amounts transferred to the fund under subsection (d) of this section; and

(4) all amounts made available to the fund from the proceeds of obligations issued under subsection (e) of this section.

(c) There are authorized to be appropriated to the fund established by subsection (a), out of any money in the Treasury not otherwise appropriated, the sum of $1,000,000,000 to provide the fund with initial capital, and such additional sums thereafter as may be necessary.

(d) There shall be transferred each fiscal year to be fund established by subsection (a), as authorized by appropriation Acts, an amount not exceeding 1 per centum of the aggregate of (1) the amounts received by the Secretary of Agriculture during such fiscal year as repayments of disaster loans made under the Consolidated Farmers Home Administration Act of 1961 and (2) the amounts received by the Small Business Administration during such year as repayments of disaster loans made under section 7(b) of the Small Business Act.

(e) To maintain the fund established under subsection (a) when the total of the amounts received by the fund under the preceding provisions of this section is insufficient, the Secretary may issue to the Secretary of the Treasury, to the extent authorized by appropriation Acts, notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities durthe month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized to purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act; and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations which shall be treated as public debt transactions of the United States.

PROPERTIES IN VIOLATION OF STATE AND LOCAL LAW; ELIGIBILITY FOR COVERAGE

SEC. 10. No new catastrophic disaster insurance coverage shall be provided under this Act for any property which the Secretary finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in disaster-prone areas.

(b) No catastrophic disaster insurance coverage shall be provided under this Act in any area which is determined by the Secretary to be an area of special catastrophic disaster risk unless the Secretary finds that reasonable efforts are being made by the appropriate public bodies in such area to improve local land use management so as to preclude excessive disaster losses at the time of catastrophe.

PROHIBITION AGAINST CERTAIN DUPLICATIONS OF BENEFITS

SEC. 11. (a) Notwithstanding the provisions of any other law, no Federal disaster assistance (as defined in subsection (b)) shall be made available to any person for the physical loss, destruction, or damage of real or personal property, to the extent that such loss, destruction, or damage is covered by a valid claim which may be adjusted and paid under catastrophic disaster insurance made available under the authority of this Act.

(b) For purposes of this section, the term "Federal disaster assistance" includes any Federal financial assistance which may be made available to any person as a result of a disaster referred to in clause (A), (B), or (C) of section 3(1).

EFFECTIVE DATE OF COVERAGE; RETROACTIVE PAYMENTS; TERMINATION OF PROGRAM UPON AVAILABILITY OF PRIVATE COVERAGE

SEC. 12. (a) Subject to subsections (b) and (c) of this section (and except as otherwise specifically provided in the preceding provisions of this Act), the program of catastrophic disaster insurance established by this Act shall apply with respect to claims for payment of losses and damage (from catastrophic disasters) incurred on and after the date of the enactment of this Act.

(b) The Secretary shall provide under the program established by this Act for payment of any losses (from a catastrophic disaster) which were incurred after June 1, 1972, and which led to a declaration of a major disaster area by the President. Such loss payments shall be made to all insured (and, to the greatest extent possible all non-insured) owners of real property and owners of household contents in accordance with loss settlement procedures normally employed by property insurance companies—to the extent of the owners' insurance coverage. The Secretary may request the insurance industry, government agencies, and any other public or private agencies or organizations to assist him in adjusting such claims. All such loss payments shall be reduced by any State or Federal disaster assistance grants paid or payable to such owners.

(c) If the Secretary finds and certifies to the President and the Congress no later than June 30, 1975, that catastrophic disaster insurance with coverage equal to or more extensive than the coverage provided under the program established by this Act is being made available on reasonable terms by private insurance companies throughout substantially all of the United States, he shall cease carrying out the program established by this Act; and this Act shall thereafter have no force or effect.

Mr. SCOTT of Pennsylvania. Mr. President, I am delighted to join my distinguished colleague from Pennsylvania (Mr. SCHWEIKER) in sponsoring the proposed National Catastrophic Disaster Insurance Act of 1973. For the very first time, the Federal Government will assume its rightful responsibility in the mitigation of all national disasters. Very simply, the type of insurance coverage mandated here would apply to every property and liability policy currently in effect nationwide.

I need only state that just two people—had purchased flood insurance in Wilkes-Barre, Pa., prior to the devastation wrought by Hurricane Agnes last summer. Federal coverage, at any rate, is not very comprehensive and sometimes impossible to gain. Private coverage anticipates too great a risk. So what we have now is a vacuum. The bill being introduced today fills it.

First, we propose to create an Office of Federal Disaster Insurance within the Department of Housing and Urban Development. President Nixon's recent executive reorganization shifts to HUD all major disaster recovery responsibility anyhow, so this would not be an additional burden on the agency. This office would hold the overall duty of administering the catastrophic insurance program utilizing, to the extent possible, the knowledge and expertise of the private insurance sector.

Second, the bill proposes a national disaster insurance fund—the pool from which all disbursements for claims will come. The funding formula would be in three parts: First, all policyholders would pay a small surcharge on property and liability insurance premiums. Second, there would be a 1-percent charge on all repayments to the Small Business Administration and the Farmers Home Administration of their outstanding disaster recovery loans. Third, congressional appropriations would make up the balance. However, the initial appropriation would be $1 billion, which would be repaid at a later date to the Treasury when the national disaster insurance fund reached a sufficient level of reserves.

Mr. President, what we are doing here is to provide sufficient protective funding, through a workable insurance program, to meet any natural disaster with a swift Federal response. I am hopeful that this bill will be given careful study by the Congress and the administration.

By Mr. McGOVERN:

S. 1145. A bill to amend and extend the Economic Stabilization Act of 1970. Referred to the Committee on Banking, Housing, and Urban Affairs.

Mr. McGOVERN. Mr. President, while I share congressional anger over the proposed Nixon cuts in domestic programs and the ever increasing unconstitutional impoundments, I fear that the debate may obscure other interests of that vast majority of our citizens who earn their living in factories and on farms.

Many Americans have lost confidence in government largely because of two factors:

First, working people have seen a severe threat to the prosperity they learned to expect and came to accept during the mid-1960's. Working families have seen gains in real income during the Kennedy-Johnson era eroded by inflation and higher payroll taxes.

Unemployment has risen substantially. Nearly 4½ million Americans cannot find work; over 2 million more can find only part-time work; millions more cannot find jobs suited to their training and their talents.

Second, working people have learned that the burden of Federal spending falls unequally upon them. During the last 4 years, individual income taxes have in-

creased by $7½ billion, while corporate taxes have decreased by $4½ billion. The tax loopholes which benefit the affluent are not available to the average family.

I believe we can find the necessary public support to spend workers' and farmers' tax dollars on new Federal initiatives such as national health insurance, aid to the handicapped, and other important domestic priorities only when they are financed by fair taxes derived from adequate wages. We cannot ask our people to do justice to others when we deny justice to them.

Mr. President, the administration's recent request for a 1-year extension of the President's authority to impose wage-price controls presents Congress with the opportunity to do at least partial justice for working Americans.

Therefore, I have introduced today, for appropriate reference, two amendments to the Economic Stabilization Act of 1970 which, if enacted, will restore an equitable balance between working people and their employers and insure the farmer an equitable price for his products.

The need for such legislation is best demonstrated by a review of the economic history of the last 4 years.

The principal domestic problem facing Mr. Nixon in his first term was how to deal effectively with the inflationary pressures caused by the war in Indochina. By 1968, the costs of Vietnam were being paid not only from an escalated Federal budget, but from the diminished earnings of labor. The war escalation of 1968 was accompanied by a 4.2-percent rise in the Consumer Price Index.

While unemployment remained stable in 1969, actually decreasing one-tenth of 1 percent, the Consumer Price Index shot up 5.6 points. Although we enjoyed our last budget surplus in 1969—$4.7 billion—the Nation was already caught in the spiral of inflation we had not seen since the Eisenhower years.

The debate swirled around who should pay the cost of controlling that wartime inflation.

The Nixon administration, on ideological grounds, applied the economics of the Hoover administration, attempting to restrain prices by raising unemployment.

The result was recession—a massive increase in both unemployment and inflation at the same time. Joblessness jumped toward 6 percent while the Consumer Price Index leaped 6½ points.

Many of us in Congress decried those primitive economic policies. We saw no need to throw millions of Americans out of work, particularly when increasing unemployment brought no relief for ever-increasing inflation. Rural States such as the one I represent were particularly hard hit; the gap between the prices farmers had to pay and the prices they were paid widened more and more.

As the pace of inflation and unemployment speeded up, the President's congressional critics argued that temporary economic controls were the only way to break the wage-price spiral. Despite the President's continuing disagreement, we enacted standby controls which he could implement, should he change his mind.

The Economic Stabilization Act of 1970, as amended, delegated broad and sweeping powers to the President to "issue such orders and regulations as he deems appropriate" to stabilize all elements of the economy—not just wages and prices. While the act set certain standards for the President to follow, the authority we delegated him was nearly absolute.

Perhaps such a broad standby measure was necessary when the President was resistant to any specific plan of controls.

Perhaps some of us wrongly assumed that the President would implement controls in an evenhanded manner.

In any case, the pressures on the White House to act mounted rapidly. Polls showed approximately two-thirds of the American people in favor of temporary controls; they also showed a commensurate decrease in the President's popularity.

So, in August 1971, the President finally unfolded a new economic policy in a stunning reversal of his prior position.

With a stroke of the pen, he devalued the dollar, froze wages, prices, and rents, and set up the machinery for future mandatory controls. However, profits and interest rates remained unregulated.

The Nation experienced a sense of relief that action had been taken at last. However, I joined with the spokesmen of organized labor—President Meany and others—in noting that the controls were less than evenhanded.

While the controls restrained wages and slowed the price advance, the cost of controlling inflation was put unfairly on the wage earner.

The wages of workers were frozen at inflation-ravaged levels while corporate profits were permitted to soar to record highs.

The administration's bias toward big business led AFL–CIO President George Meany and other representatives of organized labor to walk off the Pay Board in protest.

What have phase I and phase II done for the working man and the farmer—or, more appropriately, what have they done to them?

The administration proudly points to the January unemployment figure of 5 percent, which is 1½ percent above the level of the first Nixon year. In human terms, that statistic means that there were nearly 4½ million workers who could not find jobs in January. In addition, there were 2 million workers who had to take part-time jobs because full-time work was not available. Although the administration does not collect hard statistics on the number of persons who are underemployed, the number clearly runs into millions.

For those fortunate enough to have jobs, the decline in real income has been arrested. But the net gains have been only marginal. Average weekly earnings have increased only $7.05 since the introduction of phase II controls, with an actual decline of $1.15 in January. The 13-month rise of less than 5½ percent has been almost matched by a 4.6 point increase in the Consumer Price Index and increased payroll taxes.

But while workers' take-home pay remained virtually constant, corporate profits after taxes shot up 14 percent in 1971 and nearly 15 percent in 1972. Much of those gains were the result of Federal tax concessions to big business.

No one disputes the right of businessmen to earn equitable profits. What I do dispute is the inequity of the President's administration of phase II. The Nixon controls have prevented workers from sharing in the new affluence of their employers, even though their productivity has risen sharply. The burden on working people is thus doubly great—their take-home pay has stagnated, while consumer prices continue to rise in part because of the profits they are forbidden to share.

Many working men and women across the land are again growing restive, because they fear that the proposed Nixon phase III guidelines will perpetuate the phase II imbalance of power between labor and management.

Many unions have called for an end to the controls on grounds that their members will do relatively better in their struggle against inflation under free and open collective bargaining.

Similarly, farmers daily wince at the remarks of administration officials. The President has called on consumers to reduce the price of beef by eating fish. A USDA official recently stated that housewives who found food prices too high should boycott certain food products. In short, the White House's answer to high food prices is to make farmers—who are among the most helpless and hard-hit victims of the disease of inflation—suffer most from the cure as well.

The facts are that from 1968 to 1971, overall growth in farmers' expenses exceeded the growth in the prices they received for their products. While we complain about rising prices, we must also recognize that it was not until 1972 that the actual parity ratio for farmers reached the 1966 level once again. The family farmers' standard of living remains considerably below that of the rest of our people.

I now fear that the economic expansion of the election year may, in the words of the Federal Reserve Board Chairman, "touch off a new round of inflation."

We have already seen the prime interest rate rise to 6¼ percent. The wholesale price index increased 4 and two-tenths points since November, a rate of increase even more rapid than the period immediately before controls were imposed. The stock market, reportedly in anticipation of renewed inflation, has fallen sharply.

As Chairman Burns has warned:

> The expanding demand for goods and services could begin to pull prices upward and thereby reinforce prevailing cost-push pressures.

That risk is increased by the President's proposed budget which calls for a $19 billion or 8 percent increase in Federal spending. I have, therefore, joined with other Senators in introducing legislation to keep Federal spending at $265 billion, about $4 billion less than the President proposes to spend. We can consider further spending when and if

Congress raises further revenues by closing glaring tax loopholes.

We are thus faced with a painful choice. If inflationary pressures again explode without even standby authority to impose controls, the resulting inflation would fall hardest on workers and farmers. And if we merely extend the President's present powers we may do equal harm to the average citizen.

Therefore, I have concluded that we must insure that the stick in Mr. Nixon's closet is not again used disproportionately against average citizens. We must make sure that any controls which we adopt will be applied fairly.

The present situation is very different from the time we originally enacted the authorization for temporary controls.

The administration's economic record under both phase I and phase II, as well as the proposed phase III guidelines, signal what will be done in the year ahead unless the Congress amends the rules.

Working people will not be able to engage in free collective bargaining—their wages will not be permitted to increase by more than 5½ percent, no matter how much profit their employers make or how much their own productivity increases. That low standard could easily be substantially eroded by inflation. In terms of real income gains, it probably would mean no more than 1½ to 2 percent.

While the administration has courted organized labor, it has not made any firm promise, nor taken any definite steps which working people can rely on, if Congress extends the act.

Farmers are told that prices they receive for raw agricultural products will remain uncontrolled and that their recent gains will be permitted to stand. Yet if that promise is not written into law, future events may give it a hollow ring.

That is why I am introducing these two amendments to the Economic Stabilization Act, which can assure working men and women their fair share in the year ahead, and at the same time protect the farmer from the risks of renewed inflation.

The first of these amendments would limit the President's authority to control wages. Under its provisions, workers could bargain for wage increases up to 75 percent of the after-tax profit of the employer during the previous 12-month period or the President's proposed 5½ percent, whichever is higher.

The effect of this amendment would be to shift the cost of the fight against inflation from those least able to bear it—working people—to those who profited most from phase I and phase II—their employers. This amendment could not have an inflationary effect—unless the President permitted price increases in order to increase profit margins.

The second of these amendments would prohibit the control of prices paid to farmers for raw agricultural products, unless the price of the product exceeded the 1910–14 parity levels by more than 10 percent.

The combined effect of these two amendments is to eliminate the emerging conflict between the housewife and the farmer. Both the worker and the farmer will be able to get a fair price for their labor—an income no longer crippled by renewed inflation.

Mr. President, I ask unanimous consent that the text of these amendments be printed at the end of my remarks.

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

S. 1145

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

PRESIDENTIAL AUTHORITY

SECTION 1. (a) Wages.—

Section 203 of the Economic Stabilization Act of 1970 is amended by striking out subsection (f) thereof and adding in its place the following new subsection:

"(f) Notwithstanding any other provision of this title, the authority conferred by this section shall not be exercised to preclude the payment of any increase in wages—

"(1) required under the Fair Labor Standards Act of 1938, as amended, or effected as a result of enforcement action under such Act; or

"(2) required in order to comply with wage determinations made by any agency in the executive branch of the Government pursuant to law for work (A) performed under contracts with, or to be performed with financial assistance from, the United States or the District of Columbia, or any agency or instrumentality thereof, or (B) performed by aliens who are immigrants or who have been temporarily admitted to the United States pursuant to the Immigration and Nationality Act; or

"(3) paid in conjunction with existing or newly established employee incentive programs which are designed to reflect directly increases in employee productivity; or

"(4) which in the aggregate either equal or are less than 75 per cent the amount of after tax profit received by the employer during the twelve-month period prior the agreement to pay such wages or which equal 5½ per cent, whichever is higher."

(b) Farm Pirces.—

Redesignating subsections (h) and (i) thereof as subsections (i) and (j) respectively and by adding after subsection (g) the following new subsection (h):

" (h) Notwithstanding any other provision of this title, this title shall not be implemented in such a manner so as to decrease or limit the prices paid to farmers for agricultural products which are less than ten points above the 1910–1914 parity base for such parity base for such products."

EXTENSION

SEC. 2. Section 318 of the Economic Stabilization Act of 1970 is amended by striking out "April 30, 1973" and "May 1, 1973" and inserting in lieu thereof "April 30, 1974" and "May 1, 1974," respectively.

By Mr. WEICKER (for himself and Mr. LONG):

S. 1146. A bill to provide for repayment of certain sums advanced to providers of services under title XVIII of the Social Security Act. Referred to the Committee on Finance.

Mr. WEICKER. Mr. President, today I have introduced, with the cosponsorship of the distinguished chairman of the Finance Committee, Senator RUSSELL LONG, legislation designed to save the Nation's hospitals from a catastrophic cash crisis over the next 3 months.

The Congress must recognize that misguided attempts to create a "paper profit" in the Federal budget could cripple hospital services in Connecticut, Louisiana, and all States.

This crisis arises from the fiscal year 1974 budget requirement that hospitals must repay over $300 million in advance medicare payments before June 30, 1973. These funds were part of a program of "current financing," a method of reimbursing provider hospitals for medical services rendered under the medicare program. The "current financing" provision of medicare sought only one goal, to ease and guarantee the cash flow which providers of health care need to pay their bills, by authorizing special payments to providers for services rendered, based upon prior program experience.

When medicare was begun in 1966 there was great concern among providers—hospitals—as to the time lag between performance of service and reimbursement for those services. This lag could be as much as 90 days. Depending on the number of medicare patients that were cared for, reimbursement involved greater or lesser sums of money. As the medicare program grew, many institutional providers came into the position where one-third of their revenues were obtained from the treatment of medicare and medicaid patients. Thus, the need for a quick and efficient mechanism of reimbursement, or an alternative—current financing. The delays were offset by lending each participating hospital an amount of money equivalent to about 30 days' worth of medicare bills.

In his 1974 budget, the President has canceled the "current financing program." Two reasons are put forward: First, now that routine claims process has been established and the original concern over large backlog eliminated, this particular procedure is no longer important. Second, there are indications that some institutions have abused the program. Along with termination of this program the budget calls for the return of the $300 million advance—total amount nationally—under the program in fiscal year 1973. This means these amounts must be returned before June 30, 1973.

While there is general agreement that the advances should be returned, Congress must deplore the "hatchet" technique employed by the administration in forcing immediate repayment.

The "current financing" being collected from hospitals will eventually be paid to them for medicare services rendered. However, the tactic of ordering remittance in only 3 months is no more than a budget shift, not a budget saving—an irresponsible gimmick designed to make the 1974 budget look good without improving the Government's financial position.

This will certainly force hospitals to hemmorrage internally in order to come up with the required cash on short notice. Within 3 months under the administration budget proposal, Connecticut hospitals will have to pay back some $5 million—as much as $500,000 per hospital. These hospitals have already resorted to borrowing from the money market at relatively high interest rates to meet current operating expenses. This, coupled with phase II and phase III regulations of the economic stabilization program—which have forced some institu-

tions to rely on reserves or nonoperating sources to meet their bills—could force many hospitals to cut back on hospital service which directly affects the quality of patient care.

We all recognize the need for fiscal responsibility in Government, but we must all agree that our domestic priorities, especially in the area of health care, must not become the target of arbitrary cheap shots.

The thrust of legislation introduced today by myself and Senator LONG would be to phase out the current financing program over a period of 15 months as opposed to the elimination of the program by June. The Secretary of Health, Education, and Welfare would be directed to consult with the provider hospitals on a plan to repay the current financing advances by June 30, 1974. The provider hospitals now so strapped for cash would be afforded a reasonable period in which to arrange to discharge their repayment obligations.

I am confident that my distinguished colleagues will join me in seeking consideration forthwith of this imperative corrective legislation. In examining the budget proposals for fiscal year 1974, I submit that it is the duty of Congress and of the Nation to demand a responsible approach to policymaking across the board.

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

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

S. 1146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in the administration of sections 1815 and 1835 of the Social Security Act, the Secretary of Health, Education, and Welfare shall determine, not later than July 1, 1973, the total of amounts paid to providers of services (as defined in sections 1835(a) and 1861(u) of such Act) as interim payments made at the beginning of any such provider's participation in the insurance programs established under title XVIII of such Act or to meet other financial requirements in the production of services under such programs that have not been recovered on such date. Such amounts shall be recovered by way of repayment according to a plan agreed upon by the Secretary and the provider under which the full amount to be recovered shall be paid to the Secretary on or before June 30, 1974.

(b) Any plan agreed upon under subsection (a) may provide for repayment totally or in part by way of off-setting the amount to be recovered against any amounts otherwise owed by the United States to such provider for services rendered under such program.

By Mr. DOMINICK (for himself, Mr. FANNIN, Mr. TOWER, Mr. BENNETT, Mr. BROCK, Mr. COOK, Mr. DOMENICI, Mr. EASTLAND, Mr. ERVIN, Mr. GOLDWATER, Mr. HANSEN, Mr. HATFIELD, Mr. MCCLURE, Mr. SCOTT of Virginia, Mr. TAFT, and Mr. THURMOND:

S. 1147. A bill to amend the Occupational Safety and Health Act of 1970. Referred to the Committee on Labor and Public Welfare.

OCCUPATIONAL SAFETY AND HEALTH ACT AMENDMENTS

Mr. DOMINICK. Mr. President, on behalf of myself, Mr. FANNIN, Mr. TOWER, Mr. BENNETT, Mr. BROCK, Mr. COOK, Mr. DOMENICI, Mr. EASTLAND, Mr. ERVIN, Mr. GOLDWATER, Mr. HANSEN, Mr. HATFIELD, Mr. MCCLURE, Mr. SCOTT of Virginia, Mr. TAFT, and Mr. THURMOND, I introduce for appropriate reference a bill to amend the Occupational Safety and Health Act of 1970. As my colleagues are aware, this act has generated considerable controversy since its enactment a little over 2 years ago. We all have been virtually bombarded with complaints from employers—particularly small ones—about the act and the way it is being enforced against them. Numerous groups have organized for the specific purpose of doing something to improve the situation. They have made suggestions ranging from repeal of the law to relatively minor procedural changes. But they all have one thing in common—strong discontent with the law as presently written. I think Congress shares that discontent.

I know many of my colleagues on both sides of the aisle feel that many employers—again, particularly the small ones—have not been getting a fair shake from OSHA. This was made very clear during the debate last year on the Labor-HEW appropriations bill, when my distinguished colleague, Mr. CURTIS, offered several amendments which would have exempted small employers from OSHA enforcement for 1 year. While there was not unanimous agreement as to whether the difficulty lies primarily with the way the act is being enforced, or with unfair provisions in the act itself, there was broad agreement that some changes are needed, and that the proper forum for considering such changes is the legislative committee where the act originated, not floor debate on an appropriation bill. The message came across clear and specific—that the Labor and Public Welfare Committee should schedule hearings early this year to consider changes in the occupational safety and health law.

While I believe the Labor Department has been made cognizant of some of the problems with OSHA standards and enforcement procedures, and is moving to make corections, I strongly believe that substantive changes in the law are necessary. I believe that the objective of the act—to provide a safe and healthful working environment for all American workers—is a very worthy objective, and should be pursued vigorously. But I am afraid our efforts in that direction are in danger of breaking down. The President's 1972 Report on Occupational Safety and Health indicates only 25 percent of employers inspected were found to be in compliance with the act. Why is it not working? I think it is because of defects in the act itself, which could be summarized this way: The act as presently written places too much emphasis on punishment of employers for noncompliance and not enough emphasis on assisting employers toward compliance.

It is clear that employers must bear the responsibility for complying with the act, and that penalties are necessary where they refuse to comply. But it is equally clear that the objectives of the act cannot be achieved without their cooperation. There simply are not, and never will be, enough Federal inspectors to coerce this country's employers into compliance. Moreover, it will be a sad state of affairs indeed if we ever arrive at the conclusion that that is the best way to proceed. Businessmen are a pretty independent breed, and they have gotten their backs up against what seems to them to be an unfair law. In that sense, OSHA enforcement is at this moment crosswise with the purposes of the act. Additionally, we need to recognize that employers, particularly small ones, need assistance in understanding and complying with complex OSHA standards. So I think Congress has a duty—to employers and employees alike—to make the changes necessary for OSHA to work.

This bill proposes the changes I think are necessary to make OSHA work effectively. It is addressed to the provisions of the act which I feel are more punitive than constructive, and it would place more emphasis on assisting employers toward compliance. None of the changes it proposes would result in lessened protection for employees. It is not intended to make all of the changes which have been suggested by critics of the act—only those I feel are absolutely essential to make it work. I should note that this bill would not exempt any employers from coverage. While I believe that small employers frequently need more assistance in complying, I believe all workers are entitled to the same protections, whether they are employed by large or small businesses.

Let me summarize briefly the changes this bill would make. First, it would require OSHA to provide advice and technical assistance to employers having 100 or fewer employees. Such advice and assistance would be provided through onsite consultations where requested by the employer. Such consultations would be limited to matters specified by the employer, and no citations could be issued during the consultative visit. OSHA would be permitted to provide advice and technical assistance by means other than a visit to the worksite where such other means would be more appropriate and equally effective. At the present time, OSHA cannot provide technical assistance through onsite consultations. If an OSHA inspector observes a violation during a visit to the worksite, he is obliged to issue citations and propose penalties, depending on the nature of the violation. And I might add that for that reason many employers have declined to ask any advice from the OSHA people as to what they should or should not do about conditions in their own plants.

Second, the bill would remove OSHA's discretionary power to assess penalties for nonserious violations on the first inspection. Under the act as presently written, an employer can be fined up to $1,000 for a nonserious violation discovered on the first inspection of his premises, often a violation of a standard of which the employee was totally ignorant. This change would not affect the

provisions of the act imposing penalties for willful or repeated violations, or for failure to correct violations within the abatement period prescribed by OSHA. Thus, an employer who received a citation for a nonserious violation could receive a penalty for failing to correct that violation within a reasonable time; and he could be fined up to $10,000 for a subsequent nonserious violation.

Third, the bill would change the penalty for serious violations from mandatory to permissive. In determining whether a fine should be assessed, OSHA would be required to take into account the gravity of the violation, the good faith of the employer—for example, whether he had tried to comply—and the history of previous violations. Again, whether or not a penalty is assessed for the first serious violation, the employer would be subject to stringent penalties for failure to abate the violation, and for any subsequent violation. While the amount of a fine for a violation classified by OSHA as "serious" is discretionary under the act—up to $1,000—a fine in some amount is mandatory. I have generally been opposed to mandatory sentences for criminal offenders on the ground that the trial judge should have the discretion to consider all of the circumstances surrounding the crime. I think employers ought to be entitled to at least equal treatment, particularly since this is not supposed to be a criminal statute. It should also be kept in mind that, unlike a criminal defendant, an employer accused of violating an OSHA regulation is not entitled to a trial by a jury of his peers.

Fourth, it would establish a procedure under which an employer who has received a citation could apply for a variance from the OSHA standard violated on the ground that work procedures in operation at the time of the citation are equally effective in protecting his employees. The act now permits an employer to apply for such a variance in advance of an inspection or citation. Under this change, an employer could apply for a variance after receiving a citation, and no penalty could be assessed, pending review of the application. If a variance were granted, the citation would be withdrawn. OSHA would not be required to suspend enforcement proceedings where the application for a variance were determined to be frivolous or filed for the purpose of delay. This provision would add needed flexibility without reducing the incentive for employers to comply, and without reducing protection to workers.

Fifth, the bill would provide that citations for violations need not be posted by employers after such violations have been abated.

This is a ridiculous situation. An OSHA inspector comes into a plant and finds a violation. They have to post a notice that there has been a violation. Then they correct the violation but the notice has to stay up as though they were still in violation. That is simply nonsense so far as I am concerned. It does not help anyone—the worker, the employer, or I think, the health and safety of the area.

The act as presently written requires that citations be posted near the site of the violation. OSHA regulations under the act frequently require posting long after the violation has been corrected. This clearly serves no useful purpose other than to further punish employers, and to damage the morale of his employees.

Sixth, the bill would require OSHA to consider the economic impact of proposed new standards on affected employers, and to publish in the Federal Register along with such standards a statement summarizing their expected economic impact, including an estimate of the total costs which will be incurred by each affected industry in complying. I think this provision would result in a healthy awareness on the part of OSHA regarding the costs of proposed new standards, and would better enable all interested members of the public to measure the benefits against expected costs, which are, of course, ultimately passed on to consumers.

Mr. President, I ask unanimous consent that the text of the bill I am introducing today be printed in the RECORD, to be followed by a section-by-section analysis and several articles relating to the Occupational Safety and Health Act of 1970.

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

S. 1147

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 "Occupational Safety and Health Act Amendments of 1973".

SEC. 2. Section 6(b)(2) of the Occupational Safety and Health Act of 1970 is amended by inserting at the end of the first sentence the following: "Such proposed rule shall be accompanied by a statement summarizing its economic impact on affected employers, including an estimate of the total costs which will be incurred by employers in each affected industry in complying with such rule."

SEC. 3. (a)(1) Subsections (b) and (c) of section 9 of the Occupational Safety and Health Act of 1970 are redesignated as subsections (c) and (d), respectively.

(2) Section 9 is further amended by inserting after subsection (a) a new subsection (b) as follows:

"(b) Any employer who is issued a citation and who believes that he maintains work conditions which would meet the criteria for a variance under section 6(d), may apply to the Secretary for such a variance within the time designated in section 10(a) for giving notice of intent to contest a citation. Except where the Secretary finds it frivolous and submitted for the purposes of delay, such application shall result in the suspension of all further proceedings with respect to such citation pending final action by the Secretary on such application. If a variance is granted, the Secretary shall enter an order vacating such citation."

(b) Section 9(c) of such Act (as redesignated by this section) is amended by adding at the end thereof the following: "Such posting shall not be required after (1) such violation has been abated, or (2) a proceeding contesting such citation has been concluded by an order under sections 9(b), 10(c), or 11 vacating or modifying such citation, whichever comes first: *Provided*, That where such order modifies such citation, the citation as modified shall not be required to be posted after the violation has been abated."

SEC. 4. (a) Section 17(b) of the Occupational Safety and Health Act of 1970 is amended (1) by striking the word, "shall", and inserting in lieu thereof the word, "may", and (2) by inserting at the end thereof the following new sentence: "In determining whether a penalty shall be assessed under this subsection, due consideration shall be given to the gravity of the violation, the good faith of the employer, and the history of previous violations."

(b) Section 17 of such Act is further amended by striking subsection (c), and redesignating subsections (d), (e), (f), (g), (h), (i) (j), (k), and (l), and all references thereto, as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively.

SEC. 5. (a) Section 21 of the Occupational Safety and Health Act of 1970 is amended by changing the heading to read as follows:

"TRAINING, EDUCATION, AND TECHNICAL ASSISTANCE"

(b) Section 21 of such Act is further amended by inserting at the end thereof the following new subsection:

"(d)(1) In order to further carry out his responsibilities under this section, the Secretary shall visit the workplaces of employers having one hundred or fewer employees for the purpose of affording consultation and advice to such employers. Such visits (A) may be conducted only upon a valid request by an employer for consultation and advice at the workplace on the interpretation or applicability of standards or on possible alternative ways of complying with applicable standards, and (B) shall be limited to the matters specified in the request affecting conditions, structures, machines, apparatuses, devices, equipment, or materials in the workplace. Where, after evaluating a request by an employer pursuant to this subsection, the Secretary determines that an alternative means of affording consultation and advice is more appropriate and equally effective, he may provide for such alternative means rather than onsite consultation.

"(2) The Secretary shall make recommendations regarding the elimination of any hazards disclosed within the scope of the onsite consultation. No visit authorized by this subsection shall be regarded as an inspection or investigation under section 8 of the Act and no notices or citations shall be issued nor shall any civil penalties be proposed by the Secretary upon such visit, except that nothing in this subsection shall affect in any manner any provision of this Act the purpose of which is to eliminate imminent dangers.

"(3) Nothing in this subsection shall be deemed to require the Secretary to conduct an inspection under section 8 of the Act of any workplace which has been visited for consultative purposes. The failure of the Secretary to give consultation and advice regarding any specific matter during a consultation visit shall not preclude the issuance of appropriate citations and proposed penalties with respect to that matter.

"(4) In prescribing rules and regulations pursuant to this subsection, the Secretary shall provide for the appropriate separation of functions between officers, employees, or agents who conduct visits pursuant to this subsection and officers, employees, or agents who conduct inspections or investigations under this Act."

SEC. 6. This Act shall take effect sixty days after the date of its enactment.

SECTION-BY-SECTION ANALYSIS OF S. 1147

SECTION 2

Amends Section 6(b)(2) of the Occupational Safety and Health Act of 1970 to require that when a proposed rule, which would establish a new occupational safety and health standard, or which would affect an existing standard, is published in the *Federal Register*, it shall be accompanied by a statement summarizing its economic im-

pact on affected employers, including an estimate of the total costs which would be incurred by employers in each affected industry in complying with such rule.

* * * * *

SECTION 3

Amends Section 9(b) of the Occupational Safety and Health Act of 1970, which requires an employer who has received a citation for a violation of an occupational safety and health standard or regulation to post such citation at or near the site of the violation, by providing that such posting need not continue after the violation has been abated.

Amends Section 9 of the Act to establish a procedure whereby an employer receiving a citation could obtain a variance from the standard violated by persuading the Secretary that work procedures in operation at the time of the citation are equally effective in protecting his employees. An application for such a variance would not suspend enforcement proceedings where the Secretary found it was frivolous, or filed for the purpose of delaying enforcement proceedings.

SECTION 4

Amends Section 17 of the Occupational Safety and Health Act of 1970 by striking subsection (c), which gives OSHA discretionary power to assess fines against employers for *non-serious* violations on the first inspection.

Amends Section 17(b) of the Act by changing from mandatory to permissive the assessment of fines for serious violations. In determining whether a fine should be assessed, due consideration would be given to the gravity of the violation, the good faith of the employer and the history of previous violations.

SECTION 5

Amends Section 21 of the Occupational Safety and Health Act of 1970 by adding a new subsection requiring OSHA to provide advice and technical assistance through consultations at the work sites of employers who have 100 or fewer employees, and who request such assistance. Such on-site consultations would be limited to matters specified by employers, and no citations could be issued during such consultations. The Secretary could provide such advice and assistance through means other than on-site consultations, where he finds such alternative means to be more appropriate and equally effective.

SECTION 6

These amendments would be effective sixty days after enactment.

[From the Wall Street Journal, Feb. 20, 1973]

NEW JOB-SAFETY RULES PERPLEX THE OWNERS OF SMALL BUSINESSES; "NEEDLESS" COST CITED

(By Michael Jett)

Henry Weast of Dahinda, Ill., is quitting the heavy-excavation business. He says he can't afford it any more.

It isn't that the business wasn't profitable. It was a steady money maker, and in Mr. Weast's view, it might have continued that way for a long time. It might have, except for one thing—OSHA—more formally known as the Occupational Safety and Health Act of 1970.

Among other things, that massive piece of safety legislation would have required him to spend $150,000 to install safety devices on his equipment to protect operators in case the machinery toppled over. "It just looked like there would have been no end to spending money," says Mr. Weast. "If I had fixed up one thing, they would probably have found something else."

As a result, Mr. Weast and his two partners have already dismissed 20 employes and they are currently trying to sell their machinery. From now on, they plan to continue selling sand, gravel and other building materials, but that end of the business accounted for only about 20% of their total $1.5 million volume last year.

COSTLY AND "FOOLISH"

The reaction of Mr. Weast and his partners to the stringent new regulations may have been drastic, but their quitting the excavation business illustrates one effect the law has had on countless thinly capitalized small businessmen across the country. In a variety of ways, small businessmen say, the OSHA regulations—covering safety matters ranging from hard hats and guard rails to exit signs and safety posters—are causing widespread confusion, anger and frustration.

At the core of their problem, they contend, is the fact that practically every regulation—and they brand many of them foolish—requires them to spend money on measures that don't contribute to either safety or efficiency. Moreover, they complain, many of the highly technical regulations are incomprehensible to the layman. And even if the rules can be understood, these people add, compliance is difficult. In fact, by some estimates, as many as 20,000 specific rules and regulations apply to any single work establishment.

Indeed, the sheer bulk of the regulations is intimidating, and countless businessmen say that after they have waded through them all, they're hopelessly confused. Marvin Krauss, a furniture shop owner in South Amana, Iowa, says: "There are about 300 pages with pretty small print in the construction standards, and it's pretty darned hard to pick out exactly what fits you sometimes. You almost have to have a lawyer to figure it out."

Such complaints are becoming routine for officials charged with overseeing and enforcing the act. An OSHA spokesman says, however, that "some over-reaction" is to be expected. "Most of the complaints from small business people arise not from actual inspections, but from the fear of what might happen should there be one," he says. Unless there has been an accident or a complaint by an employe, the OSHA man says, smaller concerns are much less likely to be inspected than larger firms.

He adds that if a small businessman finds himself in a financial pinch as a result of the regulations, he can always apply for a small business administration loan, as provided in the act.

Due in part to the confusion and lack of understanding of some of the overlapping rules, numerous small businessmen are reluctant to talk for attribution—they're worried about what might happen if an OSHA inspector should see their names and then decide to drop by. "I'd hate to meet Mr. OSHA tomorrow because of my discussion with you," says a Midwest farm-equipment dealer who has spent nearly $100,000 on new equipment and repairs to satisfy safety rules. "We'll only know if we can really comply after somebody tears us apart." Like many other businessmen, he replaced a number of round toilet seats with horseshoe-shaped ones before OSHA rescinded the toilet-seat rule.

"AN ASININE SITUATION"

According to Herbert Liebenson, legislative vice president of the National Small Business Association, many of the fears expressed by small businessmen arise "because the Labor Department has done a very poor job of notifying people what to expect under the law." In fact, many businessmen say they still don't understand how the law is administered, and they worry they will have to answer to inspectors who know almost nothing about their particular type of business.

"OSHA worries the hell out of me," says Ralph Zuber, manager of a furniture store in Amana, Iowa. "I want to comply, but I've got to keep making a living. Did you know we've even got to paint the electrical outlets orange? Why, I don't know."

Adds James Curless, an International Harvester franchiser in Fairmount, Ind.: "It becomes an asinine situation. The dangerous facets of our business are virtually beyond anyone's control. One of our employes got hurt when he bumped the automatic transmission lever on a tractor and it rolled over his leg. No laws can cover anything like that."

What angers many small businessmen the most, however, is the cost of complying with the regulations. "I spent about $250,000 for four new punch presses, to enclose a conveyor, some electrical work and other things," says the owner of a metal fabricating shop in the Southeast, "and I don't think it did any good for safety or production. The punch presses, costing $15,000 to $30,000 apiece, had to be replaced only because they were too noisy. Those machines had been declared literally unusable."

COST MAY BE HIGHER

A survey of its members by the National Association of Manufacturers shows small concerns of one to 100 employes estimate it will cost them about $33,000 each to comply with the act. But that figure may not tell the whole story. Kenneth E. Schweiger, the association's director of employe relations, says the real cost to the small businessman is probably much higher. "He doesn't know what's expected of him," says Mr. Schweiger. "Smaller business has grossly understated estimates of the cost."

Further, once the money is spent, employers still can't be sure if they're in compliance. "I spent $125,000 directly to meet the law," complains a Midwestern contractor. "And after I spent the money I was inspected three times and was fined every time for some minor violations. There's no way I can meet the letter of the law as it's written."

When it comes to spending the money, many small businessmen are faced with a dilemma—what to try to get done first and what to try to get by with. "There's no consistency from one plant to another," complains the owner of several small wood-working factories in the Midwest. "I've been fined at one plant for something that has been overlooked at another. One will come through with flying colors and another will be penalized."

Businessmen "don't know which way to jump," Mr. Curless, the Harvester dealer, says. "They try and do a little at a time and hope that when the inspectors come they won't be too severe. We asked our insurance man to come out and inspect us. He said the way interpretations of the rules change so often, he couldn't even give us a decent inspection."

"I'D PROBABLY . . . GO HOME"

"We've got to write our own ticket," says Bruce Martin, assistant executive manager of the National Roofing Contractors Association. "You can't comply with all of it. What we did was take the construction regulations and got it boiled down to about six pages of the most important standards and told our guys to try to comply with these."

And some are going to try to get by without doing anything at all. "I'd just run myself nuts if I tried to comply," says an Illinois heating and air-conditioning contractor. "I've only got three employes, and in a small business everyone has to be a money maker and that (complying with regulations) would be a full-time job. If an inspector walks in here, I'd probably just hand him the keys and go home. It would be giving up a lot, but it's not worth the worry and frustration."

Whatever problems the act is causing businessmen around the country, there are still some who must be delighted with the law—the safety-equipment companies. "You take a good hard look," says Mr. Liebenson of the National Small Business Association, "and the economic benefits will go to the insurance and safety-equipment companies."

"Many problems for the small businessmen," he adds, "came about because of the sales techniques of companies selling prod-

ucts for OSHA regulations. They became frightened and started protesting."

"We have spawned new enterprises in a variety of ways," George C. Guenther, former assistant labor secretary, told a House subcommittee on small businesses last June. "We would hope most of them are wholesome, but certainly there may be those whose consultative services are at less than desirable levels."

Still others may find themselves beneficiaries of the law. Many employers are going to be spending a lot of money on lawyers if they want to appeal a fine they feel was undeserved. Small businessmen almost never have a lawyer on their staffs.

W. C. Williamson, co-owner of an Atlanta roofing company, was fined $600 after an employe was killed when he fell through a hole in a one-story building the company was working on. Mr. Williamson says the man was shown the hole and told not to remove the cover unless there was a foreman present. Why he took the cover off and exactly how he fell through the hole aren't known, but Mr. Williamson thinks he did all he could to protect the man. "I'm going to spend about $2,000 to fight a $600 fine," he says, "but it's the principle of the thing. . . . It would be the same thing if they fined me if he drove his car into a telephone pole on his way to the job."

"It's going to be a full-employment act for lawyers," said Lawrence Stessin, editor of a newsletter dealing with the OSHA regulations. It isn't going to hurt Mr. Stessin either. After sending out a sample issue last October, he was swamped with 30,000 subscriptions in one month. "We're just inundated" with requests for information and subscriptions, he says.

With all the confusion, some shady characters are bound to jump at the opportunity to take advantage of the situation. "The three latest rackets," Mr. Stessin says, are men posing as OSHA inspectors who are actually industrial spies, potential burglars figuring out a plant's security or con men who talk the owner into offering him a bribe for not imposing heavy "fines."

[From Nation's Business, June 1972]

WHERE THE SAFETY LAW GOES HAYWIRE

"It was a red-letter day for us," says Robert J. Starr, president, Safety and Industrial Net Co., Colebrook, Conn.

His firm makes a patented heavy-duty net used on bridge and high-rise building construction.

Mr. Starr, 67, founded his company nine years ago, and it prospered.

But it was after April 28, 1971, that sales really took off.

That was when the federal Occupational Safety and Health Act went into effect. It spells out a whole raft of regulations affecting every business and industry.

Its greatest impact, perhaps, has been on the construction industry. It specifies, in minute detail, how a construction job must be run—from dispensing of paper drinking cups to operation of laser beams.

One requirement is for safety nets on high-rise, skeleton steel construction, where planking or scaffolding isn't practical.

"Since then," Mr. Starr says, "our safety net sales have shot up 50 per cent."

His firm's heavy-duty, small-mesh net costs 40 cents a square foot. On a big job, that runs into money.

"Our nets are being used on the Gold Star Bridge at New London, Conn.," he says. "The bridge is about 3,000 feet long. They're using about 250,000 square feet of nets."

Or, $100,000 worth.

"His sales will go up a lot more," says Keith Nystrom, assistant safety director, Brown & Root, Inc., a big Houston, Texas, construction firm.

"Many builders still don't know that, in many cases, they must use nets.

"The nets' use on high-rise steel erection—like boiler structures for power plants—may hike costs 100 per cent or more for that part of the operation. They're expensive to buy and install. And they make it much more difficult, and costly, to hoist up building materials."

Brown & Root, he points out, is all for safety and health. So are other members of the Associated General Contractors, a group which acts as an industry spokesman.

Says AGC President James D. McClary, who is senior vice president, Morrison-Knudson Co., Inc., Boise, Idaho:

"We can't buck the objectives of the safety law. We're for one."

THE RECORD IS GOOD

But how badly does the building industry need the eagle-eyed surveillance of the new Occupational Safety and Health Administration?

Well, its safety record is pretty good.

National Safety Council statistics show it is less dangerous than these industries—coal mining, other mining, meat packing, air transport, transit, lumbering, leather, quarrying, wood products and marine transport. Its accident rate, per million man-hours of exposure, is 13.48.

Mr. McClary says a prime irritant in the many OSHA standards is that they do not fit a construction site, but are more appropriate for industrial plants.

Another prime irritant is what the Act does to costs.

"I've heard estimates that the law will boost construction costs anywhere from 10 to 35 per cent," Mr. McClary says. "Personally, I don't think it will be as high as 35 per cent.

"But if the standards are applied as they are now, and as the OSHA agency plans to apply them, they could hike building costs 10 to 20 per cent."

Construction is a $100-billion-a-year industry.

A 10 per cent hike would add $10 billion to the price Americans pay for homes, highways, subways, office buildings, high-rise apartments and other construction.

Waterloo, Iowa, the county seat of Black Hawk County (pop. 76,000) recently discovered what that means.

"We took bids last December on a lift station," says Mayor Lloyd Turner. "It was part of a $3.8 million sewer project. HUD paid half the cost; we paid the rest.

"Our engineer's estimate for the job was $270,000.

"It was made before OSHA became the law of the land.

"When the bids came in, they were staggering—the lowest was $485,000. We held them up several weeks for evaluation. It turned out that the lowest bid was realistic, even though far higher than we expected.

"There were other factors but about 15 per cent of the cost was attributed to OSHA by all the contractors.

"We had to sell another $100,000 worth of bonds this April to pay for the added costs."

HOW'S THAT AGAIN?

Vernie Lindstrom Jr., executive vice president, Kitchell Contractors, Inc., Phoenix, Ariz., explains why OSHA increases construction costs. "Some standards are impractical, costly and complex," he says.

As examples, contractors cite rules like these:

"A fire extinguisher, rated not less than 2A, shall be provided for each 3,000 square feet . . . or major fraction thereof"—even on a steel skyscraper with poured concrete floors. And "travel distance from any point of the protected area to the nearest fire extinguisher shall not exceed 100 feet."

What's a 2A fire extinguisher?

Is a 1A better—or worse? How about a 3A or a 2B?

The 70-page rule book, "Safety and Health Regulations for Construction," doesn't say.

That's spelled out in National Fire Protection Association manuals.

"To understand the ratings, you really should have two NFPA booklets," an NFPA spokesman says: "They're 'Standards for the Installation of Portable Fire Extinguishers,' 36 pages, price $1. And 'Standard on Recommended Good Practices for the Maintenance and Use of Portable Fire Extinguishers,' 33 pages, also $1."

If a builder writes NFPA, gets the booklets and reads them, he'll learn that a fire extinguisher tagged Class 1A isn't as good as one with a Class 2A rating.

But a 3A is better.

And a 2A is for a different kind of fire altogether—one involving flammable liquids and greases.

That 2A extinguisher, required even on a steel and concrete skyscraper, is for wood, paper and cloth fires. Or, OSHA says, you can substitute for it a 55-gallon drum of water with two fire pails.

"Wall openings, from which there is a drop of more than four feet, and the bottom of the opening is less than three feet above the working surface" shall be protected with a guard rail.

What does this mean in plain English? It means, contractors say, that a window with a sill less than three feet off the floor must have a railing or other barrier across it. Apparently even after glass has been installed, including thermopane glass that's hard to fall through.

And many modern office buildings have sills lower than three feet.

No detail is too minute for OSHA's attention.

Take drinking water, for example. You can't put ice in it. It's not sanitary.

"That means," a contractor says, "that to give workmen a cool drink of water, you must have a jacketed water cooler. One that plugs into an electrical socket.

"But you don't always find those utilities everywhere on a half-built building."

A LOT OF READING MATTER

To comply with the law, a builder really needs more than the 70-page "Safety and Health Regulations for Construction," which is issued by the Labor Department. For starters, he needs the Department's 248-page "Occupational Safety and Health Standards," plus the two NFPA pamphlets cited above—and hundreds of other pamphlets.

When OSHA became the law of the land, it blanketed into its code a long list of guidelines drawn up earlier by private organizations like NFPA and the American National Standards Institute, and by some government agencies. For example, the list includes:

"Standards for Protection Against Radiation (10 CFR Part 20)," published by the Atomic Energy Commission.

"Threshold Limit Values of Airborne Radiation Contaminants for 1970" of the American Conference of Governmental Industrial Hygienists.

"Z89.1–1969, Safety Requirements for Industrial Head Protection," drawn up by the American National Standards Institute.

The list could go on and on.

Sen. Carl T. Curtis (R.-Neb.) is sharply critical of the blanketing. He says:

"The Act Congress passed, in effect, made these rules the law of the land without a prior specific review . . . to see what they do, how they should be applied, or whether or not they are adequate."

Sen. Curtis has introduced one of a number of bills now on Capitol Hill to modify OSHA. Among other things, his would exempt businesses with 25 or fewer employees from the Act.

A similar bill has been introduced in the House by Rep. Joe Skubitz (R.-Kans.).

The Associated General Contractors gives some idea of the size of the thicket of guidelines, standards and cross-references.

"To get all he needs to be fully informed,"

an AGC spokesman says, "a building contractor would have to spend about $6,000. And he'd wind up with a stack of documents 17 feet high."

Obviously, few if any builders are familiar with all these binding regulations.

"I think it's true to say they are so complicated and lengthy," says the safety director of a large Eastern construction firm, "that you can find a violation of them on almost any job."

The Occupational Safety and Health Administration's own statistics bear him out. In the first nine months of this fiscal year, its inspectors visited 20,688 places of business. Nearly eight out of 10 were found in violation of the safety law.

BATTLE OF THE BOATYARD

The inspector's word is final—unless the alleged lawbreaker requests a formal hearing. Few win the appeal. One who did was a West Coast boatyard owner.

Arsene (Blackie) Gadarian has been in the business, at Newport Beach, Calif., a dozen years.

He says his firm, Blackie's Boat Yard, Inc., is "a mom and pop operation."

Actually, it's a little bigger than that—he and his wife have a half-dozen employees. But it's pint-sized, as boatyards go—the smallest of six in Newport Beach.

Mostly, it overhauls yachts owned by wealthy residents of the seaside spa.

So the propietor was quite surprised last fall when a federal inspector drove up, put on a hard hat and began to tour the yard.

Blackie felt he hardly rated this personal attention from Washington.

The inspector strolled down the pier to a small boat under repair not far from shore. He pointed to a worker crouched in the cramped bilge and asked. "Why doesn't he have a life jacket on?"

"Because," Blackie replied, "he couldn't move if he did."

"What would he do," the inspector persisted, "if he fell into the water?"

"He'd stand up," Blackie said. "The water's only two or three feet deep there."

The inspector went on inspecting.

A $1,000 FINE?

A few weeks later, the Gadarians were notified they had violated OSHA regulations—Section 1501 84. (c) (4). Offenders are subject to fines of up to $1,000.

"They said the rules were that we had to have a ladder nailed to that dock," Mrs. Gadarian says, "so an employee could climb out of the water if he fell into it.

"We wanted to comply with safety standards, and we always have. We have a good safety record. Our workmen's compensation inspector has testified to it.

"But we didn't know what the OSHA regulations were.

"We asked the OSHA inspector for a copy. He said he didn't have one on him. We asked the local area office. The director said he didn't have one for us—but was working night and day to get some out.

"So we denied the violation, and asked for a hearing, partly in hope of getting a copy of the law we were accused of breaking."

After the Gadarians said they'd fight, the occupation safety agency proposed a penalty of $16—eventually reduced to $15.

Two weeks later, a 248-page document arrived covering—among other things—safety regulations for ship repairing, shipbuilding, breaking up of ships and longshoring.

"We read practically everything in it," Mrs. Gadarian says. "But it said nothing about ladders on the dock."

The Gadarians again asked the OSHA agency office for a copy of the regulation they allegedly had violated.

"About a month after we were cited," Blackie says, "it arrived." It was a 48-page booklet, a supplement to the 248-page publication they received earlier.

"We found the part about ladders in that," Mrs. Gadarian says. "But it said nothing about one being nailed to the dock. Only that you had to have one near the boat under repair."

THE FULL MAJESTY OF OSHA

Last November, the OSHA hearing was held.

"They rented a meeting room at the Newporter Inn," says Mrs. Gadarian, "a very posh hotel."

President Nixon often uses it for press conferences and other meetings. It's about 20 miles from the West Coast White House at San Clemente. Japan's Premier Sato stayed there when he met with the President before Mr. Nixon went to Peking.

Seven federal officials were on hand for the hearing, which took four hours. As the Gadarians pointed out, all the OSHA regulation stipulated was that:

"In the vicinity of each vessel afloat in which work is being performed there shall be at least one portable or permanent ladder of sufficient length to assist employees to reach safety in the event they fall into the water."

The Gadarians said they had a ladder "in the vicinity" of the boat being repaired, and produced witnesses.

The OSHA inspector contradicted them. The closest ladder, he said, was 400 feet away.

The Gadarians showed that the boat yard was only 200 feet long, including their 66-foot dock. The Occupational Safety and Health Review Commission ruled for the Gadarians.

So they didn't have to pay the $15.

Why did the Gadarians fight a fine the size of a parking penalty?

"That's what a lot of people ask," Blackie says.

"They figure, if all it takes is 15 bucks to get them off your back, let's pay it. But I don't feel that way, if I'm not in the wrong.

"Besides, what about the next time?"

Mrs. Gadarian has carefully hoarded all the citations, summonses and reports, including the 10-page decision that dismissed the charges.

"Some day," she says, "I have to show them to my grandchildren so they can see how 1984 came early to our country."

[From Dun's, January 1972]

THE CRUSHING COST OF SAFETY

(By George J. Berkwitt)

Note.—Management is gasping at the huge price tag on the 1970 Safety Act.

At Eaton Corp. (formerly Eaton Yale & Towne), the diversified Cleveland manufacturer, the campaign got under way last June with a barrage of memos and briefings. Next came a series of regional meetings for division managers. Then six special teams fanned out across the country to make surprise inspections of company facilities. Finally, last month, Eaton's management declared it was ready.

Ordinarily, such activity would be the prelude to a major product introduction, an organization realignment or some other big company move. But in this case, management was preparing for, of all things, a safety program. Eaton, along with thousands of other manufacturers, was gearing up to comply with the requirements of the Occupational Safety and Health Act of 1970.

For while issues such as the environment and consumerism have been making all the headlines, few pieces of legislation have come out of Washington with as profound an impact on corporate management as the Occupational Safety and Health Act of 1970 (OSHA). "In the past thirty or forty years, we've seen a lot of legislation affecting industrial operations," says J. A. McIlnay, senior vice president of ESB, Inc. "But none of it has come on this strong or required such fast action."

And none of it, he might have added, has carried as big a price tag. While no one has attempted an exact accounting, estimates of OSHA's total cost to U.S. industry run into the tens of billions of dollars. A few industries will get off lightly, but costs of operations in many could rise by as much as 5% to 10%.

The reason is the breadth of its coverage. The Act applies to virtually every interstate business not already covered by such legislation as the Federal Coal Mine Health and Safety Act and the Atomic Energy Act of 1954 (the Labor Department estimates that there are more than 4 million such companies employing a total of 57 million workers) and sets some 22,000 standards in such areas as unguarded machinery, excessive noise, hazardous materials and worker safety devices.

Actually, there is little in the new Safety Act that has not already been adopted voluntarily in industry. Very few companies, however, comply with all the standards that OSHA demands. "There was almost unanimous agreement [at the 1969–70 hearings of the Senate Labor Subcommittee] that employee protection was not being adequately enforced at either the private or the state level," says Robert E. Nagle, who was then a counsel to the subcommittee. Just one example: Pipe structures to protect drivers of construction vehicles in rollovers were rare. Under OSHA, they are mandatory.

The standards, which became effective last April and August, are enforced by fines of up to $10,000 per violation and prison terms of up to six months for corporate executives responsible for the violations. And the Department of Labor and a quasi-official three-man Occupational Safety and Health Review Commission, which together are administering and enforcing the legislation, have already demonstrated they mean business. By October, some 350 inspectors (or compliance officers as they are called) had inspected 5,600 companies and turned up nearly 13,000 alleged violations. "There is no question that this is a tough law with teeth in it," says one high-level executive.

No one, of course, is against safety. In fact, most manufacturers agree that it pays. The National Safety Council estimates that injuries on the job cost industry an incredible $10 billion a year. So some people think that OSHA eventually will be worth the price in terms of recovered productivity. "It will probably take two or three years for this law to firm up properly," says James J. Sheehy, assistant treasurer at St. Regis Paper Co." But after that we are looking for at least a 14% increase in productivity. For a billion-dollar company, this could add up to 3.5% to 4% more profit."

Adds Merlin Race, who before becoming safety director at Consolidated Edison Co. last year completed a study on the impact of the new law on industry: "OSHA will encourage faster replacement of people by equipment, and, of course, safer plants will have lower accident rates and more productive manpower." The long-term impact, says Race, will be an increase in productivity industry-wide of at least 15%.

Meanwhile, though, the short-term costs, especially for those companies that have been getting along on old, fully capitalized equipment, could be devastating. "Trying to extend the life of marginal equipment while complying with the standards could knock a company right out of business," says an executive of a large electric utility.

Even in more modern plants, the cost of compliance can mount. For example, in order to comply with OSHA, the Borg & Beck division of Borg-Warner Corp. has already spent $150,000 more than budgeted moving into a new, 300,000-square-foot plant.

One of the most expensive items in the new legislation is noise abatement. According to Jefferson D. Keith, managing director of the American Metal Stamping Association, surveys to find solutions for dampening noise to levels the Act finds tolerable have already run up a bill of $6 million in stamping presses alone. Engineers at Ingersoll Mill-

ing Machine Co. estimate that some machines would double in price.

Air quality leads to a separate set of costs. At Eaton, for example, compliance calls for added air pressure in paint-spray booths to force residual spray out of the booth and away from the operator. "This will require hundreds of thousands of dollars worth of new ventilating equipment," says Malcolm Daisley, industrial relations vice president. "And the plant is in a northern state, so we need additional equipment to heat the air we pull in." Total cost of compliance: some $500,000, says Daisley.

HARD-HIT INDUSTRIES

Some industries that are facing an especially stiff compliance tab:

Metal-stamping machines. The companies that produce the units that form sheet metal into everything from car bodies to bottle tops will be spending more than $6 billion over the next five years to comply with OSHA, according to Jefferson Keith.

Lumber and wood products. With its excessive noise, the use of large, unguarded saws, flying wood chips, dust and manual handling of huge logs, the lumber industry will be taking on a massive dose of safety under the Act. Observers think the cost will go into the billions of dollars.

Housing. A prominent member of the National Association of Home Builders predicts that OSHA will add $2,000 to $3,000 to the cost of each new home.

Paper. An industry executive predicts that OSHA's cost to the pulp and paper industry will run at about $200 per worker over the next year or two—for a total tab of $140 million.

One industry that will be getting off easy: baking. According to the safety director of one of the bakery giants, bakers have traditionally given high priority to health and safety because of the need for cleanliness and sanitation. Cost of compliance could be as low as $20,000 per year per company.

Quite apart from costs, while businessmen have come to expect government involvement in the broader areas of the economy, they are not yet resigned to the kind of specific power granted inspectors under OSHA. This power includes no-knock entry and the right to shut down equipment or even an entire plant. "Prior experience with government agencies leads us to believe that they won't feel their job is well done if they don't find problems," says Robert E. Frey, director of safety and environmental engineering at Diamond Shamrock Corp.'s Diamond Shamrock Chemical Co. Adds President Joseph T. Bailey of Warner & Swasey, "These men could walk in, pull a switch and shut you down."

Because of the concern about federal intervention into the day-to-day operations of business, the law undoubtedly will be extensively tested in the courts. A $10,000 fine adjudged against Lockheed Aircraft Co. is now being appealed and "will probably be in the courts for months," says a spokesman in the company's legal department. "Lawyers," admits George C. Guenther, the Department of Labor's Assistant Secretary for Occupational Safety, "are going to have a field day."

Of course, there is also the inevitable red tape. OSHA requires three sets of records, one of which is to be kept on file at the company for five years.

And finally, because OSHA allows employees to report violations directly to compliance officers, in effect it encourages a breach in communications between employee and employer. "If an individual or a union wanted to make trouble," says Malcolm Daisley, "it could swamp the agency with complaints."

Yet when the final cost benefit of the legislation is totalled, industry, as Sheehy of St. Regis predicts, may be the winner. After all, even more than labor costs or capital equipment expenses, the name of the game today is productivity. And OSHA may turn out to be the key to the recovery of a lot of those lost man-hours.

[From U.S. News & World Report, June 26, 1972]

GROWING FUROR OVER SAFETY RULES FOR WORKERS

Congress is about to take a close look at a year-old law that is starting to stir up a storm.

The law is a controversial health and safety measure that affects three of every four workers.

Its name is the Occupational Safety and Health Act of 1970, called OSHA for short.

In simple terms, it requires employers to provide safe places to work, free of health hazards.

In operation, it has proved far more complex. Critics say it's not the law itself, but the massive set of regulations stemming from it that have caused most of the trouble.

These regulations involve everything from the height of toilet partitions to requirements for safety shoes or goggles.

Two things have provoked much of the furor.

First, employers must obey detailed and often complicated rules, enforced by federal inspectors. Many businessmen say they don't understand these rules or believe them necessary.

Second, the Act extends federal controls over working conditions into vast new areas. Now covered, for example, are hired hands on farms and part-time employes in the smallest of businesses.

WIDE COVERAGE

Almost every business—even if it has only one employe—is subject to the law. This involves about 5 million firms and 60 million workers.

Small businessmen, particularly, claim strict application of the law may force them to close.

Unions charge the Government with "half-hearted enforcement."

One independent study group assesses blame in almost equal doses to industry, Government and organized labor.

A nationwide survey by "U.S. News & World Report" found the law getting a mixed reception. For example—

"Employers want to comply," says a spokesman for the Georgia Business and Industry Association in Atlanta, "if they only knew how."

Niel Heard of the National Federation of Independent Business, based in San Mateo, Calif., comments: "They've drawn up the regulations so it would take a Philadelphia lawyer to figure them out."

From Steven J. Kennedy, director of safety for Avondale Shipyards, Inc., New Orleans: "The law is a good one, but compliance is costing us a great deal. I believe, however, that the initial cost will be offset in the long run by a reduction in accidents and compensation expenses."

Some plant managers for large corporations say they are "scared to death" to talk about inspections of their facilities for fear of Government retaliation.

"We're still feeling our way around under the law," says an executive of a farm-equipment firm in Chicago.

In Washington, members of the Senate and House who, in late 1970, overwhelmingly approved the measure find themselves swamped with mail and besieged by constituents over its workings.

Says Representative Daniel J. Flood (Dem.), of Pennsylvania, chairman of a House subcommittee, "It is murder when we go home to our district."

A sign of congressional anger over the act came on June 15 when the House of Representatives suddenly amended the Labor Department's 1973 budget to bar payments to OSHA inspectors who enter plants of 25 or fewer employes.

Starting June 20, the House Subcommittee on Small Business will begin four days of hearings into the law. Senate and House labor committees also plan full reviews soon.

NEED UNQUESTIONED

With on-the-job accidents accounting for 14,000 deaths and 2.2 million disabling injuries a year, there has been little argument with the objectives of the law. But almost every phase of its implementation has provoked controversy.

"This Act," says Representative Mark Andrews (Rep.), of North Dakota, "is an outstanding example of what happens to a piece of legislation when the bureaucrats get it."

Labor Department officials readily admit to problems, but "we have knocked ourselves out to avoid harassing," says George C. Guenther, a former businessman who became Assistant Secretary of Labor for Occupational Safety and Health. His boss, Secretary of Labor James D. Hodgson, says:

"The purposes of the Act have been imperfectly accepted by a great many. They still believe that somehow the requirements of the Act really shouldn't apply to them."

Complaints, Mr. Hodgson says, often take the form of "you are asking me to do something I didn't know anything about, or to do something about something I don't think I should have to do, or to do something that shouldn't be in the law at all."

Staff members of "U.S. News & World Report" who checked businesses around the country came up with the findings that follow.

Harry G. Austin, executive vice-president of Brown & Root, Inc., a worldwide construction firm based in Houston, says one of the biggest obstacles in compliance is changing work habits of experienced employes.

"A man gets used to doing his job one way most of his life and it's difficult to get him to change his habits overnight," Mr. Austin observes. "Take safety glasses. Many construction workers don't like to wear them because perspiration gets in their eyes, but they have to wear them now under the law."

Walter E. Standfield, a home-remodeling contractor in Houston, doesn't like the law. "It seems to me," he says, "that it was purposely written to get rid of small, independent businessmen like myself. It's hard to find people with the necessary safety equipment—safety shoes, eye goggles and hard hats—and I can't afford to buy them because most of my helpers are hired on a short-term basis. When you do find someone with the right equipment, you have to pay him more than you would otherwise."

A VOTE IN FAVOR

OSHA inspections won praise from a union official in Belvidere, Ill.

"After seeing these people inspect, I'm for 'em 100 per cent," says Jack Waldeck, vice president of a United Auto Workers local at a Chrysler plant in Belvidere. "We've had State inspectors out here before, but their inspections were a joke. These federal inspectors have my respect now."

A spokesman for Armour & Company division of Greyhound Corporation comments in the inspection of 26 of its 130 food plants across the country: "We feel the inspectors were fair, and their findings valid—the only difficulty we've had in correcting these violations is time, and we've gotten extensions of time where necessary."

After three visits by OSHA, J. Paul Seider, president of Radiant Industries, Inc., of North Hollywood, Calif., says:

"The inspections at the time were pretty irritating. Some of the things we had to do were a real pain. But looking back on what the OSHA man wanted I guess I'm glad it was done. It wasn't all that big an expense."

A California electronics company, fined $60 after an OSHA visit, estimates that contact with the agency extended over 45 days, took more than 200 hours of management and cost the company $1,000 for new equip-

ment and modifications to meet the standards.

George Nummy, manager of corporate safety for Boise Cascade Corporation, Boise, Ida., says:

"The specifications at times are not quite rational to the application. They are not easy to understand. I find it better to make frequent trips to Washington to spell out with top labor people how to interpret regulations. Unfortunately, once you get an agreement with the man in charge of the standard, the problem still exists because how do you get his man in the field to understand?"

David Spinniken, a Lake Leclanau, Mich., cherry grower, says OSHA means a lot more bookwork for him. But he believes the record keeping may eventually save him money on insurance, since he has had no serious work accidents in 25 years.

"We are presumably a high-risk occupation," he says. "With facts and figures to go on, the insurance companies might give us a better rate."

The law took effect April 28, 1971. It was a month later before standards were announced. Then, overnight, came a 248-page book touching in such things as the sizes of ladders, protective screening against atomic radiation, and safety nets for bridge-builders.

OSHA took the standards from consensus agreements developed through the industry-sponsored National Fire Protection Association, the American National Standards Institute and the American Council of Government Industrial Hygienists. One problem: Many of the standards are in highly technical language, and they haven't been simplified for business use.

Mr. Guenther also says that, in the rush to put standards into effect, some slipped by that he wishes he hadn't had to live with. Most of those, he says, will be dropped or modified by the end of the year. Among them:

A requirement that when ice is used to cool drinking water, the ice cannot come into contact with the water. This, says Mr. Guenther, was left over from the days when natural ice was chopped from rivers, and will be eliminated. So will rules on the height of toilet partitions, requiring coat hangers in portable toilets, split seats on all toilets and separate "retiring rooms" for female employes.

MORE TO COME

Despite the massive book, not all phases of safety and health are covered by standards as yet. Most of the rules deal with safety. Health standards are being developed more slowly, mainly, officials say, because of a scarcity of reliable information on the causes of occupational illnesses.

OSHA enforces the law by inspecting establishments and citing employers for violations. In the 10 months from July through April, 23,662 establishments were inspected and 75,864 violations were detected. Roughly 3 of every 4 employers were cited for one or more infractions. Mr. Guenther estimated that only about 2 per cent of the violations were serious.

Five industries, all with injury rates well above the national average, were picked as targets for intensive enforcement in what OSHA calls a "worst first" approach. They are longshoring, lumber and wood products, meat and meat products, roofing and sheet metal and miscellaneous transportation equipment, which is mainly mobile homes and snowmobiles. About 40 per cent of all inspections have been in these areas.

Inspections of very small firms so far have been quite limited, Mr. Guenther says. "The smoke is a great deal greater than the fire," he adds, referring to complaints from small business. "Mainly it's a fear that when we do make an inspection we're going to make it really rough. I can tell you that isn't true. We hope to minimize the burdens on the tiny businesses, the real small ones."

Violations are of three types—nonserious, serious and "imminent danger."

PATTERN OF FINES

A serious violation is one where a "substantial probability" exists that death or serious physical harm could result. It carries an automatic fine of up to $1,000. Nonserious violations allow for optional fines of up to $1,000.

The "imminent danger" category is defined as one "which could reasonably be expected to cause death or serious physical harm immediately, or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act."

Fines so far total 1.7 million dollars.

For all types of violations, employers are given a deadline by which corrections must be made. For each day they exceed the deadline they can be fined $1,000. Mr. Guenther says the biggest proposed penalty so far—$36,000 against a construction firm in Lincoln, Nebr.—includes $31,744 "for failure to abate" violations within the time provided.

Appeals from OSHA penalties are handled through an independent agency—the Occupational Safety and Health Review Commission, with three members appointed by the President.

If an employer wants to contest a citation, he notifies the Review Commission which provides a hearing examiner. Appeals from Commission decisions can be taken to a federal court of appeals.

The Commission says that in the first year of OSHA about 5 per cent of the citations have been contested. Only one decision has been appealed in court.

A LABOR VIEWPOINT

While business often complains that the Government is trying to do too much too fast, organized labor takes the opposite view. Peter Bommarito, president of the United Rubber Workers, had this comment on the first anniversary of OSHA.

"We have made a little progress in the past year. We would have made much more if the Deparment of Labor had applied the legislative intent of the Congress to its enforcement of this law. Unfortunately, a year's experience reveals that the Department of Labor seems smugly content with halfhearted enforcement policies, which fall far short of what is needed to give workers the kind of health and safety protection spelled out in the law."

The law provides for the eventual shifting of enforcement to the States, with the Federal Government paying half of the cost, provided that the States come up with regulations that will be at least as effective as the standards of the Federal Government.

CURTIS AMENDMENTS

OSHA officials are sure to be questioned during the small-business hearings about the package of 13 amendments offered by Senator Carl Curtis (Rep.), of Nebraska. These include proposals to exempt all employers with 25 or fewer workers, to delay compliance with the law for one year for employers with 100 workers or less and to provide technical help to firms with fewer than 100 employes to help them comply with the rules.

Secretary Hodgson said recently: "My own view is that the law should not be tampered with now, but should be given a chance to work."

Despite the critics in business, labor and Congress, Mr. Hodgson maintains, "We are proceeding in a even-handed way, in a fair way." And he adds:

"My own feeling is that as we do an informational job, and as we start making this program felt in terms of reduced injuries and a more healthy work place, it will become increasingly accepted."

Mr. DOMINICK. Mr. President, I invite the attention of the Senate to one of the articles which refers to a specific case of a gentleman who was operating a small marine repair shop, I believe in California, because it is so ludicrous and it pinpoints exactly the trouble we are having with this bill. The article will relate the story in detail, but let me just point this out:

An OSHA inspector came in and asked the boss of this very small marine establishment in California what the man was doing in a rowboat. The boss said, "Well, he is out there scraping the barnacles and repairing the boat." The inspector said, "Why does he not have on a life preserver?" The boss replied, "Because he could not get into the boat with all that equipment if he had on a life preserver." The inspector said, "What will happen if the man falls out of the boat?" The boss said, "That would not be difficult because the water there is only 2 or 3 feet deep, so it is no problem."

This employer was cited for a violation because the worker did not have a lifejacket on. That was later knocked out, but the fact that there was no ladder there for the man to climb up to the dock if he fell into the water, even though it was only 2 or 3 feet, this employer had to carry that notice for a month and he had to try to get the applicable regulation contained in one volume of 278 pages followed by a supplement of 48 pages before it was ever found at all.

Then they found that the ladder had to be at the dock, but not nailed to the dock, and he was cited for that and brought up. He took it to court on appeal and the fine was only $15, which he refused to pay. He finally won it in court after about 9 months of extensive effort and heaven knows how much expense to the employer. All the time it had not done the worker any good or the employer any good. All it resulted in was making the Department of Labor look ridiculous in the eyes of the people in that area.

So it seems to me that until we can get some kind of change in the law, so that these circumstances do not occur again, we will be continuing to have the same problem that we had before. So I honestly submit that we should go forward as rapidly as possible with further hearings on this matter before the Committee on Labor and Public Welfare, and try to put together the necessary changes in the legislation which will be necessary to accomplish the goal of the act but which will not act as a criminal and harassing statute against both workers and employers alike.

Mr. TOWER. Mr. President, I am pleased to join Senators DOMINICK, FANNIN, and a number of other Senators in offering legislation to amend the Occupational Safety and Health Act. Every Senator has received a continuous amount of mail from constituents since OSHA regulations were first issued in 1971. Criticism of the act has ranged from unreasonable standards being promulgated to highly impersonal investigations being made by Federal inspectors. While one might say that these complaints have been exaggerated at times, it cannot be questioned that they have some merit and that the law has

not been implemented in either a smooth or equitable manner.

I support the Occupational Safety and Health Act. Since it was approved by Congress, however, I have maintained that in order for it to accomplish its intent—to provide safe and healthful working conditions for all American workers—the act must be administered and enforced in a milieu conducive to total cooperation between employers, employees, and the Federal Government. This type of milieu is, at this time, impossible to achieve due to the manner in which OSHA is being enforced, and, to an extent, due to the specific statutory language in the act.

It is because of the need to make the law more equitable that this legislation is being introduced. Briefly, the legislation would provide for the following changes in OSHA:

First. When the Department of Labor publishes a proposed rule concerning OSHA in the Federal Register, the Department would be required to include an estimate of the total cost which would be incurred by employers in industries to be affected by the rule.

Second. The act would be amended so that an employer who has received a citation need not have that citation posted once the violation has been abated.

Third. A procedure would be established to allow an employer who has received a citation to seek a variance from the Department of Labor by showing that the particular procedure employed in his business is at least as effective as the OSHA standard.

Fourth. The Department of Labor's authority to issue fines for nonserious violations on the first inspection would be removed.

Fifth. The Department of Labor would be given discretionary power to issue fines for serious violations. The intent here would be to allow the Department to assess violations in a more flexible manner taking into consideration such factors as the employer's bona fide good faith effort to comply with the law.

Sixth. The act would be amended to require OSHA to provide technical assistance through consultations on an onsite basis or any other basis deemed advisable under the circumstances when such assistance is requested. No citations could be issued during the consultation and it would be limited to matters specifically brought up by the employer.

Mr. President, this legislation is a sensible proposal. It will probably not achieve all or even nearly all of the reforms requested by small businessmen. For instance, there is no provision in the legislation calling for any type of exemption from coverage.

The overall intent of the legislation is, as I have stated, to make OSHA more equitable and thereby more workable and successful. All that it does is remove the punitive aspects of the law and replace them with more rational procedures. What is more alarming at the present time is the inability of the small- or moderate-sized businessman to confront a large Federal bureaucracy with reasonable questions, requests, and recommendations. Big Brother is certainly epitomized when a small businessman in rural Texas cannot ask OSHA a question about a particular regulation without the fear of an immediate inspection. It must be remembered that the vast majority of employers in this country lack the resources to challenge the findings of an inspection.

Furthermore, those who do consider a challenge are confronted with an administrative procedure which places the burden of proof on their shoulders rather than on any agency assessing the fine.

Because of the problems in OSHA, a great deal of resentment has been steadily building between employers and the Federal Government. I do not believe that OSHA was never intended to be primarily a revenue-raising statute. Nor was it envisioned to take on some aspects of a criminal statute whereby a Government employee would point an accusing finger at a citizen.

The legislation being proposed today should be supported by the business community, organized labor, employees not represented by unions, and all other like-minded citizens who support the basic goals of OSHA. This legislation would not reduce in any way Federal occupational and safety protection for any single American.

Mr. President, I urge the Senate Labor and Public Welfare Committee to immediately schedule hearings on this legislation and other proposals already introduced which seek to modify and improve the current law. This should have one of the highest priorities in the 93d Congress for there is probably no other statute which affects as many Americans as OSHA.

By Mr. CRANSTON (for himself, and Mr. WILLIAMS, Mr. RANDOLPH, and Mr. KENNEDY):

S. 1148. A bill to provide authorization for the ACTION Agency to operate domestic volunteer service programs, and for other purposes. Referred to the Committee on Labor and Public Welfare.

THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973

Mr. CRANSTON. Mr. President, I introduce today for myself, Mr. WILLIAMS, Mr. RANDOLPH, and Mr. KENNEDY, for appropriate reference, S. 1148, a bill to provide for operation of all volunteer service programs transferred to the ACTION Agency on July 1, 1971, by Reorganization Plan No. 1 of 1971, and to provide for new and expanded volunteer service programs. This bill will be called the proposed Domestic Volunteer Service Act of 1973.

Mr. President, I am honored to be joined in introduction of S. 1148 by the chairman of the full Committee on Labor and Public Welfare, the Senator from New Jersey (Mr. WILLIAMS), long an ardent supporter of the VISTA program; by the ranking majority member of the full committee and the Special Subcommittee on Human Resources, which has jurisdiction over ACTION Agency domestic programs, the Senator from West Virginia (Mr. RANDOLPH); and by the distinguished chairman of the Health Subcommittee and former chairman of the Special Subcommittee on Aging, the Senator from Massachusetts (Mr. KENNEDY), under whose leadership the foster grandparents and RSVP programs have been increased to their present strength and who has been a longtime supporter of VISTA and all antipoverty programs.

NOTICE OF HEARINGS

Mr. President, we intend to move very rapidly in our consideration of S. 1148 in the Special Subcommittee on Human Resources, which I am privileged to chair, of the Committee on Labor and Public Welfare. The present authority for the VISTA program in title VIII of the Economic Opportunity Act of 1964 expires this June 30.

On March 15, Mr. President, the special subcommittee will conduct a public hearing on S. 1148 and ACTION domestic programs for fiscal year 1974 at which we expect to receive testimony from the ACTION Agency, the Small Business Administration, and representatives of Score, VISTA volunteers, and Older Americans Act volunteers. We then plan to proceed to subcommittee markup of the bill in early April.

ORIGIN OF LEGISLATION

Mr. President, the evolution of this comprehensive legislation to promote efforts to eliminate poverty and social ills through the utilization of volunteer service has been some time in coming. Let me therefore trace its history before going on to describe the provisions of the bill I offer today.

REORGANIZATION PLAN NO. 1

The ACTION Agency came into being on July 1, 1971, the result of Reorganization Plan No. 1 of 1971, which was intended to consolidate into a single agency a number of voluntary action programs operating throughout the executive branch of the Federal Government. Those programs are:

VISTA—Volunteers in Service to America—previously administered by the Office of Economic Opportunity, a full-time, full-year volunteer program established to strengthen and supplement efforts to eliminate poverty;

The Peace Corps, a full-time, 2-year program established to assist underdeveloped nations through the use of American volunteers;

The National student volunteer program, previously administered by the Office of Economic Opportunity, a program to foster student volunteer programs dealing with the problems of the poor;

The foster grandparents program, previously administered by the Administration on Aging in the Department of Health, Education, and Welfare, a program to provide opportunities for low-income older Americans to assist needy children.

The retired senior volunteer program—RSVP—previously administered by the Administration on Aging, a program to enable retired persons to perform voluntary services in their communities.

Service Corps of Retired Executives and Active Corps of Executives—SCORE and ACE—previously administered by the Small Business Administration and under the terms of the reorganization plan, to be jointly administered by the Small Business Administration and the ACTION Agency, a program providing assistance to small businessmen utilizing

the expertise of retired and active executives.

President Nixon transmitted the plan to the Congress on March 24, 1971. By the terms of chapter 9 of title 5, United States Code, which deals with executive reorganization, the plan was to be effective in 60 days barring congressional objection.

RESOLUTIONS OF DISAPPROVAL

Mr. President, resolutions of disapproval of the plan were subsequently introduced in both Houses of the Congress. On April 26, 1971, Chairman HARRISON WILLIAMS of the Senate Labor and Public Welfare Committee, on which I am privileged to serve, introduced Senate Resolution 108 to disapprove the plan. On April 28, 1971, Chairman CARL D. PERKINS of the House Education and Labor Committee, introduced House Resolution 411 to disapprove the plan. Among the reasons cited for the disapproval were the following:

That the provisions of Reorganization Plan No. 1 were lacking in detail and specificity;

That the persons most directly affected by the plan opposed it. These groups included the National Vista Alliance, an organization of more than 2,000 Vista volunteers; the Steering Committee of Score which passed a unanimous resolution of disapproval of the proposal; the National Retired Teachers Association and the American Association of Retired Persons;

That the plan left too many unanswered questions, among them being how the merger of the Civil Service and Foreign Service Reserve systems of employment was to be accomplished;

That the element of volunteerism was an inappropriate common denominator linking the programs involved, that solving a problem or working in a particular program area was a more appropriate agency mission than seeking to find new ways for people to volunteer;

That the existing programs to be merged might lose their identity;

That the plan would not reduce expenditure or increase efficiency since it would require a new domestic administrative mechanism and that, indeed, the President was requesting an additional $20 million to get the new Agency underway.

Mr. President, hearings on the resolutions were held by the Government Operations Committees of both House and Senate in late April and early May of 1971. And in spite of the many unanswered questions raised by the plan itself and further brought out during the hearings, both resolutions of disapproval were defeated in the House of Representatives on May 25, 1971, by a vote of 224 to 131 and in the Senate on June 3, 1971, by a vote of 54 to 29. So on July 1 of 1971, Reorganization Plan No. 1 was implemented and the ACTION Agency, headed by the then Peace Corps Director Joseph H. Blatchford, came into being.

CONTINUING PROBLEMS AFTER REORGANIZATION EFFECTIVE

Mr. President, I should back up to say that I was one of those 29 Members of the Senate who voted in favor of Senate Resolution 108 and against the reorganization plan. Indeed, I cosponsored the measure with our distinguished committee chairman, Mr. WILLIAMS, because I shared his strong reservations concerning the workability of the plan and his concern about the unresolved issues surrounding it.

And I believe at this point, Mr. President, that even officials of the ACTION Agency would agree that many of those unresolved issues have plagued the Agency since its inception and have hindered them in their efforts to carry out the programs which the Agency was established to administer.

S. 3450—"THE ACTION ACT OF 1972"

Since the President had indicated in his March 24, 1971, statement transmitting the reorganization plan that legislation authorizing the Agency would soon follow, it was my feeling that such legislation would afford the Congress an appropriate mechanism for making the plan more workable and for resolving those plaguing issues.

Nearly 1 year later, on March 16, 1972, that legislation was finally transmitted to the Congress. On April 14, 1972, at the request of the administration, I introduced that legislation—S. 3450, cited as the proposed "Action Act of 1972"—modifying it only so that the provisions relating to the Peace Corps were deleted. Separating the domestic programs from those under the jurisdiction of the Foreign Relations Committee I felt would provide for more expeditious consideration of the legislation, since it could be considered simultaneously in the appropriate committees of the Congress. The "Action Act of 1972" was subsequently referred to the Committee on Labor and Public Welfare and, in turn, to the Special Subcommittee on Human Resources, which I am privileged to chair.

HEARINGS ON S. 3450

During the spring of 1972, I chaired extensive hearings on S. 3450 and domestic volunteer programs. In doing so, I worked closely with my distinguished colleagues from Wisconsin (Mr. NELSON) and from Missouri (Mr. EAGLETON) who chair, respectively, the Subcommittee on Employment, Manpower, and Poverty, and the Subcommittee on Aging of the Labor and Public Welfare Committee, since programs under consideration in S. 3450 were authorized by legislation under the jurisdiction of those subcommittees.

The first hearings on S. 3450 were held jointly on April 12, 1972, by the Special Subcommittee on Human Resources and the Subcommittee on Aging. Four subsequent hearings were held on May 12, 1972, May 19, 1972, May 24, 1972, and June 5, 1972, by the Special Subcommittee on Human Resources. Witnesses included officials of the Action Agency, representatives of the National Council for Senior Citizens, the National Vista Alliance, the University Year for Action program, sponsors of Vista and Foster Grandparent programs, volunteers in these programs, officials of other Federal agencies representing programs with which the ACTION Agency anticipated working, representatives of private-sector volunteer groups, and Members of Congress.

DEFICIENCIES OF S. 3450

Mr. President, the hearings convinced the committee that S. 3450 fell far from the mark of legislation that would strengthen both the programs administered by the ACTION Agency and the administration of the provisions of Reorganization Plan No. 1. Not only did the legislation fail to resolve some of the most serious administrative problems faced by the agency, for instance, the issue of merging two entirely different personnel systems—the Civil Service and the Foreign Service Reserve System—and the issue of differentiating moneys appropriated through various authorities for the one agency to administer, but it failed to respond to the requests for greater program accountability made by participants in and recipients of benefits of the programs which the ACTION Agency administered.

VISTA volunteers, for example, testified that they were receiving inadequate transportation support to effectively carry out their assignments; that low-income volunteers in the program found VISTA to be a dead-end experience which often resulted in putting them back on the welfare rolls; that the dependents of low-income VISTA volunteers often lost their medicaid coverage as a result of their parents' VISTA service; that VISTA volunteers felt that they at times had been unfairly dealt with and that a legislatively sanctioned grievance mechanism was necessary; that their suggestions for improvements in the program were often ignored and that a legislatively sanctioned mechanism for consulting with VISTA volunteers and utilizing their suggestions was necessary.

Testimony from sponsors of and participants in the University Year for ACTION program raised questions as to the very legality of the establishment of this program without congressional and legislative sanction. University Year for ACTION is a new full-scale $8,000,000 volunter venture established by the ACTION Agency without authorizing legislation after its July 1, 1971, creation. UYA provides grants to institutions of higher learning to conduct programs in which students may satisfy 1 year's course work by performing service similar to that performed by VISTA volunteers.

Testimony raised programmatic questions about UYA as well. For instance, in what kinds of activities should UYA volunteers be involved? What kind and how much of a contribution should be expected from the educational institutions receiving grants to operate this program? Should the participants be subject to the same selection criteria as VISTA volunteers? Should priority be given to schools which waive tuition for its participants? The latter was a particularly important question, since the committee found that not only did the participating institutions receive sizable grants to operate the program, but in most instances they required tuition payments from the participants as well.

The SCORE/ACE program was not even mentioned in the legislation, in spite of the fact that the reorganization plan called for joint administration of this program by the Small Business Admin-

istration and the ACTION Agency. Our subsequent research into this situation revealed that the two agencies have had some difficulties in agreeing as to just how this joint responsibility should be carried out. It was only on February 22, 1973, that the two agencies finally signed a paper attempting to delineate their respective responsibilities.

In short, Mr. President, the hearings convinced the committee that an entirley fresh legislative approach was required.

S. 1148—THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973

The legislation we offer today, Mr. President, S. 1148, represents, we believe, that fresh approach. The design of the proposed Domestic Volunteer Service Act of 1973, is to provide responsible solutions to the perplexing questions and issues raised during the course of the hearings on Reorganization Plan No. 1 and the hearings on the ACTION Act of 1972 and ACTION domestic programs.

THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973—MAJOR PROVISIONS

S. 1148 supersedes the program and administrative provisions of Reorganization Plan No. 1 by providing a 3-year authorization for the ACTION Agency through positive law..

Let me emphasize, Mr. President, that the decision to provide authorization through positive law was not taken lightly. Only after conferring with officials of the ACTION Agency and participants in and representatives of the beneficiaries of the programs it administers did I come to the conclusion that the most fair and efficient way to provide for the continued authorization of these programs was through positive law and the repeal of the existing authorities for these programs.

TITLE V, NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

Title I of S. 1148 is derived from the VISTA authority contained in title VIII of the Economic Opportunity Act of 1964, as amended.

VISTA

Part A of title I provides specifically for the VISTA program of full-time volunteer service to strengthen and supplement efforts to eliminate poverty. S. 1148 changes the basic period of VISTA service from 1 to 2 years in keeping with prior action agency recommendations and the desires of VISTA volunteers regarding this issue. It provides for a grievance mechanism as requested by volunteers who testified at the hearings on S. 3450 last year, and it provides for a procedure for consultation on regulations which was also requested at that time. Section 105 contains a provision to assure that VISTA volunteers are provided the necessary allowances and support, such as transportation, to enable them to effectively carry out their assignments.

Another important new provision affecting VISTA volunteers is contained in section 416(d) which provides that those volunteers who, subsequent to the successful completion of their VISTA service, enter the Federal civil service, may do so in the same manner as Peace Corps volunteers as prescribed in the Executive Order—No. 11103, April 10, 1963—which enables the head of any agency in the executive branch to appoint such volunteers in the competitive service subject to passing an examination prescribed by the Civil Service Commission. This provision is made retroactive to apply to VISTA volunteers whose service began or was completed under title VIII of the Economic Opportunity Act.

Mr. President, with respect to low-income VISTA community volunteers, title I specifically encourages their recruitment, and in section 103, requires that prior to assignment an individual plan designed to provide opportunities for job advancement or for transition to gainful employment be provided for each low-income VISTA community volunteer and that this plan be updated and reviewed with the volunteer 120 days prior to the volunteer's completion of service. In addition, section 404(g) assures low-income VISTA community volunteers that their VISTA allowances and stipends will not have the effect of reducing or eliminating their level of eligibility for assistance or services, such as medicaid, received under any other governmental program.

UNIVERSITY YEAR FOR ACTION

Mr. President, part B of title I provides authority for the University Year for ACTION—UYA—program and similar service-learning programs on the secondary, the secondary vocational, or postsecondary school levels.

It authorizes the Director of ACTION to conduct or make grants or contracts for the UYA program, but stipulates that the programs must be in accordance with the authorities and subject to the restrictions of the VISTA program. For example, UYA volunteers must be subject to the same selection criteria and terms and conditions of assignment as VISTA volunteers, except that they will serve for a 1-year term of service, and that UYA projects will not be subject to the same Governors' scrutiny.

Section 113 requires that priority be given to the enrollment in the UYA program of low-income persons, persons who have successfully completed VISTA service as low-income community volunteers and to Vietnam era military veterans. It is interesting to note that the experience of the UYA program to date proves that many of those enrolled are low-income volunteers and military veterans.

Section 113 also requires that priority be given to arrangements with institutions which agree to waive tuition where legally possible for UYA participants and with institutions which plan their programs without the assistance of an ACTION UYA planning grant. I must emphasize that it most certainly is not intended by this provision that the ACTION Agency relax its standards for quality program planning. Rather, it is intended to spur the initiative of institutions expressing interest in this innovative program.

Mr. President, one of the purposes of the program is to encourage the involvement of educational institutions in the problems of the low-income communities of which they are a part. So section 114(b) includes a requirement that contracts with participating institutions stipulate that they open their available facilities to those communities. Such facilities include human resources, and it is anticipated by this provision that tutorial and related programs be fostered.

In an attempt to involve the maximum number of institutions in this program, section 114(c) was added to the bill to provide that participating institutions contribute to the cost of the program, and that after they receive financial support from the action agency for a total of 3 years—or in exceptional circumstances, where determined by the Director, for a total of up to 5 years—they continue to support a similar semi-learning program on their own initiative.

It is intended that the national student volunteer program, which was transferred from the Office of Economic Opportunity to ACTION by the reorganization plan, and which provides technical support to educational institutions having their own volunteer service programs, be continued under the support authorities provided by this part, section 115.

Mr. President, I believe that the university year for action program is a most worthwhile endeavor. I was concerned, as I mentioned, about the ACTION Agency's establishing such a full-scale new program without clear legislative authority. But I believe that that situation has been resolved, and I urge my colleagues to offer their full support to the UYA effort. As an example of this program's accomplishments, I ask unanimous consent, Mr. President, that an article from the January 3, 1973, edition of the Los Angeles Times featuring UYA be inserted at this point in my remarks.

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

BRINGING CONSUMERISM TO THE BARRIO

(By Betty Liddick)

When Philip Herrera, 22, was unhappy with the repair job on his girlfriend's car, he complained to Consumer Services de Aztlan in East Los Angeles.

"It seems this office would take care of things properly," the student said. "I didn't want to go to some big bureaucratic mess downtown where they'd tell me to go to the fifth floor. Then on the fifth floor they'd tell me to go to the ninth floor.

"I wanted results. That's why people come here."

Consumer Services de Aztlan (the Southwest), tucked into a cubicle at the Human Resources Development center on N. Bonnie Beach, slowly is gaining the trust of the Mexican-American community it serves, where the median school level is ninth grade and the median income is $5,100.

The year-old agency is run by Robert Gomez, 20, and three other Pepperdine University students who are enrolled in an unusual program that allows them to earn credit toward their degrees while working full time in poverty areas. (Volunteers receive $190 monthly for living expenses.)

Called University Year for Action, the experimental program is part of ACTION, the federal agency that is a merger of the Peace Corps, VISTA and other volunteer programs.

Its objectives are to make untapped university resources available to poor communities, teach students through the work they do and help the poor move toward solving their own problems.

"It combines idealism and education," said Jerry Brady, the earnest, statistic-spewing director of UYA who visited Los Angeles recently, "but the emphasis is on the community."

Judging by the results of the first-year evaluation that Brady ticks off by memory, UYA seems headed for success. It has 1,000 students in 25 universities across the country working with community sponsors in mental hospitals, housing projects, schools, day care centers, jails and neighborhood centers. And in March another 700 volunteers will be added and its budget doubled to $8.5 million.

California volunteers include students at Pitzer College, Cal State Fresno, University of Redlands and Pepperdine University.

UYA volunteers from Redlands work as deputy probation officers with minors at Indio jail to reduce the time the juvenile offenders are detained. Pepperdine UYA students counsel unwed high-school mothers in a project called Sister Love and some soon may begin a project in cooperation with the California Youth Authority in which ex-offenders attend college.

"We see this program as a mobilizer of resources," said Brady, citing the handful of Pepperdine UYA students who recruited 275 other volunteers for the Spastic Children's Foundation.

"It's hard to assess our value without tooting our own horn," he said, "yet the results are kind of remarkable."

—58% of community sponsors rated the first group of 400 volunteers excellent; 33% were rated good.

—82% said they would hire the volunteers at a yearly salary of $8,000.

—Volunteers raised $1 million and racked up two million hours from part-time volunteers.

—92% of the students said they never learned more in a comparable amount of time; 75% said they established their career choice.

—Every third person got a professor to work an average of 90 hours a year.

THINKING AHEAD

Brady is so enthused he thinks beyond the University Year for Action to a high school year of service. "I would make the case people are better motivated to learn."

A double benefit of the past year's experience has been the participation of minority students, Brady said. Half of the first 1,000 students were blacks, Mexican-Americans and Indians. "They know their community and they may need the training more."

A case in point: Robert Gomez at Consumer Services de Aztlan which is sponsored by the State Department of Consumer Affairs. "I was brought up around here and I know the problems," said Gomez, waving his arm to indicate the East Los Angeles barrio between City Terrace and Boyle Heights.

"Right now consumerism is a fad," but he sees its need as a continual one for his people because of cultural and language barriers, lack of transportation to more competitive stores and a fear of bureaucracy because a relative may be here illegally.

"Chicanos are the easiest prey for deceptive business practices because of machismo—the concept of manliness. This the ability to endure life without crying out. To complain about things would not be acceptable. So if a Chicano is cheated, he will rarely complain."

Another cultural factor is the sociability of Chicanos, said Gomez. "They believe 'mi casa es tu casa,' my house is your house." They will invite the encyclopedia salesman into their home, they will believe his claims about the books being bought at local schools and then go without essentials to buy them for their children.

FORM LETTER

Consumer Services has spread the word about "slick operators," said Gomez, through an education campaign, including stories on radio and in Spanish-language publications and information and complaint booths at shopping centers.

"We want to educate the people so they know their rights and what to do if they are cheated," said Gomez, who has been emphasizing the three-day "cooling off" law that permits the canceling of contracts of purchases of more than $50 within three days.

He had a form letter printed in local newspapers so that non-Engliseh writing Chicanos could simply fill in the blanks to cancel a contract they had made in haste.

Gomez and the other Consumer Services workers handle 40 complaints a month with a 85–90% success rate. The remaining cases, "where neither side wants to compromise," are referred to Legal Aid, he said.

Complaints center around door-to-door solicitation, automobile repair and immigration problems. "Sometimes we can settle things with a phone call," said Gomez who investigates complaints in a low-key manner that belies his intensity.

"Maybe it is only a misunderstanding. A lot of times it may not be the business' fault at all. If there is a conflict, we try to reach an agreement that is fair to both sides."

Gomez is proud that the community has begun to respond to Consumer Services. "People invite us to dinner or out for a beer. Here we don't give them the runaround. We don't shove a form at them. Sometimes we can settle their problem in one day."

A happy example is David Aguilar, whose car was repossessed when he was disabled and unable to work. Gomez had the car returned the same day and Aguilar's contract renegotiated so that his payments were lowered.

Gomez, who leaves UYA this month, looked back on his year of service and said, "What I've learned you wouldn't believe. Lawyers I've talked with (in researching complaints) say I know as much as first or second year law students."

It seems natural, then, that after graduation in August, Gomez probably will enter law school. "In this UYA program I got really involved," he said. "It was a good experience for me and my community."

SPECIAL VOLUNTEER PROGRAMS

Mr. CRANSTON. Mr. President, part C of title I provides the ACTION agency with a demonstration authority to develop special emphasis programs designed to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty. Section 122 provides the Director with the authority to determine the general terms and conditions of assignment of volunteers serving pursuant to the part—except that the political activities provisions of section 103(c) shall apply—but it contains no authority to provide stipends to those volunteers. It is intended that the agency utilize this authority to develop its cost-shared or cooperative programs whereby it is reimbursed for support costs expended for volunteers serving pursuant to the part. A related provision contained in section 501 of the bill provides that half the sums appropriated for carrying out programs under this part shall be used for cost-reimbursable VISTA programs under part A of title I.

SPECIAL EMPHASIS PROGRAM TO PROVIDE ALTERNATIVES TO THE INCARCERATION OF YOUTHFUL OFFENDERS

Mr. President, section 303 contains provisions for the establishment of a volunteer program to assist and foster community-based programs offering alternatives to the incarceration of youthful offenders. It is based on findings that the incarceration of youthful offenders is often not successful in rehabilitating juvenile delinquents, generally fails to prevent juvenile crime, is more costly than alternative approaches to corrections, and that a large proportion of adults arrested for serious crimes are those who society failed to rehabilitate as young offenders. The establishment of such a program, I believe, offers an exciting new avenue for the application of volunteer service in an area greatly in need of dedicated manpower. The section requires that the Director make special efforts to recruit as volunteers persons who are themselves rehabilitated criminal offenders.

SPECIAL EMPHASIS PROGRAM TO PROMOTE EDUCATIONAL OPPORTUNITIES FOR VETERANS

Section 304, Mr. President, contains provisions for the establishment of a volunteer program to provide Outreach assistance, job placement assistance, and other services to Vietnam-era veterans who are not taking advantage of educational assistance benefits afforded them under the GI bill of rights—chapters 31 and 34 of title 38, United States Code. It is based on findings that fewer than one-half of the Vietnam-era veterans eligible for this assistance are taking advantage of it, and only about a quarter of those with high school diplomas or less education have done so since the program began in 1966.

The aim of the special emphasis program would be to assist in enrolling these veterans in academic or vocational institutions, on-job training programs, or farm cooperative programs, and in assisting them in securing gainful employment. I believe that this is a most worthy effort to be undertaken by caring volunteers who would dedicate themselves to lending a helping hand to the American men who sacrificed so much during the long and still ongoing strife in Southeast Asia. The section requires the Director to make special efforts to recruit as volunteers for this program, persons who are themselves Vietnam-era veterans.

SPECIAL EMPHASIS PROGRAM TO PROVIDE COMMUNITY-BASED PEER GROUP OUTREACH AND COUNSELING AND OUTPATIENT SERVICES FOR DRUG USERS

Mr. President, section 125 of S. 1148 provides for a special emphasis program to supplement and strengthen drug treatment and rehabilitation efforts in communities by utilizing sympathetic peer group members—an effort which can be maximized through the use of skilled ACTION volunteers—to provide outreach, counseling, and followup services for younger persons and Vietnam-era military veterans who are suffering from the tragedy of drug abuse, including alcoholism.

In my capacity as chairman of the Subcommittee on Health and Hospitals of the Veterans' Affairs Committee and as a member of the Subcommittee on Alcoholism and Narcotics of the Labor and Public Welfare Committee, I have studied deeply the tragedy of drug and alchohol abuse among our population, particularly among Vietnam-era military

veterans. I was particularly pleased, therefore, when the legislation I authored in an attempt to begin to deal with the veteran part of this tragedy in a realistic way, S. 284, the "Veterans Alcohol and Drug Treatment and Rehabilitation Act of 1973," was adopted by the Senate earlier this week—March 6—by the overwhelming margin of 77–2. I wish to call attention to my floor statement at this time as outlining the depths of dimensions of the military and veterans addiction problem.

But the problem of drug and alcohol abuse is not confined to Vietnam-era veterans—rather, it reaches nearly epidemic proportions throughout the Nation—and we must increase our efforts on all fronts if we are ever to contain it.

This special emphasis program is thus assigned to provide additional help, at the community level, in that urgent battle.

Mr. President, I am firmly convinced that peer group therapy, when coupled with community resources and support; is one of the most successful methods of dealing with drug and alcohol abuse; consequently, section 125 provides special emphasis on the assignment to projects designed to combat addiction and drug abuse of volunteers—particularly Vietnam-era veterans—who are themselves considered by competent medical authorities recovered addicts and drug abusers.

TITLE II. NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

Mr. President, title II of S. 1148 is derived from title VI of the Older Americans Act of 1965, as amended. It provides for the retired senior volunteer program—RSVP—for the foster grandparent program, and for new older American community service programs.

An important provision contained in the bill which is common to each of these programs is the reduction of age of eligibility from 60 years old to 55 years old. This change in age of eligibility was contained at my behest in the Senate version of the Older Americans Act amendments—H.R. 15657—that were pocket vetoed by the President last October 27.

I would like to discuss for a moment, Mr. President, the reason why I am so strongly convinced that this lower age of eligibility should be adopted for these programs.

Last March I conducted hearings in California as acting chairman of Senator EAGLETON's Subcommittee on Aging of the Labor and Public Welfare Committee. I was struck by the testimony the subcommittee received from representatives of minority groups citing statistics that revealed the extent to which members of minority groups age more quickly than do their Anglo counterparts. This is perhaps due to the unjust burdens placed on minorities by our society still struggling to rid itself of prejudice.

This point was brought up again last spring during the hearings on S. 3450; for example, the director of a South Carolina sponsoring agency of a foster grandparent program urged the change and repeated a recommendation of the White House Conference on Aging that the Congress adopt age 55 eligibility standards for older Americans programs.

I for one, Mr. President, had not previously given sufficient reflection to the fact that age 60 for a black, Chicano, Indian, or other minority group person, is much different than age 60 for a white man or woman. I think we should recognize this fact and legislate programs geared to the best interest of all our older Americans.

For this reason, Mr. President, I strongly urge that as S. 1148 proceeds through the legislative process, the age of eligibility for participation in older American volunteer programs that I recommend be retained in the bill.

I would like to refer back to an important section in last year's Senate Committee Report (No. 92–1242) on S. 4044, the proposed "Older Americans Comprehensive Services Amendments of 1972," dealing with language in the present part B, title VI, authority in the Older Americans Act of 1965, since the clarification it provides applies as well to the provisions contained in title II, part B, of the legislation I offer today. The committee report states the following—page 18:

In addition, there are two matters regarding language retained from the present law in section 611(a) which require further clarification: the effect of the "person-to-person" provision and the language "including services as 'Foster Grandparents' to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs."

The Committee does not intend "person-to-person" services which Foster Grandparents are authorized to provide under this section to be limited to those in a direct one-to-one relationship with a particular child. Rather, it would be consistent with the Committee's intention for a Foster Grandparent to serve in a project or program where he or she inter-relates with several children. The Committee expects, however, that the major thrust of the subsection (a) program—bringing older persons in direct and personal contact with a child or several children with the purpose of developing an enriching relationship between them, as in a surrogate grandparent/grandchild relationship—will be carried out in programs conducted under this subsection.

Second, the Committee wishes to make clear that it does not agree with the restrictive interpretation apparently given by ACTION to the "including" clause at the end of the subsection. The Committee's view is that this language is not, and was not, exclusive with respect to the places where Foster Grandparents could serve children and that service in a private home or other non-institutional setting, as well as in "hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs" is permissible as long as the other basic requirements of the title are satisfied.

Mr. President, I repeat this explanation because I believe it is most important in view of the ACTION Agency's previous restrictive interpretation—which I understand was inherited from the Administration on Aging—of this authority.

NOW OLDER AMERICAN COMMUNITY SERVICE PROGRAMS

Subsection 211(b) of title II authorizes the Director to carry out programs similar to Foster Grandparents, but under the category of Older American Community Service programs. In these new programs, low-income retired Americans aged 55 and over would work with underprivileged older persons in the same manner as Foster Grandparents work with children. This would include, for instance, volunteer service as senior health aides working with persons receiving home health care and nursing care, or delivering meals and services as part of nutritional programs for older Americans.

I first proposed the content of this new subsection as a committee amendment to S. 4044 during our consideration of that measure late in the last Congress. I was pleased that my colleagues on the Labor and Public Welfare Committee included it in the bill at that time and as passed by both Houses and sent to the President in H.R. 15657 last October, as well as in S. 50, the new proposed "Older Americans Comprehensive Services Amendments of 1972," which passed the Senate on February 20 (S. Rept. No. 93–19). I have in the meantime added proposed language to the original subsection which provides that older persons volunteering to serve in the meals on wheels and similar nutrition programs for older Americans by delivering meals and providing services and companionship be included as senior health aides and derive the benefits afforded those volunteers.

Other stylistic and clarifying changes have also been made from the present language of title VI of the older Americans Act of 1965.

TITLE III. NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTARY SERVICE BY SMALL BUSINESS PROPRIETORS

Mr. President, in title III of S. 1148, I have attempted to resolve the most pressing problems which have arisen in the administration of the SCORE/ACE program since implementation of Reorganization Plan No. 1 which gave joint authority to the ACTION Agency and to the Small Business Administration for carrying out this program. The bill attempts to codify much of the substance of the February 22, 1973, memorandum jointly issued by ACTION and the ABA, to which I made reference earlier.

Section 301 authorizes the Directors of the ACTION agency and the Administrator of the Small Business Administration to enter into agreements as to how their joint authority shall be exercised and to publish those agreements in the Federal Register. It authorizes the Director to cooperate with the Administrator in carrying out the program carrying out the following functions: to conduct national publicity and recruitment efforts and to form new SCORE chapters; to provide general budgetary planning for the SCORE/ACE program, to provide logistical support, including office space and supplies (not available from the SBA) to the volunteers; and to expand the program by locating new clients projects and programs, particularly those funded under the OEO community economic development program, who would benefit from the expertise of SCORE/ACE volunteers.

For the first time under this legislation, SCORE volunteers would be eligible to receive reimbursement for their out-of-pocket expenses in connection with their volunteer service. And related to this, section 419(c) provides that this reimbursement shall not be considered

income for reducing social security benefits and for other purposes. This section applies to the title II older American volunteer programs as well.

The title further prohibits the utilization of services of SCORE/ACE volunteers (jointly administered with the ACTION Agency) to screen and evaluate applications for SBA loans and from providing services to an SBA client with a delinquent loan outstanding unless specifically requested in writing by that client after the loan has become delinquent. This prohibition is designed to protect the volunteer from legal actions which might be taken by the aggrieved client and to keep in the forefront the identiy of the SCORE volunteer as serving the client, not the SBA.

Mr. President, I believe that these provisions will be most helpful in specifying how the joint ACTION/SBA responsibility for the Service Corps of Retired Executives and the Active Corps of Executives program shall be carried out.

TITLE IV. GENERAL ADMINISTRATIVE PROVISIONS

Mr. President, title IV of the bill contains provisions for the administration and coordination of programs authorized by the proposed Domestic Volunteer Service Act of 1973.

Section 401 gives a concrete statutory basis to the ACTION agency and establishes its functions and responsibilities as a matter of law. It also contains provisions similar to those in Reorganization Plan No. 1, except that it also authorizes the position of Deputy Associate Director, directly responsible to the Director of the Agency for the VISTA and University Year for ACTION programs. I believe such a position is necessary to protect the integrity and identity of the VISTA program—whose volunteers have served so well during the past 8 years.

Most of the provisions of section title IV and particularly 402 are derived from personnel in title VI of the Economic Opportunity Act of 1964, as amended. Clause (13) of section 402 is a provision worthy of note, Mr. President. It requires the Director of the ACTION agency to provide or arrange for educational and vocational counseling of volunteers and recent former volunteers who have served in ACTION programs so as to encourage them to use in the national interest the skills and experience they have gained from their volunteer experience, and to promote the development or avenues in which that skill and experience can be utilized. This provision attempts to insure that the knowledge and expertise of these dedicated individuals will be utilized to the maximum extent possible even after the completion of their volunteer service.

Of particular note, too, Mr. President, is section 404(a) which prohibits the assignment of volunteers to activities that would otherwise be performed by employed workers or that would supplant the hiring of or result in the displacement of employed workers, or would impair existing contracts for service. This section is included in the bill as a result of reservations expressed by labor groups in testimony on S. 3450 about some of the experimental programs the ACTION agency had anticipated developing. A similiar section is included in the title VIII VISTA authority contained in the Economic Opportunity Act, but I believe that section 404(a) improves on and strengthens that prohibition.

I want to discuss the provisions contained in section 404(f), as well, Mr. President, since they are particularly important in light of the recurring questions arising from the difficulty of merging two personnel systems—the Civil Service and the Foreign Service Reserve—in the ACTION Agency. Section 404(f) prohibits the Director from assigning or delegating any substantial responsibility for carrying out domestic program functions under this Act to persons other than those appointed pursuant to Civil Service regulations or experts and consultants appointed pursuant to regulations of the Administrative Expenses Act of 1946. Thus, no moneys authorized and appropriated for carrying out domestic volunteer programs may be used to pay the salaries of Foreign Service personnel who have as their primary responsibilities the carrying out program functions in international volunteer service programs (Peace Corps). I believe that this provision will result in greater accountability as to how funds appropriated for domestic volunteer programs are allocated and expended. Further, it can serve to resolve one of the most troubling issues hindering the efficient administration of the ACTION Agency.

TITLE V. AUTHORIZATION LEVELS

Mr. President, title V of S. 1148 contains separate authorization of appropriations for the administration of programs under the act, and for all the programs themselves.

The authorizations for title I—National Volunteer Antipoverty Programs, including VISTA and the University Year for ACTION programs, and for title II—National Older Americans Volunteer programs, including the Retired Senior Volunteer program and the Foster Grandparent program, are stacked in such a way so as to insure that the successful VISTA UYA, and Foster Grandparents programs are carried on at levels comparable to present. The breakdown of those authorizations and the authorization levels for all titles by program is contained in the following chart with a 3-year total of $536.5 million:

TABLE 1.—THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973—AUTHORIZATION OF APPROPRIATION BY PROGRAM AND TITLE

[In millions of dollars]

	Title I			Title II			Title III	Title IV
	VISTA	UYA	Special programs	RSVP	FGP	OACSP	Score/ace	Administration
Fiscal year:								
1973	30	12	8	30	45	7	1.0	15
1974	35	15	10	40	55	8	1.5	16
1975	45	20	10	50	65	9	2.0	17
Total	110	47	28	120	165	24	4.5	48
3 year grand total				536.5				

Mr. President, the following two additional charts will provide even further clarification.

Table 2 provides a breakdown of the funding authorized, by part, for title I, the funding earmarked, by part, for title I and the additional funding available, by part, for title I if full funding is provided; table provides a breakdown of the funding authorized and earmarked for title II, part B:

TABLE 2.—THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973—AUTHORIZATION OF APPROPRIATIONS FOR TITLE I

[In millions of dollars]

	Total	By part			Earmarked			Add on		
		A	B	C	A	B	C	A	B	C
Fiscal year:										
1974	50	30	12	8	22.3	7.3	8	7.7	4.7	0
1975	60	35	15	10	25.0	8.5	10	10.0	6.5	0
1976	75	45	20	10	27.5	10.0	10	17.5	10.0	0

TABLE 3.—THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973—AUTHORIZATION OF APPROPRIATIONS FOR TITLE II, PT. B

[In millions of dollars]

	Total	By subsection—		Earmarked		Add on	
		a	b	a	b	a	b
Fiscal year:							
1974	52	45	7	25	0	20	0
1975	63	55	8	25	0	30	0
1976	74	65	9	25	0	40	0

CONCLUSION

Mr. President, as I indicated at the outset of my remarks today, this legislation has been long in coming. The ACTION Agency will be celebrating its second birthday in less than 4 months. It has operated up to this point without the benefit of authorizing legislation. It has had to look for its authorizations of appropriations to four different pieces of legislation. It has been responsible to more than 15 and committees subcommittees of the Congress.

It is my hope that this legislation will provide a solid foundation from which the ACTION Agency can more efficiently operate in the future and expand its involvement in positive and progressive volunteer service programs.

The ACTION Agency represents our Nation's concern for its less fortunate and its determination to match that concern with deeds. S. 1148 is designed to provide the ACTION Agency with the legislative tools it requires to get on with its mission.

Mr. President, I ask unanimous consent that the text of S. 1148, followed by a very detailed section-by-section analysis be printed in the RECORD at this point.

There being no objection, the bill and section-by-section analysis was ordered to be printed in the RECORD, as follows:

S. 1148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as "The Domestic Volunteer Service Act of 1973":

TABLE OF CONTENTS

TITLE I—NATIONAL VOLUNTEER ANTI-POVERTY PROGRAMS

PART A—VOLUNTEERS IN SERVICE TO AMERICA

Sec. 101. Statement of Purpose
Sec. 102. Authority to Operate VISTA
Sec. 104. Terms of Service
Sec. 105. Support Services
Sec. 106. Participation of Beneficiaries
Sec. 107. Participation of Older Persons

PART B—SERVICE-LEARNING PROGRAMS

Sec. 111. Statement of Purpose.
Sec. 112. Authority to Operate University Year for Action
Sec. 114. Special Conditions
Sec. 115. Special Service-Learning Programs

PART C—SPECIAL VOLUNTEER PROGRAMS

Sec. 121. Statement of Purpose
Sec. 122. Authority to Establish Programs
Sec. 123. Special Emphasis Program to Provide Alternatives to the Incarceration of Youthful Offenders
Sec. 124. Special Emphasis Program to Promote Educational Opportunities for Veterans
Sec. 125. Special Emphasis Program to Provide Community-based Peergroup Counseling and Outreach for Drug Abusers

TITLE II—NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

PART A—RETIRED SENIOR VOLUNTEER PROGRAM

Sec. 201. Grants and Contracts for Volunteer Service Projects

PART B—FOSTER GRANDPARENT PROGRAM AND OLDER AMERICAN COMMUNITY SERVICE PROGRAMS

Sec. 211. Grants and Contracts for Volunteer Service Projects
Sec. 212. Conditions of Grants and Contracts

PART C—GENERAL PROVISIONS

Sec. 221. Coordination With Other Federal Programs
Sec. 222. Payments

TITLE III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTARY SERVICE BY SMALL BUSINESSMEN

Sec. 301. Authority To Cooperate in the Operation of SCORE/ACE
Sec. 302. Authority To Establish Terms and Conditions of Assignments

TITLE IV—ADMINISTRATION AND COORDINATION

Sec. 401. Establishment of Agency
Sec. 402. Authority of the Director
Sec. 403. Political Activities
Sec. 404. Special Limitations
Sec. 405. National Voluntary Service Advisory Council
Sec. 406. Labor Standards
Sec. 407. Reports
Sec. 408. Joint Funding
Sec. 409. Prohibition of Federal Control
Sec. 410. Coordination With Other Programs
Sec. 411. Prohibition
Sec. 412. Appeals, Notice and Hearing Procedures
Sec. 413. Duration of Program
Sec. 414. Distribution of Benefits Between Rural and Urban Areas
Sec. 415. Advance Funding
Sec. 416. Application of Federal Law
Sec. 417. Evaluation
Sec. 418. Nondiscrimination
Sec. 419. Taxes
Sec. 420. Legal Expenses
Sec. 421. Guidelines
Sec. 422. Definitions

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. National Volunteer Antipoverty Programs
Sec. 502. National Older American Volunteer Programs
Sec. 503. National Volunteer Program to Assist Small Businesses and Promote Voluntary Service by Small Business Proprietors
Sec. 504. Administraiton and Coordination
Sec. 505. Availability of Appropriations

TITLE VI—AMENDMENTS TO OTHER LAWS AND REPEALERS

Sec. 601. Supersedence of Reorganization Plan No. 1 of 1971
Sec. 602. Creditable Service for Civil Service Retirement
Sec. 603. Extension of Eligibility for Veterans' Educational Benefits
Sec. 604. Taxes on Stipends to Volunteers
Sec. 605. Taxes on Support to Older American Volunteers
Sec. 606. Repeal of Title VIII of the Economic Opportunity Act
Sec. 607. Repeal of Title VI of the Older Americans Act

TITLE I—NATIONAL VOLUNTEER ANTI-POVERTY PROGRAMS

PART A—VOLUNTEERS IN SERVICE TO AMERICA

STATEMENT OF PURPOSE

SEC. 101. This part provides for the Volunteers in Service to America (VISTA) program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and coordination of such program. Its purpose is to strengthen and supplement efforts to eliminate poverty in the United States by encouraging and enabling persons from all walks of life and all age groups, including elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help the poor to overcome the handicaps of poverty and to secure and exploit opportunities for self-advancement.

AUTHORITY TO OPERATE VISTA

SEC. 102. The Director shall recruit, select, and train persons to serve in full-time volunteer programs consistent with the provisions and to carry out the purposes of this part.

SEC. 103. (a) The Director, upon request of Federal, State, or local agenices, or private nonprofit organizations, shall assign such volunteers to work in appropriate projects and programs—

(1) in meeting the health, education, welfare, or related needs of Indians living on Federal trust lands, of migratory and seasonal farmworkers and their families, and of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps under the supervision of nonprofit institutions or facilities; and

(3) in connection with programs or activities authorized, supported, or of a character eligible for assistance under the Economic Opportunity Act of 1964, as amended.

(b) The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. Prior to the assignment of any such community volunteer, the Director shall ensure that each such volunteer is provided an individual plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment. One hundred and twenty days prior to the completion of such community volunteer's term of service, the Director shall ensure that such plan is updated and reviewed with the volunteer.

(c) Except as provided in subsection (d), the assignment of volunteers under this section shall be on such terms and conditions (including restrictions on political activities that appropriately recognize the special status of volunteers living among the persons or groups served by programs to which they have been assigned) as the Director may determine, including work assignments in their own or nearby communities.

(d) Volunteers under this part shall not be assigned to duties or work in any State unless such program has been submitted to the Governor or other chief executive officer

of the State concerned, and has not been disapproved by him within forty-five days of such submission. The assignment of a volunteer shall be terminated by the Director when so requested by the Governor or chief executive officer of the State concerned not later than thirty days after such request has been made, or at a time after such request has been made as agreed upon by such Governor or chief executive officer of the State concerned and the Director.

TERMS OF SERVICE

SEC. 104. (a) Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty. To the maximum extent practicable, this shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their term of service, except for authorized periods of leave.

(b) Volunteers serving under this part shall be enrolled for two-year periods of service, including or excluding periods of time devoted to training as the Director may determine, except that volunteers serving under this part may be enrolled for periods of service of no less than one year when the Director determines, on an individual basis, that a period of service of less than two years is necessary to meet a critical scarce-skill need. Volunteers serving under this part may reenroll for no more than one two-year period of service. No volunteer shall serve for more than five years under this part.

(c) Volunteers under this part shall, upon enrollment, take the oath of office as prescribed in section 5(j) of the Peace Corps Act, as amended (22 U.S.C. 2504(j): *Provided*, That persons legally residing within a State but who are not citizens of the United States, may serve under this part without taking or subscribing to such oath, if the Director determines that the service of such persons will further the interests of the United States. Such persons shall take such alternative oath or affirmation as the Director shall deem appropriate.

(d) The Director shall establish a procedure, including notice and opportunity to be heard, for volunteers under this part to present and obtain resolution of grievances in connection with the terms and conditions of their service. Such procedure shall include provision for personal appearance by the volunteer to present such grievance in the regional area in which he is serving, for the volunteer's written appeal to the Director, and, if requested by the volunteer, for submission of a recommendation on such grievance by volunteer councils or a component thereof composed of volunteers elected by a majority vote of the volunteers serving in each regional area. Such volunteer councils shall be composed of one volunteer for each 25 volunteers represented and shall meet on a regular basis twice a year except upon emergency call of the chairman, and a volunteer council member shall be entitled to devote no more than 20 per cent of his or her service time to duties in connection with such membership.

(e) In connection with the determination of the terms and conditions of the service of volunteers under this part and part B of this title, the Director shall establish a procedure for full consultation on a regular basis with volunteer councils elected and designated pursuant to subsection (d) of this section. Such procedure shall include provision for submission, at least forty-five days in advance of implementation, of all proposed rules, regulations, directives, and other issuances affecting such terms and conditions, to each such volunteer council in order for such council to present comments thereon to the Director.

(f) In establishing the procedures required under subsections (d) and (e), the Director shall consult with and take into consideration the recommendations of such representative groups of volunteers as exist on the date of enactment of this subsection, and shall establish and publish in the Federal Register regulations prescribing such procedures within ninety days after such enactment. The Director shall promptly provide to each volunteer in service on such date, and to each such volunteer beginning service thereafter upon such volunteer's entry into training, a copy of all such regulations.

SUPPORT SERVICES

SEC. 105. (a) (1) The Director shall provide a stipend to volunteers under this part while they are in training and during their assignment. Such stipend shall not exceed $50 per month during the volunteer's service, except that the Director may provide a stipend not to exceed $75 per month in the case of persons who have served for at least one year and who, in accordance with standards which the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills.

(2) Stipends shall be payable only upon completion of a term of service; except that in extraordinary circumstances the Director may from time to time advance all or a portion of the accrued stipend to or on behalf of a volunteer. In the event of the death of a volunteer during service, the amount of any unpaid stipend shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

(b) The Director shall also provide volunteers such living, travel (including travel to and from place of training), and leave allowances, and such housing, supplies, equipment, subsistence, clothing, health and dental care, transportation, supervision, technical assistance and such other support as he deems necessary and appropriate to carry out the purpose of this part, and shall ensure that each such volunteer has available such allowances and support as will enable the volunteer to carry out the purpose of this part and to effectively perform the work to which he is assigned.

PARTICIPATION OF BENEFICIARIES

SEC. 106. To the maximum extent practicable, the poor of the communities to be served by volunteers under this part, under part B, and under any other provision of this title in programs serving the poor, shall participate in planning, developing, and implementing programs thereunder.

PARTICIPATION OF OLDER PERSONS

SEC. 107. In carrying out this part and part C of this title, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of older persons and older persons membership groups as volunteers and participant agencies in the various programs and activities authorized under such parts and, because of the high proportion of older persons within the poverty group, shall encourage the development of a variety of volunteer services to older persons, including special projects, to assure that such persons are served in proportion to their need.

PART B—SERVICE-LEARNING PROGRAMS

STATEMENT OF PURPOSE

SEC. 111. This part provides for the University Year for Action (UYA) program of full-time volunteer service by students enrolled in institutions of higher learning, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. Its purpose is to strengthen and supplement efforts to eliminate poverty by enabling students at such cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of such students' course work during their term of service while attending such institutions, in agencies, institutions, and situations where the application of human talent and dedication may help the poor to overcome the handicaps of poverty and to secure and exploit opportunities for self-advancement. Its purpose further is to encourage other students and faculty members to engage, on a part-time, self-supporting basis, in such volunteer service and work along with the participants of the program established by this part; and to promote participation by such institutions in meeting the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise. Its purpose further is to provide for a program of part-time or short-term service learning by secondary and post-secondary school students to strengthen and supplement efforts to eliminate poverty.

AUTHORITY TO OPERATE UNIVERSITY YEAR FOR ACTION

SEC. 112. Except as otherwise provided in this part, the Director shall conduct or make grants or contracts for programs to carry out the purposes of this part in accordance with the authorities and subject to the restrictions in the provisions of part A of this title, except for those in subsections (d) of sections 103 and 104.

SEC. 113. In carrying out programs under this part, the Director shall insure that priority shall be given—

(1) to the enrollment of persons who have successfully completed their service as low-income community volunteers under part A of this title or under part A of title VIII of the Economic Opportunity Act of 1964, as amended, to military veterans (as defined in section 101 of title 38, United States Code), and to low-income persons;

(2) to arrangements with institutions agreeing to waive tuition for participants in such program, where such waiver is not prohibited by law; and

(3) to arrangements with institutions at which students and faculty, on a self-supporting basis, have carried out necessary and appropriate planning for such programs.

SPECIAL CONDITIONS

SEC. 114. (a) Volunteers serving under this part shall be enrolled for one-year periods of service and may receive academic credit for such service in accordance with the regulations of the sponsoring institution.

(b) Grants to and contracts with institutions to administer programs under this part shall provide that prospective student participants in such programs shall participate substantially in the planning of such programs and that such institutions shall make available to the poor in the surrounding community all available facilities, including human resources, of such institution in order to assist in meeting the needs of such poor persons.

(c) (1) In making grants or contracts for the administration of programs under this part, the Director shall insure that financial assistance under this Act to programs carried out pursuant to section 112 of this part shall not exceed 80 per centum of the total direct cost (including planning costs) of such program. Each such grant or contract shall require a commitment from the institution to assume the full cost of continuing a program, of at least the same size for at least one year, carrying out the purposes of this part after such institution has received support under title VIII of the Economic Opportunity Act of 1964, as amended, and/or under this part for three years, except that the Director may provide assistance for up to an additional two years in exceptional circumstances.

(2) The Director shall take necessary steps to monitor the extent of compliance by such institutions to commitments entered into under paragraph (1) of this section and shall advise the Secretary of the Department of Health, Education, and Welfare of the extent of each such institution's compliance.

SPECIAL SERVICE-LEARNING PROGRAMS

SEC. 115. (a) Of the funds appropriated for the operation of programs under this

part, up to 10 per centum may be used, notwithstanding any other provision of this part, to encourage and enable students in secondary, secondary vocational, and post-secondary schools to participate in service-learning programs on an in- or out-of-school basis in assignments of a character and on such terms and conditions as described in subsections (a) and (c) of section 103.

(b) Persons serving as volunteers under this section shall not be deemed to be Federal employees for any purpose.

(c) Persons serving as volunteers under this section shall receive no living allowance or stipend and only such other support or allowances as the Director determines, pursuant to regulations which he shall prescribe, are required because of unusual or special circumstances affecting the program.

PART C—SPECIAL VOLUNTEER PROGRAMS

STATEMENT OF PURPOSE

SEC. 121. This part provides for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. Its purpose is to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

AUTHORITY TO ESTABLISH PROGRAMS

SEC. 122. (a) The Director is authorized to conduct or make grants or contracts for special volunteer programs or demonstration programs designed to stimulate and initiate improved methods of providing volunteer services and to encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part.

(b) The assignment of volunteers under this section shall be on such terms and conditions as the Director shall determine, pursuant to regulations which he shall prescribe.

SPECIAL EMPHASIS PROGRAM TO PROVIDE ALTERNATIVES TO THE INCARCERATION OF YOUTHFUL OFFENDERS

SEC. 123. (a) The Congress finds that the incarceration of youthful offenders is often not successful in rehabilitating juvenile delinquents, generally fails to prevent juvenile crime, and is more costly than alternative approaches to corrections, and that a large proportion of adults arrested for serious crimes are those who society failed to rehabilitate as young offenders. It is the purpose of this section to provide for a special emphasis volunteer program to supplement and strengthen efforts to prevent delinquency through community-based alternatives to the incarceration of youthful offenders.

(b) The Director, utilizing not less than 10 per centum of the funds made available pursuant to section 501 for carrying out programs under this part in each fiscal year and in consultation with the Attorney General and the Secretary of Health, Education and Welfare, shall conduct a program in furtherance of the purpose of this section under which—

(1) volunteers serving under part A, B, or C of this title, with special emphasis on the recruitment, selection, training, and assignment as volunteers to such program under this section of persons who are themselves rehabilitated criminal offenders, are assigned to a department of corrections in a State, county, city, or school district to support and expand existing community-based alternatives to incarceration for delinquency prevention, and to foster the creation of such alternatives to incarceration where they do not yet exist; and

(2) such volunteers, wherever possible, work in cooperation with existing Federal agency and other personnel engaged in programs similar to those authorized by this section.

SPECIAL EMPHASIS PROGRAM TO PROMOTE EDUCATIONAL OPPORTUNITIES FOR VETERANS

SEC. 124. (a) The Congress finds that fewer than one-half of the Vietnam era veterans eligible for educational assistance benefits under the GI Bill of Rights (chapters 31 and 34 of title 38, United States Code) are taking advantage of such benefits, that only 25 per cent of such eligible veterans who had a high school diploma or less are taking advantage of such benefits, and that many of such veterans are unemployed or underemployed and are unaware of the economic and social opportunities available to them under such law and other laws and programs. It is the purpose of this section to provide for a special emphasis volunteer program to supplement and strengthen efforts to provide outreach and other assistance to such veterans, particularly those who are educationally disadvantaged, in enrolling such veterans in academic or vocational institutions, on-job training programs, or farm cooperative programs, and in securing gainful employment for such veterans.

(b) The Director, in consultation with the Administrator of Veterans' Affairs, the Commissioner of Education in the Office of Education, Department of Health, Education, and Welfare, and the Secretary of Labor and utilizing not less than 10 per centum of the funds made available pursuant to section 501 for carrying out programs under this part in each fiscal year, shall conduct a program in furtherance of the purpose of this section to which volunteers enrolled under part A, B, or C of this title are assigned with special emphasis on the recruitment, selection, training, and assignment to programs under this section as volunteers of persons who themselves are military veterans of the Vietnam era (as defined in section 101 of title 38, United States Code); and

(2) such volunteers, wherever possible, work in cooperation with existing Veterans' Administration (including veterans carrying out student services pursuant to section 1688 of title 38, United States Code), institution of higher education, veterans' organization, or other personnel engaged in programs similar to those authorized by this section.

SPECIAL EMPHASIS PROGRAM TO PROVIDE COMMUNITY-BASED PEER GROUP OUTREACH AND COUNSELING FOR DRUG USERS

SEC. 125. (a) The Congress finds that one of the most successful methods of helping persons, especially younger persons, suffering from all forms of drug addiction and abuse including alcoholism) is to provide concerned, sympathetic peer-group members to conduct outreach, counseling and related activities in community-based drug treatment and rehabilitation program. It is the purpose of this section to provide for a special emphasis volunteer program to supplement and strengthen drug treatment and rehabilitation efforts in communities by providing outreach, counselling, follow-up, and related services for persons (especially younger persons and military veterans of the Vietnam era (as defined in section 101 of title 38, United States Code)) suffering from drug addiction or drug abuse (including alcoholism).

(b) The Director, utilizing not less than 10 per centum of the funds made available pursuant to section 501 for carrying out programs under this part in each fiscal year and in consultation with the Director of the Special Action Office on Drug Abuse Prevention in the Executive Office of the President, the Director of the National Institute of Mental Health, in the Department of Health, Education, and Welfare, and the Administrator of Veterans' Affairs, shall conduct a program in furtherance of the purpose of this section under which—

(1) volunteers enrolled under part A, B or C of this title, with special emphasis on the recruitment, selection, training, and assignment as volunteers to such program under this section of persons (particularly such military veterans of the Vietnam era) who are themselves considered by competent medical authority as recovered addicts or abusers;

(2) such volunteers, whenever possible, work in cooperation with existing Federal agency and other personnel engaged in programs similar to those authorized by this section.

TITLE II—NATIONAL OLDER AMERICANS VOLUNTEER PROGRAMS

PART A—RETIRED SENIOR VOLUNTEER PROGRAM

GRANTS AND CONTRACTS FOR VOLUNTEER SERVICE PROJECTS

SEC. 201. (a) In order to help retired persons to avail themselves of opportunities for voluntary service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 303(a)(1) of the Older Americans Act of 1965, as amended (52 U.S.C. 3023(a)(1)) or grants to or contracts with other public and nonpublic private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service programs under this section, if he determines, in accordance with regulations which he shall prescribe, that—

(1) volunteers shall not be reimbursed for other than transportation, meals, and other out-of-pocket expenses incident to the provision of services under this part;

(2) only individuals aged fifty-five or over will be enrolled as volunteers to provide services under this part (except for administrative purposes), and such services will be performed in the community where such individuals reside or in nearby communities either (A) on publicly owned and operated facilities or projects, or (B) on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;

(3) the program includes such short-term training as may be necessary to make the most effective use of the skills and talents of participating volunteers, and provides for the payment of the reasonable expenses of such trainees;

(4) the program is being established and will be carried out with the advice of persons competent in the field of service involved, and of persons with interest in and knowledge of the needs of older persons; and

(5) the program is coordinated with other related Federal and State programs.

(b) The Director shall not award any grant or contract under this part for a project in any State to any agency or organization unless, if such State has a State agency established or designated pursuant to section 303(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3023(a)(1)), such agency itself is the recipient of the award or such agency has been afforded at least sixty days in which to review the project application and make recommendations thereon.

PART B—FOSTER GRANDPARENT PROGRAM AND OLDER AMERICAN COMMUNITY SERVICE PROGRAMS

GRANTS AND CONTRACTS FOR VOLUNTEER PROJECTS

SEC. 211. (a) The Director is authorized to make grants to or contracts with public and

nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to volunteers serving under this part) designed for the purpose of providing opportunities for low-income persons aged fifty-five or over to serve as volunteers to provide supportive person-to-person services in health, education, welfare, and related settings to children having exceptional needs, including services as Foster Grandparents to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs. The Director may approve assistance in excess of 90 per centum of the costs of the development and operation of such projects only if he determines, in accordance with regulations which he shall prescribe establishing objective criteria, that such action is required in furtherance of the purpose of this section. Provision for such assistance shall be effective as of September 19, 1972. In the case of any project with respect to which, prior to such date, a grant or contract has been made under section 611(a) of the Older Americans Act of 1965 (42 U.S.C. 3044(b)) or with respect to any project under the Foster Grandparent program in effect prior to September 17, 1969, contributions in cash or in kind from the Bureau of Indian Affairs, Department of the Interior, toward the cost of the project may be counted as part of the cost thereof which is met from non-Federal sources.

(b) The Director is also authorized to make grants or contracts to carry out the purpose described in subsection (a) of this section in the case of persons (other than children) having exceptional needs, including services by volunteers serving as senior health aides to work with persons receiving home health care, nursing care, or meals on wheels or other nutritional services, and as senior companions to persons having developmental disabilities.

CONDITIONS OF GRANTS AND CONTRACTS

SEC. 212. (a)(1) In carrying out this part, the Director shall insure that volunteers receiving assistance in any project are older persons of low income who are no longer in the regular work force.

(2) The Director shall not award a grant or contract under this part which involves a project proposed to be carried out throughout the State or over an area more comprehensive than one community unless—

(A) the State agency established or designated under section 303(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3023(a)(1)) is the applicant for such grant or contract or, if not, if such agency has been afforded a reasonable opportunity to apply for and receive such award and to administer or supervise the administration of the project; and

(B) in cases in which such agency is not the grantee or contractor (including cases to which subparagraph (A) applies but in which such agency has not availed itself of the opportunity to apply for and receive such award), the application contains or is supported by satisfactory assurances that the project has been developed, and will to the extent appropriate be conducted, in consultation with, or with the participation of, such agency. (3) The Director shall not award a grant or contract under this part which involves a project proposed to be undertaken entirely in a community served by a community action agency unless—

(A) such agency is the applicant for such grant or contract or, if not, if such agency has been afforded a reasonable opportunity to apply for and receive such award and to administer or supervise the administration of the project;

(B) in cases in which such agency is not the grantee or contractor (including cases to which subparagraph (A) applies but in which such agency has not availed itself of the opportunity to apply for and receive such award), the application contains or is supported by satisfactory assurances that the project has been developed, and will to the extent appropriate be conducted in consultation with, or with the participation of, such agency; and

(C) if such State has a State agency established or designated pursuant to section 303(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3023(a)(1)), such agency has been afforded at least forty-five days in which to review the project application and make recommendations thereon.

(b) The term "community action agency" as used in this section means a community action agency established under title II of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2781–2837).

PART C—GENERAL PROVISIONS

COORDINATION WITH OTHER FEDERAL PROGRAMS

SEC. 221. In carrying out this title, the Director shall consult with the Office of Economic Opportunity, the Departments of Labor, and Health, Education, and Welfare, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination with such other programs, and shall promote the coordination of projects under this title with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Director in disseminating information about the availability of assistance under this title and in promoting the identification and interest of low-income and other older persons whose services may be utilized under this title.

SEC. 222. Payments under this title pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions, as the Director may determine.

TITLE III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTARY SERVICE BY SMALL BUSINESSMEN

AUTHORITY TO COOPERATE IN THE OPERATION OF SCORE/ACE

SEC. 301. In order to assist persons engaged or seeking to engage in small business enterprises, especially economically disadvantaged persons, the Director, pursuant to agreements with the Administrator of the Small Business Administration (hereinafter referred to as the "Administrator") which shall be published in the Federal Register, shall cooperate with the Administrator in carrying out the Service Corps of Retired Executives (SCORE) and the Active Corps of Executives (ACE) programs pursuant to section 8(b)(1) of the Small Business Act, as amended (15 U.S.C. 637(b)(1)), by—

(1) conducting a national publicity and recruitment effort to encourage eligible businessmen to serve as volunteers in the SCORE/ACE program and to form SCORE chapters;

(2) providing general budgetary planning for the SCORE/ACE program and such logistical support (including office space and supplies when not available from the Small Business Administration), subject to the provisions of subsection (c) of section 302 of this title, to SCORE/ACE volunteers serving Small Business Administration clients as the Administrator, with the concurrence of the Director, determines are necessary and appropriate to carry out such section 8(a)(1); and

(3) expanding the application of the expertise of such SCORE/ACE volunteer businessmen to other projects and agencies to carry out other programs authorized in this Act and the Economic Opportunity Act of 1964, as amended (particularly title VII thereof); and budgeting and planning for the execution of such expanded projects.

AUTHORITY TO ESTABLISH TERMS AND CONDITIONS OF ASSIGNMENTS

SEC. 302. (a) Except as provided in subsection (c) of this section, the assignment of volunteers enrolled in programs carried out pursuant to clause (3) of section 301 shall be on such terms and conditions as the Director, in consultation with the Administrator, shall determine.

(b) Such volunteers, while engaged in programs under this title or under section 8(b)(1) of the Small Business Administration Act (15 U.S.C. 637(b)(1)), shall be considered employees of the Federal Government for the purposes of the Federal tort claims provisions in title 28, United States Code, and for the purposes of the provisions relating to compensation to Federal employees for work injuries in subchapter I of chapter 81 of title 5, United States Code.

(c) The Director is authorized to reimburse SCORE/ACE volunteers serving pursuant to agreements entered into under section 301 only for transportation, meals, telephone calls, and other out-of-pocket expenses incident to their provision of services or coordination of programs under this Act or the Small Business Act (15 U.S.C. 637(b)(1)).

(d) Notwithstanding any other provision of law, in order to exercise the authority to reimburse expenses of volunteers serving pursuant to section 8(b)(1) of the Small Business Act, as amended (15 U.S.C. 637(b)(1)), the Administrator shall delegate payment responsibility to the Director, making reimbursement to the ACTION Agency in connection with subsequent expenditures by such Agency.

(e) Volunteers serving pursuant to agreements entered into under section 301 shall in no event (1) participate in any screening or evaluation activities on behalf of the Small Business Administration in connection with applications for loans from such Administration, or (2) provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

TITLE IV—ADMINISTRATION AND COORDINATION

ESTABLISHMENT OF AGENCY

SEC. 401. There is hereby established in the executive branch of the Government an agency to be known as the ACTION Agency. Such Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). There shall also be in such Agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Director shall perform such functions as the Director shall from time to time prescribe, and shall act as Director of the ACTION Agency during the absence or disability of the Director. There shall also be in such Agency four Associate Directors who shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5315). Each such Associate Director shall perform such functions as the Director shall from time to time prescribe. There shall also be in such Agency one Deputy Associate Director who shall be appointed by and be directly responsible to the Director. Such Deputy Associate Director shall be primarily responsible for programs carried out under parts A and B of title I of this Act.

AUTHORITY OF THE DIRECTOR

SEC. 402. In addition to the authority conferred upon him by other sections of this Act, the Director is authorized to—

(1) appoint in accordance with the Civil Service laws such personnel as may be necessary to enable the ACTION Agency to carry out its functions, and, except as otherwise provided herein, fix the compensation of such personnel in accordance with the Classification Act of 1949 (5 U.S.C. 1071 et seq.);

(2)(A) employ experts and consultants or organizations thereof as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 3109(b)), except that no individual may be employed under the authority of this subsection for more than 100 days in any fiscal year; (B) compensate individuals so employed at rates not in excess of that payable to a GS-18 level employee, including traveltime; and (C) allow such individuals, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5 of such Act (5 U.S.C. 5703) for persons in the Government service employed intermittently, while so employed: *Provided*, That contracts for such employment may be renewed annually;

(3) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of this Act and, as necessary or appropriate, delegate any of his powers under this Act and authorize the redelegation thereof subject to provisions to assure the maximum possible liaison between the ACTION Agency and such other agencies at all operating levels, which shall include the furnishing of complete operational information by such other agencies to the ACTION Agency and the furnishing of such information by the ACTION Agency to such other agencies;

(4) with their consent, utilize the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or a political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivision without reimbursement;

(5) accept in the name of the ACTION Agency, and employ or dispose of in futherance of the purposes of this Act, or any title thereof, any money, or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(7) allocate and expend, or transfer to other Federal agencies for expenditure, funds made available under this Act as he deems necessary to carry out the provisions hereof, including (without regard to the provisions of section 4774(d) of title 10, United States Code), expenditure for construction, repairs, and capital improvements;

(8) disseminate, without regard to the provisions of section 4154 of title 39, United States Code, data and information, in such forms as he shall deem appropriate, to public agencies, private organizations, and the general public;

(9) adopt an official seal, which shall be judicially noticed;

(10) collect or compromise all obligations to or held by him and a legal or equitable rights accruing to him in connection with the payment of obligations until such time as such obligations may be referred to the Attorney General for suit or collection;

(11) expend funds made available for purposes of this Act as follows: (A) for printing and binding, in accordance with applicable law and regulation; and (B) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by him; but the Director shall not utilize the authority contained in this subclause (B)—

(i) except when necessary to obtain an item, service, or facility, which is required in the proper administration of this Act, and which otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form, or under the conditions in which, it is needed, and

(ii) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of his intention to exercise such authority, the item, service or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority;

(12) notwithstanding any other provision of law, make grants or contracts with Federal or other public departments or agencies and private nonprofit organizations for the assignment or referral of volunteers under this Act (except for volunteers serving under part A of title I thereof), which may provide that the agency or organization shall pay all or a part of the costs of the program;

(13) provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this Act to (A) encourage them to use in the national interest the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (B) promote the development, and the placement therein, of such volunteers, of appropriate opportunities for the use of such skills and experience;

(14) establish such policies, standards, criteria, and procedures, prescribe such rules and regulations (including providing for payments under grants or contracts, lump sum or installments, and in advance or by way of reimbursement) pursuant to contracts and agreements otherwise authorized under this Act; and

(15) generally perform such functions and take such steps, consistent with the purposes and provisions of this Act, as he deems necessary or appropriate to carry out the provisions of this Act.

POLITICAL ACTIVITIES

SEC. 403. (a) No part of any funds appropriated to carry out this Act, or any program administered by the ACTION Agency, shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the ACTION Agency, who, in his official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" has the same meaning given such term by section 301(a) of the Federal Election Campaign Act of 1971 (Public Law 92-225), and the term "Federal office" has the same meaning given such term by section 301(c) of such Act (Public Law 92-225).

(b) Programs assisted under this Act shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity. The Director, after consultation with the Civil Service Commission, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance for no more than 30 days until notice and an opportunity to be heard can be provided or other action necessary to permit enforcement on an emergency basis.

SPECIAL LIMITATIONS

SEC. 404. (a) The Director shall prescribe regulations and shall carry out the provisions of this Act so as to assure that the service of volunteers assigned, referred, or serving under agreements executed under this Act is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(b) All support, including transportation provided to volunteers under this Act, shall be furnished at the lowest possible cost consistent with the effective operations of volunteer programs.

(c) No agency or organization to which volunteers are assigned hereunder, or which operates or supervises any volunteer program hereunder shall request or receive any compensation for services of volunteers supervised by such agency or organization.

(d) No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organizations or related activity.

(e) Persons serving as volunteers under this Act shall provide such information concerning their qualifications, including their ability to perform their assigned tasks and their integrity, as the Director shall prescribe and shall be subject to such procedures, for selection and approval as the Director determines are necessary to carry out the purposes of this Act. The Director may establish such special procedures for the recruitment, selection, training and assignment of low-income residents of the area to be served by a program under this Act who wish to become volunteers as he determines will further the purposes of this Act.

(f) Notwithstanding any other provision of law and except as provided in the second and third sentence as of this subsection, the Director shall assign or delegate any substantial responsibility for carrying out functions under this Act only to persons appointed or employed pursuant to clauses (1) and (2) section 402, and persons assigned or delegated such substantial responsibilities on the effective date of this Act and who are receiving compensation in accordance with provisions of law other than those set forth in such clauses on such date shall, by operation of law on such date, be assigned a grade level pursuant to subsection (a) of section 402 so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date. Notwithstanding any other provision of law, in order to achieve the appointment of personnel pursuant to subsection (a) of section 402, as directed by the first sentence of this subsection, the number of positions authorized by section 5108(a) of title 5, United States Code, and assigned to the ACTION Agency, is increased by a number equal to the number of persons whose level of compensation on the day prior to the effective date of this Act requires their assignment to such positions. The Director may personally make exceptions to the requirement set forth in the first sentence of this subsection for persons whom he finds will be assigned to carrying out functions under the Peace Corps Act (22 U.S.C. 2501 et seq.) within six months of the effective date of this Act. This subsection shall not apply in the case of persons carrying out administrative functions under this Act as described in the second proviso in subsection (a) of section 504.

(g) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level or eligibility for assistance or services any such volunteers may be receiving under any other governmental program.

NATIONAL VOLUNTARY SERVICE ADVISORY COUNCIL

SEC. 405. (a) There is hereby established in the ACTION Agency a National Voluntary Service Advisory Council (hereinafter referred to as the "Council") to be composed of not more than 25 members appointed by and serving at the pleasure of the President. Such members shall be representative of public and private organizations, groups, and individuals interested in serving and benefited by programs carried out under this Act and the Peace Corps Act (22 U.S.C. 2501 et seq.), including, in approximately equal numbers, representatives of beneficiaries of programs established under this Act, nations hosting Peace Corps volunteers, present and former volunteers, and national coalitions representing such groups. The President shall designate a temporary chairperson from such members and shall call the initial meeting of the Council within thirty days after establishment of such Council. Members of the Council shall designate a permanent chairperson from such members and shall meet at the call of such chairperson, but not less than four times in each year. Members of the Council, other than those regularly employed by the Federal Government while attending meetings of such Council, shall be entitled to receive compensation and travel expenses as provided in section 402(b) of this Act with respect to experts and consultants. The Director and Deputy Director of the ACTION Agency shall be ex officio members of the Council.

(b) The Council shall—

(1) advise the Director with respect to policy matters arising in the administration of this Act and the Peace Corps Act (22 U.S.C. 2501 et seq.); and

(2) upon the request of the Director, review the effectiveness and the operation of programs under this Act and the Peace Corps Act and make recommendations (including such proposals for changes in such Acts as the Council deems appropriate) concerning (A) the improvement of such programs, (B) the elimination of duplication of effort and (C) the coordination of such programs with other Federal programs designed to assist the beneficiaries of such Acts.

(c) Not later than March 31 of each calendar year beginning with the calendar year 1974, the Council shall make an annual report of its findings and recommendations to the President for transmittal by the President to the Congress together with his comments and recommendations.

LABOR STANDARDS

SEC. 406. All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating of projects, buildings and works which are federally assisted under this Act 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. 276a–276a–5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133–133z–15), and section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(C)).

REPORTS

SEC. 407. No later than one hundred and twenty days after the close of each fiscal year, the Director shall prepare and submit to the President for transmittal to the Congress a full and complete report on the activities of the ACTION Agency during such year.

JOINT FUNDING

SEC. 408. Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this Act, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this Act, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the ACTION Agency, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this Act, which requirement is inconsistent with the similar requirements under or pursuant to this Act.

PROHIBITION OF FEDERAL CONTROL

SEC. 409. Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administraiton, or personnel of any educational institution or school system.

COORDINATION WITH OTHER PROGRAMS

SEC. 410. The Director shall take necessary steps to coordinate volunteer programs authorized under this Act with one another, with community action programs and with other related Federal, State, and local programs. The Director shall also consult with the heads of other Federal, State, and local agencies responsible for programs related to the purposes of this Act with a view to encouraging greater use of volunteer services in those programs and establishing in connection with them systematic procedures for the recruitment, referral, or necessary preservice orientation or training of volunteers serving pursuant to this Act.

PROHIBITION

SEC. 411. In order to assure that existing Federal agencies are based to the fullest extent possible in carrying out the purposes of this Act, no funds appropriated to carry out this Act shall be used to establish any new department or office when the intended function is being performed by an existing department or office.

APPEALS, NOTICE AND HEARINGS PROCEDURES

SEC. 412. The Director shall prescribe procedures to insure that—

(1) assistance under this Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days, nor shall an application for refunding under this Act be denied, unless the recipient has been given reasonable notice and opportunity to show cause publicly why such action should not be taken; and

(2) assistance under this Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

DURATION OF PROGRAM

SEC. 413. The Director shall carry out the programs provided for in this Act during the fiscal year ending June 30, 1974, and the three succeeding fiscal years. For each such fiscal year, only such sums may be appropriated as the Congress may authorize by law.

DISTRIBUTION OF BENEFITS BETWEEN RURAL AND URBAN AREAS

SEC. 414. The Director shall adopt appropriate administrative measures to assure that benefits of this Act will be distributed equitably between residents of rural and urban areas.

ADVANCE FUNDING

SEC. 415. For the purpose of affording adequate notice of funding available under this Act, appropriations for grants, contracts, or other payments under this Act are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

APPLICATION OF FEDERAL LAW

SEC. 416. (a) Except as provided in subsections (b), (c), (d), and (e) of this section, volunteers under this Act shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal offices and employees and Federal employment.

(b) Individuals serving in programs authorized by part A and B of title I of this Act, and individuals serving in programs authorized by parts B or C of title I of this Act who are enrolled as full-time volunteers in a program established as a program of one or more years duration shall, with respect to such service or training, (1) be deemed, for the purposes of subchapter III of chapter 73 of title 5, United States Code, persons employed in the executive branch of the Federal Government, and (2) be deemed Federal employees to the same extent as volunteers serving in the Peace Corps under section 5(h) of the Peace Corps Act (22 U.S.C. 2504(h)), except that for the purposes of computation, the monthly pay of a volunteer serving for one year or less shall be deemed to be that received under the entrance salary for GS–7 under section 5332 of such title.

(c) Any period of service of a volunteer under part A of title I of this Act, and any period of full-time service of a volunteer enrolled in a program of one or more years duration established under parts B or C of title I of this Act, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission, the Foreign Service Act of 1946, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(d) Volunteers serving pursuant to part A of title I of this Act, and volunteers serving pursuant to title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d), including those whose service was completed under such Act, who the Director determines, in accordance with regulations he shall prescribe, have successfully completed their term of service, shall be eligible for appointment to the career Civil Service in the same manner as Peace Corps volunteers as prescribed in Executive Order No. 11103 (April 10, 1963).

(e) Notwithstanding any other provision of law, all references in any other law to persons serving as volunteers under title VIII of the Economic Opportunity Act of 1934, as amended, shall be deemed to be references to persons serving as full-time volunteers in a program of one or more years duration under part A, B, or C of title I of this Act.

EVALUATION

SEC. 417. (a) The Director shall measure and evaluate the impact of all programs authorized by this Act, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

(b) Before funds are released or assistance is provided for the programs and projects covered by this Act, the Director shall develop and publish general standards for evaluation of the program and project effectiveness in achieving the objectives of this Act. Reports submitted pursuant to section 407 shall describe the actions taken as a result of these evaluations.

(c) In carrying out evaluations under this title, the Director shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of the programs and projects.

(d) The Director shall publish summaries of the results of evaluations of program and project impact and effectiveness no later than sixty days after the completion thereof.

(e) The Director shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) The Director is authorized to use such sums as required, but not to exceed 1 per centum of the funds appropriated under this Act, to conduct program and project evaluations (directly or by grants or contracts) as required by this title. In the case of allotments from such an appropriation, the amount deemed appropriated available for such allotments (and the amount therefor) shall be reduced accordingly.

NONDISCRIMINATION

SEC. 418. (a) The Director shall not provide financial assistance for any program under this Act unless the grant, contract, or agreement with respect to such program specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any such program because of race, creed, color, national origin, sex, age, physical or mental disability, political affiliation, or belief.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with, any program or activity receiving assistance under this Act. The Director shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Director to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under this Act.

TAXES

SEC. 419. (a) Notwithstanding any other provision of law, for the purposes of computing the tax payable under the Internal Revenue Code of 1954, a volunteer or volunteer leader under this Act shall be deemed to be paid and to receive such amount of any stipend to which he is entitled under this Act when such amount is transferred from funds made available for the payment of such stipend to the fund from which such stipend is payable. Such stipend shall otherwise be considered to be income for the year in which it is actually received.

(b) In the case of an individual serving as a volunteer or volunteer leader under this Act. Payments or support received as allowances other than amounts received as—

(1) stipends provided under Section 105 (a),

(2) leave allowance, or

(3) such portion of living allowances as the Director may determine constitutes basic compensation,

shall not be included in gross income for purposes of income taxation under the Internal Revenue Code of 1954.

(c) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to titles II and III of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after the effective date of this Act.

LEGAL EXPENSES

SEC. 420. Notwithstanding any other provision of law and pursuant to regulations which the Director shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings to which full-time volunteers serving under this Act have been made parties.

GUIDELINES

SEC. 421. All rules, regulations, guidelines, instructions, and applications forms published or promulgated pursuant to this Act shall be published in the Federal Register and submitted to the appropriate Committees of the Congress at least thirty days prior to their effective date.

DEFINITIONS

SEC. 422. For the purposes of this Act—

(1) the term "Director" means the Director of the ACTION agency;

(2) the terms "United States" and "States" mean the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, and American Samoa;

(3) the term "nonprofit" as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and

(4) the term "poor" or "low-income" persons, individuals, or volunteers means such individuals whose incomes fall at or below the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92-424 (42 U.S.C. ——).

TITLE V—AUTHORIZATION OF APPROPRIATIONS

NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

SEC. 501. (a) There are authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1974, $60,000,000 for the fiscal year ending June 30, 1975, and $75,000,000 for the fiscal year ending June 30, 1976, respectively, to be used for the purpose of carrying out title I of this Act of which (1) the amount of $30,000,000 for the fiscal year ending June 30, 1974, $35,000,000 for the fiscal year ending June 30, 1975, and $45,000,000 for the fiscal year ending June 30, 1976, respectively, shall be available for carrying out full-time volunteer programs designed to strengthen and supplement efforts to eliminate poverty under part A of such title; (2) the amount of $12,000,000 for the fiscal year ending June 30, 1974, $15,000,000 for the fiscal year ending June 30, 1975, and $20,000,000 for the fiscal year ending June 30, 1976, respectively, shall be available for carrying out programs designed to strengthen and supplement efforts to eliminate poverty under part B of such title; and (3) the amount of $8,000,000 for the fiscal year ending June 30, 1974 and the amount of $10,000,000 for the two succeeding fiscal years shall be available for carrying out programs under part C of such title: *Provided*, That 50 per centum of the sums appropriated for carrying out programs under such part C shall be used for carrying out programs, on a cost-reimbursable basis, authorized by part A of such title.

(b) If the sums authorized to be appropriated under subsection (a) of this section are not appropriated and made available in full, then such sums as are so appropriated and made available for such fiscal year shall be allocated so that (1) any amounts appropriated not in excess of $22,300,000 for the fiscal year ending June 30, 1974, $25,000,000 for the fiscal year ending June 30, 1975, and $27,500,000 for the fiscal year ending June 30, 1976, respectively, shall be used for carrying out programs designed to strengthen and supplement efforts to eliminate poverty under part A of such title; (2) any amounts appropriated in excess of $22,300,000 for the fiscal year ending June 30, 1974, $25,000,000 for the fiscal year ending June 30, 1975, and $27,500,000 for the fiscal year ending June 30, 1976, respectively, but not in excess of $29,600,000, $33,500,000, and $37,500,000, for each such fiscal year, respectively, shall be used for programs designed to strengthen and supplement efforts to eliminate poverty under part B of such title; (3) any amounts appropriated in excess of $29,600,000 for the fiscal year ending June 30, 1974, $33,500,000 for the fiscal year June 30, 1975, and $37,500,000 for the fiscal year ending June 30, 1976, respectively, but not in excess of $37,600,000, $43,500,000 and $47,500,000, for each such fiscal year, respectively, shall be used for carrying out programs under part C of such title; (4) any amounts appropriated in excess of $37,600,000 for the fiscal year ending June 30, 1974, $43,500,000 for the fiscal year ending June 30, 1975, and $47,500,000 for the fiscal year ending June 30, 1976, respectively, but not in excess of $45,300,000, $53,500,000, and $65,000,000 for each such fiscal year, respectively, shall be used for carrying out programs designed to strengthen and supplement efforts to eliminate poverty under part A of such title; and (5) any amounts appropriated in excess of $45,300,000 for the fiscal year ending June 30, 1974, $53,500,000 for the fiscal year ending June 30, 1975, and $65,000,000 for the fiscal year ending June 30, 1976, respectively, shall be used for programs to strengthen and supplement efforts to eliminate poverty under part B of such title.

NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

SEC. 502. (a) There are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1974, $40,000,000 for the fiscal year ending June 30, 1975, and $50,000,000 for the fiscal year ending June 30, 1976, respectively, to be used for the purpose of carrying out programs under part A of title II of this Act.

(b) (1) There are authorized to be appropriated $52,000,000 for the fiscal year ending June 30, 1974, $63,000,000 for the fiscal year ending June 30, 1975, and $74,000,000 for the fiscal year ending June 30, 1976, respectively, for the purpose of carrying out programs under part B of such title of which (A) $45,000,000 for the fiscal year ending June 30, 1974, $55,000,000 for the fiscal year ending June 30, 1975, and $65,000,000 for the fiscal year ending June 30, 1976, respectively, shall be available for such years for grants or contracts under subsection (a) of section 211 of part B of such title and (B) $7,000,000 for the fiscal year ending June 30, 1974, $8,000,000 for the fiscal year ending June 30, 1975, and $9,000,000 for the fiscal year ending June 30, 1976, respectively, shall be available for such years for grants or contracts under subsection (b) of such section.

(2) If the sums authorized to be appropriated under paragraph (1) of this subsection are not appropriated and made available in full for each such fiscal year, then such sums as are appropriated and made available for each such fiscal year shall be allocated so that—

(A) any amounts appropriated not in excess of $25,000,000 shall be used for grants or contracts under subsection (a) of section 211; and

(B) any amounts appropriated in excess of $32,000,000 for the fiscal year ending June 30, 1974, $33,000,000 for the fiscal year

ending June 30, 1975, and $34,000,000 for the fiscal year ending June 30, 1976, respectively, shall be used for grants or contracts for such fiscal years under subsection (a) of such section.

NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTARY SERVICE BY SMALL BUSINESS PROPRIETORS

SEC. 503. There are authorized to be appropriated $1,000,000 for the fiscal year ending June 30, 1974, $1,500,000 for the fiscal year ending June 30, 1975, and $2,000,000 for the fiscal year ending June 30, 1976, for the purpose of carrying out programs under title III of this Act.

ADMINISTRATION AND COORDINATION

SEC. 504. (a) There are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1974, $16,000,000 for the fiscal year ending June 30, 1975, and $17,000,000 for the fiscal year ending June 30, 1976, for the administration of this Act as authorized in title IV of such Act: *Provided,* That no amount appropriated for such administration shall be expended for such purpose in any such fiscal year in excess of an amount which equals that proportion which the amount appropriated and made available pursuant to this title in such fiscal year is of the total of (1) the amount appropriated and made available pursuant to this Act; (2) the amount appropriated and made available pursuant to the Peace Corps Act (22 U.S.C. 2501 et seq.); and (3) the amount appropriated and made available pursuant to any other law for which implementing responsibility is delegated or transferred to the Director in such year: *Provided further,* That amounts expended for such purpose in any such fiscal year shall be used for salaries and expenses of persons carrying out functions under this Act only if the Director determines, in accordance with regulations which he shall prescribe, that such persons are engaged in carrying out such functions for a substantial portion of their time and that such functions constitute a substantial portion of their responsibilities.

(b) The total administrative expenditures, including the compensation of Federal employees, incurred under the authority of this Act for any fiscal year shall not exceed 10 per centum of the total amount appropriated and made available for appropriation pursuant to authorizations in this Act for that year: *Provided,* That grants, subsidies, and contributions, and payments to individuals, other than volunteers and Federal employees, shall not be counted as an administrative expenditure.

AVAILABILTY OF APPROPRIATIONS

SEC. 505. (a) Notwithstanding any other provision of law, unless enacted in express and specific limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program under this Act shall remain available, in accordance with the provisions of this Act statute, for obligation and expenditure until expended.

(b) There shall be no limitation on the use of funds appropriated to carry out any program under this Act other than limitations imposed by or pursuant to the provisions of this Act; nor shall any funds appropriated to carry out any program under this Act be allotted, apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified or provided in this Act.

TITLE VI—AMENDMENTS TO OTHER LAWS AND REPEALERS

SUPERSESSION OF REORGANIZATION PLAN NUMBER 1 OF JULY 1, 1971

SEC. 601. Sections 1, 2(a), and 3 of Reorganization Plan No. 1 of 1971 (July 1, 1971) are hereby superseded.

(b) The personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Director of the ACTION Agency by section 2(a) and 3 of such Reorganization Plan are hereby transferred to the ACTION agency established by section 401. All grants, contracts, and other agreements awarded or entered into under the authority of such Reorganization Plan will be recognized under comparable provisions of this Act so that there is no disruption of on-going activities for which there is continuing authority.

(c) All official actions taken by the Director of the ACTION Agency, his designee, or any other persons under the authority of such Reorganization Plan which are in force on the effective date of this Act and for which there is continuing authority under the provisions of this Act shall continue in full force and effect until modified, superceded or revoked by the Director.

(d) All references to ACTION, or the Director of ACTION in any statute, reorganization plan, executive order, regulation or other official document or proceeding shall on and after the effective date of this Act, be deemed to refer to the ACTION Agency established by section 401 and the Director thereof.

(e) No suit, action, or other proceeding, and no cause of action, by or against the agency known as ACTION created by such Reorganization Plan, or any action by any officer thereof acting in his official capacity, shall abate by reason of enactment of this Act.

(f) Persons appointed by the President by and with the advice and consent of the Senate to positions requiring such advice and consent under such Reorganization Plan may continue to serve in the same capacity in the ACTION Agency without the necessity of an additional appointment by the President or further such advice and consent by the Senate.

CREDITABLE SERVICE FOR CIVIL SERVICE RETIREMENT

SEC. 602. Section 8332(b)(7) of title 5, United States Code (relating to creditable service to civil service retirement), is amended by inserting a comma and "or a period of service of a full-time volunteer enrolled under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (— U.S.C. —)" after "Economic Opportunity Act of 1964."

EXTENSION OF ELIGIBILITY FOR VETERANS' EDUCATIONAL BENEFITS

SEC. 603. Section 1662(a) of title 38, United States Code (relating to the period of eligibility for educational assistance), is amended by inserting before the period a colon and *"Provided,* That the time limit specified herein shall be extended by the length of any period, including training, during which an eligible veteran is serving as a full-time volunteer or volunteer leader under the Peace Corps Act or title I of the Domestic Volunteer Service of 1973".

TAXES ON STIPENDS TO VOLUNTEERS

SEC. 604. (a) Section 1304 of the Internal Revenue Code of 1954 (26 U.S.C. 1304 (relating to special tax rules)) is amended by adding at the end thereof the following new subsection:

"(g) For treatment of the stipend paid to VISTA volunteers and volunteer leaders, see section 420(a) of the Domestic Volunteer Service Act of 1973 (—— U.S.C. ——).

(b) Section 3401(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3401(a)) (relating to definitions for the purpose of taxation) is amended—

(1) by striking out "or" after the semicolon in clause (15) and striking out the period in clause (16) and inserting in lieu thereof a semicolon and an "or";

(2) by adding at the end thereof the following new clause:

"(17) to a volunteer or volunteer leader within the meaning of title I of the Domestic Volunteer Service Act of 1973 (U.S.C.), except stipends, leave allowances, or living allowances determined by the Director of the Action Agency to be basic compensation".

(c) Section 124(a) of the Internal Revenue Code of 1954 (26 U.S.C. 124(a)) is amended—

(1) by striking out "or" after the semicolon in clause (18) and striking out the period in clause (19) and inserting in lieu thereof a semicolon and "or"; and

(2) by adding at the end thereof the following new clause:

"(20) Certain allowances paid to domestic volunteers and volunteer leaders, see section 420(b) of the Domestic Volunteer Service Act of 1973 (U.S.C.)."

TAXES ON SUPPORT TO OLDER AMERICAN VOLUNTEERS

SEC. 605. (a) Section 3121(b) of the Internal Revenue Code of 1954 (relating to the definition of employment for purposes of the Federal Insurance Contributions Act) (26 U.S.C. 3121(b)) is amended—

(1) by striking out "or" after the semicolon in clause (18) and striking out the period in clause (19) and inserting in lieu thereof a semicolon and "or"; and

(2) by adding at the end thereof the following new clause:

"(20) Supportive services performed by persons aged fifty-five and over described in titles II and III of the Domestic Volunteer Service Act of 1973 (—U.S.C.—)."

(b) Section 3306(c) of the Internal Revenue Code of 1954 (relating to the definition of employment for purposes of the Unemployment Tax Act (26 U.S.C. 3121(c)) is amended—

(1) by striking out "or" at the end of clause (17) and striking out the period at the end of clause (18) and inserting in lieu thereof a semicolon and "or"; and

(2) by adding at the end thereof the following new clause:

"(19) Supportive services performed by persons aged fifty-five and over described in titles II and III of the Domestic Volunteer Service Act of 1973 (— U.S.C. —)."

REPEAL OF TITLE VIII OF THE ECONOMIC OPPORTUNITY ACT

SEC. 606. Title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d), is hereby repealed.

REPEAL OF TITLE VI OF THE OLDER AMERICANS ACT

SEC. 607. Title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3044–3044e), is hereby repealed.

THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973—S. 1148; SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act may be cited as "The Domestic Volunteer Service Act of 1973".

TITLE I—NATIONAL VOLUNTEER ANTI-POVERTY PROGRAMS

Part A—Volunteers in Service to America

Section 101 contains a statement of purpose of part A of title I of the Act. The part provides for the Volunteers in Service to America (VISTA) program of full-time volunteers who work to strengthen and supplement efforts to eliminate poverty in the United States. The part also provides the powers and responsibilities designed to assist in the development and coordination of the VISTA program. The part is derived from part A of title VIII of the Economic Opportunity Act of 1964, as amended, authorizing the VISTA program of full-time volunteer service, and is intended to authorize the kinds of programs presently being carried out under that authority. It contains several changes designed to facilitate the carrying out of the program.

Section 102 provides the Director of ACTION with the authority to recruit, select, and train persons to serve in the VISTA program.

Section 103(a) provides the Director of ACTION with the authority to assign VISTA Volunteers, upon the request of Federal, State, or local agencies or private nonprofit organizations, in meeting the health, education, welfare, or related needs of Indians living on Federal Trust lands, of migratory and seasonal farmworkers and their families, or of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, or the Virgin Islands; in the care and rehabilitation of the mentally ill, developmentally disabled, and other individuals with severe handicaps who are under the supervision of non-profit institutions or facilities; and in connection with programs or activities authorized, supported, or of a character eligible for assistance under the Economic Opportunity Act of 1964, as amended. The section is similar to section 810(a) of the Economic Opportunity Act of 1964, as amended. Changes in language include the substitution of the term Federal Trust Lands" for the term "reservations" since there are a substantial number of low-income Indians who live on other than reservations and the term "Federal Trust Lands"' is more comprehensive, and deletion of authority to assign VISTA Volunteers to the Trust Territory of the Pacific Islands. This deletion was made after consultation with the Senate Foreign Relations Committee, in consideration of the fact that Peace Corps Volunteers are eligible to be assigned to the Trust Territory, and that the Trust Territory considers itself to be a foreign nation rather than a part of the United States.

Section 103(b) concerns the assignment of low-income VISTA volunteers. The section directs the Director, wherever feasible, to assign low-income VISTA volunteers to serve in their home communities in teams with nationally recruited VISTA volunteers having an appropriate specialty which would benefit that community. The section further directs the Director to ensure that, on an individual basis, each low-income VISTA volunteer, prior to assignment is provided a plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment, and that such plan is updated and reviewed with the volunteer 120 days prior to the volunteer's completion of service. The section was included after testimony on related legislation revealed that many low-income VISTA Volunteers were previously welfare recipients, and that often when their VISTA assignment was completed, they had nowhere to turn except back to the welfare rolls. This section is consistent with the purpose of the part to help the poor secure and take advantage of opportunities for self-advancement.

Section 103 (c) and (d) are derived from section 810(b) of title VIII of the Economic Opportunity Act of 1964, as amended (the present VISTA authority). They provide the Director with the authority to determine the terms and conditions of volunteer assignments, for Governors' approval of VISTA projects and for Governors' voice in the termination of service of individual VISTA volunteers, respectively. Subsection 103(d) differs from section 810(b) in that whereas formerly no VISTA project could become operational without the consent of the Governor, the new subsection(d) places a forty-five day time limit on the Governor to disapprove a project. This change allows for more efficient administration of VISTA projects by providing a fixed time during which a project can be disapproved. Like section 810(b), subsection 103(d) requires the Director to terminate the assignment of an individual VISTA volunteer within thirty days of a Governor's request, or within a mutually agreeable time frame.

Section 104(a) is similar to section 811(a) of the Economic Opportunity Act of 1964, as amended. It requires that VISTA Volunteers make a full-time, personal commitment to combating poverty, including, to the extent practicable, a commitment to live among and at the economic level of the people with whom they are assigned to work, and to remain available for services without regard to regular working hours, at all times during their term of service, except for authorized periods of leave. As the section implies, VISTA Volunteers are expected to be on call twenty-four hours a day. Their assignment calls for a commitment greater than the forty-hour a week traditional interpretation of a full-time job commitment.

Section 104(b) authorizes a two-year term of enrollment for VISTA Volunteers, rather than the one-year term prescribed in Section 811(b) of the Economic Opportunity Act. It does, however, make exception in the case of scarce-skill volunteers who are critically needed by providing that they may serve for no less than one year upon determination of the Director. It also provides that volunteers may re-enroll for one additional two-year term of service. The term of service for an individual volunteer may be extended, but under no circumstances may the term of an individual volunteer's service be greater than five years. This condition is made to prevent individuals from becoming "professional volunteers" and to encourage a turn-over of people serving under this part so that the VISTA program retains a freshness and vigor. In the case of older persons who are retired and who wish to continue serving in a volunteer capacity, it is anticipated that the Director will encourage them to participate in one of the other programs authorized by this Act.

Section 104(c) provides that VISTA Volunteers shall take the same oath as is prescribed in section 5(j) for Peace Corps Volunteers and other individuals in the Federal service. Section 811(c) of title VIII of the Economic Opportunity requires that VISTA Volunteers serving under that authority take the same oath as is prescribed for Job Corps enrollees. The section has been changed to have the VISTA oath conform with the Peace Corps oath so that those serving in programs under the ACTION Agency take the same oath. A new provision in the section provides the Director with the authority to allow foreign nationals who wish to serve in the program to take an alternative oath or affirmation.

Section 104(d) provides for the establishment of a grievance procedure for VISTA Volunteers in connection with the terms and conditions of their service. Included in the procedure is provision for enabling the Volunteer to present his grievance in person in the regional area in which he is serving and in writing to the Director of the ACTION Agency, and, if requested by the volunteer, for submission of a recommendation by an elected group of his peers. The councils shall be composed of one volunteer for each 25 volunteers represented, and shall meet twice a year except on emergency call of the chairperson. No more than 20% of a council member's service time may be spent on council duties. This section is included in the bill as a result of testimony on related legislation which pointed to the desirability of such a provision.

Section 104(e) directs the Director of ACTION to consult on a regular basis with VISTA volunee- councils elected pursuant to section 104(d) in connection with the determination of the terms and conditions of service of VISTA and Volunteers. It also directs him to submit to each such volunteer council for comments, at least forty-five days in advance of implementation, all issuances affecting the terms and conditions of VISTA service. This section is included in the bill as a result of testimony on related legislation which pointed to the desirability of such a provision.

Section 104(f) directs the Director to consult with and take into consideration the recommendations of the representative groups of VISTA volunteers (such as the National Vista Alliance) which exist upon enactment of this subsection when he establishes the grievance procedures and consultation procedures required in subsections 104 (d) and (e). It further directs him to establish and publish in the *Federal Register*, within ninety days after enactment of those subsections, the regulations prescribing those procedures, and to provide each VISTA Volunteer with copies of all such regulations.

Section 105(a) is similar to section 812(a) of the Economic Opportunity Act. It authorizes the Director to provide stipends to volunteers serving under this part and sets conditions on the payment of stipends, including providing for advance payment of accrued stipends and payment in the event of the death of a volunteer during service as provided in section 812(b) of the Economic Opportunity Act.

Section 105(b) directs the Director to support volunteers serving under this part through living allowances, travel allowances, and leave allowances, and through housing, supplies, equipment, subsistence, clothing, health and dental care, transportation, supervision, technical assistance, and any other support which he deems necessary or appropriate for volunteers to carry out their assignments. It is similar to section 812(a) of the Economic Opportunity Act, but goes further to stipulate that the Director must supply each volunteer or see that each volunteer has at his disposal all allowances and support necessary to enable him to carry out the purpose of this part and to effectively perform the work to which he is assigned. This new language was added after testimony on related legislation pointed out that such necessary support as transportation was often denied volunteers, thus hindering the effective performance of their jobs.

Section 106 provides that, to the maximum extent practicable, the poor of the communities to be served by volunteers under this title shall participate in the planning, developing, and implementing of those programs. This section is in keeping with the philosophy of the Economic Opportunity Act fostering maximum participation of the poor in its programs.

Section 107 is the same as section 832 of the Economic Opportunity Act, concerning participation of older persons in VISTA. The section applies to part C (short-term and part-time) Volunteers as well.

Part B—Service-learning programs

Section 111 contains a statement of purpose of Part B of title I of the Act. The part provides for the University Year for ACTION program of full-time volunteer service of students enrolled in institutions of higher learning who satisfy one year's traditional course work by working to strengthen and supplement efforts to eliminate poverty. A subsidiary purpose of the part is to promote expansion of service-learning programs at such institutions, and participation by educational institutions in meeting the needs of the poor and to encourage students and faculty to engage in volunteer service. It further provides for related service-learning programs on the secondary and post-secondary school level.

Section 112 directs the Directors of ACTION to conduct or make grants or contracts for the University Year for ACTION (UYA) program, but requires that the program be subject to the same restrictions and operate in accordance with the authorities set forth in part A, other than those concerning Governor's approval (section 103(d) and establishment of volunteer councils (section 104(d)) and except where provided otherwise under part B.

Section 113 stipulates that, in selecting participants for the University Year for ACTION program, priority should be given to low-income persons, low-income VISTA Community Volunteers, and Vietnam era military veterans. No priority is intended to be implied in the order of the listings. It further stipulates that in conducting or contracting for University Year for ACTION programs,

priority should be given to those institutions which agree to waive tuition for participants where that is legally permissible under applicable State law, and that, in conducting or contractng for University Year for ACTION programs, priority should be given to those institutions which plan and make arrangements for the program without the financial assistance of an ACTION planning grant. This does not remove authority to make such planning grants, which is an authority implicit in section 114(c)(1) where it is specified that the amounts of any such planning grants must be counted as part of the total 80 percent maximum Federal share for UYA programs.

Section 114(a) provides for a one-year term of enrollment for University Year for ACTION participants and provides that participants may receive academic credit for such service in accordance with the regulations of the sponsoring institution. It is not intended to limit re-enrollments in UYA programs.

Section 114(b) stipulates that students who participate as University Year for ACTION Volunteers must be substantially involved in the planning of the project to which they will be assigned. It further stipulates that institutions participating in the program must agree to make available to the poor in the surrounding community those of its facilities which are available. Such facilities include human resources such as tutorial services. This student and institutional participation commitment must be a part of any grant or contract made to operate a University Year for ACTION program.

Section 114(c) requires the Director, in making grants or contracts for the establishment and operation of a University Year for ACTION program to allocate to any one participating institution no more than 80 percent of the total direct cost of the program including any amount of any planning grant for such programs. It provides that the participating institution shall carry out a program meeting the purposes of the part, as specified in section 111, although not necessarily all of the detailed aspects of the program, with no financial support from ACTION after it has received such support for a total period of three years (including any prior support under title VIII of the Economic Opportunity Act) or in exceptional circumstances, where determined by the Director, for a total of up to five years. The section provides that these provisions must be a part of any contracts let or grants made to operate the program. It further requires the Director to take necessary steps to monitor the extent of compliance by participating institutions with the special conditions and commitments set forth in the subsection and to advise the Secretary of the Department of Health, Education, and Welfare of the extent of such compliance.

Section 115(a) authorizes the Director to use up to 10 percent of the funds appropriated to carry out the purpose of part B to foster secondary, secondary vocational, and post-secondary schools, participation in service-learning programs. The nature of assignments of such volunteers shall be those of a character for VISTA volunteers (section 103(a) under the same terms and conditions of service (regarding political activities) as specified in section 103(c) for VISTA volunteers.

Section 115(b) provides that persons participating in service-learning programs under this section shall not be deemed to be Federal employees for any purpose.

Section 115(c) requires the Director to prescribe rules and regulations concerning the support necessary to carry out service-learning programs under this section, but it prohibits provision of stipends or living allowances for participants in these programs.

Part C—Special volunteer programs

Section 121 contains a statement of purpose of part C of title I of the Act. The part provides for special emphasis and demonstration volunteer programs. The purpose of these programs is to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty. Only this part and the title III programs of the Act are not solely anti-poverty in nature.

Section 122(a) authorizes the Director to conduct or contract for special or demonstration volunteer programs of a full-time, part-time, or short-term nature to further the purposes of the part.

Section 122(b) requires the Director to determine the terms and conditions of assignment of volunteers serving in programs conducted to further the purposes of the part, but it does not authorize him to provide stipends, living allowances, or similar support services to volunteers serving under the authority of this part. If the Director feels such support services to be necessary in certain programs established under this authority, they should be provided by the sponsoring agency. Volunteers serving in special emphasis programs under part A or part B authority would, however, be eligible for such support under those authorities.

Special Emphasis Program to Provide Alternatives to the Incarceration of Youthful Offenders

Section 123(a) contains a declaration of findings concerning the failure of rehabilitating juvenile delinquents through incarceration and a statement of purpose for the section. The section provides for a special emphasis program to strengthen and supplement efforts to prevent delinquency through community-based alternatives to such incarceration.

Section 123(b) directs the Director, in consultation with the Attorney General and the Secretary of HEW, to conduct the special emphasis program by assigning VISTA, UYA, or other ACTION volunteers to departments of corrections in a State, county, city, or public school district in furtherance of the purpose of the section. It directs him to place a special emphasis on the recruitment of rehabilitated criminal offenders as participating volunteers. It further directs him to see that, wherever possible, volunteers work in cooperation with Federal agency or other personnel engaged in similar programs, for instance Law Enforcement Assistance Administration personnel, personnel involved in the implementation of the Juvenile Delinquency Prevention Act, or personnel involved in the implementation of any related legislation which may be enacted. At least 10 percent of the funds made available for part C programs must be used to carry out this program.

Special Emphasis Program to Promote Educational Opportunities for Veterans

Section 124(a) contains a declaration of findings concerning the need for outreach and assistance to Vietnam-era veterans, especially educationally disadvantaged such veterans, who are unaware of the educationally-related economic and social opportunities available to them. The section provides for a special emphasis program to assign VISTA, UYA, or other ACTION volunteers to strengthen and supplement efforts to provide such outreach and assistance to veterans in enrolling them in academic and vocational institutions, on-job training programs, farm cooperative programs, and other programs under the GI Bill, or assisting them in securing gainful employment.

Section 124(b) directs the Director in consultation with the VA Administrator, the Commissioner of Education and the Secretary of Labor, to conduct a program in furtherance of the purpose of this section, with a special emphasis on the recruitment as volunteers of persons who are Vietnam-era veterans. It further directs him to see that, wherever possible, volunteers work in cooperation with existing VA (including the iew veteran student services program in title 38, section 1688), colleges and universities, veterans' organization, or other personnel engaged in similar veteran outreach and counseling programs.

Section 125(a) contains a declaration of findings concerning successful methods of helping persons, especially younger persons, suffering from all forms of drug abuse and addiction, including alcoholism. The section provides for a special emphasis program to supplement and strengthen drug treatment and rehabilitation efforts in communities by utilizing these methods whereby sympathetic peer group members provide outreach, counseling, follow-up and related services for persons, especially younger persons and Vietnam-era military veterans, who are suffering from drug addiction or drug abuse, including alcoholism.

Section 125(b) directs the Director, in consultation with the Director of the Special Action Office on Drug Abuse Prevention, the Director of the National Institute of Mental Health, and the VA Administrator, to conduct the special emphasis program by assigning VISTA, UYA, or other ACTION volunteers to programs in furtherance of the purpose of this section. It directs him to place a special emphasis on the recruitment of persons, particularly Vietnam-era veterans, who are themselves considered by competent medical authority as recovered addicts or abusers. It further directs him to see that, wherever possible, volunteers work, in cooperation with existing Federal agency and other personnel engaged in programs similar to those authorized by this section. At least ten percent of the funds made available for part C programs must be used to carry out the program.

TITLE II—NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

Part A—Retired Senior Volunteer Program

This part is substantially the same as part A of Title VI—National Older Americans Volunteer Program, of the Older Americans Act of 1965 providing for the Retired Senior Volunteer Program (RSVP). Differences are that under this Act, the age of eligibility has been reduced to age fifty-five from age sixty, and that the section concerning the displacement of workers has been omitted, since a more comprehensive section dealing with this problem has been included in the Administration title (title IV) of this Act. The authorization of appropriations is contained in title V of this Act.

Part B—Foster grandparent program and older American community service prorgams

Section 211 (a) contains provisions for the Foster Grandparent program similar to those contained in part B of title VI of the Older Americans Act of 1965, as amended, providing for the program. Differences include the following: The age of eligibility has been reduced from age sixty to age fifty-five; the section concerning the displacement of workers has been omitted, since a more comprehensive section dealing with this problem has been included in this Administration title (title IV) of this Act: the Director is authorized to pay all or part of the costs of the program as he is under the RSVP authority (previously he was authorized to pay not to exceed 90 per centum of the cost), and he is given authority (previously implicit in section 611 of the Older Americans Act of 1965, as amended) to make payments to volunteers under this part—in practice generally at around the Federal minimum wage level).

Subsection (b) has been added to author-

ize the Director to fund programs similar to the Foster Grandparent programs wherein older persons would work as volunters with persons, other than children, having exceptional needs, including services as senior health aides to work with persons receiving home health care, nursing care, or nutritional services, including meals on wheels, and as senior companions to persons having developmental disabilities.

Section 212 outlines the conditions of grants and contracts and is similar to section 612 of the Older Americans Act.

It should be noted parts A and B of this title and the authorization of appropriations in section 502 are similiar to the provisions in title VI of the Older Americans Comprehensive Services Amendments of 1972 (S. 50, as reported—Report No. 93–19) as passed by the Senate on February 20, 1973.

Part C—General Provisions

Section 221 requires the Director to coordinate programs under this title with relevant programs in other Federal agencies in disseminating information about the availability of assistance under this title, and in promoting the identification and interest of older persons whose services may be utilized under this title. The section is similar to section 613 of the Older Americans Act.

Section 222 provides for advance payment, reimbursement, or installment payment for programs under this title.

TITLE III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTARY SERVICE BY SMALL BUSINESSMEN

Section 301 directs the Director to consult with the Administrator of the Small Business Administration in order that they may cooperate in the operation of the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) program which provides managerial and other assistance to small businesses. It contains a breakdown of what shall be the responsibilities of the Director with respect to this cooperative arrangement. The Director shall be responsible for (1) conducting a national publicity and recruitment effort to publicize the accomplishments of these programs and to encourage others to serve in them; (2) providing general budgetary planning for the SCORE/ACE program and appropriate logistical support (including office space and supplies when the SBA has none available to the SCORE/ACE volunteers serving Small Business Administration clients; and (3) expanding the application of the expertise of SCORE and ACE volunteers to other projects and agencies, besides the Small Business Administration, to carry out programs authorized by this act or the Economic Opportunity Act (particularly the Community Economic Development provisions in title VII thereof) and he shall be responsible for the budgeting and planning for the execution of these new programs.

Section 302(a) requires the Director to work in consultation with the Administrator of the Small Business Administration in prescribing terms and conditions of service of SCORE volunteers working on other than SBA projects.

Section 302(b) declares that such volunteers, while working on SBA projects or new programs under this title, shall be considered Federal employees for purposes of Federal tort claims and compensation for work injuries. Insofar as coverage while in SBA projects is concerned, this authority confirms a ruling of the General Counsel of the Small Businses Administration providing for torts claim and FECA coverage.

Section 302(c) authorizes the Director to reimburse SCORE/ACE volunteers for transportation, meals, telephone calls, and other out-of-pocket expenses incident to their service (including attendance at official meetings).

Section 302(d) in connection with reimbursement described in section 302(c) provides that the Administrator of the Small Business Administration to delegate payment responsibility to the Director of ACTION and to reimburse ACTION for expenses paid to SCORE/ACE volunteers in connection with section 8(b)(1) of the Small Business Act which authorizes the payment of certain expenses of volunteers who must travel more than 50 miles to serve SBA clients.

Section 302(e) prohibits SCORE/ACE volunteers serving in connection with the responsibilities of the Director of the ACTION Agency under this Act from participating in any screening or evaluation activities on behalf of the Small Business Administration in connection with applications for loans from the Administration, and prohibits them from providing services to a client of the Small Business Administration with a delinquent loan outstanding except when specifically requested by such a client after the loan has become delinquent.

TITLE IV—ADMINISTRATION AND COORDINATION

Section 401 provides for a Director, a Deputy Director, four Associate Directors, and one Deputy Associate Director. The latter is to be appointed by the Director and is to be primarily responsible for the VISTA and University Year for ACTION programs. The other Directors are to be appointed by the President, by and with the advice and consent of the Senate; their compensation levels are provided in the section as well. It is derived from section 1 of Reorganization Plan No. 1, 1971. The position of Deputy Associate Director is added to protect the integrity and identity of the VISTA program.

Section 402 provides the Director with general authorities which are in addition to those given him by other provisions of the Act. They include the authority to: (1) appoint Civil Service personnel and fix their compensation; (2) employ consultants and experts who may serve for no more than 100 days in any fiscal year and who may be eligible for compensation at rates not to exceed that payable to a GS–18 level employee and for travel expenses while away from their homes or regular places of business; (3) with the approval of the President; to arrange with and reimburse the heads of other Federal agencies for the performance of any of his provisons under the Act, and, as necessary or appropriate, to delegate or authorize the redelegation of any of his powers under the Act; (4) to utilize, with their consent, the services and facilities of Federal agencies, States, or political subdivisions of States, without reimbursement; (5) accept in the name of the Agency and utilize gifts to the Agency; (6) accept voluntary and uncompensated services; (7) allocate, expend, or transfer to other Federal agencies for expenditure funds made available under the Act as he deems necessary to carry out its provisions; (8) disseminate information; (9) adopt an official seal to be judicially noticed; (10) collect or compromise all obligations to or held by him and all legal or equitable rights accruing to him in connection with the payment of obligations until such time as they may be referred to the Attorney General for suit or collection; (11) expend funds for printing and binding and for rent of buildings and space in buildings for repair, alteration, and improvement of buildings and space in buildings rented by him when such space is unavailable in the quantity, quality, time frame, form, or conditions necessary, subject to prior notification to the Administrator of the General Services Administration; (12) make grants to or contracts with Federal or other public agencies and private nonprofit organizations for the assignment or referral of volunteers, under this Act, except those serving under part A of title I—VISTA, which may provide that the agency or organization pay all or a part of the costs of the program; (13) provide or arrange for educational and vocational counselling of participants in programs under this Act to encourage them to use in the national interest skills and experiences which they have derived from their training and services, particularly in combatting poverty as members of the helping professions, and promote the development of opportunities for the use of these skills and experiences, and for the placement of volunteers in the programs he develops; (14) establish policies, standards, criteria, procedures, rules and regulations, and to enter into contracts and agreements with public agencies and private organizations and persons, to make payments and generally perform functions and take steps, consistent with the purposes of the Act, as he deems necessary or appropriate to carry out the provisions of the Act; and (15) generally perform such functions and take such steps as necessary or appropriate to carry out the Act, consistent with the provisions of the Act. The provisions of this section derive from section 602 of the Economic Opportunity Act.

Section 403 prohibits funds appropriated to carry out programs under the Act or to carry out the Act from being used to finance political activity or election, and authorizes the Director to issue rules and regulations for the enforcement of these political prohibitions and similar prohibitions in any programs assisted under the Act. The provisions of this section derive from section 603 of the Economic Opportunity Act.

Section 404(a) directs the Director to prescribe rules and regulations and to carry out the provisions of the Act so as to assure that the service of volunteers assigned or referred under the Act is limited to activities which would not otherwise be performed by employed workers and which will not support the hiring of or result in the displacement of employed workers, or impair existing contracts for service. The provisions of this section derive from and is intended to strengthen the provisions of section 834(a) of the Economic Opportunity Act.

Section 404(b) stipulates that all support shall be furnished at the lowest cost possible consistent with the effective operation of programs under the Act. It is the same as section 834(b) of the Economic Opportunity Act.

Section 404(c) prohibits agencies or organizations to which volunteers are assigned, or which operates or supervises any volunteer program authorized by this Act, from requesting or receiving any compensation for services of those volunteers. It is the same as section 843(c) of the Economic Opportunity Act.

Section 404(d) prohibits the use of funds authorized to be appropriated under this Act from being used to finance labor or anti-labor organizations. It is derived from section 834(d) of the Economic Opportunity Act.

Section 404(e) authorizes the Director to prescribe requirements for volunteer service in programs authorized by this Act and requires volunteers and prospective volunteers to provide information concerning their qualifications. The section enables the Director to establish special procedures for low-income persons wishing to enroll in these programs. It is the same as section 834(e) of the Economic Opportunity Act.

Section 404(f) prohibits the Director from assigning or delegating any substantial responsibility for carrying out the provisions of this Act (except for the support provisions as described in section 504(a), second proviso) to persons not appointed or assigned in accordance with Civil Service regulations or as experts or consultants in accordance with the Administrative Expenses Act. This

subsection stipulates that, on the effective date of this Act, all persons assigned to carry out such substantial domestic program responsibilities coming under the provisions of this Act who have not been employed or assigned in accordance with Civil Service law or with the Administrative Expenses Act shall be assigned a Civil Service rating affording a compensation rate no less than what such persons received prior to the effective date of this Act. In order to achieve the appointment of such persons to the Civil Service, the subsection provides that the number of supergrade positions authorized and assigned to the ACTION agency shall be increased by a number equal to the number of persons whose level of compensation on the day prior to the effective date of this Act requires their assignment to these positions.

An exception may be made by the Director to the conversion requirement when he personally determines that an individual will be assigned to carry out functions under the Peace Corps Act within six months after enactment of the Act, so that such an employee could be retained during such period in an FSS or FSR appointment while carrying out substantial, non-support domestic operations program responsibilities.

Section 404(g) provides that, notwithstanding any other provision of law, payments to volunteers enrolled in programs under this Act shall not in any way reduce or eliminate the level of eligibility for assistance or services these volunteers may be receiving under any other governmental program. This section applies, for instance, to former welfare recipients who may lose Medicaid benefits for their dependents as a result of their VISTA service.

Section 405(a) establishes in the ACTION Agency a National Voluntary Service Advisory Council to be composed of not more than 25 members appointed by and serving at the pleasure of the President. The members shall be representative of public and private organizations, groups, and individuals interested in serving in programs and being benefited by programs carried out under this Act and the Peace Corps Act. They shall include in approximately even numbers representatives of beneficiaries of programs established under this Act, nations hosting Peace Corps volunteers, present and former volunteers, and national coalitions representing such groups. The section provides that the President shall designate a temporary chairperson from the members and shall call the initial meeting of the council within 30 days after establishment of the Council. Members of the Council shall designate a pemanent chairperson from among themselves, and shall meet at the call of the chairperson, but not less than four times in each year. Members of the Council, except those regularly employed by the Federal Government, shall be entitled to receive compensation and travel expenses while attending council meetings. The Director and Deputy Director of the ACTION agency shall be ex-officio members of the Council.

Section 405(b). Provides tht the Council shall advise the Director with respect to administrative and policy matters, and at his request, review the effectiveness of the programs operating under this and the Peace Corps Act and make recommendations to him (including changes in law) concerning the improvement of these programs and the elimination of duplication of effort, and the coordination of these and other Federal Government programs designed to assist the beneficiaries of these Acts. The Council shall make an annual report of its findings.

Section 406 provides that not less than the prevailing wage as determined in accordance with the Davis-Bacon Act shall be paid to laborers and mechanics employed in connection with programs assisted by this Act. It is the same as section 607 of the Economic Opportunity Act.

Section 407 directs the Director to prepare and submit to the President for transmittal to the Congress an annual report on the activities of the ACTION Agency. It is similar to section 608 of the Economic Opportunity Act.

Section 409 provides for the designation of the principal agency to administer funds provided for programs assisted under this Act when such programs involved more than one Federal agency, and provides for the waiver of grant or contract requirements pursuant to any law other than this Act by the ACTION Agency when it is the principal agency involved if those requirements are inconsistent with those of this Act. It is derived from section 612 of the Economic Opportunity Act.

Section 409 prohibits the Federal Government and its employees from exercising any directions, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system. It is the same as section 614 of the Economic Opportunity Act.

Section 410 directs the Director to coordinate the volunteer programs under this Act with one another, with community action programs, and with other related Federal, State, and local programs, and to take necessary steps to encourage the greater use of volunteer services in those programs.

Section 411 prohibits the use of any funds appropriated to carry out this Act from being used to establish any new department or office when the intended function is being performed by an existing department or office. It is derived from section 636 of the Economic Opportunity Act.

Section 412 requires the Director to prescribe procedures to insure that 1) financial assistance under this Act shall not be suspended for failure to comply with applicable terms and conditions and that applications for refunding shall not be denied unless the recipient has been given reasonable notice and opportunity to show cause publicly why such action should not be taken, and that 2) financial assistance shall not be terminated unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing. It is derived from section 604 of the Economic Opportunity Act.

Section 413 requires that programs under this Act shall be carried out for four years beginning June 30, 1973 (one year beyond the three years for which funds are authorized to be appropriated) and restricts appropriations to those authorized by law. This section is similar to section 615 of the Economic Opportunity Act.

Section 414 directs the Director to adopt appropriate administrative measures to assure that benefits of this Act will be distributed equitably between residents of rural and urban areas. It is the same as section 617 of the Economic Opportunity Act.

Section 415 provides that for the purpose of affording adequate notice of funding available under this Act, appropriations for grants, contracts, or other payments may be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. It is derived from section 622 of the Economic Opportunity Act.

Section 416(a) provides that volunteers shall be deemed to be Federal employees only for the purposes of computing time towards Civil Service retirement as provided in section 8332 of title 5, United States Code, and for purposes set forth in subsections (b), (c), (d), and (e) of this section. It is similar to section 833(a) of the Economic Opportunity Act.

Section 416(b) provides that VISTA and UYA volunteers, and part C volunteers serving in full-time programs of at least one-year's duration shall be deemed to be Federal employees for purposes of political activity prohibitions set forth in subchapter III of chapter 73 of title 5, United States Code, for purposes of the Internal Revenue Code of 1954 and title II of the Social Security Act, for purposes of the Federal Employees Compensation Act relating to compensation for injuries, and for purposes of the Federal Tort Claims Act provisions of title 28, United States Code. In computing compensation for injuries, volunteers specified above shall be deemed to be paid at the entrance salary for GS–7 Federal Civil Service employees. It is derived from section 833(b) of the Economic Opportunity Act.

Section 416(c) provides that VISTA and UYA volunteers, and part C volunteers serving in full-time programs of at least one-year's duration shall be credited in connection with subsequent employment in the Federal Government in the same manner as a like period of civilian employment for the purposes of United States Government retirement systems, for determining seniority, reduction in force, layoff rights, and leave entitlement, and any other rights and privileges afforded United States Government employees based on length of service. It is similar to section 833(c) of the Economic Opportunity Act.

Section 416(d) provides that VISTA volunteers and former VISTA volunteers who have successfully completed their term of service shall be eligible for appointment to the career Civil Service in the same manner as Peace Corps volunteers.

Section 416(e) provides that VISTA and YA volunteers, and part C volunteers serving in full-time programs of at least one-years' duration shall be treated for purpose of any other law as if their service had been performed under the part A VISTA authority in title VIII of the Economic Opportunity Act of 1964, as amended. This specifically is intended to deal with references in the Civil Service law pertaining to VISTA volunteer service contained in title 5, United States Code, § 8332 (b) (7) through 8332(j), as well as references in the Higher Education Act of 1965, as amended, regarding non-accrual of interest and deferred repayment in connection with certain federal or federally-guaranteed education loans (20 U.S.C. § 425(b) (1) (A) (iii) and 1087dd(c) (2) (A) (iv)).

Section 417 is derived from section 207 of S. 50, the proposed "Older Americans Comprehensive Service Amendments of 1972" and requires the Director to evaluate the effectiveness and impact of programs authorized by this Act, to publish general standards for evaluation, to take into consideration the opinions of programs participants in such evaluations, to publish summaries of the results of such evaluations, to assure that related data and the evaluations themselves become property of the United States, and to use such sums as are required to conduct such evaluations so long as those sums do not exceed 1 per centum of the fund appropriated under this Act.

Section 418 prohibits the Director from providing financial assistance for any program under this Act unless the financial arrangement specifically prohibits discrimination because of race, creed, national origin, sex, physical or mental disability, political affiliation, or belief. It furthers prohibits the grounds of sex to be used to exclude anyone from participation in, benefiting from, being denied employment, or being subjected to discrimination under any program or activity receiving assistance under this Act. The Director is directed to enforce these provisions in accordance with section 602 of the Civil Rights Act of 1964. Section 603 of the Civil Rights Act is made applicable to any enforcement action taken by the Director. This section is the same as section 624 of the Economic Opportunity Act.

Section 419(a) provides that the stipend paid to volunteers under this Act shall not be taxed until actually received by the volunteers, but that the tax rate will be deter-

mined by treating the stipend as if it had been received month-by-month during the volunteer's term of service. This section affords domestic volunteers the same tax treatment established for Peace Corps volunteers with respect to the payment and accrual of their readjustment allowances under the last sentence in section 5(c) of the Peace Corps Act.

Section 419(b) exempts from income tax the allowances received by VISTA and University Year for ACTION volunteers and volunteers serving in full-time programs of at least one-year's duration under part C of title I of this Act, except for stipends (to VISTA or UYA Volunteers or Volunteer Leaders), leave allowances, and that part of the living allowance which the Director determines is basic compensation. This provision affords domestic volunteers the same tax treatment provided Peace Corps volunteers with respect to their receipt of readjustment allowance under section 912(3) of the Internal Revenue Code of 1954.

In other words, food and lodging allowances and adjustment allowances would not be subject to tax.

Section 419(c) exempts payments for supportive services or reimbursement for out-of-pocket expenses made to retired persons serving in the RSVP, Foster Grandparent and other part B title II programs, and SCORE volunteers from any tax or charge for the purposes of unemployment, temporary disability, retirement or similar benefit payments, or minimum wage laws. Since these volunteers are not considered members of the labor force, in accordance with the special limitations contained in section 404(a), this section provides that these payments shall not be considered as if their recipients were a part of the labor forces—that deductions shall not be made for purposes of reducing Social Security benefit payments, for unemployment insurance, or similar purposes.

Section 420 authorizes the Director to assume the legal expenses incidental to the defense of full-time volunteers serving in programs under this Act. This section makes available with respect to domestic full-time volunteers the same authority provided with respect to Peace Corps volunteers under section 5(*l*) of the Peace Corps Act.

Section 421 requires the Director to see that all rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this Act shall be published in the Federal Register and submitted to the appropriate Committees of the Congress at least thirty days prior to their effective date.

Section 422 defines certain terms used in this Act.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Section 501 authorizes appropriations for title I of this Act for the next three fiscal years ($50 million, $60 million and $75 million, respectively). The authorizations are stacked in such a way so as to ensure that the VISTA program receives top priority for funding if the appropriations made available for this title are substantially less than those authorized, and that the University Year for ACTION program receives second priority. The earmarking for FY 1974 is identical to the amounts in the President's budget request; the earmarked amounts for FY 1975 and 1976 provide for small increases largely to meet anticipated inflation in program costs. The following chart provides a breakdown of the funding authorized, by part, for title I, the funding earmarked, by part, for title I, and the additional funding available, by part, for title I if full funding is provided:

THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973, AUTHORIZATION OF APPROPRIATIONS FOR TITLE I

[In millions of dollars]

	Total	By part			Earmarked			Add on		
		A	B	C	A	B	C	A	B	C
Fiscal year:										
1974	50	30	12	8	22.3	7.3	8	7.7	4.7	0
1975	60	35	15	10	25.0	8.5	10	10.0	6.5	0
1976	75	45	20	10	27.5	10.0	10	17.5	10.0	0

Section 502 authorizes appropriations for title II (Older American Volunteer Programs) of this Act for the next three fiscal years.

Subsection (a) provides authorizations for the RSVP program ($30 million, $40 million, and $50 million, respectively).

Subsection (b) provides authorizations for the Foster Grandparent program ($45 million, $55 million, and $65 million, respectively) and the new programs authorized by subsection (b) of section 211 ($7 million, $8 million, and $9 million, respectively). These authorizations are stacked in such a way so as to insure that the Foster Grandparent program receives top priority funding (at the fiscal year 1973 funding level of $25 million) in the event the appropriations made available for this section are less than those authorized. The following chart provides a breakdown of the funding authorized and earmarked for title II; part B:

THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973, AUTHORIZATION OF APPROPRIATIONS FOR TITLE II, PART B

[In millions of dollars]

	Total	By subsection		Earmarked		Add on	
		A	B	A	B	A	B
Fiscal year:							
1974	52	45	7	25	0	20	0
1975	63	55	8	25	0	30	0
1976	74	65	9	25	0	40	0

Section 503 authorizes appropriations for carrying out title III of this Act for the National Volunteer Programs to Assist Small Businesses and Promote Voluntary Service by Small Business Proprietors for the next three fiscal years ($1 million, $1.5 million, and $2 million, respectively).

Section 504(a) authorizes appropriations for title IV of this Act for Administration and Coordination for the three years of the Act's duration ($15 million, $16 million, and $17 million, respectively). It provides that no amount appropriated for administration purposes under this section shall be expended in excess of an amount which equals the proportion of the amount appropriated and made available for administration purposes and (1) the amount appropriated and made available pursuant to this Act; (2) the amount appropriated and made available pursuant to the Peace Corps Act; and (3) the amount appropriated and made available pursuant to any other law for any other programs for which implementing responsibility is delegated or transferred to the Director. It provides further that amounts expended for administration purposes shall be used for salaries and expenses of only those persons carrying out functions under this Act, or those persons whom the Director determines, in accordance with regulations which he shall prescribe, are engaged in carrying out functions under this Act for a substantial portion of their time and that such functions constitute a substantial portion of their responsibilities. These are the so-called "support" personnel when legitimately carrying out mixed domestic and international operations functions.

Section 504(b) prohibits the expenditure in excess of ten percent of the total amount appropriated and made available for this Act for administrative expenditures, including the compensation of Federal employees. It is derived from section 619 of the Economic Opportunity Act.

Section 505 provides that funds appropriated for any fiscal year to carry out programs under this Act shall remain available for obligation and expenditure until expended, and that there shall be no limitation on the use of funds appropriated to carry out programs under this Act other than those imposed by or pursuant to this Act, nor shall any funds appropriated to carry out a program under this Act be distributed in any manner or by any method different from that specified in this Act.

TITLE VI—AMENDMENTS TO OTHER LAWS AND REPEALERS

Section 601(a) supersedes the program and administrative provisions of Reorganization Plan No. 7 relating to domestic volunteer programs. It does not affect the provisions relating to the Peace Corps.

Section 601(b) provides that the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Director of the ACTION Agency by section 2(a) and 3 of such Reorganization Plan are by operation of law transferred to the ACTION agency established by section 401. All grants, contracts, and other agreements awarded or entered into under the authority of such Reorganization Plan will be recognized under comparable provisions of this Act so that

there is no disruption of on-going activities for which there is continuing authority.

Section 601(c) provides that all official actions taken by the Director of the ACTION Agency, his designee, or any other person under the authority of such Reorganization Plan which are in force on the effective date of this Act and for which there is continuing authority under the provisions of this Act shall continue in full force and effect until modified, superseded or revoked by the Director.

Section 601(d) directs that all references to ACTION, or the Director of ACTION in any statute, reorganization plan, executive order, regulation or other official document or proceeding shall, on and after the effective date of this Act, be deemed to refer to the ACTION Agency established by section 401 and the Director thereof.

Section 601(e) provides that no suit, action, or other proceeding, and no cause of action, by or against the agency known as ACTION created by such Reorganization Plan, or any action by any officer thereof acting in his official capacity, shall abate by reason of enactment of this Act.

Section 601(f) directs that persons appointed by the President by and with the advice and consent of the Senate to positions requiring such advice and consent under such Reorganization Plan may continue to serve in the same capacity in the Action Agency without the necessity of an additional appointment by the President or further such advice and consent by the Senate.

Section 602 provides that VISTA, University Year for ACTION volunteers, and volunteers serving in full-time programs of at least one-year's duration under part C of title I of this Act who subsequently become members of the Federal Civil Service shall have their volunteer service time counted as creditable toward Civil Service retirement, in accordance with the provisions of section 416(a) of this Act.

Section 603 provides that veterans who serve in VISTA or the Peace Corps shall have an extension on the time period in which they are eligible for veterans educational assistance under the GI Bill equal to the time which they spent in VISTA or Peace Corps training and service.

Section 604 amends the Internal Revenue Code to provide for the tax treatment prescribed in section 419(a) and (b) relating to title I volunteers.

Section 605 amends the Internal Revenue Code to provide for the tax treatment prescribed in section 419(c) relating to title II and III volunteers.

Section 606 provides for the repeal of title VIII of the Economic Opportunity Act of 1964, as amended. Title VIII contains the VISTA authority which this Act replaces.

Section 607 provides for the repeal of title VI of the Older Americans Act of 1965, as amended. Title VI contains the RSVP and Foster Grandparent authority which this Act replaces.

By Mr. MAGNUSON for himself, Mr. BENNETT, Mr. BURDICK, Mr. CLARK, Mr. DOLE, Mr. DOMENICI, Mr. DOMINICK, Mr. EASTLAND, Mr. GRAVEL, Mr. HART, Mr. HARTKE, Mr. HATFIELD, Mr. HANSEN, Mr. HATHAWAY, Mr. HUGHES, Mr. HUMPHREY, Mr. JACKSON, Mr. JAVITS, Mr. MANSFIELD, Mr. MUSKIE, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MOSS, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, and Mr. YOUNG):

S. 1149. A bill to increase the supply of railroad rolling stock and to improve its utilization to meet the needs of commerce, users, shippers, national defense, and the consuming public. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I send to the desk a bill for appropriate reference. It is a bill to increase the supply of railroad rolling stock, to improve its utilization, and to meet the needs of commerce, users, national defense, and the consuming public.

In other words, it is the old freight car shortage bill which has plagued us for a long time in many parts of the country, as in Minnesota and the farmers there, and in other places.

As a matter of fact, 82 years ago the ICC was created. Docket No. 1 of the ICC was a petition from a group of North Dakota farmers to get more freight cars to ship their wheat grain to Duluth and not have the wheat lie on the ground. That has been going on that long a time. The ICC never seems to be able to solve this problem. We have had many bills to try to do so. This is a comprehensive bill sponsored by 35 Senators from all sections of the country which are involved in this matter.

There is one part of the bill which we will have to examine in committee quite closely, which provides that unless something is done satisfactorily to relieve the boxcar shortage within the next 3 years, the Secretary of Transportation could establish a so-called quasi-governmental body which would buy the rolling stock. This is a great departure. No one suggests—especially the sponsors—that this is something we would like to do. We are hopeful that we can solve the matter by this bill, which would allow guaranteed loans for the building of rolling stock.

The committee is going to hold hearings on 2 days next week, and the matter of what we do, other than the initial step to see if this works, is going to be examined closely by the committee. Perhaps we want to accept this alternative; perhaps not. In any event, it is in the bill and it is before us, so that we can take a look at it.

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

Mr. MAGNUSON. I yield.

Mr. HUMPHREY. I thank the Senator from Washington, once again, for his leadership in this matter.

I am privileged to serve on the Committee on Agriculture and Forestry. I serve with the distinguished Senator from Kentucky (Mr. HUDDLESTON) on the subcommittee that has been looking into the boxcar shortage.

It is a critical problem. The entire transportation problem for agricultural America is in a mess, with all these abandonments of railroads, with many of our rural communities no longer having any form of transportation that is satisfactory. Right now, because of the massive export trade in which we are engaged in the field of agricutural products, the boxcar shortage has literally crippled rural America.

To be sure, the Commodity Credit Corporation is doing all right, because it gets one-half of all the boxcars available for the movement of its supplies.

Mr. MAGNUSON. And the movement at the wrong time.

Mr. HUMPHREY. They have been moving them at the wrong time. The Senator is correct.

But I point out that it is rather difficult for a farmer in Minnesota or Washington or Iowa or North Dakota or West Virginia, or wherever, to pick up the morning newspaper and read—for example, as today, in Minnesota—that corn is approximately $1.70 a bushel in Chicago, but it is $1.12 a bushel on the farm. They cannot understand it.

What is more, there are no boxcars. We have country elevators that are going broke because they cannot move the goods on which they have loans and which they have purchased. We have farmers who keep reading that soybeans are $6.50 a bushel, and they cannot get a boxcar to sell them. The only soybeans my farmers have sold were about $3.50 a bushel.

Every so often, I am going to comment on this matter, because the Nation's Capital is grossly ill-informed of the problems of our farm people.

I thank the Senator, and I hope I am a cosponsor of the measure.

Mr. MAGNUSON. The Senator is a cosponsor.

Mr. HUMPHREY. When I came here in 1949, we were talking about boxcars.

Mr. MAGNUSON. When I first came to the Senate, I was assigned to the then Committee on Commerce, and the first meeting I attended dealt with the boxcar shortage. That was 28 years ago in the Senate, let alone 82 years ago in the ICC.

I am hopeful that this bill will do a great deal to relieve the boxcar shortage. As a matter of fact, this fall was the worst of all the years.

Those eight North Dakota farmers had the right idea 82 years ago, but I do not think they ever got the boxcars. I have looked at the old petition. It is a marvelous document. It was written by hand by those farmers. They did not know about a stenographer or lawyers. That was docket No. 1.

I hope we can clean up this matter. We are going to examine every possible alternative, and we are going to be practical and hope we can finally work this matter out.

I thank the Senator from Minnesota and others for their support in this matter.

Mr. HARTKE. Mr. President, since I last addressed this body on the subject of surface transportation, and more particularly, the railroad situation, an alarming development has occurred which requires the attention and action of all the Members of the Senate. The most recent reports from the Interstate Commerce Commission indicate that as of January 6, the Nation was experiencing a daily shortage of 8,000 box cars and a daily shortage of 10,000 covered hopper cars. Many of you are undoubtedly fully aware of the situation because of the phone calls, wires, letters and personal visits that you have had, particularly with your constituency in the grain and feed business.

This shortage has been occasioned by a number of factors. The tremendous size of the Russian grain contracts has put a strain upon the Nation's transportation system far beyond ordinary

comprehension. For example, there are indications the Russians purchased 440 million plus bushels of wheat, 285 million bushels of corn, and 40 million bushels of soybeans. In the signing of the contract, until the end of January only approximately 25 percent of this order had cleared our ports, meaning that the transportation system must move the balance of these orders by mid-1973.

In addition to the unprecedented demands by the Russians, our regular customers, such as Japan, have ordered heavily this past year and now even the foreign nations of the world, such as India using their free foreign exchange, are buying substantial quantities of American grain. Drought in Australia and South America have prevented those countries from participating in the export business as they ordinarily would, and the world now looks to the United States as the only nation with adequate stocks to meet this recordsetting demand.

To make matters even worse, the U.S. Department of Agriculture took administrative action which requires the farmers to repay loans on their 1969, 1970, and 1971 crops of corn by midsummer. This means that the farmers will have to move millions of bushels of old corn crop into the already clogged market channels, causing even more acute problems than we have now, if that is possible. Beyond this, the Government is emptying all of its warehouses of its own grains, the so-called CCC stocks. This appears to be the straw that broke the camel's back.

At first blush, it would appear that we have an acute car shortage and that is all. But that is not the whole story. I have received a number of reports that the elevator operators have bought the grain from the farmers and paid them for it, but were unable to ship the wheat. Thus, the small elevator operator is having to borrow to the maximum the banks will loan to him to stay in business until this grain can be moved out. In some areas of the country I have received reports that farmers are putting grain in the elevators where they have the space with the express understanding that they will not be paid until the grain has actually reached the market. Thus, we see a situation building up very rapidly of farmers unable to ship the grain; being compelled to repay loans; elevator operators unable to finance any purchases, and the entire grain marketing system is coming to a halt.

On the receiving end of the grain, particularly in the eastern part of the United States, a great number of feed mills report extreme difficulty in obtaining feed, again because their regular suppliers in Indiana cannot ship to them.

The U.S. Department of Agriculture, in an attempt to stem rising prices, has not only tried to force additional grain onto the market, but has announced action which would put an additional 30 million acres set aside, back into production. Between high grain prices encouraging heavier rates of fertilizer application and this additional acreage, our Indiana fertilizer dealers are going to be required to handle increased tonnages far beyond those of all normal years, and they report serious difficulty in being able to secure fertilizer stocks.

I have been informed that some of the major production plants in Florida have material sold and ready to ship, but are threatened now with shutdowns simply because they cannot get the cars to ship the material. All this only goes to show that a freight car shortage is like a stone in a pond—the waves go far in the economy and have great effect on many, many people, not just those persons most immediately and directly concerned.

The important thing is to take action now.

On August 4, 1971, the Senate, by an 81 to 0 vote, approved S. 1729. Unfortunately, due to the lateness of the legislative year, the House failed to take action. Had S. 1729 finally cleared the Congress, we would not be faced with the horrendous problems that face us now. With the economy of the Nation showing a sharp recovery, it is clear that all classes of rail cars will be in very short supply, regardless of what trade or industry they serve.

While most of us have a mental impression that the railroads are fading from the scene, this is not so. At the peak of World War II, the railroads moved 737 billion revenue ton miles of traffic. This record was broken in 1972 when they moved 780 billion ton miles of traffic. They are handling a dwindling percentage of intercity transportation; however, our economy has expanded to such a degree over the past years that they are still the backbone of the Nation's logistical system. For further illustration, they transport 76 percent of all of our automobile and automobile parts, 78 percent of all U.S. lumber and wood products, 63 percent of the country's chemicals, 68 percent of the Nation's primary metal products, and 86 percent of all pulp and paper, so that when the shortage effect is felt, every industry is bound to be penalized.

I, therefore, join in introducing, a bill nearly identical to S. 1729, to which I alluded earlier. The two changes made in S. 1729 pertain to labor protection provisions and a provision for the new rolling stock authority to come into being at the end of 2 years, if there is a continuing car shortage, rather than the 3 as provided in the original version of S. 1729. There are two reasons for this. First, 1 full year has nearly passed, yet the solution to the car shortage problem has not manifested itself by the carrier on action. Second, the use of 2 years rather than 3 will impart even more urgency in carrier self-help.

There is created by the bill a national rolling stock information service, which authorizes the Secretary of Transportation to design a system that will furnish information about the location of rolling stock and other factors appropriate to such a system. The end product of the system would be to greatly increase the utilization of the present freight car fleet.

In all the testimony taken by my committee earlier, there was general agreement among the witnesses that, with computerized control, the Nation's present railroad fleet would increase its utilization from 10 to 15 percent. On a fleet of 1,400,000 cars, this is obviously a substantial gain in the number of cars actually available to American industry.

As a second feature of this proposed legislation, there is a Federal Railroad Equipment Obligation Insurance Fund created whereby the carriers themselves could borrow money and it would be insured by the U.S. Government. Thus, if the carriers did not want to participate in a pool of cars created in another section of this legislation, they would be able to use the insurance fund loan route to extricate themselves from their present difficulties. This, obviously, would be attractive to carriers who are having financial trouble obtaining money that otherwise would not be available to them.

There was a novel section in the bill new to American transportation which called for the creation of a Rolling Stock Authority. This authority could, with certain safeguards, be established to build and repair all forms of rolling stock. The idea, of course, would be to create a pool of cars which could be withdrawn and used at any time, but would be particularly valuable in times of emergency.

Traditionally, Russia, India, and other major nations look to their own indigenous production for wheat. It is fairly clear, therefore, that we will only make sales of wheat of the magnitude now going on when these countries, because of weather and other factors, cannot satisfy their domestic needs. Experience should certainly teach us that a large pool of reserve cars is necessary; yet, at the same time, it is obvious none of the railroads would be able to afford to have idle cars waiting a sudden surge in exports.

The Rolling Stock Authority pool would help the Nation out of a dilemma created by these sudden and unexpected surges. While it may well be argued that this is a drastic approach to settle the problem, it is a fact that the Nation has been faced for nearly 75 years with this problem of an adequate freight car fleet and something more than words are needed to finally solve a problem that seems to face Congress every time it meets. Therefore, I commend the rolling authority concept to my colleagues for their careful consideration and support.

Our committee plans to have immediate hearings on this measure. Inasmuch as witnesses have all had an opportunity to testify on this bill at great length last year, I would not anticipate prolonged hearings or undue delay. The situation can only grow more critical. Anyone reasonably familiar with the growing season in this country knows that by the time the Russian grain shipments have been completed, the 1973 wheat harvest will have already begun in the Southwest. Additional acreages now permitted are going to produce a corn crop now currently estimated by USDA in excess of 6 billion bushels. That is an all time high. USDA is planning a surge in soybean plantings and this crop will run well over a billion bushels.

The hour is late. If cars are to be built, action must be taken now or we could

well see the Nation's transportation system bog down in the essential service of handling freight.

By Mr. PELL (by request) (for himself and Mr. CASE):

S. 1155. A bill to provide for participation by the United States in the United Nations environment program. Referred to the Committee on Foreign Relations.

Mr. PELL. Mr. President, the United Nations Conference on the Human Environment, held in Stockholm June 5 to 16, 1972, represents a landmark for international cooperation. This conference, the largest international meeting ever held, was attended by 113 different nations. Despite a number of heated confrontations between various countries, this world assembly was able to adopt more than 100 recommendations for international action. These recommendations could establish an important framework for the world's collective attack on global environmental problems.

The most significant action taken by this conference was the creation of a U.N. Environmental Agency. This Agency, comprised of a small secretariat headed by Maurice Strong as its executive director, would be the focal point for cooperation, coordination, and effective management of environmental activities in the United Nations system. However, the ultimate success or failure of this Agency will depend to a great extent on the size and availability of a voluntary environment Fund. This Fund, initially proposed by President Nixon in his 1972 environmental message to Congress, will provide support for the activities of Mr. Strong's secretariat.

Subject to congressional approval, the United States has stated its willingness to pay on a matching basis with other nations up to 40 percent of a 5-year $100 million fund. At the present time, approximately 10 countries, other than the United States, have pledged a total of $41.47 million to this Fund.

In addition to this sum, another 11 nations have revealed their intentions to make a contribution, but have yet to specify an exact amount.

Mr. President, in view of these developments, on behalf of myself and the Senator from New Jersey (Mr. CASE), I introduced by request, for appropriate reference, a bill authorizing the appropriation of amounts for the United States voluntary contributions to this U.N. Environment Fund.

This bill has been requested by the Acting Assistant Secretary of State for Congressional Relations and we are introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

We reserve the right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the Assistant Secretary of State to the Vice President dated February 15, 1973, and a sectional analysis of the bill.

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

S. 1155

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 "United Nations Environment Program Participation Act of 1973."

SEC. 2. It is the policy of the United States to participate in coordinated international efforts to solve environmental problems of global and international concern, and in order to assist the implementation of this policy, to contribute funds to the United Nations Environment Fund for the support of international measures to protect and improve the environment.

SEC. 3. There are authorized to be appropriated such amounts as may be necessary for contributions to the United Nations Environment Fund, which amounts are authorized to remain available until expended, and which may be used upon such terms and conditions as the President may specify.

DEPARTMENT OF STATE,
Washington, D.C., February 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: As mentioned in the President's Message to the Congress on the Environment, there is transmitted herewith a draft of a proposed Act,

"To provide for the participation of the United States in the United Nations Environment Program."

The proposed act would authorize the appropriation of amounts for United States voluntary contributions to a United Nations Environment Fund. The creation of this Fund was recommended by the United Nations Conference on the Human Environment held in Stockholm June 5–16, 1972. The Conference recommendation has been implemented by UN General Assembly Resolution A/RES/2997 (XXVII).

The creation of a United Nations Environment Fund was largely the result of United States efforts. In his Message to the Congress of February 8, 1972, President Nixon proposed that such a Fund be established with an initial funding goal of $100 million during the first five years of the international effort to improve the global environment. Subsequently, the President established, subject to Congressional approval, the United States fair share of the Fund, up to $40 million on a 40–60 matching basis.

As of the close of the UN General Assembly in December 1972, a number of governments had made public their intention to contribute specific amounts (Australia, Canada, Finland, France, Federal Republic of Germany, Japan, Netherlands, New Zealand, Sweden, United Kingdom) which, when added to the proposed United States contribution, totals $81.5 million. Several other governments have indicated their intention to contribute amounts which would bring the total of the Fund to the $100 million goal.

The purpose of the Fund is to coordinate and support international environmental programs, particularly in the fields of identification and control of pollutants, monitoring, conservation, human settlements, information exchange, education, training and research. The Fund would employ the facilities of existing organizations wherever possible.

The administration of the Fund is committed to the Executive Director of the United Nations Environment Program under the policy guidance of a Governing Council of 58 member countries. Costs of servicing the Secretariat and the Governing Council are to be borne by the UN regular budget. Operational program costs, program support and administrative costs of the Fund are to be borne by the Fund.

Members of the Governing Council are elected for three-year terms on the basis of equitable geographic distribution by the UN General Assembly. In addition to providing policy guidance to the Executive Director, the Governing Council will decide upon environmental programs to be supported by the Fund.

In view of the role of the United States in proposing and securing the creation of the Fund, prompt consideration and early enactment of this legislation are respectfully urged.

The Office of Management and Budget has advised that the enactment of this legislation is in accord with the President's program.

Sincerely yours,

MARSHALL WRIGHT,
Acting Assistant Secretary for Congressional Relations.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Section 1 contains a "short title" for the Act.

Sec. 2. Section 2 states the policy upon which United States support for and participation in the United Nations Environment Fund is based. It endorses the creation of the Fund as a means to commence the amelioration and solution of environmental problems of global and international concern.

Sec. 3. Section 3 contains the authorization for appropriations for voluntary United States contributions to the United Nations Environment Fund.

By Mr. PERCY (for himself and Mr. TAFT):

S. 1156. A bill to amend title III of the Trade Expansion Act of 1962 so as to provide more effective adjustment assistance thereunder, and for other purposes. Referred to the Committee on Finance.

TRADE ADJUSTMENT ASSISTANCE ACT OF 1973

Mr. PERCY. Mr. President, as we look at the agenda of major issues before us for the year, questions of international economic policy loom among the largest. Continuing attention must be given to reform of the world monetary system. At the same time, and from the point of view of the Congress, of particular importance is the need to enact legislation to give the President authority to conduct negotiations to provide new opportunities for American products in overseas markets.

A central element in the debate over trade legislation in 1972 will surely be the exact nature of the mechanisms to provide relief from the impact of imports on domestic firms, workers, industries and communities.

Such import adjustment assistance has been in the past primarily of two kinds: Import barriers such as tariffs or quotas—known as "tariff adjustment"—to provide a measure of protection from imports; and various forms of government aids to enable specific firms, groups of workers, industries or communities to adjust to import competition—known as "adjustment assistance".

In an expanding economy near full employment, import competition should not normally create a severe adjustment burden. The normal pace of economic expansion and change creates new jobs in new forms of economic activity that are intrinsically more competitive than

old forms. In our economy, adjustments that occur in response to wholly domestic changes are infinitely greater than adjustments caused by imports.

Import competition is, however, a particularly sensitive kind of competition. It is essential that new trade legislation create a workable new system of adjustment assistance as the main response to such competition.

The 1962 Trade Expansion Act first provided for such adjustment assistance. It recognized that a lowering of tariff barriers would possibly cause economic hardships to some sectors of the economy. The philosophy of the 1962 Trade Act was that all segments of the American economy would benefit from duty restrictions and that it was therefore the Nation's responsibility to share in the cost of compensating injured workers and firms for any dislocations which would result. Uncompetitive firms and workers should not have to bear unassisted the burden of economic adjustment stemming from the implementation of a freer trade policy.

Thus the 1962 Trade Act introduced a program of adjustment assistance for those firms and workers injured by increased imports that result from tariff concessions. Various European nations had practiced adjustment assistance for many years, successfully guiding the retraining of workers and the modernizing of outdated facilities. As the Secretary of Commerce said when the 1962 act was sent to Congress, adjustment assistance was not to be "an indemnity or a franchise to remain noncompetitive."

The 1962 act contained a strict requirement that firms and workers must show that injuries resulted from cuts in U.S. tariffs. This caused a series of negative findings by the Tariff Commission. No adjustment assistance was offered until 1969, when the Tariff Commission began to reinterpret the eligibility criteria. This reinterpretation did not, however, provide the broad revision which the Trade Act needed in order to make it effective. Labor organizations and businesses who were facing tough, damaging import competition had already come to distrust this adjustment program, which had failed to offer any effective assistance. Because of their experience with the Trade Act's adjustment assistance provision, many of those who have grievances have become convinced that protectionist legislation or restrictive international trade arrangements are the only meaningful alternatives available to deal with damaging foreign imports.

For the purpose of providing a truly workable alternative to protectionist restrictions on international trade, I am introducing today, with the cosponsorship of Senator TAFT, the Trade Adjustment Assistance Act of 1973. In our opinion, this bill is a reasonable, responsive means of making adjustment assistance a workable answer to the dislocations caused by imports—of providing workers, companies, communities, and even entire industries with means of modernizing and becoming independently self-sustaining without the need for subsidies such as tariffs.

The bill would amend title III of the 1962 Trade Expansion Act, a section which deals wholly with tariff adjustment, and adjustment assistance programs.

SCOPE OF ASSISTANCE

Whereas the scope of assistance in the 1962 Act—and in subsequent attempts to amend it—was limited to firms and worker groups, the Adjustment Assistance Act of 1973 would permit new groups to apply for help. Communities would, for the first time, be eligible, as would cooperative firm-worker, firm-community, and worker-community groups.

The provision for relief to communities is a recognition of the dislocation which communities can, and have, experienced if they are substantially dependent on one firm which is seriously affected by increased imports. In my own State of Illinois, several small towns in the southern part of the State have experienced great hardships because of the demise of companies on which the towns' populations were economically dependent. If enacted, the Trade Adjustment Assistance Act Senator TAFT and I are proposing today would have assisted in modernization of the industries and retraining of the workers, and would have assisted in reviving and sustaining the communities themselves. This principle was endorsed in the report of the President's Commission on International Trade and Investment Policy, the "Williams Commission" and in Peter G. Peterson's report titled "Foreign Economic Perspective" of December 1971.

CRITERIA FOR OBTAINING ADJUSTMENT ASSISTANCE AND TARIFF ADJUSTMENT

The bill also makes needed changes in the criteria and in the process for receiving adjustment assistance. First, the criteria for receiving adjustment assistance are liberalized by eliminating the requirement that injury-creating imports must result from tariff cuts, and by requiring that imports need only be a substantial cause of injury. The idea of breaking the causal link between tariff cuts and increased imports has become widely accepted since 1962. This change was contained in the 1968 Trade Expansion Act proposed by the Johnson administration and in the 1970 Trade Act proposed by President Nixon. The concept was also advocated in the 1971 Williams Commission study and in former Ambassador William M. Roth's 1969 report to the President, "Future United States Foreign Trade Policy."

Second, the Tariff Commission will become an investigative body only, as suggested in the 1968 and 1970 trade bills. Application for adjustment assistance will be made to the President. The modification of these sections provides firms, workers and communities with a more accessible application procedure, one that is not an insurmountable hurdle, as in the past, but one that nonetheless makes the reasonable demands that injury is substantial and is the result of imports, and not of other economic factors.

The bill makes changes as well in the requirements for obtaining tariff adjustment. The basic tenet of the 1962 Trade Act is respected that tariffs should be raised to protect domestic industry only in exceptional and critical cases, and that assistance to help the adjustment of the domestic industry is the preferred remedy. But the bill provides that increased imports must be the primary cause or threat of injury, which differs from the adjustment assistance criterion which requires only a substantial increase in imports in order for an injured economic unit to qualify for benefits. The criterion that increased imports must result from Tariff acts is eliminated, as it is in the case of adjustment assistance.

TARIFF COMMISSION REVIEW

Under the 1962 Trade Act, the Tariff Commission makes annual reports to the President on tariff adjustment cases. The Trade Adjustment Assistance Act of 1973 would in addition require the Commission first, to suggest whether adjustment assistance is a more appropriate remedy and second, to find the probable effect of a tariff or quota increase on consumers and exporters. Firms applying for a renewal of tariff protection must report on the efforts and progress they have made in their attempts to become competitive with imports. These provisions will attempt to insure that firms actually use the import protection they are granted in order to adjust to import competition, and they will help ensure that such import protection does not have a heavily adverse effect on other economic groups, particularly consumers. The requirement that firms show how they are using their protection to become competitive is a recognition that import barriers create additional costs to the economy, and that the beneficiaries of this form of public subsidy must show that they are using it to become competitive and end their dependence.

SPEEDIER DELIVERY OF BENEFITS

The adjustment assistance program has proven to be extremely slow in the delivery of benefits, as recognized in the Roth report, the Williams Commission report, and the Peterson report. Delivery has been delayed by as much as 2 years in some cases, negating the intended effectiveness of the adjustment program. To asure a minimum of hardship, this bill imposes time limits throughout the determination process.

The technical, tax, and financial assistance presently provided by the 1962 act will also be supplemented with interim assistance—a Williams Commission innovation. This interim assistance consists of low-interest loans, tax credits, and grants to firms while they await delivery of their benefits. Firms are encouraged to take initiatives toward economic adjustment themselves. The Federal guarantee of loans is raised from 90 to 100 percent if firms take substantial measures to assist their own adjustment.

IMPROVED BENEFITS

The assistance offered workers has become woefully inadequate in the decade since the 1962 Trade Act was passed. Federal and State unemployment benefits have been upgraded to correspond to cost-of-living increases. To become more consistent with these, the trade readjustment allowance in this bill is raised from 65 percent of the average manu-

facturing wage to 80 percent. The bill also provides that an adversely affected worker should receive a decent percentage of his own wage rather than, as presently provided, a percentage of a national average wage. Under present law the worker is obligated to take the lesser of the two sums, and can consequently be placed in a difficult financial position.

Under the Trade Adjustment Assistance Act of 1973, workers are encouraged to seek retraining. Workers who find assistance from other manpower development services—such as State unemployment and retraining programs—will now be eligible to receive a total of 100 percent—rather than 75 percent—of their former wage. This means, for example, that a worker receiving a State retraining allowance equal to 80 percent of his former wage will be eligible for a Federal allowance of 20 percent of his former wage. This Federal contribution is reduced as the worker approaches his previous wage level. Otherwise, the adjustment allowance continues throughout the period of retraining.

Eligible workers over 60 years of age often find reemployment and retraining difficult to obtain. They should receive adjustment assistance benefits until the time they qualify for social security. The bill we are introducing today provides for such assistance.

COMMUNITY ASSISTANCE

The new chapter concerning community adjustment would be administered by the Secretary of Commerce. Communities dependent on a firm which faces hardships due to increased imports would be eligible for adjustment assistance if their proposals would contribute to economic adjustment, give consideration to the workers and the firm, and importantly, demonstrate the efforts of the community to use its own resources. Community adjustment can take the form of industrial diversification, improvement of transportation facilities, and other projects related to the encouragement of industry.

CONSUMER PROTECTION

In an effort to assure that consumers are not seriously and adversely affected by adjustment actions, the Trade Adjustment Assistance Act of 1973 makes provision for the protection of consumers. The economic effects of increased tariffs and of international orderly marketing agreements on consumers must be annually investigated by the Tariff Commission and reported to the President. The price and availability of articles being protected must be considered. The Tariff Commission shall also have the responsibility of recommending reduction or removal of a duty, should it be found to be having a substantially adverse effect on consumers.

Finally, Mr. President, I have included a provision for eventual coordination of this adjustment assistance program. The lack of direction in this area is a serious handicap to the entire program. No governmental agency or department now in existence can fairly and adequately administer all aspects of the assistance programs. This bill, therefore, simply recommends inclusion of a coordinating body at the time of the creation of a Cabinet-level Department of Economic Affairs.

The Trade Adjustment Assistance Act of 1973 is in the best tradition of American trade policy. It provides adequate benefits to those workers, firms, and communities affected by trade dislocations. It makes the substantive alterations which will help American industry and agriculture, relieves them of the complete readjustment which may be involved in a free exchange of goods and services and facilities the movement of capital and labor into more efficient uses. The provisions included here will reinforce the U.S. commitment to an open world economy and discourage those who would seek to discredit the progress of the past four decades. It is in answer to the competition we meet now on various levels and in various markets and preserves the driving competitive philosophy of the American economy.

Mr. TAFT. Mr. President, millions of American workers are gripped by the fear that imports are going to cost them their jobs. The Economic Policy Committee of the AFL–CIO Executive Council has estimated that because of imports, over 1 million job opportunities for Americans have been lost since 1966. This development has been counterbalanced in large part by the benefits of expanded international trade, including larger markets for American industries and agriculture, new jobs for American workers as a result of increased exports, and domestic price restraint due to import competition. Nevertheless, it is inexcusable that so little Federal relief has been provided under present law to alleviate the hardships and dislocation caused by imports.

The import trend was not limited to any specific industry, but was evidenced in such diverse types of concerns as textiles, appliances, shoes, bicycles, steel, and tennis rackets.

Congressman BURKE and Senator HARTKE, with the support of the AFL–CIO, have proposed across-the-board import quotas as part of the answer to this problem. I reject this approach because it would lead to higher prices for American consumers and invite a trade war that would cost American jobs in export-related industries. The Burke-Hartke bill might even result in a net reduction of American jobs.

It would be irresponsible, however, to dismiss the Burke-Hartke bill without making any positive suggestions for dealing with the import problem. Americans whose jobs or businesses are lost or threatend due to import competition should not have to bear the full cost of a free trade policy which benefits all Americans. The Government must help those hurt by imports. This should be done, however, in a manner which balances their interests with the interests of taxpayers in the role of consumers and exporters. I am joining Senator PERCY as a cosponsor of the Adjustment Assistance Act of 1972 because I believe that it would provide this kind of assistance.

One of the major reasons for the enactment of the Trade Expansion Act of 1962 was to provide aid in the form of tariff increases or import quotas where necessary, and subsidized loans and grants on a more widespread basis, to help workers and firms adjust to increased imports. Relief cannot be provided, however, unless the Tariff Commission makes a positive finding that it is needed. In the first 7 years of the Trade Expansion Act, the Tariff Commission reviewed 13 industry applications for assistance without making a positive finding. To this day, only five positive findings on such applications have been made.

The past difficulty of obtaining this type of assistance may be one reason why so many people have become convinced that protectionist policies are the only viable solution to the import problem. I believe that tariffs should not be increased nor import quotas imposed unless the situation is extremely serious, but I see no reason to be as miserly as the Government has been with respect to the provision of relief for individual workers, firms, and industries. An adequate level of assistance has just not been provided under the present law.

The Trade Adjustment Assistance Act would deal with this problem by eliminating the requirement that adjustment assistance may be made available only if the damage due to increased imports results from U.S. trade concessions. Instead, tariff increases or import quotas could be invoked if increased imports have been the primary cause or threat of serious injury to the industry in question. Such measures, however, would be applied to specific groups of goods, rather than a wide range of products.

Loans, grants, and other assistance for workers, firms, and communities would be made available whenever imports have been a substantial cause of the industry's problems. I hope that this provision will result in a much more realistic utilization of adjustment assistance.

Our legislation would also expedite the provision of assistance by placing imposing time limits on various stages of the application process. In addition, it would establish an entirely new program of assistance to adversely affected communities who need to diversify their industrial base. For example, in my own State of Ohio, the town of East Liverpool could seek aid for ending its dependence on the now-depressed pottery industry. Similarly, a city such as Massillon, which is dependent upon the import-plagued specialty steel industry, could ask for assistance in attracting new sources of employment.

I believe that the increased relief for workers which this bill provides will help to alleviate the hardships that they now face upon losing a job due to increased imports. It will also facilitate any necessary retraining and relocation of these workers. The provision of more generous loan terms to firms which have already made substantial efforts to adjust to import competition will serve as an incentive for firms to attempt such adjustments on their own.

This legislation goes further than any other bill of which I am aware to protect consumers and exporters against injurious side effects of the adjustment assistance program. It is imperative that any shelter which domestic industries

are provided by the artificial restraint of competition, through higher tariffs or import quotas, be utilized to give these industries time to increase their competitiveness. We cannot permit tariffs or import quotas to be used as vehicles simply to raise prices. To insure that these protections are used properly, the bill directs the President to take consumer interests into account as he decides whether to increase tariffs or impose import quotas. It requires the Tariff Commission to report on any protected industry's efforts to adjust to import competition, to survey the effects of any increased tariffs, import quotas, or import restraints—"orderly marketing"—agreements on consumers, and to document the impact on U.S. exporters of any retaliatory measures adopted by foreign countries in response to such arrangements. Most importantly, the legislation puts teeth in these provisions, by giving the Tariff Commission the power to recommend reduction, modification, or elimination of increased tariffs, import quotas, or import restraint agreements if the arrangement in question has had a substantially adverse effect on consumers or exporters.

Neither Senator PERCY nor I maintain that this legislation is the solution to the unfavorable trade balance problem. Whether the imbalance situation will improve depends largely upon our ability to become more competitive, through effective inflation control, improved marketing and increases in our productivity. In addition, as President Nixon has repeatedly stated, it is essential to eliminate any unfair trade rules which presently give foreign industries an edge over our own industries.

The Trade Adjustment Assistance Act would complement such efforts. We recognize that regardless of the degree of success attained on these fronts, imports will continue to cause some serious dislocations and hardships. Therefore, our legislation provides a workable, responsive means of helping workers, firms, and communities adjust to increased imports. I believe it is a viable alternative to protectionist legislation.

I ask unanimous consent that the text of the Trade Adjustment Assistance Act of 1973 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. 1156

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That (a) this Act may be cited as the "Trade Adjustment Assistance Act of 1973".

(b) The Congress hereby finds and declares that—

(1) the prosperity and security of the United States continue to depend on a healthy international economy based on economic cooperation among nations and economic competition relying on fair, open and nondiscriminatory trading,

(2) among the benefits of such policies are (A) larger markets for the products of American agriculture and industry and new jobs for American workers, (B) increased economic efficiency in the United States economy, (C) a restraining effect on price increases and a wider selection of goods for United States consumers, and (D) a more dynamic United States economy,

(3) such international economic competition may, however, cause economic hardship for, and thus require adjustment by, particular workers, firms, industries, and communities,

(4) such workers, firms, industries, and communities should not bear unaided the burden for a trade policy which is in the Nation's interest,

(5) the most desirable method of providing assistance in adjusting to serious import competition is assistance designed to restore the ability of firms, industries, and communities to compete in new product lines and thus provide new jobs and new economic prosperity,

(6) the adjustment assistance provided in existing law to help such industries, workers, and communities make the necessary adjustments has been inadequate or unavailable.

(7) adequate, speedy, effective adjustment assistance should be available for workers, firms, and communities which are seriously injured or threatened by imports, and

(8) the primary reliance of adjustment policy should be on adjustment assistance rather than new or increased tariffs or quotas. Such import restrictions should be temporarily imposed or increased only where absolutely necessary, and the effects of any such impositions or increases should be carefully monitored to ensure that they are not unduly detrimental to the larger interests of the United States economy, and to United States consumers and exporters.

SEC. 2. Section 301 of the Trade Expansion Act of 1962 (19 U.S.C. 1901) is amended to read as follows:

"SEC. 301. PETITIONS AND DETERMINATIONS.

"(a) (1) A petition for tariff adjustment under section 351 may be filed with the Tariff Commission by a trade association, firm, certified or recognized union, or other representative of an industry.

"(2) A petition for a determination of eligibility to apply for adjustment assistance under chapter 2 may be filed with the President by a firm or its representative, by a duly authorized joint firm-worker representative, by a duly authorized community representative, or by a duly authorized joint firm-community representative. A petition for a determination of eligibility to apply for adjustment assistance under chapter 3 may be filed with the President by a group of workers or by their certified or recognized union or other duly authorized representative. A petition for a determination of eligibility to apply for adjustment assistance under chapter 4 may be filed with the President by a community or its representative.

"(3) Whenever a petition is filed under paragraph (1), the Tariff Commission shall transmit a copy thereof to the Secretary of Commerce.

"(b)(1) Upon request of the President, upon resolution of either the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Tariff Commission shall promptly make an investigation to determine whether increased quantities of imports of an article directly competitive with an article produced by a domestic industry have been the primary cause or threat of serious injury to such industry. In making its determination under this paragraph, the Tariff Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment, and detailed plans, submitted by the industry, for use of time requested.

"(2) For purposes of paragraph (1), the term 'domestic industry' means that portion or subdivision of the producing organizations manufacturing, assembling, processing, extracting, growing, or otherwise producing like or directly competitive articles in commercial quantities. In applying the preceding sentence, the Tariff Commission shall (so far as practicable) distinguish or separate the operations of the producing organizations involving the like or directly competitive articles referred to in such sentence from the operations of such organizations involving other articles.

"(3) If a majority of the Commissioners present and voting make an affirmative injury determination under paragraph (1), the Commissioners voting for such affirmative injury determination shall also determine the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such injury. For purposes of this title, a remedy determination by a majority of the Commissioners voting for the affirmative injury determination shall be treated as the remedy determination of the Tariff Commission.

"(4) In the course of any proceeding initiated under paragraph (1), the Tariff Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and whenever in the course of its investigation the Tariff Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act, 1921, section 303 or 337 of the Tariff Act of 1930, or other remedial provisions of law, the Tariff Commission shall promptly notify the appropriate agency and take such other action as it deems appropriate in connection therewith.

"(5) In the course of any proceeding initiated under paragraph (1), the Tariff Commission shall, after reasonable notice, hold public hearings and shall afford interested parties opportunity to be present, to present evidence, and to be heard at such hearings.

"(6) The Tariff Commission shall report to the President the determinations and other results of each investigation under this subsection, including any dissenting or separate views, and any action taken under paragraph (4).

"(7) The report of the Tariff Commission of its determinations under this subsection shall be made at the earliest practicable time, but not later than 4 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Tariff Commission shall promptly make public such report, and shall cause a summary thereof to be published in the Federal Register.

"(8) No investigation for the purposes of this subsection shall be made, upon petition filed under subsection (a)(1), with respect to the same subject matter as a previous investigation under this subsection, unless 1 year has elapsed since the Tariff Commission made its report to the President of the results of such previous investigation.

"(c)(1) In the case of a petition by or on behalf of a firm for a determination of eligibility to apply for adjustment assistance under chapter 2, the President shall determine whether increased quantities of imports of an article like or directly competitive with an article produced by the firm have been a substantial cause or threat of serious injury to such firm.

"(2) In the case of a petition by a group of workers for a determination of eligibility to apply for adjustment assistance under chapter 3, the President shall determine whether increased quantities of imports of an article like or directly competitive with an article produced by such workers' firm, or an appropriate subdivision thereof, have

been a substantial cause or threat of unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision.

"(3) In the case of a petition by a community for a determination of eligibility to apply for adjustment assistance under chapter 4, the President shall determine whether increased quantities of imports of an article like or directly competitive with an article produced by a firm in such community have been a substantial cause or threat of serious injury to such firm and hence to the economic base of the community.

"(4) In order to assist him in making the determinations referred to in paragraphs (1), (2), and (3) with respect to a firm, group of workers, or community, the President shall promptly transmit to the Tariff Commission a copy of each petition filed under subsection (a)(2) and, not later than 5 days after the date on which the petition is filed, shall request the Tariff Commission to conduct an investigation relating to questions of fact relevant to such determinations and to make a report of the facts disclosed by such an investigation. In his request, the President may specify the particular kinds of data which he deems appropriate. Upon receipt of the President's request, the Tariff Commission shall promptly publish notice thereof in the Federal Register.

"(5) In the course of any investigation under paragraph (4), the Tariff Commission shall, after reasonable notice, hold a public hearing, if such hearing is requested (not later than 10 days after the date of publication of its notice under paragraph (4)) by the petitioner or any other interested person, and shall afford interested persons an opportunity to be present, to produce evidence, and to be heard at such hearing.

"(6) The report of the Tariff Commission of the facts disclosed by its investigation under paragraph (4) with respect to a firm, group of workers, or community shall be made at the earliest practicable time, but not later than 60 days after the date on which it receives the request of the President under paragraph (4).

"(d) Should the Tariff Commission find with respect to any article, as the result of its investigation, the serious injury or threat thereof described in subsection (b), it shall find the amount of increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such injury as well as the appropriateness of adjustment assistance to remedy such injury and shall include such finding in its report to the President. In addition, the Tariff Commission shall find the probable effect of such increase or imposition upon consumers, including the price and availability of such article and the like or directly competitive article produced in the United States."

SEC. 3. (a) Section 302 of the Trade Expansion Act of 1962 (19 U.S.C. 1902) is amended by striking out "DETERMINATION" in the heading of such section and inserting in lieu thereof "REPORTS".

(b) Section 302(a) of such Act is amended by striking out "or" at the end of paragraph (3), and by striking out paragraph (4) and inserting in lieu thereof the following:

"(4) provide, with respect to such industry, that the affected communities may request the Secretary of Commerce for certification of eligibility to apply for adjustment assistance under chapter 4, or

"(5) take any combination of such actions."

(c) Section 302(b) of such Act is amended to read as follows:

"(b)(1) Within 30 days after receiving a request for certification from a firm in an industry with respect to which the President has acted under (a)(2), the Secretary of Commerce shall certify such firm as eligible to apply for adjustment assistance under chapter 2 unless he makes a determination that the increased quantities of imports have not been a substantial cause or threat of serious injury to such firm. Any such determination shall be supported by written findings of fact and shall be issued within 30 days after receipt of the initial request for certification unless, within that period, the Secretary notifies the firm that he requires it to submit additional information in order to enable him to resolve specific questions as to the firm's eligibility, in which even he shall issue his decision as to eligibility within 15 days after receiving such information.

"(2) Within 30 days after receiving a request for certification from a group of workers in an industry with respect to which the President has acted under (a)(3), the Secretary of Labor shall certify such group of workers as eligible to apply for adjustment assistance under chapter 3 unless he makes a determination that the increased quantities of imports have not been a substantial cause or threat of unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof. Any such determination shall be supported by written findings of fact and shall be issued within 30 days after receipt of the initial request for certification unless, within that period, the Secretary notifies the group of workers that he requires it to submit additional information in order to enable him to resolve specific questions as to the group of workers' eligibility, in which event he shall issue his decision as to eligibility within 15 days after receiving such information.

"(3) Within 30 days after receiving a request for certification from a community affected by an industry with respect to which the President has acted under (a)(4), the Secretary of Commerce shall certify such community as eligible to apply for adjustment assistance under chapter 4 unless he makes a determination that the increased quantities of imports have not been a substantial cause or threat of serious injury to the economic base of such community. Any such determination shall be supported by written findings of fact and shall be issued within 30 days after receipt of the initial request for certification unless, within that period, the Secretary notifies the community that he requires it to submit additional information in order to enable him to resolve specific questions as to the community's eligibility, in which event he shall issue his decision as to eligibility within 15 days after receiving such information."

(d) Section 302(e) of such Act is amended to read as follows:

"(c)(1) In the case of any petition for adjustment assistance filed under section 301(c), the President shall make his determination at the earliest practicable time after receiving the report of the Tariff Commission of the facts disclosed by its investigation under section 301(c)(4), but not later than 30 days after the date on which he receives such report, unless within such 30-day period, he requests additional factual information from the Tariff Commission. If the President requests such additional factual information, the Tariff Commission shall not later than 25 days after the date on which it receives the President's request, furnish such additional factual information in a supplemental report, and the President shall make his determination not later than 15 days after the date on which he receives such supplemental report.

"(2) The President shall promptly publish in the Federal Register a summary of each determination under section 301(c) with respect to any firm, group of workers, or community.

"(3) If the President makes an affirmative determination under section 301(c) with respect to any firm, group of workers, or community, he shall promptly certify that such firm, group of workers, or community is eligible to apply for adjustment assistance.

"(4) The President is authorized to exercise any of his functions with respect to determinations and certifications of eligibility of firms, workers, or communities to apply for adjustment assistance under section 301 and this section through such agency or other instrumentality of the United States Government as he may direct."

SEC. 4. (a) Section 311(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1911) is amended by striking out the second sentence and inserting in lieu thereof the following: "Within a reasonable time after filing its application, the firm, the firm-worker group, or the firm-community group, shall present a proposal for the economic adjustment of the firm."

(b) Section 311(b)(2) of such Act is amended by striking out "actions taken in carrying out trade agreements" and inserting in lieu thereof "substantially increased imports".

(c) Section 311 of such Act is amended by redesignating subsection (d) as (f), and by inserting after subsection (c) the following new subsections:

"(d) Immediately after the certification by the Secretary of Commerce, the firm shall be eligible for interim assistance (between approval and delivery of assistance). Such interim assistance may consist of low-interest loans, tax credits, and grants.

"(e) Certification procedures and forms prescribed by the Secretary of Commerce pursuant to this section shall be designed to simplify and expedite the provision of adjustment assistance to firms."

SEC. 5. Section 315(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1915) is amended by inserting after "90 percent" the following: "(or, if the Secretary determines that the firm has already taken substantial measures to assist its own economic adjustment, 100 percent)".

SEC. 6. Section 317(a)(2) of the Trade Expansion Act of 1962 (19 U.S.C. 1917) is amended by striking out "by the increased imports which the Tariff Commission has determined to result from concessions granted under trade agreements" and inserting in lieu thereof "by the increased quantities of imports identified by the Tariff Commission under section 301(b)(1) or by the President under section 301(c)(1), as the case may be".

SEC. 7. Section 321 of the Trade Expansion Act of 1962 (19 U.S.C. 1931) is amended by inserting "(a)" immediately before "The", and by adding at the end thereof the following new subsection:

"(b) Procedures and forms prescribed by the Secretary of Labor pursuant to this section shall be designed to simplify and expedite the provision of adjustment assistance to workers."

SEC. 8. Section 322 of the Trade Expansion Act of 1962 (19 U.S.C. 1941) is amended—

(1) by striking out subsection (c), and

(2) by striking out "subsections (b) and (c)" in subsection (a) and inserting in lieu thereof "subsection (b)".

SEC. 9. (a) Section 323(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1942) is amended by striking out "65 percent of his average weekly wage or to 65 percent of the average weekly manufacturing wage, whichever is less" and inserting in lieu thereof "80 percent of his average weekly wage".

(b) Section 323(e) of such Act is amended to read as follows:

"(e) Whenever, with respect to any week of unemployment, the total amount payable to an adversely affected worker as remuneration for services performed during such a week, as unemployment insurance, as a training allowance referred to in subsection (d), and as a trade readjustment allowance—

"(1) would be less than 100 percent of his average weekly wage, his trade readjustment

allowance shall be increased by the amount of such deficiency, or

"(2) would exceed 100 percent of his average weekly wage, his trade readjustment allowance shall be reduced by the amount of such excess."

SEC. 10. Section 324 of the Trade Expansion Act of 1962 (19 U.S.C. 1943) is amended to read as follows:

"SEC. 324. PERIOD OF PAYMENT OF TRADE READJUSTMENT ALLOWANCES.

"(a) Payment of trade readjustment allowances shall be made to an adversely affected worker for the entire period of his retraining to assist him in the completion of that retraining as approved by the Secretary of Labor.

"(b) Payment of a trade readjustment allowance shall be made to an adversely affected worker who has attained the age of 60 years for the period of time until he qualifies for social security payments, or until he has been relocated in suitable employment."

SEC. 11. Section 326 of the Trade Expansion Act of 1962 (19 U.S.C. 1951) is amended to read as follows:

"SEC. 326. IN GENERAL.

"(a) To assure that the readjustment of adversely affected workers shall occur as quickly and effectively as possible, with minimum reliance upon trade readjustment allowances under this chapter, every effort shall be made to prepare each such worker for full employment in accordance with his capabilities and prospective employment opportunities. To this end, and subject to this chapter, adversely affected workers shall be afforded, where appropriate, the testing, counseling, training, and placement services and supportive and other services provided for under any Federal law. Qualified workers should be provided the opportunity to pursue further training in technical, professional, and academic areas, as well as in vocational areas. Such workers may also be afforded supplemental assistance necessary to defray transportation and subsistence expenses for separate maintenance when such training is provided in facilities which are not within commuting distance of their regular place of residence. The Secretary of Labor in defraying such subsistence expenses shall not afford any individual an allowance exceeding $5 per diem; nor shall the Secretary authorize any transportation expense exceeding the rate of 10 cents per mile.

"(b) To the extent practicable, the Secretary of Labor shall encourage joint firm-worker adjustment assistance proposals, as well as joint community-firm proposals, for the expedition of retraining and readjustment. Lacking such a coordinated effort, the Secretary of Labor shall consult with such workers' firm and their certified or recognized union or other duly authorized representative and develop a worker retraining plan which provides for training such workers to meet the manpower needs of such a firm, in order to preserve or restore the employment relationship between the workers and the firm."

SEC. 12. Section 328 of the Trade Expansion Act of 1962 (19 U.S.C. 1961) is amended to read as follows:

"SEC. 328. RELOCATION ALLOWANCES AFFORDED

"Any adversely affected worker who has been separated or has voluntarily separated may file an application for a relocation allowance, subject to the terms and conditions of this subchapter."

SEC. 13. Section 330(2) of the Trade Expansion Act of 1962 (19 U.S.C. 1963) is amended to read as follows:

"(2) (A) a lump-sum equivalent to two and one-half times the average weekly manufacturing wage, or (B), in the case of an adversely affected worker who cannot obtain adequate information and assistance through public employment services, a low-interest loan in such amount as is reasonable and necessary under regulations prescribed by the Secretary of Labor (but not less than the amount specified in clause (A)), repayment of which shall be waived if the worker actively seeks and locates employment within a reasonable period."

SEC. 14. Section 331(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1971) is amended to read as follows:

"(a) The Secretary of Labor is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency. Under such an agreement, the State agency (1) as agent of the United States Government, will receive applications for, and will promptly provide, assistance on the basis of this chapter, (2) will afford adversely affected workers who apply for assistance under this chapter testing, counseling, referral to training, placement services, and supportive and other services, and (3) will otherwise cooperate with the Secretary of Labor and with other State and Federal agencies in providing assistance under this chapter."

SEC. 15. Section 338 of the Trade Expansion Act of 1962 (19 U.S.C. 1978) is amended—

(1) by striking out paragraph (3).

(2) by adding the following new sentence at the end of paragraph (4): "For purposes of this paragraph, the Secretary of Labor is authorized to issue regulations providing that the term 'total wages' may include the monetary equivalent of insurance, retirement, and other benefits obtained in addition to wages.",

(3) by inserting after "severance" in paragraph (11) "(including voluntary severance)", and

(4) by striking out "75 percent" in paragraph (14) and inserting in lieu thereof "100 percent".

SEC. 16. Title III of the Trade Expansion Act of 1962 is amended by renumbering chapters 4 and 5 as chapters 5 and 6, respectively, and by inserting after chapter 3 the following new chapter:

"CHAPTER 4.—ASSISTANCE TO COMMUNITIES

"SEC. 339. AUTHORITY.

"The Secretary of Commerce shall determine whether applicants are entitled to receive assistance under this chapter and shall pay or provide such assistance to applicants who are so entitled.

"SEC. 340. QUALIFYING REQUIREMENTS.

"(a) A community certified under section 302 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary of Commerce for adjustment assistance under this chapter. Within a reasonable time after filing its application, the community shall present a proposal, either separately or in conjunction with a firm or a group of workers, or both, for its economic adjustment.

"(b) Adjustment assistance under this chapter consists of technical assistance and financial assistance. Except as provided in subsection (c), no adjustment assistance shall be provided to a community under this chapter until its adjustment proposal shall have been certified by the Secretary of Commerce—

"(1) to be reasonably calculated materially to contribute to the economic adjustment of the community,

"(2) to give adequate consideration to the interests of the communities' workers and firms adversely affected by substantially increased imports,

"(3) to demonstrate that the community will make all reasonable efforts to use its own resources for economic development.

"(c) In order to assist a community which has applied for adjustment assistance under this chapter in preparing a sound adjustment assistance proposal, the Secretary of Commerce may furnish technical assistance to such community prior to certification of its adjustment assistance proposal.

"(d) Any certification made pursuant to this section shall remain in force only for such period as the Secretary of Commerce may prescibe.

"SEC. 341. USE OF EXISTING AGENCIES.

"(a) The Secretary of Commerce shall refer each certified adjustment proposal to such agency or agencies as he determines to be appropriate to furnish the technical and financial assistance necessary to carry out such proposal.

"(b) Upon receipt of a certified adjustment proposal, each agency concerned shall promptly—

"(1) examine the aspects of the proposal relevant to its functions, and

"(2) notify the Secretary of Commerce of its determination as to the technical and financial assistance it is prepared to furnish to carry out the proposal.

"(c) Whenever and to the extent that any agency to which an adjustment proposal has been referred notifies the Secretary of Commerce of its determination not to furnish technical or financial assistance, and if the Secretary of Commerce determines that such assistance is necessary to carry out the adjustment proposal, he may furnish adjustment assistance under sections 342 and 343 to the community concerned.

"(d) There are hereby authorized to be appropriated to the Secretary of Commerce such sums as may be necessary from time to time to carry out his functions under this chapter in connection with furnishing adjustment assistance to communities, which sums are authorized to be appropriated to remain available until expended.

"SEC. 342. TECHNICAL ASSISTANCE.

"(a) Upon compliance with section 341(c), the Secretary of Commerce may provide to a community, on such terms and conditions as he determines to be appropriate, such technical assistance as in his judgment will materially contribute to the economic adjustment of the community.

"(b) To the maximum extent practicable, the Secretary of Commerce shall furnish technical assistance under this section and section 340(c) through existing agencies, and otherwise through private individuals or institutions.

"(c) The Secretary of Commerce shall require a community receiving technical assistance under this section or section 340(c) to share the cost thereof to the extent he determines to be appropriate.

"SEC. 343. FINANCIAL ASSISTANCE.

"(a) Upon compliance with section 341(c), the Secretary of Commerce may provide to a community, on such terms and conditions as he determines to be appropriate, such financial assistance in the forms of guarantees of loans, agreements for deferred participations in loans, or loans, as in his judgment will materially contribute to the economic adjustment of the community. In addition, grants for specific economic development projects, transportation facilities, community economic development corporations, government feasibility studies, and joint firm-worker adjustment assistance programs patterned for specific economic enterprises shall be provided by the Secretary of Commerce if, in his judgment, they will materially contribute to the economic adjustment of the community.

"(b) Guarantees, agreements for deferred participations, loans, or grants shall be made under this section only for the purpose of making funds available to the community for diversification and encouragement of industry.

"(c) To the maximum extent practicable, the Secretary of Commerce shall furnish financial assistance under this section through agencies furnishing financial assistance under other laws.

"SEC. 344. CONDITIONS FOR FINANCIAL ASSISTANCE.

"(a) No loan shall be guaranteed and no agreement for deferred participation in a loan shall be made by the Secretary of Commerce in an amount which exceeds 90 percent of that portion of the loan made for purposes specified in section 343(b).

"(b)(1) Any loan made or deferred participation taken up by the Secretary of Commerce shall bear interest at a rate not less than the greater of—

"(A) 4 percent per annum, or

"(B) a rate determined by the Secretary of the Treasury for the year in which the loan is made or the agreement for such deferred participation is entered into.

"(2) The Secretary of the Treasury shall determine annually the rate referred to in paragraph (1)(B), taking into consideration the current average market yields on outstanding interest-bearing marketable public debt obligations of the United States of maturities comparable to those of the loans outstanding under section 343.

"(c) Guarantees or agreements for deferred participation shall be made by the Secretary of Commerce only with respect to loans bearing interest at a rate which he determines to be reasonable. In no event shall the guaranteed portion of any loan, or the portion covered by an agreement for deferred participation, bear interest at a rate more than 1 percent per annum above the rate prescribed by subsection (b) (determined when the guarantee is made or the agreement is entered into), unless the Secretary of Commerce shall determine that special circumstances justify a higher rate, in which case such portion of the loan shall bear interest at a rate not more than 2 percent per annum above such prescribed rate.

"(d) The Secretary of Commerce shall make no loan or guarantee having maturity in excess of 25 years, including renewals and extensions, and shall make no agreement for deferred participation in a loan which has a maturity in excess of 25 years, including renewals and extensions. Such limitation on maturities shall not, however, apply to—

"(1) securities or obligations received by the Secretary of Commerce as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency, of the obligor, or

"(2) an extension of renewal for an additional period not exceeding 10 years, if the Secretary of Commerce determines that such extension or renewal is reasonably necessary for the orderly liquidation of the loan.

"(e) No financial assistance shall be provided under section 343 unless the Secretary of Commerce determines that such assistance is not otherwise available to the community, from sources other than the United States, on reasonable terms, and that there is reasonable assurance of repayment by the borrower.

"(f) The Secretary of Commerce shall maintain operating reserves with respect to anticipated claims under guarantees and under agreements for deferred participation made under section 343. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200).

"SEC. 345. ADMINISTRATION OF FINANCIAL ASSISTANCE

"(a) In making and administering guarantees, agreements, for deferred participation, and loans under section 343, the Secretary of Commerce may—

"(1) require security for any such guarantee, agreement, or loan, and enforce, waive, or subordinate such security;

"(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees, agreements, or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees, agreements, or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

"(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees, agreements, or loans;

"(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

"(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 343.

"(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

"(a) Each recipient of adjustment assistance under section 342 or 343 shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary of Commerce may prescribe.

"(b) The Secretary of Commerce and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient pertaining to adjustment assistance under sections 342 and 343.

"(c) No adjustment assistance shall be extended under section 342 or 343 to any community unless the officials or representatives of such community certify to the Secretary of Commerce—

"(1) the names of any attorneys, grants, and other persons engaged by or on behalf of the community for the purpose of expediting applications for such adjustment assistance, and

"(2) the fees paid or to be paid to any such person.

"SEC. 347. PENALTIES.

"Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Secretary of Commerce under this chapter, or for the purpose of obtaining money, property, or anything of value under this chapter, shall be fined not more than $5,000 or imprisoned for not more than 2 years, or both.

"SEC. 348. SUITS.

"In providing technical and financial assistance under sections 342 and 343, the Secretary of Commerce may sue and be sued in any court of record of State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to section 342 and 343 from the application of section 507(b) and 2679 of the Revised Statutes (5 U.S.C. 316)."

SEC. 17. (a) Section 351(a)(1) of the Trade Expansion Act of 1962 (19 U.S.C. 1981) is amended by inserting before the period at the end thereof ", taking into account the probable effect of such increase on imposition upon consumers, including the price and availability of the imported article and the like or directly competitive domestic article, and upon competition in the domestic markets for such article".

(b) Section 351(d) of such Act is amended to read as follows:

"(d)(1) So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section remains in effect, the Tariff Commission shall keep under review, and make annual reports to the President on—

"(A) the specific efforts being made by the firms in the industry concerned to adjust to import competition, and other developments with respect to such industry,

"(B) the effect of such increase or imposition upon consumers, including the price and availability of the imported article and the like or directly competitive article produced in the United States, and upon competition in the domestic markets for such articles, and

"(C) the impact upon United States exports and exporters of any action taken by foreign countries as a consequence of such increase or imposition.

"(2) When in the judgment of the Tariff Commission—

"(A) the effect of an increase in, or imposition of, a duty or other import restriction pursuant to this section is substantially adverse to the interests of consumers, or

"(B) the impact of action taken by foreign countries as a consequence of such increase or imposition is materially adverse to United States exports and exporters,

it may recommend to the President a reduction in, or removal of, such duty or other import restriction.

"(3) No later than 2 years after the effective date of a proclamation providing for the increase in, or imposition of, any duty or other import restriction pursuant to this section, or upon request of the President, or upon its own motion, the Tariff Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the reduction or termination of such increase or imposition.

"(4) Upon petition on behalf of the industry concerned, filed with the Tariff Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any increase or imposition referred to in paragraph (1) or (2) of subsection (c) is to terminate by reason of the expiration of the applicable period prescribed in paragraph (1) or an extension thereof under paragraph (2), the Tariff Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination. Such petition shall include a detailed account of the specific efforts made by the firms in the industry to adjust to import competition after the effective date of such increase or imposition.

"(5) In advising the President under this subsection as to the probable economic effect on the industry concerned, the Tariff Commission shall take into account the specific efforts made by the firms in such industry to adjust to import competition, as well as all other economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment. In so advising the President, the Tariff Commission shall also provide its judgment as to the probable effect of the reduction or elimination, as the case may be, upon—

"(A) consumers, including the price and availability of the imported article and the

directly competitive article produced in the United States, and upon competition in the domestic markets for such articles, and

"(B) United States exports and exporters affected by any action taken by foreign countries as a consequence of the increase in, or imposition of, any duty or other import restriction pursuant to this section.

"(6) Advice by the Tariff Commission under this subsection shall be given on the basis of an investigation during the course of which the Tariff Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard."

(c) Section 352 of such Act (19 U.S.C. 1982) is amended by adding at the end thereof the following new subsection:

"(c)(1) So long as any agreement concluded under subsection (a) remains in effect, the Tariff Commission shall keep under review and make annual reports to the President on—

"(A) the specific efforts being made by the firms in the industry concerned to adjust to import competition, and other developments with respect to such industry,

"(B) the effect of such agreement on consumers, including the price and availability of the imported article and the like or directly competitive article produced in the United States, and on competition in the domestic markets for such articles, and

"(C) the impact upon United States exports and exporters of any action taken by foreign countries as a consequences of such agreement.

"(2) When in the judgment of the Tariff Commission—

"(A) the effect of an agreement concluded under subsection (a) is substantially adverse to consumers, or

"(B) the impact of action taken by foreign countries as a consequence of such agreement is materially adverse to United States exports and exporters,

it may recommend to the President a revocation or modification of such agreement."

SEC. 18. Title III of the Trade Expansion Act of 1962 is amended by adding at the end thereof the following new chapter:

"CHAPTER 7.—PUBLICITY

"SEC. 371. PUBLICITY OF ADJUSTMENT ASSISTANCE PROGRAMS.

"(a) The President shall take all appropriate steps to insure that the adjustment assistance available under chapters 2, 3, and 4 is made known in a prompt and effective manner throughout the United States to persons who might need such assistance, including persons in areas of substantial unemployment as determined by the Department of Labor.

"(b) In particular, the President shall direct the Departments of Commerce and Labor, and such other agencies as he deems appropriate—

"(1) to use their services and programs in the several States to furnish interested persons with information concerning the various kinds of adjustment assistance available under chapters 2, 3, and 4 and the procedures for obtaining such assistance, and

"(2) to provide timely and appropriate assistance, through their field offices in the several States, to any person seeking to apply for, and to obtain, adjustment assistance under chapters 2, 3, and 4.

"(c) In any area of the United States where a language other than English is used by a significant number of persons, the President shall insure that information and assistance under this chapter are provided in both English and such other language."

SEC. 19. Upon the establishment of a Department of Economic Affairs, the functions, powers, and duties of the Secretary of Commerce and the Secretary of Labor under title III of the Trade Expansion Act of 1962 are hereby transferred to the Secretary of Economic Affairs.

By Mr. GURNEY (for Mr. ALLEN and himself, and Mr. TALMADGE, Mr. SPARKMAN, Mr. NUNN, and Mr. CHILES):

S. 1157. A bill to authorize the Secretary of the Interior to conduct a study with respect to the feasibility of establishing the Bartram Trail as a national scenic trail. Referred to the Committee on Interior and Insular Affairs.

Mr. GURNEY. Mr. President, the National Trails System Act of 1968 authorized the establishment of two national scenic trails, the Appalachian Trail in the East, and the Pacific Crest Trail in the West. Additionally, studies were authorized for 14 other routes to determine if these trails should also be added to the National Scenic Trail System.

One of the 14 routes to be studied is in my own State of Florida, the El Camino Real Trail from St. Augustine to Fort Caroline National Memorial—a distance of about 30 miles along the southern border of the St. Johns River.

It is a beautiful trail, and one that should be included in the National Scenic Trail System, but its importance must be considered in a larger historical context. It would indeed be a shame if we included one small part of the famous trail and then left out the rest of the route followed by one of the most famous naturalists and explorers of colonial America—John Bartram.

In late August 1765, John and William Bartram departed Charleston, S.C., and headed for Florida, which had just come into British hands 2 years earlier and which was largely unpopulated. As the newly appointed royal botanist for all the American colonies, John Bartram's mission was to explore the newly acquired area and report on its condition. In the next 2 years, he and his son did just that—traveling throughout the Southeast collecting and describing minerals, soils, plants, and animals.

In the course of their mission, the Bartrams traveled through what is now Jacksonville, Fla., before reaching St. Augustine. Then they explored the St. Johns River, traveling in part along what is now known as the El Camino Real Trail. Subsequently, in 1774–75, both men returned to east Florida on a trip that also took them to parts of Georgia and southeastern Alabama, particularly the areas along the Tombigbee River and the area around present-day Mobile. Out of their travels came a far greater understanding of the wildlife and terrain of what was soon to become an important part of the United States.

John Bartram has gone down in history as the first native American botanist. He traveled far and wide in North America, but no trips were more important than the two I just mentioned. Millions of Americans have subsequently discovered what John and William Bartram went to such pains to see and record—that the north Florida, south and coastal Georgia and southeast Alabama area is a region rich in natural beauty. The route they followed—as the Bartram Trail—is well worth preserving, from an environmental as well as a historical standpoint.

The bill of the distinguished Senators from Alabama, Senators ALLEN and SPARKMAN and the distinguished Senators from Georgia, Senators TALMADGE and NUNN, along with the junior Senator of Florida, Mr. CHILES, would be a big step in that direction. If we are going to consider a 30-mile section of Bartram Trail for inclusion within the National Scenic Trail System, why not at least consider the possibility of the whole trail under the same protective umbrella.

Mr. President, I ask unanimous consent to have the text of this bill printed in the RECORD.

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

S. 1157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 5 of the National Trails System Act is amended by adding at the end thereof the following:

"(15) Bartram Trail, which extends from Mobile, Alabama, through the area of Montgomery, Alabama, to the Alabama and Georgia State border about due east of Montgomery, Alabama; continues through Georgia to the area of Savannah, Georgia, thence south to the Georgia and Florida State border; and terminates in the area of Manatee Springs, Florida, after passing through the area of Jacksonville, Florida, and south along the St. Johns River to Lake George, and thence through the Alachua Savanna to the Suwannee River."

By Mr. ALLEN (for himself, Mr. SPARKMAN, Mr. TALMADGE, Mr. BENNETT, Mr. THURMOND, and Mr. HELMS):

S. 1160. A bill to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes. Referred jointly to the Committees on Commerce and Government Operations with the priviso that when one committee reports the bill the other will have 45 days to report or the other committee will be deemed discharged from said bill.

CONSUMER PROTECTION ACT OF 1973

Mr. ALLEN. Mr. President, every responsible person agrees that the interests of consumers are an essential part of the public interest and need to be safeguarded.

You will find no disagreement on that point within Congress. You will find no disagreement on that point among reputable producers—businessmen, workingmen, farmers, and so forth. We are all, after all, consumers.

Great differences often arise among reasonable people, however, as to how to protect consumers properly, and as to what degree of importance consumer interests are in relation to other aspects of the public interest.

If, for example, you tell a labor union official that all barriers to foreign imports should be dropped so that less expensive goods can be offered to the American consumer, that official may agree that such an action would benefit consumers, but he would also argue that a greater detriment would be done to the public interest by putting Americans out of jobs.

Many of us in this Chamber can agree to the merit of creating a Consumer Protection Agency to assist the Federal Gov-

ernment in the complex task of granting due consideration to the interests of consumers.

But while many of us—perhaps even a vast majority—would agree to the potential value of creating a Consumer Protection Agency to advocate the interests of consumers and otherwise serve the buyer aspect of the public interest, there is great disagreement as to what powers are needed for such an agency effectively to serve the public.

As evidence of this, we need only remember that a consumer protection agency bill failed in this Chamber last year. Currently, a bill similar to that bill of last year has been introduced as S. 707, a far-reaching proposal that exceeds the bounds of consumer interests and strains almost to the breaking point the term "consumer protection."

Therefore, Mr. President, together with the distinguished senior Senator from Alabama (Mr. SPARKMAN), the distinguished senior Senator from Georgia (Mr. TALMDGE), the distinguished senior Senator from Utah (Mr. BENNETT), the distinguished senior Senator from South Carolina (Mr. THURMOND), the distinguished junior Senator from North Carolina (Mr. HELMS)—who is now presiding over this body as the Presiding Officer of the Senate—I introduce today a bill for those who support the concept of consumer protection and who wish to support a consumer protection agency bill which concerns itself with the issue of consumer protection only. It does not contemplate sweeping social and governmental reforms. The bill is workable and it is passable.

Mr. President, I, of course, ask unanimous consent that this bill receive the same referral as S. 707 so as to make their dual consideration at hearings possible; that is, I ask unanimous consent that this bill be referred jointly and simultaneously to the Committee on Government Operations and the Committee on Commerce, that, following the reporting of the bill by either committee, the other committee shall have 45 calendar days thereafter to report the bill, that following such 45 days the committee not reporting the bill shall be considered to have discharged the bill, and that it be placed on the Senate Calendar of Business.

The PRESIDING OFFICER (Mr. HELMS). Without objection, it is so ordered.

Mr. ALLEN. Mr. President, the major differences between our bill and the far-reaching S. 707 are as follows:

ONE AGENCY, NOT TWO, CREATED

Under the more sweeping S. 707, a second consumer protection unit would be created for purposes overlapping those of the CPA, and this Council of Consumer Advisers would be placed within the Office of the President. This is against the specific wishes of the administration which testified in opposition to the concept.

Under our bill, only one new unit would be created, the CPA. We would not create a Counsel of Consumer Advisers, and therefore we avoid the imposition of an unwanted and unneeded agency upon the President and the taxpayer.

NONCONSUMER REFORMS DELETED

There are provisions in the very broad S. 707 which should be considered separately and by other more appropriate committees—provisions to restrict certain general powers of the Office of Management and Budget, and provisions to revise the general practice and procedure of all Federal agencies.

Our bill is a consumer bill, and does not extend beyond that subject. Therefore, these provisions which attempt to require public interest reforms are deleted by us without any position being taken on them other than that they should be considered elsewhere by a committee of appropriate jurisdiction.

OPEN, NOT SPECIFIC, APPROPRIATIONS

Similar to last year, the more far-reaching bill would authorize specific sums of money for the CPA, yet there has been no expert testimony nor projections to determine the appropriateness of the suggested multimillion-dollar sums.

Under our bill we would authorize "such sums as may be required" to carry out the act, so that these would be determined later by the Appropriations Committee pursuant to a budget request.

WORKABLE KEY DEFINITIONS

Under the broader bill, syntactical problems cause confusion in applying the definition of "interest of consumers" to the important CPA advocacy function.

More importantly, S. 707 defines "interest of consumers" so broadly as to encompass within it the public interest, rather than the other way around—the consumer interest being only a part of the public interest. Apparently, confusion as to how this definition might relate to real life situations is to be overcome by making the definition of interests of consumers capable of application to anything that could ever happen.

Thus, under the more sweeping provisions of S. 707, the CPA may advocate what it considers to be in the public interest beyond what is in the special interests of consumers. This may not be a bad concept, but it would do an injustice to any consumer movement and all those who think this is a consumer bill.

After all, the basic principle upon which the CPA bill is being promoted is that the interests of consumers are separable from those of business, labor and agriculture, and that these consumer interests are definable to the point of being representable by an advocate who will assert them before an agency charged with protecting the larger public interest.

If the interests of consumers cannot be defined by Congress with enough precision to exclude matters clearly not applicable to our consumer functions, there should be no CPA bill whatsoever. We should not create a whole new agency to protect and foster an undefined—therefore unknown and unproved—need.

Under our bill, on the other hand, "interest of consumers" is defined without unnecessary complexity and, unlike the broader bill, interrelated to the important definition of "consumer" so as to set forth for the CPA the essence of the consumer aspect of all individuals. Yet we do this without being overly restrictive.

We define "interests of consumers" simply as "any benefit or protection that is, or reasonably should be, accorded under law to an individual when he is functioning as a consumer."

A "consumer," the person whom this bill is al labout, in turn, is defined as "any individual who, primarily for personal, family or household purposes, uses or buys for use, or who reasonably may be expected to use or buy for use, goods or services offered or furnished at a consideration for such purposes."

ADVOCACY SCOPE FOCUSED ON FORMAL PROCEEDINGS

Under the far-reaching provisions of S. 707, the CPA not only could intrude unchallenged into the formalized agency proceedings under the Administrative Procedure Act, but could also, as of right, "participate" in any informal Federal activity of its choice—such as the recent private discussions between the President and labor union leaders.

Our bill also allows for CPA advocacy as of right in the formalized proceedings which represent a ripening of the agency process to the stage where it can benefit from such advocacy. We would not, however, provide a right of advocacy for the CPA in the unstructured and more internalized working of government that generally are called "informal activities."

We fear that there are too many unknowns involved in granting the CPA an unchallengeable right, as S. 707 would, to "participate" in "any phase" of "any agency process whether such process is formal or informal."

Thus, we are not convinced of the benefit of allowing the CPA to intrude in collective bargaining negotiations arbitrated by the Federal Mediation and Conciliation Service or regional functions of the Tennessee Valley Authority, or millions of similar informal Federal activities that may be hindered more than advanced by the intrusion of consumer protection agents.

If the CPA, after experience in advocacy, claims that intrusion in informal Federal activities is needed to protect consumers, then we should reconsider the matter on the basis of this experience.

ADVOCACY USED TO ASSIST GOVERNMENT

Under the more negative S. 707, the CPA would become the adversary of its sister agencies and of anyone else—including consumers, mind you—who disagreed with its position.

Superadvocacy powers available to no other party or participant would be granted to the CPA under that sweeping bill, including the power for the CPA to assign itself full party status, even if the forum agency disagrees, and the power to take its own Government to court to strike down action it does not like, even if no other agency or consumer could have done so.

To my knowledge, no nonregulatory agency ever had such extraordinary, not to mention negatively oriented powers,

nor should such powers be granted to such a unit or individual.

Under our bill, on the other hand, the CPA would not be created to attack the Government from within. The CPA would be granted advocacy powers to assist other agencies efficiently by: first, presenting arguments or briefs based upon information in its possession; second, after all participants are finished, commenting to the forum, from the consumer viewpoint, all submitted information and arguments; and third, seeking an administrative rehearing rather than forcing the overburdened courts to make policy in a complex United States against United States case brought at great embarrasment to the Government.

Again, if the CPA later shows a need for negative power after trying unsuccessfully to assist the Government positively, we should reconsider this issue on the basis of experience and positive evidence.

But it is our feeling that we should not start down the road to institutionalizing discontent with a negatively oriented agency, until we have at least attempted to solve this problem with a positive proposal.

SAFEGUARDS ADDED TO INFORMATION FUNCTIONS

A considerable number of real safeguards are added in our bill to assure that the CPA does not impinge improperly upon public and private rights when exercising its information gathering and dissemination functions.

Among others, we delete as improper the granting to CPA of power to force citizens to answer virtually any question under oath and pain of being imprisoned for not answering.

Under the sweeping and far-reaching provisions of S. 707 and recent court cases holding that there is no newsman's privilege, for example, the CPA could use such extraordinary investigation powers to force newsmen to reveal their sources. Or, conversely, this same extraordinary power may expressly be used to assist the investigation of anyone else who does not have similar powers—newspapers, private groups such as Nader's Raiders, or other Federal agencies which, for any reason, were not granted sweeping investigation rights.

We also delete as improper the CPA power under the other bill to force other Federal agencies to grant access to and copies of most documents in their possession. We would make such access discretionary.

We would also prohibit certain documents such as an individual's medical files and top secret State Department or Atomic Energy Commission material from being given at all to the CPA.

Under the more far-reaching S. 707, the CPA not only could get copies of these documents if the agency holding them wished to give them to the consumer advocates, it apparently could publish them if the original agency did not specifically object first. This is because limitations on the dissemination of information by the CPA are expressly limited to those in section 208 of that bill, and nothing in that section would prohibit such disclosure.

GRANTS ONLY TO GOVERNMENTAL BODIES

Also under the broader S. 707, the CPA would be given authority to distribute millions of dollars as grants to nonprofit private organizations as well as State and local governmental units.

We believe that if the CPA is to administer a Federal grant program to benefit consumers locally, the grantees of this program should be limited to governmental units, at least during the initial years.

This would not only be putting the money where it would be most needed and doing the most good, it would delete an area—private beneficiaries—that might prove to be a major policing headache.

PUBLIC JUDICIAL REVIEW

Under our bill, the public's right to seek judicial review of CPA action is safeguarded so as to allow any legally wronged citizen to take the CPA to court just as he would any other agency.

The provisions of S. 707—ultraliberal with respect to many CPA powers—actually expressly diminish a citizen's normal right to seek relief from capricious action. This we cannot abide.

Mr. President, those are some of the major differences between our bill and the far-reaching S. 707 that was introduced last month.

There are, of course, other differences. We therefore urge that the two bills be compared closely by those who wish to support a CPA bill.

To assist in this purpose, we have prepared a more detailed comparison of the major differences between S. 707 and our measure, and ask unanimous consent that it be printed in the RECORD at this point in the form submitted.

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

MAJOR DIFFERENCES BETWEEN TWO 1973 CONSUMER PROTECTION AGENCY BILLS

S. 707—RIBICOFF, ET AL.	S. 1160—ALLEN, BENNETT, HELMS, SPARKMAN, TALMADGE, AND THURMOND
1. *Two Agencies Created:* In addition to the CPA, a separate statutory consumer protection agency, the Council of Consumer Advisers, would be created. Title I.	1. *One Agency Created:* Only the CPA would be created. Title I.
2. *Non-Consumer Reforms Sought:* The power of the Office of Management and Budget under the Federal Reports Act would be limited, whether or not consumer interests are involved. Sec. 402. All federal agencies would have to revise their rules of procedure to make them consistent with the requirements of the Act, whether or not the Federal agency or any of its proceedings might relate to consumer interests. Sec. 403.	2. *Consumer Protection Only:* This consumer protection bill is only concerned with consumer protection, not other reforms.
3. *"Interest of Consumer" Defined As Larger Than Public Interest:* The key definition of "interest of consumer" upon which the CPA's advocacy powers depend is defined broadly enough to include anything that the CPA says it includes, and the CPA's determination in this regard is completely unchallengeable. Sec. 401(11), 210(e)(2).	3. *"Interest of Consumer" Defined As Part of Public Interest:* Unlike the other bill, the terms "interest of consumer" and "consumer" are interrelated, and distinguish the interests of individuals when functioning in their consumer aspects as opposed to other aspects that make up human beings. Sec. 301(6), (9).
4. *Millions of Dollars Specifically Authorized:* The bill authorizes specific amounts of money to be appropriated to carry out the CPA grants-in-aid program as well as all other functions. $35 million is authorized for the first year, and $60 million for the second. Sec. 213, 301.	4. *General Authorization Provided:* "Such sums as are necessary" are authorized under the bill leaving determination of specific amounts for a later date when information is available with which to make an informed decision. Sec. 111, 201.
5. *Private Consumer Organizations To Receive CPA Grants As Well As Government Units:* Nonprofit private organizations are eligible to receive CPA grants for consumer protection activities. Sec. 303.	5. *Only State and Local Governmental Organizations to Receive Grants:* Only Governmental units or programs at the state and local levels would be funded by the CPA. Title II.
6. *Intrusion In Informal Activities:* In addition to allowing the CPA to appear as of right in the more formalized proceedings of Government which are designed to benefit by advocacy, the CPA would also be able to intrude as of right in any informal process of a Government agency whether or not such informal activity might benefit by having a watchdog intrude. Sec. 203(b), 401(4).	6. *No Intrusion In Informal Activities:* The CPA would be allowed to advocate the interests of consumers in the more formalized proceedings where others with an interest in the subject matter may do so, but not in the informal activities of the Government. Sec. 103.
7. *Negative Super Advocacy Powers To Attack:* Extraordinary powers never granted to any agency, no less a nonregulatory agency, would be granted to the CPA to make it the most powerful party or participant in any proceeding. Extraordinary	7. *Positive Advocacy Powers To Assist:* Recognziing that the CPA is a Governmental agency, not a private citizen, the CPA is granted power to assist other agencies, not attack them. The CPA would make arguments or present views,

for a nonregulatory agency are powers to assign itself any available status, including full party, statutory standing to appeal federal decisions even where other agencies could not (e.g., government contract payments), and use of subpenas and other discovery powers even if the CPA does not assume a status which would be required for others to have such powers used for them. Sec. 203, 204.

8. *Extraordinary Subpena-Like Power For CPA's Own Use and Others:*

The CPA would be granted extraordinary power, particularly for a nonregulatory agency, to issue court enforceable orders that citizens answer any question or file a report on any topic, under oath. All the CPA would have to do is make sure that such a demand fell within and was therefore relevant to the all-inclusive category of being information that substantially affects consumer health or safety, or is necessary for the CPA to discover consumer fraud or other unconscionable conduct detrimental to an important interest of consumers. Sec. 207(b).

This information, obtained by threat of court sanction, could be used by CPA to assist investigations by other Federal agencies which for one reason or another have not been granted such powers, or even to assist private consumer groups which were having difficulty obtaining information. Sec. 207(a), 207(b)(1).

9. *Direct CPA Access to Sensitive Government-Held Documents:*

The CPA would, *as a matter of right,* have access to almost all information in the hands of another agency. Even classified information, information "which would constitute a clearly unwarranted invasion of personal privacy," and information prohibited from being disclosed by one agency to another, specifically would be open to access by the CPA under this authorization, except that such information could be given the CPA only at the discretion of the agency holding it. Sec. 207(c). Access to income tax return information under authority of this act (as opposed to other acts) would not be granted. Sec. 207(d).

10. *Protected Business Information May Be Publicly Disclosed By CPA:*

Where the CPA, in its discretion, determines that it is necessary to protect public health or safety, it may release to the public confidential business information protected from disclosure by Federal law. Sec. 208(c).

11. *CPA Need Not Retract Erroneous Information:*

Where the CPA releases to the public information that is inaccurate, misleading or incomplete, it *may* issue a retraction, but could also adopt as a face-saving alternative the option of taking "other reasonable action to correct any error or release significant additional information." Sec. 205(d).

12. *CPA May Indicate By Implication "Better Buys":*

The CPA bill reported by Committee last year prohibited the CPA from indicating "in any manner" that one product is a better buy than another. The 1973 bill contains an amendment that merely prohibits the CPA from "expressly" indicating some products to be better buys than others. Sec. 208(e)(3). The language of the new bill, particularly in light of past language, would appear to condone allowing the CPA to indicate by implication (arrangement of products on a list according to CPA-determined "quality" and price, for example) which products it considered better buys than others, thereby subjectively influencing consumer choice.

13. *Citizens' Right To Challenge CPA Action Restricted Considerably:*

A citizen's usual right to seek judicial review of Government action that legally wrongs him is severely restricted in relation to the CPA both by limiting availability and by the imposition of artificially higher standards that such a person would have to meet before seeking judicial review. Sec. 210(e). It is obviously intended to reduce to a *minimum* the availability to citizens of court review of CPA actions, and to discourage application for such review in this narrow area.

based on information in its possession, to a forum agency without having to participate as an adversary and without any discovery (subpena, etc.) powers made available to it. After all arguments have been made, but before a final decision by the forum agency, the CPA would be given an opportunity to make the last comment in the interests of consumers. No right to seek judicial review would be granted, but the CPA would be allowed to request reconsideration or rehearing. Sec. 103.

8. *No Subpena-Like Power:*

No such power would be granted to the CPA.

9. *Access Only At Host Agency Discretion; Some Prohibited:*

Rather than as of right, CPA would have access to information generally in posesession of other agencies only at the discretion of those other agencies. In the following sensitive areas, however, the CPA would be *prohibited* from access to information in the hands of other agencies:

1. classified information;
2. information which would constitute a clearly unwarranted invasion of privacy;
3. information which is prohibited from being disclosed to another agency;
4. information in an income tax return.
5. trade secrets or other privileged commercial information (unless the person who provided the information allows it to be released to CPA).

Sec. 106(b)

10. *CPA May Not Publicly Disclose Protected Business Information:*

The CPA could not release to the public confidential information protected from disclosure by Federal law; however, CPA could release such information confidentially to the appropriate regulatory agency with expertise in the manner for determination as to whether it should be released. Sec. 107(c).

11. *CPA Must Always Retract Erroneous Information:*

No matter what other action it might take, the CPA must always promptly issue a retraction upon discovery that its publicly released information was misleading, inaccurate or incomplete. Sec. 107(d).

12. *CPA May Not Indicate "Better Buys":*

The CPA may not indicate "in any manner" that one product is a better buy than another. Sec. 107(c). This is the language that appeared in the 1972 CPA bill as reported by Committee.

13. *Citizens' Right To Challenge CPA Action Left Untouched:*

Any person legally wronged because of any CPA action may seek judicial review of that action as he would other Governmental action and receive the relief available under current law for such purposes. Sec. 109(d).

Mr. ALLEN. Mr. President, I send the bill to the desk for appropriate reference, as already mentioned, in line with the unanimous-consent agreement that I have obtained.

By Mr. JAVITS (for himself, Mr. BUCKLEY, Mr. STEVENSON, and Mr. SCOTT of Pennsylvania):

S. 1161. A bill to amend the act of August 13, 1946, relating to Federal participation in the cost of protecting the shores of the United States, its territories and possessions, to include privately owned property. Referred to the Committee on Public Works.

FLOOD AND EROSION CONTROL

Mr. JAVITS. Mr. President, much attention has been given recently to the serious problem confronting residents of those areas on our Great Lakes which are presently threatened by flooding. These high water levels, if combined with wind and storm conditions following the spring thaw, pose the threat of an imminent major disaster along these shorelines. The threat from the presently high water level is compounded by the critical erosion problems along these shorelines—a problem which the Corps of Engineers is prohibited from correcting where such erosion exists on private property.

I propose to introduce legislation which would correct the existing law to permit private property owners affected by erosion to qualify for Federal assistance and make this assistance available through the Corps of Engineers in accordance with already established procedures for civil projects.

In the Rivers and Harbors Act of 1968, Public Law 90–483, the Congress gave to the Chief of Engineers special responsibilities for appraising, investigating, and studying the condition of the Nation's shorelines and for developing suitable means for protecting, restoring, and managing them so as to minimize erosion-induced damages. This national shoreline study found 20,500 miles of the ocean and Great Lakes shores of the United States undergoing significant erosion. The study further found that action to halt significant erosion appears justified along 2,700 miles of such shores. The cost of constructing suitable protec-

tive works for these shores is estimated to be $1.8 billion. The study suggests that priority attention should be given to 190 miles of shores where continued erosion is most likely to endanger life and public safety within the next 5 years. The cost of constructing protective works along these shores is estimated to be $240 million. About two-thirds of the areas where erosion is a serious problem are privately owned and not eligible for Federal assistance under present law.

This study concluded:

Yet the public interest in such private shores is considerable. The management of private lands often affects public beaches, navigation channels, and other facilities. Ecological and environmental problems are not stopped by private fences, nor are the problems associated with storm flooding and disaster-related emergencies.

Of the total 2,680 miles of Great Lakes shoreline, this study found 220 miles is suffering critical erosion.

The legislation I introduce is a companion measure to a bill already introduced by concerned Great Lakes States' Congressmen.

I ask to have the text of this bill printed following these remarks with the text of the section of the United States Code which the bill would amend.

In addition, I would like to have printed in the RECORD a statement which I issued today in Rochester, N.Y.

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

S. 1161

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of the first section of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property", approved August 13, 1946 (33 U.S.C. 426e(b)), is amended by inserting immediately after "in which the project is located," the following: "or by responsible local interests, or both,".

(b) Subsection (d) of the first section of such Act of August 13, 1946 (33 U.S.C. 426e (d)), is hereby repealed, and subsection (c) of such first section is hereby redesignated as subsection (d).

STATEMENT DELIVERED FOR SENATOR JACOB JAVITS

I am pleased to be represented today for an inspection of this area of New York which is so threatened by the forces of nature that a disaster seems imminent—unless drastic action is taken.

Certainly the Corps of Engineers is to be commended for its assistance under Operation Foresight—but more must be done if we are to turn back these threatening waters.

I intend first of all to urge most earnesly that the Office of Emergency Preparedness act quickly and favorably on the application of the Governor for a pre-disaster declaration in this immediate area. This declaration will permit the Corps of Engineers to take emergency—although temporary—measures for the protection of private property along these shores.

Second—and most important for the long-term solution for this crisis—I intend to introduce legislation in the U.S. Senate today which would correct and improve existing law by granting authority to the Corps of Engineers to take action to prevent private property shoreline erosion. In other words, it would permit private property owners affected by erosion to qualify for Federal assistance to be given by the Corps in accordance with already established procedures for civil projects. I am enlisting the support and cosponsorship of all the Great Lakes Senators in this effort and urge rapid and sympathetic consideration by the appropriate Senate Committee.

There are, in addition to the above solutions certain mechanical controls which can be instituted under the jurisdiction of the International Joint Commission and I will urge that all such actions be carefully and quickly weighed (i.e. regulation of gates at Sault Ste. Marie and storage on Lake Superior; diversion through the Chicago Drainage Canal; possibility of a dam on Lake Erie; regulation of Welland Canal; efforts to regulate the maximum and minimum lake levels).

Finally, I must emphasize the urgency of submitting applications for flood insurance. I have been asked by the Department of Housing and Urban Development to urge everyone who is threatened by these impending floods to get applications in immediately to insure some protection against the potential devastation and loss which are confronting us now.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 426a of this title.

§ 426e. Federal aid in protection of shores.

(a) Declaration of policy. With the purpose of preventing damage to the shores of the United States, its Territories and possessions and promoting and encouraging the healthful recreation of the people, it is declared to be the policy of the United States, subject to the following provisions of sections 426e to 426h of this title to assist in the construction, but not the maintenance, of works for the restoration and protection against erosion, by waves and currents, of the shores of the United States, its Territories and possessions.

(b) Federal contribution; maximum amount; exceptions. The Federal contribution in the case of any project referred to in subsection (a) of this section shall not exceed one-half of the cost of the project, and the remainder shall be paid by the State, municipality, or other political subdivision in which the project is located, except that (1) the costs allocated to the restoration and protection of Federal property shall be borne fully by the Federal Government, (2) Federal participation in the cost of a project for restoration and protection of State, county, and other publicly owned shore parks and conservation areas may be, in the discretion of the Chief of Engineers, not more than 70 per centum of the total cost exclusive of land costs, when such areas: Include a zone which excludes permanent human habitation; include but are not limited to recreational beaches; satisfy adequate criteria for conservation and development of the natural resources of the environment; extend landward a sufficient distance to include, where appropriate, protective dunes, bluffs, or other natural features which serve to protect the uplands from damage; and provide essentially full park facilities for appropriate public use all of which shall meet with the approval of the Chief of Engineers, and (3) Federal participation in the cost of a project providing hurricane protection may be, in the discretion of the Secretary of the Army, acting through the Chief of Engineers, not more than 70 per centum of the total cost exclusive of land costs.

(c) Periodic beach nourishment; definition of "construction". When in the opinion of the Chief of Engineers the most suitable and economical remedial measures would be provided by periodic beach nourishment, the term "construction" may be construed for the purposes of sections 426e to 426h of this title to include the deposit of sand fill at suitable intervals of time to furnish sand supply to project shores for a length of time specified by the Chief of Engineers.

(d) Shores other than public. Shores other than public will be eligible for Federal assistance if there is benefit such as that arising from public use or from the protection of nearby public property or if the benefits to those shores are incidental to the project, and the Federal contribution to the project shall be adjusted in accordance with the degree of such benefits.

(e) Authorized plans. No Federal contributions shall be made with respect to a project under sections 426e to 426h of this title unless the plan therefor shall have been specifically adopted and authorized by Congress after investigation and study by the Beach Erosion Board under the provisions of section 426 of this title as amended and supplemented, or, in the case of a small project under section 426g of this title; unless the plan therefor has been approved by the Chief of Engineers. (Aug. 13, 1946, ch. 960, § 1, 60 Stat. 1056; July 28, 1956, ch. 768, 70 Stat. 702; Oct. 23, 1962, Pub. L. 87–874, title I, § 103(a)(1)—(3), 76 Stat. 1178; Dec. 31, 1970, Pub. L. 91–611, § 208, 84 Stat. 1829.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–611 provided for designation of existing provisions as cls. (1) and (2) by insertion of "(1)" after "except that" and substitution of "(2)" for "and, further, that" and added cl. (3).

1962—Subsec. (b). Pub. L. 87–874, § 103(a)(1), (2), increased the maximum limit on the amount of Federal contributions from one-third to one-half of the project cost, provided that costs for restoration and protection of Federal property shall be borne fully by the Federal Government, and that costs for restoration and protection of State, county and other publicly owned shore parks and conservation areas may be borne by the Federal Government up to not more than 70 per centum, exclusive of land costs, when such areas include a zone which excludes permanent human habitation, include recreational beaches, satisfy criteria for conservation and development of natural resources, extend landward enough to include natural features to protect the uplands, and provide essentially full park facilities for public use, all of which meet with the approval of the Chief of Engineers.

Subsec. (e). Pub. L. 87–874, § 103(a)(3), required approval of plans by the Chief of Engineers in the case of a small project under section 426g of this title.

1956—Act July 28, 1956, extended assistance to privately owned shores, to include shores of Territories and possessions, to substitute the term "restoration" for the term "improvement", to define "construction", and to eliminate provisions which authorized Federal aid toward the repair and protection of seawalls constructed by political subdivisions to protect important public highways.

ABOLITION OF THE BEACH EROSION BOARD

Pub. L. 88–172, § 1, Nov. 7, 1963, 77 Stat. 204, provided in part for the abolition of the Beach Erosion Board, and is set out as a note under section 426 of this title. For transfer of functions of the Beach Erosion Board to the Coastal Engineering Research Center, see sections 426–1 and 426–3 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 426g, 426h of this title.

§ 426f. Same; payments to States, etc.

The Secretary of the Army is authorized to reimburse local interests for work done by them, after initiation of the survey studies which form the basis for the project, on authorized projects which individually do not exceed $1,000,000 in total cost: *Provided,* That the work which may have been done on the projects is approved by the Chief of Engineers as being in accordance with the

authorized projects: *Provided further*, That such reimbursement shall be subject to appropriations applicable thereto or funds available therefor and shall not take precedence over other pending projects of higher priority for improvements. (Aug. 13, 1946, ch. 960, § 2, 60 Stat. 1056; July 28, 1956, ch. 768, 70 Stat. 703; Oct. 23, 1962, Pub. L. 87–874, title I, § 103(a)(4), 76 Stat. 1178.)

By Mr. ERVIN:

S.J. Res. 72. A joint resolution to insure separation of Federal powers and to protect the legislative function by providing a procedure for requiring Federal officers and employees to inform the Congress. Referred to the Committee on the Judiciary.

Mr. ERVIN. Mr. President, today I introduce, for appropriate reference, a joint resolution proposing steps to be taken by the Congress when any head of a department or agency of the United States, or officer or employee of the United States refuses to provide information requested by the Congress or any of its committees or subcommittees, whether by refusing to appear and testify or by refusing to provide documents or other matter.

As we all are aware, the failure or outright refusal of Federal officers and employees to produce information requested by the Congress for its use in carrying out its constitutional obligation to legislate has resulted in a serious erosion in the separation of powers principle embodied in the Constitution.

For almost 6 years, the Senate Judiciary Subcommittee on Separation of Powers, which I am honored to serve as chairman, has studied the problems raised by so-called executive privilege, and in July 1971, the subcommittee conducted 5 days of hearings on the subject. At that time the subcommittee considered S. 1125, a bill introduced by Senator FULBRIGHT, designed to limit the assertion of executive privilege. During those hearings, the subcommittee fully explored the conflict between the alleged power of the President to withhold information when he feels its disclosure would impede him in the performance of his constitutional duties and the power of the legislative branch to obtain information needed to legislate wisely and effectively. The basic right of the taxpaying public to know what its Government is doing and the underlying facts upon which it bases its actions was also considered.

These basic principles have clashed repeatedly since President Washington's first term, when the Congress undertook to investigate the St. Clair expedition. Without objecting to the propriety of the investigation, President Washington's advisors concluded that, while the Congress might institute inquiries, and call for papers generally, and while the Executive ought to provide those that the public good would permit, the Executive none the less had the discretionary power to refuse to communicate any information the disclosure of which would injure the public. Despite this contention, however, all of the requested papers were turned over to the Congress. Thus the celebrated St. Clair incident by no means constitutes precedent for withholding of information from the Congress by the President or departments or agencies of Federal Government.

There is little disagreement that the power to institute inquiries and exact information is integral to the congressional power to legislate—*McGrain* v. *Daugherty*, 273 U.S. 165(1927). However, several Presidents have urged that the Chief Executive has the power to withhold information from the Congress and from the public, based upon article II, section 3 of the Constitution, which requires the President to see that the laws are faithfully executed. Chief Executives have argued that a certain amount of secrecy is mandatory to give the President the necessary autonomy to discharge his duties. Since he cannot exercise all of his powers alone, it is urged that there is a derivative applicable to all the members of the executive branch, an assertion that is even more devastating to the checks-and-balances principle.

In 1962, President Kennedy attempted to end the practice of delegating to employees of the executive branch the authority to claim executive privilege. In his March 7, 1962, letter to the House Special Government Information Subcommittee of the Government Operations Committee, President Kennedy stated that the basic policy of his administration would be that only the President could invoke executive privilege, and that the privilege would not be used "without specific Presidential approval." Presidents Johnson and Nixon reaffirmed in writing this policy of limited exercise of executive privilege. Nevertheless, this theoretical control over the withholding of information does not operate satisfactorily in practice, and over the years Congress has encountered numerous instances of withholding of information essential in carrying out its constitutional powers.

Even if the issuance of the foregoing Presidential policy statements were to be taken as a statement of a policy which operates as well in practice as in theory, it would still be notable that the theory of the executive privilege has developed subject to the will of each succeeding President, and that there has been no legislative statement relating to its existence or exercise, nor have there been any definitive judicial decisions. The result has been that the formal or informal withholding of information from the Congress has become part and parcel of the growing power of the executive branch vis-a-vis the Congress.

This shifting of power away from the legislative branch and into the hands of the Executive has come about primarily from the failure of the Congress to assert and exercise its constitutional powers. This, in conjunction with the almost unlimited delegation of authority to the bureaucracy has placed the Congress in the position of being the chief aggrandizer of the Executive. I fear that the resulting increase in executive power has come close to creating "a government of men, not of laws."

Aside from the enormous problems that refusals to provide information pose in terms of the separation of powers principle, the practice contravenes an underlying assumption of the Constitution; namely, that the free flow of ideas and information and the open and full disclosure of the governing process is essential to the operation of our democratic form of Government. Any lessening in available information results in lessened citizen participation, and in a virtual absence of accountability on the part of those who govern. Thus it is plain that the exercise of the assumed power of executive privilege undergirds the growing policy of governmental secrecy that is so inimical to our freedoms.

Despite growing objections to this unwarranted use of executive power, the past months have seen no letup; indeed, only last month, during the hearings which my Subcommittee on Separation of Powers conducted in conjunction with an ad hoc subcommittee of the Government Operations Committee, it appeared that Secretary of Agriculture Earl Butz and Administrator William Ruckelshaus of the Environmental Protection Agency, under direction of the administration, would refuse to come and testify on the subject of executive impoundment of funds appropriated for programs to be carried out by the Department of Agriculture and the Environmental Protection Agency. Only after the subcommittees made it plain that the testimony of the two Government witnesses was essential to the inquiry, and that the subcommittees were prepared to issue subpenas, if necessary, did the administration decide that it would be appropriate for these two officials to appear and present the testimony requested. Moreover, during the hearings held in the last Congress by my Subcommittee on Constitutional Rights on the reprehensible practice of Army surveillance over civilians, the subcommittee repeatedly requested information, documents, and the testimony of certain military officers. However, the subcommittee was refused consistently on the grounds, inter alia, that it had no need for the information or testimony requested, but at no time was the doctrine of executive privilege formally invoked by the President. There are numerous similar instances involving the head of Federal departments and agencies. Thus it is not the formal invocation of executive privilege alone that causes difficulty, but the multitude of specious reasons given by department and agency heads and other officers and employees of the Federal Government for their refusals to provide the information sought by the Congress.

Additionally, I might note that the Washington Post, in a story dated March 3, 1973, reported that the President had told reporters at a press conference that he would invoke executive privilege if the Senate Judiciary Committee should request the appearance of his counsel, John W. Dean III, in regard to the nomination of L. Patrick Gray III to be the Director of the Federal Bureau of Investigation. Mr. Nixon reportedly stated that "No President could ever agree to allow the counsel to the President to go down and testify before a committee," making no

distinction whatever between the various types of information that might be sought from such a person. While I recognize that there is a need for a President to seek counsel and advice from his closest staff members, and that such conversations on certain occasions necessarily must be kept confidential, it appears to me that the President's broadside statement that no President could ever agree to allow his counsel to testify represents the essence of the conflict between the President and the Congress.

In truth, it is an admission that the President and agency and department heads and employees are making unilateral decisions regarding the information that the Congress will be allowed to obtain in carrying out its constitutional duty to legislate and approve presidential appointments. Further, these unilateral determinations appear to be made with no reasonable discriminatory ground rules. I believe that the Congress and the President must cooperate in seeing that the American people receive the informed governance that they deserve and that they receive the necessary information regarding the operations of their Government, and that those who govern will, in turn, be accountable to the taxpayers.

In view of the continued reluctance of the President and employees and officials of Federal departments and agencies to provide the Congress with the information which it must have in order to legislate intelligently, I feel that it is essential that the Congress adopt some means of insuring that such refusals are well taken, and if not that they will cease, and the information needed by the legislative branch will be forthcoming from those who possess it.

It is for that reason that I urge the speedy adoption of the Senate joint resolution I introduce today. The resolution would provide for the Congress to require any Federal department or agency head or any officer or employee of the Federal Government to appear and answer and to produce all documents and other matter sought, unless the President formally invokes executive privilege, in which event the Congress—or any subcommittee, committee, or joint committee propounding the questions or seeking the documents or other matter—would make a factual determination whether the invocation of executive privilege is well taken. If it decides that the refusal is not well taken, it can then require the officer or employee to answer the questions propounded or to produce the materials requested. When any committee or subcommittee upholds or denies the invocation of executive privilege, it is required to file a resolution with its House of Congress—or a concurrent resolution with both Houses in the case of a joint committee or a subcommittee thereof—with a report of its proceedings relating to such invocation of executive privilege. The Congress or respective House thereof is empowered to take such action as it deems proper with respect to the disposition of such resolution.

I submit that this procedure would strongly discourage the abuse of the doctrine of executive privilege and would provide an essential procedure for the Congress to use in its apparently earnest effort to regain its rightful constitutional powers. I want to stress strongly that the introduction of this resolution is not a partisan matter, but that it is an attempt to enable the Congress to regain its rightful role under the Constitution.

It is mandatory for the survival of our system of government that we take all reasonable measures to insure that the separation of powers principle survives, for if it does not, the basis of our freedoms will have retreated into history.

Mr. President, I ask unanimous consent that the text of this joint resolution be printed in full in the body of the RECORD immediately following my statement.

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

S.J. RES. 72

Whereas Congress must be fully informed of the facts and premises upon which proposed actions of the United States Government are based if it is to exercise its constitutional responsibility in enacting the laws and appropriating the budget authority of the United States Government;

Whereas, heads of departments and agencies of the United States, and officers and employees of the United States, have on past occasions refused to appear and to testify and produce documents and other matter and to inform Congress when requested to do so by the Congress, either House of Congress, its joint committees, committees of either House, or subcommittees thereof, thereby causing a grievous erosion of the checks and balances prescribed by the Constitution;

Whereas, such heads of departments and agencies of the United States, and officers or employees of the United States have asserted that their refusals to appear and to testify or produce documents or other matter before such committees and subcommittees has been based upon the notion of privileged communications between the President and the officials requested to appear and to testify or to produce documents and other matter; and

Whereas, there is a pressing need to terminate this erosion and to ensure the separation of federal powers and to protect the legislative function: Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, when any such head of a department or agency of the United States, or officer or employee of the United States is summoned and requested to testify or to produce documents or any other matter before the Congress, either House of Congress, any joint committee of Congress, any committee of either House, or any subcommittee thereof, that department or agency head or officer or employee shall appear and answer all questions propounded to him, and produce all documents and other matter sought, unless the President formally invokes executive privilege in writing and expressly instructs the officer or employee to refuse to appear or to refuse to answer specific questions, or to produce specific documents or other matter, with respect to a specific item, in which event it shall then be a question of fact for the Congress, House of Congress, joint committee, committee or subcommittee proposing the questions or seeking the documents or other matter to decide whether the invocation of executive privilege is well taken. If it is decided that the invocation is not well taken, the officer or employee shall be ordered to appear and to answer the question or questions propounded and produce any documents or other matter requested.

SEC. 2. When the Congress, either House of Congress, joint committee, committee or subcommittee upholds or denies the invocation of executive privilege, it shall, within 10 days, file—

(1) in the case of a joint committee, a concurrent resolution with both Houses of Congress; and

(2) in the case of a committee or subcommittee, a resolution with its House of Congress;

with a report and record of its proceedings relating to such invocation of executive privilege. Congress, in the case of any such concurrent resolution, and the House of Congress with whom any such resolution is filed, shall take such action as it deems proper with respect to the disposition of such concurrent resolution or resolution.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 17

At the request of Mr. SCHWEIKER, the Senator from South Carolina (Mr. THURMOND), the Senator from North Dakota (Mr. BURDICK), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 17, the National Diabetes Research and Education Act.

S. 330

At the request of Mr. THURMOND, the Senator from Nevada (Mr. BIBLE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Texas (Mr. TOWER), the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from New Jersey (Mr. CASE) were added as cosponsors of S. 330, to amend chapter 67—relating to retired pay for nonregular service—of title 10 United States Code, to authorize payment of retired pay actuarily computed to persons otherwise eligible, at age 50, and for other purposes.

S. 397

At the request of Mr. MATHIAS, the Senator from Vermont (Mr. STAFFORD) was added as a cosponsor of S. 397, the full disclosure bill.

S. 467

At the request of Mr. RANDOLPH, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 467, a bill to extend the Public Works and Economic Development Act of 1965, as amended, for 1 year, and for other purposes.

S. 743

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Nevada (Mr. CANNON), I ask unanimous consent that at its next printing, his name be

added as a cosponsor of S. 743, to increase the penalty with respect to certain offenses involving the commission of a felony while armed with a firearm.

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

S. 874

At the request of Mr. JAVITS, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of S. 874, the Gifted and Talented Children's Educational Assistance Act.

S. 896

At the request of Mr. RANDOLPH, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 896, to amend the Education of the Handicapped Act, and for other purposes.

S. 1007

At the request of Mr. PEARSON, the Senator from Maryland (Mr. BEALL) was added as a cosponsor of S. 1007, to provide for increased foreign commerce involving small business.

S. 1017

At the request of Mr. ROBERT C. BYRD (for Mr. JACKSON), the Senator from Montana (Mr. METCALF) was added as a cosponsor of S. 1017, to promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes.

S. 1029

At the request of Mr. TAFT, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of S. 1029, to provide, in cooperation with the States, benefits to individuals who are totally disabled due to employment-related respiratory disease and to the surviving dependents of individuals whose death was due to such disease or who were totally disabled by such disease at the time of their deaths.

S. 1121

At the request of Mr. KENNEDY, the Senator from Indiana (Mr. BAYH), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of S. 1121, to amend the Federal Regulation of Lobbying.

SENATE JOINT RESOLUTION 6

At the request of Mr. CRANSTON, the Senator from New Jersey (Mr. CASE), the Senator from Nevada (Mr. CANNON), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of Senate Joint Resolution 6, to establish the Tule Elk National Wildlife Refuge.

SENATE JOINT RESOLUTION 10

At the request of Mr. SCHWEIKER, the Senator from Alabama (Mr. SPARKMAN) was added as a cosponsor of Senate Joint Resolution 10, the school prayer amendment.

SENATE JOINT RESOLUTION 68

At the request of Mr. THURMOND, the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of Senate Joint Resolution 68, a joint resolution proposing an amendment to the Constitution of the United States with respect to the method of appointing electors of the President and Vice President of the United States.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 15

At the request of Mr. HART, the Senator from Indiana (Mr. BAYH), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from Maryland (Mr. MATHIAS), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of Senate Resolution 15, to establish a special committee to investigate the feasibility of improving the efficiency in the conduct of Senate hearings.

AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY CONSTRUCTION—AMENDMENT

AMENDMENT NO. 26

(Ordered to be printed, and referred to the Committee on Public Works.)

Mr. BARTLETT. Mr. President, my colleague from Oklahoma, Senator HENRY BELLMON, is necessarily absent today due to a death in his family, and, I have been requested to submit on his behalf an amendment Senator BELLMON is proposing to S. 502, the bill authorizing appropriations for highway construction.

The language of Senator BELLMON'S amendment is identical to S. 653, a bill he introduced on January 31. The purpose of this amendment is to prohibit the executive branch from further impounding money from the Highway Trust Fund. I completely agree with Senator BELLMON that Congress must act now to stop this unwarranted practice, and accordingly, I have joined as cosponsor of this amendment, along with Senators ERVIN, FULBRIGHT, HARTKE, HUMPHREY, MCGEE, SCHWEIKER, THURMOND, and METCALF.

At the time S. 653 was introduced, Senator BELLMON delivered a statement explaining the urgent need to prohibit impoundments from the Highway Trust Fund. I ask unanimous consent that his original statement together with the full text of this amendment to prohibit Highway Trust Fund impoundments be printed in the RECORD at this point.

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

AMENDMENT NO. 26

At the end of the bill add a new section as follows:

PROHIBITION OF IMPOUNDMENT

SEC. —. No part of any sums authorized to be apportioned by the provisions of section 104 of title 23, United States Code, which have been appropriated by Congress for expenditure shall be impounded or withheld from obligation, for the purposes and projects as provided in that title, by an officer or employee of any department, agency, or instrumentality of the executive branch of the Federal Government, except such specific sums as may be determined by the Secretary of the Treasury, after consultation with the Secretary of Transportation, are necessary to be withheld from obligation for specific periods of time to assure that sufficient amounts will be available in the Highway Trust Fund to defray the expenditures which will be required to be made from such fund.

STATEMENT BY U.S. SENATOR HENRY BELLMON

Mr. President, on behalf of myself and nineteen other Senators, I am introducing legislation which is intended to rectify a serious executive encroachment upon the legislative power of Congress, and to prevent the executive branch from further frustrating the legislative purpose of the Federal Aid Highway Act. This bill when enacted will prohibit the practice of impoundment of money from the Highway Trust Fund.

Mr. President, the framers of our Constitution wisely created three separate but coequal branches of government out of which grew the Constitutional doctrine of "separation of powers." Now, nearly two hundred years later, this doctrine is being severely tested and, in fact, largely ignored, at least insofar as it concerns the present and past administration of the Highway Trust Fund. Therefore, it is the intent of this bill to finally set straight what Congress always intended, by prohibiting action by any officer or employee of any department, agency, or instrumentality of the executive branch which would result in the impoundment or withholding from obligation of money from the Highway Trust Fund.

The need for this legislation is quite evident when one examines only briefly the legislative history of the 1956 Federal Aid Highway Act. Let me explain: In 1956, Congress passed the Federal Aid Highway Act and in so doing created the Highway Trust Fund wherein Congress earmarked revenue from certain taxes to go directly into a trust fund which was then to be apportioned to the various states. These taxes are:

Motor fuel: 4 cents per gallon.

New trucks, and trailers (over 10,000 pounds gross weight), and new buses, other than transit: 10 percent on the manufacturer's wholesale price.

Highway vehicle tires and tubes: 10 cents per pound.

Other tires, and tread rubber: 5 cents per pound.

Heavy vehicle use: $3.00 per 1,000 pounds annually on the total gross weight of vehicles rated at more than 26,000 pounds gross weight.

Parts and accessories: 8 percent on the manufacturer's wholesale price of truck and bus parts and accessories.

Lubricating oil: 6 cents per gallon, if used for highway purposes.

This system worked extremely well and the construction of the Nation's interstate highway system was progressing in an orderly manner until six years ago, at which time the Administration began an impoundment practice. I believe this to be clearly contrary to the will of Congress and the legislative purpose of the highway act.

The practice of refusing to permit States to enter into highway construction contracts, to the extent authorized by Congress, was initiated in FY 1967. The Director of the Bureau of the Budget ordered the reduction of obligational authority under the federal aid highway program by $700 million with an additional reduction of $600 million ordered on January 23, 1968, for calendar year 1968.

Another withholding occurred in FY 1971, when the $5.425 billion Congressional authorization was reduced to $4.6 billion. Although this reduction was partially in response to a Congressional spending ceiling, it was also the direct result of fiscal policies announced by the President on July 18, 1970. Finally, for FY 1972 and FY 1973, further reductions in obligational authority were made of approximately $488 million and $1.7 billion respectively.

What possible authority or legal justification does the executive branch have to indulge in this practice of withholding obligational authority from the States? Certainly none as far as I am concerned. In fact, a federal district court recently held that the executive branch has unlawfully impounded that part of the highway trust fund which should be apportioned to the State of Missouri. The U.S. District Court for the Western District of Missouri ruled on June 12, 1972, in the case of *Missouri Highway Commission v. Volpe*, 347 F. Supp. 951, that the Secretary of Transportation and the Director of the Office of Management and Budget do not have discretion under the Federal Aid Highway Act of 1956 to impound Highway Trust moneys except for very specific reasons. This case was argued on appeal on January 10, 1973, before the U.S. Court of Appeals for the Eighth Circuit in St. Louis and a decision is presently pending by that Court.

In the lower Court's decision, Judge Becker's opinion was based largely upon an interpretation of paragraph (c) of 23 U.S.C. 101 which states:

(c) It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid system which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation, for purposes and projects as provided in this title, by any officer or employee in the executive branch of government, except such specific sums as may be determined by the Secretary of the Treasury, after consultation with the Secretary of Transportation, are necessary to be withheld from obligation for specific periods of time to assure that sufficient amounts will be available in the Highway Trust Fund to defray the expenditures which would be required to be made from such fund.

Judge Becker found that the withholding of funds from obligational authority was not "within the lawful discretion of the Secretary."

He stated further:

The reasons advanced by the Secretary for the current and past withholding of obligational authority are foreign to the standards and purposes of the Act and the Fund. The reasons relied on are related to the prevention of inflation of wages and prices in the national economy. These reasons are impermissible reasons for action which frustrates the purposes and standards of the Act, including but not limited to those in Section 109 Title 23, U.S.C.A. Therefore it is not within the discretion of the Secretary to withhold obligational authority from Missouri and Judicial relief should be granted.

It is a mystery to me why, with the intent of Congress clearly spelled out in the statutes and a further declaration of the sense of Congress that no funds should be impounded or withheld from obligation, the executive branch continues to hold this vital program hostage. Certainly one thing is quite clear—that every State suffers as a result of this practice, funds have now been withheld and this policy is having a devastating impact upon the completion of our interstate highway system, resulting in increased costs, periodic unemployment, and the construction postponement of vital segments of this system. As the third co-equal branch of government, the Court is an independent arbiter and thus uniquely qualified to rule in this area.

Such a practice contributes significantly to the ever-increasing cost of highway construction. To illustrate: From 1956, when the Act was originally initiated, through 1970, highway construction costs rose by more than 41%. Certainly an early completion of our interstate system is a worthwhile goal because delays in completion will only mean that additional outlays must eventually be made.

In addition, completion of our national interstate system is imperative if we are to reduce the slaughter which is presently taking place on our nation's highway. It is a national disgrace when more than 55,000 persons lose their lives each year on our country's roads. Delays only mean that more lives will be lost on our highways and will only postpone the day when our citizens have a safe system of interstate roads.

The concern felt by the States regarding this problem was expresed in policy positions adopted by the National Governor's Conference at its 64th annual meeting held June 4–7, 1972, in Houston, Texas.

In the section dealing with highways, the Governors stated:

The management of the federal Highway Trust Fund during fiscal year 1972 continues to exemplify the problems which have persisted since 1967 by severely hampering the capital planning and programming capability of the States. If we are to attain and retain any stability in constructing the Nation's highway system, efforts must be made to eliminate the up and down obligational authority of the highway program. The continued practice of using the Highway Trust Fund as a stop-gap effort to adjust the economy must be ended.

Mr. President, in 1967 the Attorney General of the United States rendered an opinion which in part stated:

There is nothing in Title 23 of the United States Code which imposes upon the Executive Branch the duty to approve all qualifying projects for which apportioned funds are available.

The bill I have introduced will finally set the record straight and impose such a duty. Congress will "go on record" to clearly spell out its intent that funds not be withheld from obligational authority from the States.

Regardless of whether one believes the Highway Trust Fund should be utilized for mass transit, or whatever, one must agree that the practice of executive impoundment in this area should and must be stopped. I am fully aware that many in the Senate feel that money should be diverted from the trust fund for this purpose. My bill does not deal with this issue. The important question at this time is: Who is going to decide when and how this money will be spent, Congress or the executive? I am firmly committed to the principle that until Congress decides otherwise the executive should follow the legislative mandate of Congress regarding the Highway Trust Fund. Failure to do so is nothing short of a direct violation of the "separation of powers" doctrine. Congress is given by the Constitution the Legislative power, including the power under Article 1, Section 9, to appropriate funds. The executive branch is given no role to play in the legislative process other than the power to recommend legislation and limited veto power. In addition, the President is required by Article 11, Section 3 of the Constitution to "take care that the Laws be faithfully executed." In my view, it would be extremely difficult to formulate a Constitutional theory to justify a refusal by the President to comply with the Congressional directive to spend as enumerated in Section 101 (c) of the Federal Highway Act.

Let the Senate act promptly to cause the Highway Trust Fund to be used as originally intended. Let the Senate act to end "stop and go" financing which causes periodic unemployment for thousands of construction workers and which by intermittent funding has greatly increased the cost of highway construction. It is time that Congress reasserted its proper role in the appropriation process and enacted this legislation in order to prohibit the executive from further thwarting the will of Congress.

S. 158: FREE FLOW OF INFORMATION ACT—AMENDMENT

AMENDMENT NO. 27

(Ordered to be printed, and referred to the Committee on the Judiciary.)

AMENDMENT OF S. 158

PRESERVING THE FREE FLOW OF NEWS TO THE PUBLIC

Mr. CRANSTON. Mr. President, on January 4, 1973, I introduced, on behalf of the American Newspaper Publishers Association—ANPA—S. 158, the proposed "Free Flow of Information Act." Today, I submit for printing for myself and the Senator from Massachusetts (Mr. KENNEDY) an amendment (No. 27), in the nature of a substitute, to that bill.

This amendment is the product of consultation with representatives of the ANPA and extensive discussions with representatives of the other organizations and entities in the print and electronic media who cooperated in producing the original draft of S. 158.

PURPOSE TO STRENGTHEN IMPLEMENTATION OF PRINCIPLES UNDERLYING S. 158

Our purpose, Mr. President, is to strengthen S. 158 by providing an unqualified protection of news and news sources at all levels of government and official action. Those were the principles underlying S. 158 as introduced. And it was in support of those principles that I introduced S. 158—by request—on the first day of this Congress.

Mr. President, my support for these principles has never diminished. It is, if anything, stronger than ever today in view of the continued harassment of the news media as exemplified by FBI subpenas for the Jack Anderson phone records and now the subpenaing of reporters, editors, and publishers from our four major newspapers by the Committee To Reelect the President.

These past 2 months I discussed the provisions of S. 158 with numerous other Senators, journalists, publishers, public officials, and private citizens. It became clear that there were aspects of S. 158 that needed redrafting so as to strengthen the implementation of its underlying principles. It also appeared desirable to include certain additional provisions.

MEDIA EXTENSIVELY CONSULTED

My staff and I discussed these changes with the ANPA and others in the news media to obtain their counsel. I am profoundly grateful for their extraordinary cooperation and for their contribution to our joint effort. I feel that through our revisions we have achieved a much more sound, much more strong legislative proposal.

At this point, Mr. President, I ask that there be printed in the RECORD the full text of the amendment Senator KENNEDY and I are submitting today.

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

AMENDMENT NO. 27

On page 1, strike out all after the enacting clause and insert the following in lieu thereof:

That this Act may be cited as the "Free Flow of Information Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress finds and declares that—

(1) the purpose of this Act is to preserve the free flow of news to the public through the news media;

(2) a public fully informed about events, situations, or ideas of public concern or public interest or which affect the public welfare is essential to the principles as well as the effective operation of a democracy;

(3) the public is dependent for such news on the news media;

(4) those in the news media who regularly gather, write, or edit news for the public or disseminate news to the public must be encouraged to gather, write, edit, or disseminate news vigorously so that the public can be fully informed;

(5) such persons can perform these vital functions only in a free and unfettered atmosphere;

(6) such persons must not be inhibited, directly or indirectly, in the performance of such functions by governmental restraint or sanction imposed by governmental process;

(7) compelling such persons to present testimony or produce material or information which would reveal or impair a source or reveal the content of any published or unpublished information in their possession dries up confidential and other news sources and serves to erode the public concept of the press and other news media as independent of governmental investigative, prosecutorial, or adjudicative processes and functions and thereby inhibits the free flow of news to the public necessary to keep the public fully informed;

(8) there is an urgent need to provide effective measures to halt and prevent this inhibition in order to preserve a fully informed public:

(9) the practice of the news media is to monitor and report across State boundaries those events, situations, or ideas originally reported locally in one State which may be of concern or interest to or affect the welfare of residents of another State;

(10) the free flow of news to the public through the news media, whether or not such news was originally published in more than one State, affects interstate commerce;

(11) this Act is necessary to implement the first and fourteenth amendments to the Constitution of the United States and article I, section 8 thereof by preserving the free flow of news to the public, the historic function of the freedom of the press.

EXEMPTION

SEC. 3. No person shall be compelled pursuant to subpena or other legal process issued under the authority of the United States or of any State to give any testimony or to produce any document, paper, recording, film, object, or thing that would—

(1) Reveal or impair any sources or source relations, associations, or information received, developed, or maintained by a newsman in the course of gathering, compiling, composing, reviewing, editing, publishing, or disseminating news through any news medium.

(2) Reveal the content of any published or unpublished information received, developed, or maintained by a newsman in the course of gathering, compiling, composing, reviewing, editing, publishing, or disseminating news through any news medium.

PRESUBPENA STANDARDS AND PROCEDURES

SEC. 4. (a) No subpena or other legal process to compel the testimony of a newsman or the production of any document, paper, recording, film, object, or thing by a newsman shall be issued under the authority of the United States or of any State, except upon a finding that—

(1) there are reasonable grounds to believe that the newsman has information which is (A) not within the exemption set forth in section 3 of this Act, and (B) material to a particular investigation or controversy within the jurisdiction of the issuing person or body;

(2) there is a factual basis for the investigation or for the claim of the party to the controversy to which the newsman's information relates; and

(3) the same or equivalent information is not available to the issuing person or body from any source other than a newsman.

(b) A finding pursuant to subsection (a) of this section shall be made—

(1) in the case of a court, grand jury, or any officer empowered to institute or bind over upon criminal charges, by a judge of the court;

(2) in the case of a legislative body, committee or subcommittee, by the cognizant body, committee or subcommittee;

(3) in the case of an executive department or agency, by the chief officer of the department or agency; and

(4) in the case of an independent commission, board, or agency, by the commission, board, or agency.

(c) A finding pursuant to subsection (a) of this section shall be made on the record after hearing. Adequate notice of the hearing and opportunity to be heard shall be given to the newsman.

(d) An order of a court issuing or refusing to issue a subpena or other legal process pursuant to subsection (a) of this section shall be an appealable order and shall be stayed by the court for a reasonable time to permit appellate review.

(e) A finding pursuant to subsection (a) of this section made by a body, agency, or other entity described in clause (2), (3), or (4) of subsection (b) of this section shall be subject to judicial review, and the issuance of the subpena or other legal process shall be stayed by the issuing body, agency, or other entity for a reasonable time to permit judicial review.

SPECIAL LIMITATIONS

SEC. 5. (a) A finding under section (4) of this Act shall not in any way affect the right of a newsman to a de novo determination of rights under section 3 of this Act.

(b) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the invalidated provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

DEFINITIONS

SEC. 6. For the purposes of this Act:

(1) The term "information" includes fact and opinion and any written, oral, or pictorial means for communication of fact or opinion.

(2) The term "news" means any communication of information relating to events, situations, or ideas of public concern or public interest or which affect the public welfare.

(3) The term "newsman" means any person (except an employee of the Federal Government or of any State or other governmental unit while engaged in disseminating information concerning official governmental policies or activities) who is or was at the time of his exposure to the information or thing sought by subpena or legal process an operator or publisher of a news medium, or who is or was at such time engaged on behalf of an operator or publisher of a news medium in a course of activity the primary purpose of which was the gathering, compiling, composing, reviewing, editing, publishing, or disseminating of news through any news medium; and includes a freelance writer who has disseminated news on a regular or periodic basis to the public.

(4) The term "news medium" means any newspaper, periodical, book, other published matter, radio or television broadcast, cable television transmission, or other medium of communication, by which information is disseminated on a regular or periodic basis to the public or to another news medium.

(5) The terms "operator or publisher" means any person engaged in the operation or publication of any news medium.

(6) The term "State" means any of the several States, territories or possessions of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Amend the title so as to read: "A bill to preserve the free flow of news to the public through the news media."

Mr CRANSTON. Mr. President, the revised text places main emphasis where it belongs, on the news and on the people engaged in preparing and transmitting news to the public. We have altered the long title, and earlier references to information have been changed to news.

In addition, the amended bill places the focus of the unqualified, preemptive exemption squarely on those whose activities are indispensable to a well-informed public opinion—the men and women who are engaged in regularly or periodically disseminating news to the public.

WHOSE NEWSGATHERING IS PROTECTED?

Some people—especially in the media—are understandably wary of attempting to define "newsmen." So was I, at first. But it has become clear that a definition is absolutely necessary. There is a broad range of practical and philosophical reasons why this is so.

First, as a starting premise, the thrust of this bill is to exclude from adjudicative, investigatory, or regulatory truth-seeking proceedings, information and evidence that may be highly relevant and probative. Yet I believe that the public interest is generally best served by the fullest permissible gathering and airing of such information in these kinds of proceedings. Exclusion of such information or evidence should be granted only when exclusion serves a higher public interest. Because this entails a balancing of competing public interests, the ambit of exclusion of information and evidence, I believe, should be only as broad as is necessary to serve the underlying purpose of the exclusion—in this case—insuring that the free flow of news to the public is preserved and protected in the public interest.

So the test I have applied is: Who absolutely must be able to claim the exemption in order to guarantee a free flow of information that a democratic society must have to survive.

COURT CONSTRUCTION OF BROAD COVERAGE

Mr. President, a second factor in determining who is to be covered is the likely attitude of the courts. How would they construe a statute that would arguably permit any individual to lay claim to the exemption who could make a colorable showing of having been engaged in gathering data for the purposes of eventual publication. I do not believe most courts would be inclined to construe very broadly such a far-reaching application.

I think that quite properly courts instead would find ways of reaching what they consider "common sense" results. A statute that does not define "newsman" would thus invite courts to cut a wide swath of interpretation through the statute—either by construing away part of the substantive scope of the exemption, or by setting up judge-made standards to determine who is a "legitimate" or a "recognized" newsman. In either case, it is likely that the result would be far narrower protection than offered by our revised bill.

The net effect of enacting a statute without a "newsman" definition could very well be that protection would be denied in the very situations where Congress and the public would most want it applied.

OBJECTIVE STANDARDS NEEDED

Mr. President, we have thus sought to establish a set of guidelines for the courts to apply rather than allow judicial imagination to fashion their own. Our standard of regularity or periodicity of dissemination of news to the public sets up objective criteria discernible by material proof rather than findings of subjective intentions. And these criteria can reasonably be met by an extraordinarily wide range of press and media—professional and amatuer, "establishment" and "nonestablishment"—free-lance writers, other published authors, and book publishers, and people engaged in preparing and disseminating news to the public "on their behalf."

The standard of regularity or periodicity could be met, for example, by any one who enters into even a loose agency relationship to prepare an article or book manuscript for a publisher. Under the terms of the bill, this would be an "on behalf of" relationship. That relationship could be evidenced by such things as an exchange of letters agreeing on a particular story line and/or a right of first refusal. This practice of "querying" a publisher before writing or fully researching a manuscript is already common among free lancers.

The free-lance writer who has regularly or periodically himself disseminated news to the public in the past, but is not preparing a particular manuscript "on behalf of" a publisher, also clearly has met the definition in the bill.

Mr. President, I would agree that the protection in the revised bill is not so broad as to be coextensive with the freedom to publish as guaranteed by the freedom of speech clause in the first amendment. But it is not our purpose to extend this protection to everyone whose free speech is covered by the first amendment.

Our sole purpose is to restrict evidentiary testimony only to the extent that is required to ensure a free flow of information on to the public. The first-time, would-be author, who cannot enter into any "on behalf of" relationship with a publisher in preparing his or her manuscript still is free to publish.

This statute is not—heaven forbid—a licensing statute saying who can and who cannot publish; only who can and who cannot refuse to testify with impunity.

As long as so wide a group of newsmen as I have described can readily come within the coverage of the exemption in their news gathering activities, the public's need to know will be amply protected. And that must be the only test.

FIRST-TIME WRITERS CAN ACQUIRE PROTECTION

Mr. President, if the line is drawn in the law as we suggest, it is probable that publishers will be more willing than at present to enter into loose, but objectively determinable, agency relationships with first-time writers so as to make them eligible for the exemption.

We think this carefully drawn balance in terms of whose news-gathering is protected substantially strengthens the reach and protection of S. 158.

Next, we have revised the bill in order to provide the protection in the following circumstances, which were either uncovered or unclear under S. 158 as introduced:

IMPAIRMENT OF NEWS SOURCES OR NEWSMEN'S ASSOCIATIONS

Mr. President, clause 1 of the exemption in section 3 of the revised bill, regarding protection of the disclosure of news sources, has been expanded to encompass the compelling of testimony or the production of any document or thing that would reveal or impair any sources or source relations, associations, or information. This notion of impairment and the references to source relations and associations broadens the artificially narrow concept of confidential communications to include the ability of a newsman to gather information based upon the highly complex set of interrelating factors governing his relations and associations with potential sources of news.

WORKING NOTES AND OUTTAKES

Mr. President, clause 2 of the exemption in section 3 of the revised bill, regarding protection of notes, outtakes, and the general "work product" of a newsman, has been expanded to deal with the revelation of the content of published as well as unpublished information. This is done in recognition that in terms of the underlying concept for such protection, which is set forth in the revised congressional finding in clause 7 of section 2 of the revised bill—compelling such persons to present testimony or produce material or information which would reveal or impair a source or reveal the content of any published or unpublished information in their possession dries up confidential and other news sources and serves to erode the public concept of the press and other news media as independent of governmental investigative, prosecutorial, or adjudicative processes and functions and thereby inhibits the free flow of news to the public necessary to keep the public fully informed—applies equally to published as well as unpublished information and material maintained by a newsman.

Mr. President, the protection of material, even when it was previously published or broadcast, is essential to keep reporters from appearing to be an arm of the law. Otherwise, district attorneys might work less hard to press an investigation on their own if they knew they could lean on reporters to do their work for them. That is especially true if attorneys could get at a reporter's notes, tapes, and unused film.

Making a reporter's work products available to the Government would enable—indeed would seem to invite—the Government to set itself up as a supersnoop or super-editor, passing judgment on the accuracy or objectivity of the press. It is but one short, precipitous step from the Government as super-editor to the Government as super-censor.

INVESTIGATIVE AGENCIES' RELIANCE ON USING RESULTS OF NEWSMEN'S INVESTIGATIONS

Mr. President, I feel that if prosecutorial and investigative officials and bodies know that published information—such as the actual glossy print of an uncropped photograph published in a newspaper or the actual video tape as broadcast on TV—will in all cases be available to them through subpena, they will place reliance on access to such information and limit their own independent investigative activities accordingly. I am not saying that, if the news media chooses to provide such published material voluntarily, it should not do so, but only that the predictability of the availability of such material by subpena tends to increase the likelihood of resort to subpenas of such material.

I should point out that the use of the word "content" in clause 2 of revised section 3 is intended to permit some compulsory process for the purposes of authentication.

ALL PROCEEDINGS COVERED

Third. The scope of the exemption in section 3 of the revised bill is extended to cover proceedings before any local governmental entity as well as entities of the U.S. Government or of a State government.

Fourth. The scope of the exemption in section 3 of the revised bill is also extended to proceedings under the authority of a territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SEVERABILITY

Fifth. A severability clause is added—section 5(b)—to insure that if the application of any provision of the reivsed bill is declared invalid as applied to any particular person or circumstance, the remainder of the bill, and the application of the invalidated provision to others not similarly situated or to other circumstances, would not be affected by such an invalidation.

PRESUBPENA STANDARDS AND PROCEDURES

In addition, Mr. President, the revised bill includes a new section—section 4—establishing presubpena standards and procedures. I consider this procedure protection a major source of protection of news and news sources. Under this section, a subpena or other legal process to compel any testimony from a newsman or to require him to produce any document or thing could not even be issued until after certain findings have been made and certain procedures complied with, as follows:

BURDEN ON MOVING PARTY

First, the parties seeking to compel testimony or the production of a document or thing must carry the burden of demonstrating to the issuing person or body that—first, there are reasonable grounds to believe that the newsman has information not within the exemption set forth in section 3 and which is material to a particular investigation or controversy within the jurisdiction of the issuing person or body; and second, there is an underlying factual basis for the matter under investigation or the claim being asserted by the party in question; and third, the same or equivalent information is not available to the issuing person or body from any other source.

HIGH LEVEL DECISION MAKER

Second, Mr. President, subsection (b) requires that the decision as to whether or not the moving party has carried the burden described in subsection (a) must be made by the highest authority within the issuing person or body: That is, by a judge of the court in the case of judicial or grand jury process; by the committee or subcommittee in the case of a legislative body; by the head of the department or agency in the case of an executive department or agency; and by the commission, board or agency in the case of an independent regulatory or administrative body. This means, Mr. President, that the clerk of the court who is authorized to issue subpenas in civil cases under the rule 45(a) Federal Rules of Civil Procedure would not have this power as to a newsman.

NOTICE AND HEARING

Third, Mr. President, subsection (c) requires that the requisite findings under subsection (a) must be made on the record after a hearing and that the newsman in question must be afforded adequate notice of the hearing and an opportunity to be heard if he wishes to be.

APPELLATE REVIEW

Fourth, Mr. President, subsections (d) and (e) provide for appellate review of decisions to issue or not to issue subpenas made by courts, and judicial review of such decisions made by other issuing persons or bodies, and requires that the actual issuance of subpenas be stayed for a reasonable time in order to permit such appellate or judicial review, in the appropriate State or Federal court.

POSTSUBPENA DE NOVO DETERMINATION OF APPLICABILITY OF EXEMPTION PRESERVED

Fifth, Mr. President, in order to insure that any determinations under the presubpena provisions of section 4 in no way constitute a decision which is considered res judicata or "the law of the case" with respect to the availability of the section 3 exemption—indeed, the issue would not be the same in any event since section 4(a)(1)(A) deals with a finding of "reasonable grounds" rather than a decision as to whether or not the section 3 exemption is in law applicable—section 5(a) specifically provides that a finding under section 4 permitting the issuance of a subpena or other process would not in any way preclude or limit the newsman's right to a full de novo determination of the applicability of the section 3 exemption.

EFFECT OF PRESUBPENA PROCEDURES

These presubpena standards and procedures, Mr. President, are designed to eliminate the issuance of a great many unnecessary subpenas to newsmen and thus also eliminate the considerable expense, substantial amounts of time, impairment in the eyes of the public, and needless controversy arising from any subpena to any newsman. Particularly important in this regard is the guarantee that the newsman be given notice in advance of the issuance of a proposed subpena and the opportunity to resist such issuance if he chooses, and his right to make his case in public rather than, for example, in the secrecy of a grand jury proceeding.

The effect of the presubpena procedural protections and standards put into the revised bill should be to make it a lot tougher on attorneys and prosecutors who are using subpenas to harass reporters or trying to intimidate the news media.

Fighting a subpena can be a long drawn out, expensive proposition that can be particularly burdensome to small newspapers, periodicals, radio stations, or freelance writers.

Sometimes an attorney achieves his purpose of harassment or attempted intimidation just by obtaining a subpena, whether or not the reporter ever finally testifies. That practice has to be stopped.

Mr. President, it is also important that a reporter be able to prevent even the issuance of a subpena. In some cases, even his appearing to contest a subpena could destroy working relations with his news sources. This was the case with New York Times Reporter Earl Caldwell, who quite properly feared that his sources would dry up if he responded to a grand jury subpena; he would have had to go before them in secret session, and his sources would not know what he said about them, if anything.

I do wish to make clear, however, Mr. President, that a reporter could not successfully resist a subpena under the revised bill if the information being sought had been obtained while he was not working on a story.

CONSTITUTIONAL PREDICATE IN DECLARATION OF FINDINGS AND OF CONGRESSIONAL PURPOSE

Finally, Mr. President, the findings and declarations of purpose in section 2 of the revised bill have been redrafted with a view toward tightening them in terms of the succeeding provisions and terminology in the revised bill and in order to lay a predicate for the protection of "work product" in section (3) and to make the necessary underlying findings in terms of the authority of the Federal Government to preempt State law under the first and fourteenth amendments to the Constitution and under the commerce clause.

Mr. President, that concludes my explanation of the provisions of amendment Number 27 to S. 158. Now, I would like to turn to a more detailed discussion of the need for prompt passage of S. 158 as amended.

NEED FOR PASSAGE OF S. 158, AS AMENDED

Mr. President, as a former news wire correspondent, as a public official, and as an American citizen. I feel strongly that the news media and the press need and should have maximum legal protection to meet their responsibilities in a free and open society.

The first amendment is not a piece of special interest legislation for the news and publishing industries, it is a governmental guarantee to a free people without which they could not remain free for long. The working press of our Nation must be able to protect its sources of information if it is to continue to expose corruption and lawlessness in and out of Government, in high places and low.

For a society to be truly free, Mr. President, it must have a press that is truly free. One of the fundamental services that a free press renders to a free people is to watchdog the various levels of Government, the officialdom and the bureaucracy who handle the peoples' money and who wield awesome powers over people's lives, freedoms and property.

But what would happen to investigative reporting, what would happen to advances toward truth and probity in public life which result from fearless investigative reporting, if newsmen could not guarantee confidentiality to their news sources?

It is generally recognized that these sources would dry up. That drying up constitutes a danger to our free press and, more importantly, a danger to our free society. Without an ironclad assurance of anonymity, many people with vital information that should come to public attention simply would not talk.

INSIDE INFORMANTS NEEDED

Mr. President, that is not surprising. When public or private power is abused it is often abused secretly. As a police department often must depend on a tip to solve a crime, so an investigative reporter often must depend on a knowledgeable, inside informant to be able to discover abuses of power and bring them to public attention. But informants who fear for their jobs—and sometimes for their lives—rarely divulge incriminating information unless they feel sure that their identity will be kept secret.

As Timothy Leland, Pulitzer prize winning assistant managing editor of the Boston Globe wrote me:

> Reporters, unlike law enforcement agencies, are not able to subpoena public records, which makes the job of exposing public corruption and malfeasance infinitely more difficult. Confidential sources are the most important tool in a reporter's workshop. To jeopardize this advantage is to handcuff the news media in one of its most important functions.

That inescapable fact is further documented by the replies I received from a number of Pulitzer prize winning investigative reporters whom I surveyed for their views on the importance of confidentiality.

Let me read you just two of them, Mr. President.

Al Delugach, who is now with the Los Angeles Times, won the Pulitzer prize in 1969 when he wrote a series of articles for the St. Louis Globe Democrat exposing fraud and corruption in the St. Louis Steamfitters Union. Here is what

he wrote to me about the importance of confidentiality:

I cannot over-emphasize the importance to me, in 21 years as a newspaper reporter, to have confidential sources. Almost any important story involves such sources. Even though it may be that none of the information from such sources is used directly in a story, invaluable leads and background information usually are obtained. The confidential source is usually someone in a rare position to know something significant (from the public standpoint) that is going on inside a government agency or organization.

Almost by definition, a confidential source is one who does not desire to have—and often cannot afford the risk of having—his identity become known to his superiors or associates. Whether he is acting from altruistic or selfish motive, the source usually reveals information only with a guarantee of anonymity. Without it, the source cannot be a source. Often there is no substitute for a confidential source. In his absence, valuable information is lost to the public, and it may not be possible to have a story at all . . . .

I feel that some of the very best sources of newsmen would dry up if a guarantee of protection could not be given—and made credible. If it became common to force newsmen to disclose sources, I believe there would be widespread fear of disclosing important facts to newsmen by persons in the circumstances I have described.

I think investigative coverage of many vital areas of public information will suffer grievous shrinkage unless legal protection is forthcoming to counteract the recent Supreme Court decision.

OFFICIAL COLLUSION EXPOSED

William Jones of the Chicago Tribune won the Pulitzer Prize for investigative reporting in 1971 for exposing collusion between police and some of Chicago's largest private ambulance companies to restrict services in low-income areas.

Mr. President, here is what he wrote to me:

I cannot stress strongly enough the importance of confidential sources to investigative reporters. Without them we would be hamstrung to the point where many investigations would never get off the ground. I think it should also be stressed that the term "confidential source" as it is used in investigative reporting is not a synonym for the kinds of characters portrayed in dime spy novels.

It has been my experience that most confidential sources are people who see something wrong or corrupt in the public or private agency where they work and merely want the problem corrected. It is usually their first time in dealing with such a situation and they arrive at the door of the investigative reporter only after exhausting every effort within their own agency to bring about changes. They are people with kids and mortgages and pride in the job they do, not plotters and spies seeking to topple governments or agencies.

Anonymity is essential. It is frequently the first question asked by a potential confidential source in the first telephone conversation. If you can't guarantee it you will probable never hear from the source again. There are a number of reasons for this and from personal experience I could recite examples that range from murder threats to firing and professional blacklisting. I might add that all too often when an agency is hit with a scandal that appears to be the result of confidential sources they frequently devote more time to trying to find the source than correcting the abuses.

THE PUBLIC BENEFITS FROM INVESTIGATIVE REPORTING

What kinds of stories do investigative reporters write? What are the results of these stories? Who benefits?

KNX radio in Los Angeles, explaining that both their news and editorial departments rely on confidential sources, lists some recent editorials which, they say, would not have happened without a confidential tip to start with. These editorials included:

An illegal appointment to the city planning commission.

An alleged financial flimflam behind the Los Angeles Convention Center.

The details of the land swap that suggested a secret deal between city hall and an oil company.

The unfair and illegal destruction of a park.

The exploitation of a tribe of Indians by some judges, lawyers, and a major bank.

The parking ticket mess that jails innocent people in Los Angeles.

The beating up of a student editor by the UCLA student body president.

The threats made against police officers by a group of professors.

The attempt by an assemblyman to create a new assembly district for one of his friends.

ONE HUNDRED AND NINETEEN INDICTMENTS IN BOSTON

In its first full year of operation, the Boston Globe's four-man investigative team published reports that resulted, among other things, in:

119 indictments against 27 people, including three former city mayors and a city auditor:

Passage of legislation requiring the State Turnpike Authority to put all projects out for competitive bidding;

A probe of scandalous land speculation in another Massachusetts city by the District Attorney's office.

None of these investigative reports—and the beneficial results that ensued—would have been accomplished without help from confidential sources.

According to Editor Leland.

Mr. President, Newsday conducted a 3-year investigation and expose of secret land deals in eastern Long Island which led to a series of criminal convictions, discharges, and resignations among public and political office holders in the area.

The recent CBS Special, "The Mexican Connection," revealed narcotics smuggling practices which enabled the Government to more effectively curtail those practices.

Two reporters and a photographer for the Philadelphia Bulletin exposed collusion between police and numbers racket operators.

David Burnham, of the New York Times, exposed widespread police corruption in that city and initiated the present departmentwide cleansing of criminal influences.

YABLONSKI MURDER CLUES

It was newspaper stories that produced the clues that led to arrests in the Yablonski murder case.

The Riverside California Press Enterprise won the Pulitzer Prize a few years ago when it exposed corruption in the courts in connection with the handling of property and estates of a local Indian tribe.

And here, Mr. President, is a 5-year record of revelations of widespread corruption in government by the Los Angeles Times, revelations which, in the editors' own words:

Depended heavily on the trust placed in Times reporters by hundreds of news sources.

In 1967, an investigation of a proposed World Trade Center on Terminal Island led to a grand jury inquiry and the indictment of four commissioners.

In 1968, an investigation of the Recreation and Parks Commission resulted in the indictment and conviction of a commissioner.

In 1968, an investigation of the Rapid Transit District led to the indictment of two men who had arranged the sale of surplus equipment at a cut-rate price.

In 1969, an investigation disclosed that a Los Angeles city planning commissioner and the city planning director had joined a group of developers and had bought land for speculative purposes on the site of a proposed airport at Palmdale.

In 1969, an investigation disclosed irregularities in the Beverly Ridge Estates development financed by Teamster Union pension funds in the Santa Monica Mountains.

In 1971, an investigation disclosed waste and mismanagement in the development of the Queen Mary as a maritime museum.

And last June, an investigation disclosed speculative land investments based on inside information by Anaheim's city manager and public works director who played key roles in planning public works that boosted the value of their property.

MEDIA SUPPORT

Scores of newspapers, radio, and television stations have sent me copies of editorials they have written or broadcast in support of my bill—from the Daily Star in Tuscon, Ariz. to the Evansville Courier in Indiana, from the Lewiston Daily News in Montana to the Long Island Free Press in New York. Without exception, every one of them expresses in its own words the emphatic opinion of the Vicksburg, Miss. Post:

If the media is required to divulge the source of information sought out, and received through confidential sources, it follows this type of information would not be forth-coming.

What that would do, warns the Contra Costa Times in California, "is literally dry up our news sources and make it all but impossible to keep the public informed about the actions of the instruments the people themselves have created—government."

And the Norristown, Pa. Times Herald notes Mr. President, that—

If the courts and the Congress are allowed to subpoena at will the notes of a journalist, it will be the end of the free press and, in the end, it will be the public who will suffer most.

Robert Fichenberg, chairman of the Freedom of Information Committee of the American Society of Newspaper Editors, warns:

It would take only a few instances of forced disclosure at the federal level to set in motion a nation-wide chain reaction of timidity and reluctance among potential sources.

That "chain reaction of timidity" may already be underway. Brit Hume cataloged in a New York Times article last December instance after instance of inside-the-government informants choking up, if not drying up, for him and other newsmen. This is a case of no news being bad news. What we do not know will hurt us.

WHITE'S VIEW DIFFERS

Significantly Mr. Justice White's opinion for the Court in the Caldwell case projected just the opposite result of a failure to protect news sources. He said:

Reliance by the press on confidential informants does not mean that all sources will in fact dry up because of the later possible appearance of the newsman before a grand jury . . . There is little before us indicating that informants whose interest in avoiding exposure is that it may threaten job security, personal safety, or peace of mind, would in fact, be in a worse position, or would think they would be, if they risked placing their trust in public officials as well as reporters.

In fact, the experience of the last 7 months indicates Justice White was not correct on the facts of the situation. I think that is a significant development. Congress can discover the truth as to whether news sources are indeed drying up. And based on independent, comprehensive findings, Congress can then take appropriate legislative action.

Mr. President, the Court's opinion also makes much of the point that though there has never been a Supreme Court holding that news sources were protected, sources were not reluctant to come forward with confidential information in the past. This, I must say, respectfully, misses the point. Most of the reporters, broadcasters, publishers and private citizens with whom I have talked had generally assumed prior to the Caldwell decision that such a constitutional protection was implicit in the first amendment freedom of the press clause. It was the Court's holding to the contrary which opened wide a door which had hitherto been widely understood to have been locked.

Mr. President, newsgathering is an obvious prerequisite to news publication or broadcast. Consequently governmental action that has the effect of restricting newsgathering by drying up news sources is, in a real sense, a form of prior restraint on the press—a practice most Americans look upon with abhorrence.

Informants will be encouraged to talk to the press only if the law that Congress designs to protect them against involuntary disclosure is as broad as possible and simple enough for anyone to understand. For if the law is neither broad nor easy to understand it will likely turn off rather than encourage news sources. That, I am afraid, will be the result if any of the qualifications proposed in other bills now before the subcommittee are enacted into law.

WEAKNESSES OF SOME OF THE QUALIFICATIONS PROPOSED

Mr. President, read some of the qualifications that have ben proposed, singly, or in combination and consider: How many potential informants will be eager to talk to the press once they realize that the reporter may be compelled to testify if there is probable cause to believe that the information they give him is clearly relevant to a suspected crime? Or that the evidence is unavailable or not readily accessible elsewhere? Or that the information must be exposed in open court to prevent a miscarriage of justice? Of because of compelling and overriding national interest or for reasons of national security?

We all know that the Government of the United States can invoke national security almost any time it wants to. And in most cases make it stick.

Such qualifications could open up loopholes that would destroy the very protection we are trying to extend. Qualifications such as "national security" or "threat to human life" would be self-defeating.

A member of an espionage ring would not likely tell what he knows to a newsman if he knows the reporter may be compelled to identify him to the authorities. As a result of his silence law enforcement officers themselves will not have the benefit of the information he might otherwise have disclosed.

And if the identity of a member of the Mafia is ever revealed in court because he tipped off a reporter to a planned murder, it will probably be the last time that a member of the Mafia—or anyone else who does not want to be "fingered"—tips off a reporter to a murder.

ENCOURAGE TIPSTERS

Mr. President, the worse the crime we want to prevent or to solve—kidnaping, murder, political assassination, espionage—the most important it is that Congress produce legislation that will encourage tipsters to tell the press what they know about these crimes. Otherwise the information we need the most is the very information we will no longer receive.

Moreover, what constitutes a threat to human life? Is bad meat sold to the public a threat to human life? Last July, William Avery, news director of channel 13, in Springfield, Mo., wrote to tell me about substandard meat processing plants in the State which the station's reporters had learned about through confidential sources. The station broadcast the story.

If the "threat to human life" exception applied in this case, as well it might, Mr. President, then the station's newsmen could be compelled to identify the source of their story. With that precedent, how many others would dare tell a newsman about unwholesome conditions in a food processing plant in the future?

Thus an exception probably meant to apply to cases where killings may be involved could easily spill over to cover instances of bad food which might cause illness or death. Similarly, this in turn could extend to product safety of any kind: automobiles, flammable clothes, or unsafe power tools used in the home. A worker in a factory might not dare reveal to a newsman that the power saws his plant produces are defective for fear that his identity would be revealed in court and he would lose his job.

Most people will not read the law, of course, Mr. President. But they will read of reporters and their informants caught in its web. When silence is so much safer, few potential informants will be willing to take their chances of emerging unscathed from the vague and uncertain legal maze created by a qualified protection.

DEFAMATION

Mr. President, a number of pending bills propose a total exemption for defamation cases. I believe that such a blanket libel exception would create so huge a loophole as to destroy the very protection we are seeking to create.

The rulings in the New York Times and Rosenbloom cases require plaintiffs in "public figure" or "public interest" defamation suits to prove malice on the part of the news media when the media has disclosed alleged corruption or wrongdoing. As a result, it is now extremely difficult for the "public" plaintiff to win a defamation award, or even to resist summary dismissal of his case.

But a blanket libel exception in these kinds of cases would in effect give "public figures" a concrete, albeit illegitimate reason to bring libel actions against the media. Though the public official would stand little chance of winning his suit, he would be able to force the newsman to disclose the confidential news source who "blew the whistle" on him.

A blanket libel exception clearly offers far too great an opportunity for abuse.

PREEMPTION OF STATE LAW

Mr. President, I also want to focus on the absolutely paramount need for a Federal statute which extends to all non-Federal proceedings. There is a strong practical need for uniformity in this area to preserve the public's need to know. A Federal statute applying only to Federal proceedings offers little assurance to a potential news source who knows that the newsman can be subpenaed and compelled to reveal in a State or local proceeding the informer's identity or certain information he has given in confidence.

I do not believe we can afford the luxury of waiting for each of the remaining 31 States to act in this field. Nor can we expect them to enact a uniform law any more than the 19 States which already have a wide variety of news protection legislation.

Mr. President, for the channels of confidential communications to be effectively reopened, newsmen and their sources must know with reasonable certainty what the rules are as to a subpena issuing under either State or Federal authority. It is also important to stress that news flow clearly is a national occurrence. And that we in Washington, D.C., for example, need to have the fruits of the confidential relationships—and the information flowing from such sources—which the press may have established in San Diego, Chicago, Philadelphia, or wherever. News, and the public's need to get the news, knows no State boundaries.

OTHER TESTIMONIAL PRIVILEGES WORK

Mr. President, an attorney cannot violate the canons of ethics and break a

confidence with his client even to prevent the conviction of an innocent man or to disclose a breach in national security. Yet we do not hear demands that the attorney-client privilege be "qualified" to compel a lawyer to testify when he has that kind of information. Nor do we hear that either our system of justice or the survival of our Nation is in jeopardy because that privilege is not qualified.

A doctor also cannot be compelled to break a confidence with his patient. But it is accepted that he will violate his Hippocratic Oath and disclose confidential information about his patient if, in his professional judgment, disclosure is necessary for the public safety or to protect his patient's life.

A reporter must also have this double set of freedoms: freedom from compulsion and freedom to follow the dictates of his conscience, his commonsense, his loyalty to his country and, most cogently, freedom to exercise his professional judgment. The reporter alone is competent to determine if breaking his pledge of confidentiality in a particular case will harm future relations with his sources and so diminish or destroy the services he can continue to render the public as an investigative reporter.

Many people consider the press a kind of unofficial ombudsman of our constitutional system. Many have learned that it is sometimes necessary to get press publicity as a prod to those in authority to take action against wrongdoers. In most such cases, the only alternative to public disclosure is continued cover-up. That is perhaps why prosecutors in States with so-called newsmen's shield laws told a New York Law Revision Commission that those statutes actually help them in law enforcement. A number of State attorneys general and other law enforcement officials agree completely.

UNFETTERED PRESS

Mr. President, I believe that an unfettered press is basic for law and order and justice in a free society. I am equally convinced that an unfettered press is basic for a criminal defendant to have the protections that the Founding Fathers envisioned when they insisted on his constitutional right to a "public trial."

Mr. President, I believe that a defendant has more to fear from secrecy in his trial proceedings than from press coverage, more to fear from a star chamber than from a 5-star edition.

First is literally first, Constitutionwise. The Court has time and again ruled that first amendment rights like the right of free speech and free press enjoy preferred status. First amendment rights must be given greater weight whenever they come into conflict with other Bill of Rights guarantees.

That is simple logic, as far as I am concerned. For if first amendment rights did not exist, most of the rights enumerated in the other nine amendments would be empty rights; they would offer little consolation to a people intellectually enslaved.

SELF-DEFEATING NOT TO GIVE PROTECTION FROM COMPULSORY PROCESS

Mr. President, if newsmen are compelled to testify about criminal information they may possess, most if not all of them will soon cease to be recipients of criminal information and so, having nothing to testify about, will no longer be subpenaed. That may be one way of resolving the current controversy, but it is not the way I recommend in the public interest, or in the interest of law and order and justice.

UNDESIRABLE SIDE EFFECTS WITHOUT WORK PRODUCT PROTECTION

Mr. President, many undesirable side effects also will occur if newsmen's files, notes, and "work product" are available upon subpena to prosecutors, investigators, and others.

People who normally deal with the press openly, in a straightforward manner will become more guarded and more reticent once they realize that something they say may involve them in a criminal investigation. And finally investigators will tend to rely on newsmen's investigative work rather than pursue their own.

The news media will consequently take on the image of being part of, rather than distinctly separate from, official governmental processes and the authority of the state. Press credibility will suffer. Worse yet, if the Government can subpena the media's notes, tapes, film, and outtakes, it can easily set itself up as a kind of supereditor, passing judgment on the accuracy and objectivity of the gathering, editing, and publication of news. It is but one short precipitous step from the Government as supereditor to the Government as supercensor.

HISTORICAL PERSPECTIVE

But by no means does everyone favor congressional action at this time. If ever.

Mr. President, the administration, though reluctantly willing to accept some qualified bill, thinks the press should put its trust totally in the self-restraint of the Justice Department and rely on the Attorney General's guidelines. Those are the guidelines which the Attorney General's Office imposed on itself in August 1970 in response to a growing concern of the news media.

SPATE OF SUBPENAS

That concern arose from a spate of Federal grand jury subpenas earlier that year. They included subpenas served on Time, Life, and Newsweek; the four major newspapers in Chicago, and the now famous subpena for Earl Caldwell of the New York Times, which led to last June's landmark decision. During 1969–70, the networks were served more than 150 subpenas.

In my opinion, Mr. President, the Attorney General's guidelines are a rather shaky staff for an independent press to rely on. True, they restrict somewhat the use of the subpena power against newsmen. But only somewhat. And only for as long as any particular Attorney General wishes to keep them in effect. Worse yet, the guidelines implicitly legitimize governmental powers over a free press which, in my view, the Government should not possess.

Much more credible to me, Mr. President, is the fear expressed by some members of the press that looking to the legislature for protection is a risky business. They accurately note that "what Congress gives, Congress can take away." These newsmen prefer the path recommended by one publication that warned that the press can "only put its trust in the first amendment pure and clear, and plug away at getting the whole truth and nothing but the truth."

VOID CREATED BY CALDWELL CASE

Unfortunately, Mr. President, the first amendment became considerably less pure and clear for press purposes, thanks first to the Caldwell decision, and then to the Court's refusals to review the imprisonment of Bill Farr in California, and Peter Bridge in New Jersey. So despite the opposition of some members of the press to congressional action, it is now apparent that unless Congress does act, strongly and clearly, to fill the first amendment void created by the Caldwell decision, our press freedoms will be still more seriously eroded as lower courts apply the Caldwell holdings in more and more cases.

Some newsmen believe that the best way to get the Government and the courts to back down is for more reporters to choose jail rather than violate a confidence. To quote their reasoning:

> They can't put us all in jail. And besides, it will prove to informants that reporters won't break their word.

Most newsmen would agree, however, Mr. President, that the sight of a newsman being carted off to jail is more likely to shake up a news source than reassure him. And it is less than a sure bet that Government prosecutors are going to be deterred even by a succession of sacrificial lions behind bars.

I agree with attorneys for the Washington Post and Newsweek who hold that—

> The preservation of an institution as important to our form of government as a free press should not and must not depend upon the willingness of newsmen to go to jail.

The current debate for the most part has centered not on whether Congress should pass protective legislation, but rather on what should be the nature and sweep of that legislation.

Who and what should be protected? Under what conditions? Indeed, should there be any limitations, or should the ban against compulsory disclosure of confidential news sources and information be total and unqualified?

ABSOLUTE BILL NEEDED

Mr. President, I believe that a broadly embracing and absolute protection is needed to insure that the public gets the information it must have in a democratic society. It is my view that Congress aim should be to protect explicitly by statute all of the newsgathering rights which many people had all along assumed were implicit in the first amendment—until the Court told us otherwise.

Intelligent self-government requires a vigorous, robust press that will develop confidential leads and follow them up. It demands fiercely independent, unin-

timidated news media that probe and investigate, question and criticize, and so shed the daylight of public exposure on every shaded or shady area of public life.

It also demands a press that is more than an uncritical conduit for public pronouncements. Today's in-depth, interpretive reporters make frequent use of confidential information to help them verify and evaluate the on-the-record "news" they get from official sources. Much that is handed out as news these days is superficial, sometimes deliberately misleading, and almost always self-serving.

Mr. President, if a self-governing people are to govern themselves wisely and well, their Government must encourage the fullest possible freedom for them to speak their minds; the Government should encourage the people's freest possible access to information and opinion by which they may enlighten their minds. The two are inseparable and interdependent.

PRIVILEGE CHARACTERIZATION IS A MISNOMER

Though some people talk in terms of a newsman's privilege, that is a misnomer, Mr. President. The newsman merely exercises the privilege on behalf of the public. The public itself is the beneficiary. Congress must act to protect the public, not merely the newsman and his source.

Mr. President, my bill protects the public, not the press. It protects the public's right to know and the public's need to know. It protects the public's right to know about scandals in government and business. It protects the public's right to information which will lead to the conviction of criminals. It also protects the public's right to hear views and opinions which may displease those in authority.

For a press to meet its responsibilities in a free society, the Columbia Missourian declared:

> It needs all possible freedom from governmental controls. The pluralism of ideas, the intensity with which they are expressed, the constant battle for minorities to be heard or survive and the respect for individual rights this country represents make such a freedom guarantee not only possible but mandatory.

The Missourian concluded—as shall I—

> In a dynamic democracy like ours, a press must be absolutely free from governmental controls to function in its ascribed role—there is no realistic compromise about that.

CONCLUSION

Mr. President, I can think of no single issue pending before Congress or the Nation at this time which more fundamentally affects the delicate balance of our democratic process. The public's right to know—more to the point, the public's need to know—is dependent on the ability of the press to protect all of its information and all of its sources of information.

INTRODUCTION OF THE FREE FLOW OF INFORMATION ACT

Mr. KENNEDY. Mr. President, it gives me great pleasure today to join the Senator from California (Mr. CRANSTON) in introducing the Free Flow of Information Act, designed to preserve the free flow of news and ideas to the public through the news media. As stated in its initial section, this bill like the first amendment, is based on the premise that a fully informed public is essential to the maintenance and effective operation of our democracy. The provisions of this bill follow logically from our conclusion that compelling newsmen to reveal a source or the content of information in their possession inhibits the free flow of news to the public.

Our proposed legislation would provide newsmen with an absolute and unqualified privilege from compulsory process in both State and Federal forums, and it includes procedural safeguards to effectuate this protection. Last month the Constitutional Rights Subcommittee opened hearings into the need for newsmen's privilege legislation. After listening to and reviewing the testimony presented, I became more resolute in my determination to secure the most complete protection for newsmen. The Justice Department subpenas for Jack Anderson's telephone records and the spate of civil subpenas issued to newsmen who covered the Watergate case—both occurring after the Senate hearings opened—drove home the compelling need for prompt action on this legislation.

There are four important features of the bill being introduced today. First, it affords newsmen protection without qualifications or loopholes. This reflects our belief that anything less than blanket protection would prove inadequate to fulfill the purposes and objectives of the legislation. Observed Mr. Justice Douglas:

> Sooner or later, any test which provides less than blanket protection to beliefs and associations will be twisted and relaxed so as to provide virtually no protection at all.

I concur with this observation.

Second, our bill applies to both State and Federal proceedings. Certainly citizens in every State should enjoy an equal right to the fruits of a free and unfettered press. Likewise, newsmen in every State must have the same protection if they are to provide the public with those fruits. The excellent legal analysis provided by witnesses to the Constitutional Rights Subcommittee appear to me persuasive as to Congress' constitutional power to preempt State laws in this area.

Third, our bill covers legislative and administrative, as well as judicial, proceedings. Society's interest in preserving a free flow of information to the public should remain paramount despite the nature of the proceeding from which threats to the press may emanate. Before all forums the newsman must remain equally protected if he is to have any viable protection at all.

Finally, the bill contains presubpena safeguards in section 4 to provide a screen for unnecessary or harassing subpenas, while at the same time insuring that the newsman will remain amenable to process in his private capacity. The procedures, though appearing complex, merely serve to place the initial burden where it belongs—on the party who would compel testimony or presentation of documents, and not on the newsman himself.

Mr. President, I have more fully elaborated my views on the subject of newsmen's privilege legislation generally in my statement at the opening of the Senate hearings last month. I thus ask unanimous consent that my statement be included in the RECORD at this point.

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

STATEMENT OF SENATOR EDWARD M. KENNEDY

Mr. Chairman, I commend you for initiating these hearings on the rights of reporters, and I hope that our Subcommittee will give the pending legislation the high priority it deserves. Of all the great principles on which our nation was founded, none is more important than freedom of the press under the First Amendment, and none is under greater attack in the nation today.

Not since the Alien and Sedition Acts nearly two hundred years ago has freedom of the press been as ominously threatened by the heavy hand of government as it is at the present time. It is not too much to say that we have a crisis before us, a crisis over the First Amendment, and the way we resolve that crisis in the coming months will have profound effects on the future of our country and all our other basic freedoms.

The right of the public to know and the right of the press to represent the public are twin pillars of our heritage. Any attempt to impose conditions upon this right strikes at the very core of our democracy—the right of the people to have access to the information which affects their lives. This is why I am pleased to give my support to federal legislation providing newsmen with an absolute and unqualified privilege from compulsory process in both state and federal forums.

We know that Congress is very much alone in the current struggle. Last June the Supreme Court turned a deaf ear to pleas that the Constitution itself is sufficient to protect reporters from being required to disclose their notes and sources to a grand jury. And, the Executive Branch professes to see no danger worthy of legislation in the present crisis.

For nearly two hundred years, reporters and prosecutors have coexisted without the need for such legislation. In fact, throughout our history, reporters have enjoyed a *de facto* privilege from subpoena in grand jury proceedings, a privilege of the sort consistently afforded to doctors, lawyers, priests, husbands and wives, and others whose special relationships of confidentiality have long received generous protection of society.

Today, under the present Administration, all that has changed. Spurred on by the Vice President's persistent attacks on the press, by the Pentagon Papers Case, and by a series of other government-inspired assaults on the First Amendment, the traditional freedom of the press has been seriously undermined, to the point where reporters now find themselves fair game for any aggressive or unscrupulous prosecutor armed with a fishing license stamped "subpoena."

We know the mushrooming dimensions of the problem. In recent months, numerous reporters have been subpoenaed to reveal their sources or notes. Several reporters have gone to jail for contempt, for refusing to deliver such material. Overall, we know that editors and reporters are developing serious reservations about publishing information that might bring grand jury repercussions on them, and their sources are afraid to talk.

Thus, a range of deeper problems is emerging, the consequences of which we cannot even begin to evaluate. A growing number of men and women who know of wrongdoing, who know of corruption, or who know of questionable policies, are now deciding not to call reporters, because they no longer trust the reporters' ability to keep their identities

hidden. Editors and newsmen are giving second thoughts to publishing and revealing information, for fear that such disclosure may bring swift and frightening retaliation by government. And, because of these fears, there is the very real problem that the public is now being denied the enlightening fruits of the truly free press envisioned by the drafters of the Bill of Rights.

My own view is that the current situation is so serious that Congress should not hesitate to enact the broadest possible legislation designed to give newsmen an absolute and unqualified privilege from subpoenas to disclose their notes and sources. The privilege should apply to all jurisdictions, federal, state and local, and to all branches of government, Legislative, Executive or Judicial.

The logical progression from the First Amendment to the need for a secure newsman's privilege was clearly described by Justice Potter Stewart in his opinion dissenting from last summer's distressing Supreme Court decision rebuffing the claim of a constitutional privilege for newsmen. Justice Stewart wrote:

"We have held that the right to publish is central to the First Amendment and basic to the existence of constitutional democracy. . . .

"A corollary of the right to publish must be the right to gather news. . . .

"The right to gather news implies, in turn, a right to a confidential relationship between a reporter and his source. . . ."

The fears of potential news sources that their identities may be revealed are well-founded. Not only loss of job, but even loss of life, may follow from disclosure of the source. Even irrational fears of disclosure, if the newsman's source is not fully protected may suffice to inhibit the flow of information into the hands of the press and ultimately the public. Thus the confidential relationship is often necessary if the reporter is to receive his documents or tips in the first place.

We know there is a close relationship between excellence in journalism and the reporter's need for confidentiality. Outstanding examples are the Pulitzer Prize-winning stories by Neil Sheehan of the *New York Times*, bringing the Pentagon Papers to public light; by Jack Anderson making public disclosure of the documents of the National Security Council dealing with India and Pakistan; and by the *Boston Globe's* Spotlight Team of reporters, who exposed corruption in city government. All of these stories originated with information or documents from confidential sources, and were heavily dependent on those sources. The list goes on and on—other dramatic recent examples include the George Polk Memorial Awards to the Associated Press' Jean Heller for the story on the Tuskegee Syphilis Scandal, to Carl Bernstein and Bob Woodward of the *Washington Post* for their coverage of the Watergate Affair, and to Ron Kessler of the *Washington Post* for his series on hospitals. All these reports saw publication only because sources agreed to reveal information in confidence to able investigating reporters. Confidential sources also were indispensable to Frank Wright of the *Minneapolis Tribune* and James Polk of the *Washington Evening Star News*, who received the Worth Bingham Prize and the Raymond Clapper Memorial Award for stories on campaign contributions.

And those are only the tip of the iceberg—the stories that made national headlines. What about the countless daily investigations of local issues by local reporters?

How many stories will never be born because a source feels insecure in the face of the Supreme Court's decision and the threat of a prosecutor's subpoena? A few years ago, the Wall Street Journal estimated that 15 percent of its stories were based on confidential information. The Christian Science Monitor has predicted that its percentage may go as high as 50 percent.

How much will be lost to the public because CBS News could not assure a welfare mother of anonymity? Because Paul Branzburg's editors became nervous about his continuing series on drug abuse? Because a key source in an official corruption story being developed by a Baton Rouge reporter feared a subpoena threat? Because Earl Caldwell's tapes and notes on the Black Panthers were destroyed? Because crucial informers were afraid of being revealed as sources for the Boston Globe's Spotlight Team reports?

The answers will never be known. But the danger is obvious. The less informed we are, the less ability we have to protect ourselves from corruption of government officials, from the unresponsiveness of our institutions, and even from violent crime.

In part, of course, the rash of press subpoenas in grand jury and criminal cases in recent months is a symptom of lazy law enforcement. Effective investigative work is a difficult and demanding job. With all the vast resources available to law enforcement agencies today, I see no need whatever to allow a situation to continue in which reporters are forced into the role of unwilling investigators for state prosecutors or local district attorneys, or in which the National Press Building becomes simply the Fourteenth Street Annex of the F.B.I.

In the current debate, nothing is more misleading than the suggestion that the real question should be framed as a choice between combatting crime or protecting news sources. The question is not whether we shall have privileged news or unprivileged news, but whether we shall have privileged news or less news. The public, as it watches television, listens to the radio, and reads its magazines and newspapers, will be the greatest loser if the news media are compelled to perform their vital role under the current oppressive atmosphere.

Doctors and patients, attorneys and clients, priests and penitents, husbands and wives—all have protected relationships under the law today. Indeed, it is safe to say that relevant information in criminal proceedings is often lost to prosecutors because of these protections. But society has decided that the need for candor and trust and openness in these relationships is more important than any need that prosecutors may have for the information these privileged groups possess. The same should be true for reporters.

The Constitution recognizes that a free and robust press is central to our liberty, and it is up to Congress to act to keep that guarantee secure.

As I have indicated, I believe that the legislation we enact should contain an absolute, unqualified privilege. As Professor Paul Preund of the Harvard Law School has stated, "It is impossible to write a qualified newsman's privilege. Any qualification creates loopholes which will destroy the privilege." However well-intentioned such qualifications may be, they risk the result that they will weaken the First Amendment, and that Congress will simply be rubber-stamping the current practice. As Justice Douglas wrote:

"Sooner or later, any test which provides less than blanket protection to beliefs and associations will be twisted and relaxed so as to provide virtually no protection at all."

Any aggressive prosecutor, for example, or any determined judge, could easily shift to a newsman the burden of resisting subpoenas under a qualified privilege law. We cannot take this risk. We cannot afford to gamble with the First Amendment by enacting a law that confers less than a privilege that is absolute.

Further, as I have also indicated, the bill we enact should encompass state as well as federal proceedings. Citizens in every part of this nation have the same rights to information, and newsmen everywhere should enjoy the same protections. Legislation applying only to federal proceedings would be a sham, since it would leave a gaping hole in the protection reporters need.

These principles and objectives have been advanced by Davis Taylor, publisher of the *Boston Globe* and the American Newspaper Publishers' Association. They are presently contained in S. 158, as introduced by Senator Cranston.

In the course of these hearings, I am sure that these principles will be improved and refined, but we must be vigilant to insure they are not weakened. After all, what is at stake is not just the rights of reporters, but the rights of all of us, the right of the American people to know the news—not just the news contained in government press releases, but all the news.

Mr. KENNEDY. Mr. President, there will be 2 more days of hearings on newsmen's privilege legislation next week, and I hope that the provisions of this bill can be explored there further.

Senator CRANSTON has provided a full and detailed explanation of the bill in his statement, and he makes a most compelling case for its enactment. I am pleased to be associated with his efforts on this issue, which have been marked throughout by vigor and persistence, as well as by insight and dedication.

I also want to commend the chairman of the Constitutional Rights Subcommittee, Senator ERVIN, for his commitment to the principles of the first amendment, which is reflected in the attention he has given this subject.

I hope that this Congress will act to provide the protection needed to maintain the vigor and freedom of our press and ultimately to preserve the people's right to know.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 25

At the request of Mr. EAGLETON, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of Amendment No. 25, intended to be offered to the bill (S. 398) to extend and amend the Economic Stabilization Act of 1970.

NOTICE OF HEARINGS ON READING PROGRAMS

Mr. PELL. Mr. President, the Subcommittee on Education of the Senate Committee on Labor and Public Welfare in its continuing program of legislative oversight is scheduling hearings on April 4 and 5 concerning the reading programs conducted by the U.S. Office of Education. Information gathered by the junior Senator from Missouri (Mr. EAGLETON) has raised certain questions in our minds concerning the reading programs and this will be one of the subjects of our inquiries.

Mr. EAGLETON. Mr. President, I am most grateful to the distinguished Senator from Rhode Island, Senator PELL for his prompt response to the need for looking into the reading programs now being conducted by the Office of Edu-

cation. The serious questions raised over the past 3 years of "right to read" and the lack of a comprehensive plan for attacking illiteracy prompted me to introduce the National Reading Improvement Act last Congress. I have intentionally withheld reintroduction of a similar measure this year in the hopes that these hearings could be arranged, for I believe the information gleaned during the hearing process can be used to strengthen the provisions of the bill.

Mr. President, it may sound incredible but it is true. In the United States, which boasts the world's highest standard of living, there are 3 million adults who are totally unable to read and write and 20 million adults and children who read so poorly that they are classified as "functional illiterates".

For over 3 years we have heard this administration's rhetoric about its "Right to Read" program. You may recall that this program was first announced in October 1969, by the late Dr. James Allen, then U.S. Commissioner of Education. Dr. Allen spoke of the 10 million American children and teenagers with serious reading difficulties who were, as he called it, "denied a right—a right as fundamental as the right of life, liberty, and the pursuit of happiness." He committed the administration to a far-reaching program of educational support for these youngsters to enable them to enjoy their right to read.

Not long thereafter, in May 1970, President Nixon promised $200 million for the reading program, but he never asked Congress for any new money to fund it. Instead, he siphoned off funds from other titles of the Elementary and Secondary Education Act. Last spring, before a congressional committee, even Dr. Sidney Marland, now Assistant Secretary for Education, admitted that "the right-to-read program contained a great deal of rhetoric in its first year and a half. It did not contain any money." The picture has not changed. The program does not yet contain anywhere close to the amount needed to achieve—or move toward—the right to read. For fiscal year 1974 the administration is recommending only $12 million for the right-to-read program—the same amount as last year. This is certainly not the funding level one would anticipate for what is touted as a "national priority program".

Right to read has been beset with problems other than lack of form and money. The National Reading Council, an autonomous panel, was awarded a $1.5 million grant from the Right-to-Read Office in the Office of Education for its National Reading Center to help launch the right-to-read program. A GAO report, as well as an investigation conducted by Representative EDITH GREEN, revealed that the center has misspent 60 percent of its first year's budget. After 2 years of operation, and $3 million, the center has done little more than issue stacks of press releases and reports, conduct two national surveys on the extent of illiteracy, and compile a list of volunteer reading tutors.

We must not allow this waste to continue. We cannot allow this administration to announce in a few years that, after pouring millions of dollars into the right-to-read program, the Government has little to show for its efforts and that it must reluctantly conclude that funding must be terminated. Such is the line now being taken with regard to compensatory education and Headstart. Too many programs have been characterized by this sort of high rhetoric and low budgets.

The legislation which I intend to introduce after completion of the hearings will seek to prevent this course of action. It will authorize adequate funding to attack illiteracy effectively. It will establish State programs to encourage the establishment and expansion of improved reading programs for schoolchildren and adults. It will place emphasis on training of teachers so that we may have the necessary skilled manpower to eliminate illiteracy.

Mr. President, I hope that all Members of Congress will take an interest in solving the problem of illiteracy. We can end the incongruity of millions of functional illiterates in the wealthiest, most advanced nation in the world, but it will take a concerted effort and a substantial financial commitment.

NOTICE OF HEARINGS RELATING TO CONSENT JUDGMENTS IN CIVIL AND CRIMINAL ANTITRUST CASES

Mr. HART. Mr. President, may I announce that the Senate Antitrust and Monopoly Subcommittee has scheduled hearings for March 15 and 16 on two measures dealing with consent judgments in civil and criminal antitrust cases.

The bills are S. 780, introduced by Senators TUNNEY and GURNEY and S. 1088, introduced by Senator BAYH.

Anyone wishing to express his views on these bills may contact the staff director of the subcommittee.

NOTICE OF HEARINGS ON RECOMMENDED JUDGESHIPS

Mr. BURDICK. Mr. President, I wish to announce continuation of the public hearings before the Subcommittee on Improvements in Judicial Machinery relating to the recommendations of the Judicial Conference of the United States for creation of an additional 51 additional district judgeships—S. 597.

The hearings will be held in room 1318, Dirksen Office Building, commencing at 10 a.m. on March 13 and 14, 1973.

On March 13, testimony will be received from the chief judges of the District of Arizona, the central district of California and of the ninth circuit, court of appeals.

On March 14, testimony will be received from the chief judges of the northern, eastern, and southern districts of California.

Communications relative to these hearings should be directed to the subcommittee staff, 6306 Dirksen Office Building, extension 5–3618.

NOTICE OF HEARINGS ON DISASTER RELIEF

Mr. BURDICK. Mr. President, I wish to announce the first in a series of field hearings before the Subcommittee on Disaster Relief for the purpose of evaluating the Disaster Relief Act of 1970.

Hearings will be held in Biloxi, Miss., on Saturday, March 24, and in Rapid City, S. Dak., on Friday and Saturday, March 30 and 31. My colleagues will recall that the Gulf coast was devastated by Hurricane Camille in 1969 and that Rapid City was the scene of a tragic flood last summer. In both cities, testimony will be received from regional administrators of disaster relief agencies, State and local officials, and from private citizens.

The schedule of hearings in other areas of the country will be announced later. A summary session in Washington is also planned.

Communications relative to these hearings should be directed to the subcommittee staff, 4202 Dirksen Office Building, extension 56176.

NOTICE OF HEARINGS ON NOMINATIONS

Mr. SPARKMAN. Mr. President, I announce that the Committee on Banking, Housing and Urban Affairs will hold hearings on Tuesday, March 13 commencing at 10 a.m. in room 5302, Dirksen Building, on Mr. Floyd Hyde who has been nominated to be Under Secretary of HUD, Mr. Michael H. Moskow, nominated to be Assistant Secretary for Policy Development and Research, Mr. H. R. Crawford, nominated for Assistant Secretary for Management, Mr. Sol Mosher, nominated for Assistant Secretary for Legislative Affairs, and Mr. James L. Mitchell, nominated to be General Counsel, all of Department of Housing and Urban Development.

Anyone wishing to appear as a witness on these nominees should contact Mr. Carl A. S. Coan, area code 202 telephone number 225–6348.

ADDITIONAL STATEMENTS

RESPONSE OF DEMOCRATIC LEADERSHIP TO PRESIDENT NIXON'S MESSAGE ON THE ECONOMY

Mr. MANSFIELD. Mr. President, on Wednesday, February 28, Senator WILLIAM PROXMIRE delivered an address at the request of the Democratic leadership in response to the President Nixon's message on the economy.

In his address Senator PROXMIRE spoke frankly about the charges made against a Democratically controlled Congress and the erroneous impressions the administration leaves with the people of this Nation about the causes of inflation and the economic crisis which faces many Americans today. He touched on the enormous question of priorities in spending and the responsibility of the Congress to make the resource allocations.

I ask unanimous consent that this address be printed in the RECORD.

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

TEXT OF SENATOR PROXMIRE'S RESPONSE TO PRESIDENT NIXON'S RECENT ECONOMIC MESSAGE

America has the most successful economic system in the history of the world. We are proud of what our country has done in providing the abundant life for more people than any nation in history. But in the past four years, the American economy has begun to falter. Our world economic leadership is now, like the dollar, under fire.

For the first time in eighty years we have lost our trade surplus. The deficit in our balance of trade not only endangers our capacity to be the great economic bastion of the free world, it is costing hundreds of thousands of American jobs. The unemployment picture has indeed improved in the past year, but it remains too high, disgracefully high, compared to any other major industrial country in the world. Unemployment in Japan is less than half ours. Compared to Germany, we have more than five times as much unemployment. For young people and blacks unemployment is literally at depression levels. The Administration has no program to reduce unemployment. It even refuses to set a 4 percent unemployment goal. In the President's budget, programs that would meet the unemployment problem are decimated or eliminated.

The recent devaluation may have been necessary. But it is a confession of the failure of our government policies to keep America as strong and competitive as it was and it will cost your family fifty to a hundred dollars a year in higher prices.

The devaluation will cost you more when you buy gasoline for your car and when you buy fuel oil for heating your house. We import much of our oil, and the devaluation will require you to pay several dollars more when you buy it.

You will feel the same punch in your pocketbook when you go to buy a television set or a radio or a little wine to brighten up your dinner.

But that's just the beginning. *American* made products will cost you more too. This is because the devaluation will reduce the competition for steel and auto companies and others. You'll pay more for the refrigerator you buy, and also more the next time you trade in your car.

Now the devaluation *will* increase the demand for what America exports. But what do we export? The answer: Two categories of goods especially. First, high technology machinery and equipment such as aircraft and computers. These require high skill, and high skill is often in short supply so our increased exports may come at the price of higher wages and prices.

The second big export is food. And what happens as we export more food? That's right. The price of food will go still higher. You'll be hit in the breadbasket as well as the pocketbook!

But the mistaken and weak economic policies that forced the Administration to devalue are unfortunately not the end of the story. You and I as consumers face higher prices because of even more important blunders by the Administration.

The President is proposing a mammoth $19 billion increase in Federal spending. Does this surprise you? Did you think the President was fighting to hold down spending? How about it? Is President Nixon, in fact proposing to hold down spending? The proposed increase will be on the biggest dollar increases in spending in our history. If Congress agrees and puts the Nixon increase into effect, it means another mammoth federal deficit for the coming year.

It will mean that the Administration in the past four years has run up more deficit spending than in any four year period in American history except in World War II when the whole free world was in an all-out war for survival. And those Nixon deficits spell higher prices for you.

What is stunning about this reckless Nixon nineteen billion dollar inflationary increase in spending is that it comes at the end of the war. This will be the first time ever the country has increased its spending when a war was over. And what an increase!

What will this do to your pocketbook? Almost everything you buy will go up. But consider just one thing. The interest rate you pay when you buy a home, or a car, or borrow money for any purpose will go up, as it went up just this past week. It will go up because of the Administration's excessive spending and the increased federal borrowing that will require.

You may ask, "But isn't it true that you Democrats in Congress would increase spending even more?" Answer: Absolutely not! We would oppose *some* of the President's cuts because they are cruel and even inflationary. But we would cut far deeper than the President in some programs and we would restore to others only part of the reduction we would make.

For example, we would cut the President's military budget—as Congress has reduced every Nixon military budget in the past four years. We will slash his foreign aid—especially his foreign military aid and aid to North Vietnam—just as Congress has cut every Nixon foreign aid budget in the past four years.

These are multi-billion dollar programs, the savings we can make in these programs will provide funds for low income housing, manpower training, disaster farm relief; everyone of which the President would cut and get this—everyone of which if pushed ahead will help keep your prices down. You ask how will this spending keep my prices down?

Won't this spending push up prices? The Answer is NO. Here's why:

By restoring the low income housing program we hold down home costs and your rent costs. Isn't that true? By moving ahead with manpower training we give the unskilled unemployed the skills they need to get a job and produce what they consume and more. Don't you agree? By saving the disaster hit farmers we increase the food supply and hold down the price you pay for food. Why isn't that true?

You see, all in all, we would reduce spending below the Presidential level—not increase it.

And how about wage and price controls? The Administration has announced it is moving into another weaker price control system. We started with a freeze on prices and wages. That worked and worked well. Then we moved to Phase II. Wages were allowed to go up by 5.5% and prices by 2%.

But that was in theory. What really happened? Your wages were held down to less than 5½% and the prices you pay—they went up more than the price guidelines.

Here was a program that cried out to be strengthened. But what has the Administration proposed? Firms will be allowed to increase prices with no advance notification and no approval. Then what happens if they violate the guidelines and overcharge you? Will they have to refund to you the difference as they did under Phase II? No! They can keep the difference. What's more, the enforcement staff which was too small and weak under Phase II will be cut in half. Can we have the stronger price control system—rising prices call for with fewer persons enforcing the law? You tell me.

And yet the President talks about how tough Phase III will be. He talks about his shotgun in the closet. Well, if you think about how weak this program is, you can see that when the price gouger goes to work he won't be hit with a shotgun blast, but a peashooter.

How does the stock market read Phase III—stronger or weaker?

Phase Three is so feeble that the stock market, reading it as meaning more inflation, has been dropping steadily in spite of reports of thriving economic activity and soaring profits. How do hard headed foreign investors interpret Phase III? Answer: They have been selling American dollars short by the billions.

Does organized labor think Phase III has any bite? Organized labor has now walked away from the 5½% guidelines. Why? Because they're convinced that inflation will be much steeper. Virtually all economists agree that prices will be higher because price controls have been gutted.

To sum up, we love this country. We are proud of its superb economic achievements and the good life so many millions of Americans enjoy because of the marvelous American economy.

But we vigorously protest the grave economic mistakes of the President that would do little about unemployment and are pushing us into an inflation that will cost your pocketbook dearly.

Our answer is to cut inflationary military and foreign aid spending and channel some but not all of those funds into programs that will not only make for a more humane America, but a stronger country and one in which the housing will be built, the unskilled labor trained and the food produced to hold down the prices you pay.

SERMON ABOUT JONATHAN LIVINGSTON SEAGULL

Mr. MATHIAS. Mr. President, by now, we all know of the success of Richard Bach's novel about a seagull who aspires to perfection. One of my constituents, Kenneth S. Jones, pastor of the Faith United Methodist Church in Rockville, Md., was inspired by this creative work and incorporated its theme into a very moving sermon which has been published in the February issue of Washingtonian magazine. I encourage Senators to read Pastor Jones' unique story, "Jonathan Livingston Christian" and ask unanimous consent that it be printed in the RECORD.

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

MOVE OVER, J. L. SEAGULL, HERE'S JONATHAN LIVINGSTON CHRISTIAN

The publishing phenomenon of the 1970s has been a slender book called Jonathan Livingston Seagull. Written by a pilot named Richard Bach and rejected by most major book publishers, Jonathan was quietly launched into print two years ago by Macmillan. Sales started slowly but grew and grew, and Jonathan perched atop the best-seller list most of 1972. Hardback sales are nearing two million, with a paperback printing out this month. The movie, with only seagulls as characters, will be out later this year.

What kind of seagull inspires that sort of interest? Jonathan yearns to fly better

and faster than any other gull. At first he has trouble with his high-speed dives because of his long wings. He gives up. "If I were meant to fly at speed," he says, "I'd have a falcon's short wings." But he tries again and again, and finally achieves perfection.

Being inspirational and about flying was enough to catch the interest of Kenneth S. Jones, pastor of the Faith United Methodist Church in Rockville. Jones is a pilot—he learned while a missionary in the Congo—and he likes to bring new ideas into his young, growing church. So a sermon titled "Jonathan Livingston Christian" was a natural.

"I got an extraordinary reaction," Jones says. "People hugged me, women kissed me. They told me it was the best sermon I ever preached." Jones' son Jeffrey, a student at Western Maryland College in Westminster, heard about it and invited his father to talk about Jonathan Livingston Christian at Sunday chapel services. The students gave the sermon a rousing ovation—"a first for me in twenty years of preaching," Jones says.

Why is Jonathan so popular? "People admire the idea that you can be better than you are," Jones says, "that if you give it all you've got, success is unlimited."

Some think the book is not all that Christian. A bishop has denounced it for the sin of pride, for its emphasis on the self over others. But Jones points out that after Jonathan learned to fly, he wanted to teach others. Jones emphasizes "this Christian interpretation of Jonathan's willingness to share what he knew with others."

So move over Jonathan Livingston Seagull and make room for Jonathan Livingston Christian:

How could a book with only 40 pages of text and some pictures of seagulls in flight become a national best seller? There is no sex not even a single human being mentioned in the story.

Jonathan Livingston Seagull discovered the joy of flying. He found it was more challenging than following fishing boats for castaway fish and spending his life as a beachcomber. By holding his wings close to his body he was able to dive at more than 200 miles an hour. One day he climbed to 5,000 feet and dove right through the midst of his home flock a hundred feet above the water. He thought they'd be proud of his accomplishment, but instead they expelled him from the flock, banished him to a lonely life on the Far Cliffs.

The head gull, called the Elder, pronounced his banishment and gave this philosophy: "Life is the unknown and unknowable, except that we are put into this world to eat and to stay alive as long as we possibly can." In disregard for tradition, Jonathan Seagull talked back to the Elder: "For a thousand years we have scrambled after fishheads, but now we have a reason to live—to learn, to discover, to be free." "The Brotherhood is broken" the adult gulls intoned together and that meant that Jonathan was no longer part of them.

Jonathan suffered not so much by his loneliness as by the fact that the other gulls could not believe the glory that would be theirs if they would open their eyes and see. Jonathan discovered that boredom and fear and anger are the reasons that a gull's life is so short, and with these gone from his thought he lived a long fine life indeed.

Then one evening two shining gulls, who actually flew with more grace and skill than Jonathan, appeared at his wingtips. He added full power and zoomed away from them, but they dove and rolled and banked with perfect precision. "We are from your flock, Jonathan. We have come to take you higher, to take you home." With the promise of flying higher and with greater skill, he gladly flew with them to heaven.

He asked a nobler Elder Gull: "Is this heaven?" "No, Jonathan, there is no such place. Heaven is not a place or a time. Heaven is being perfect."

One day, standing on the shore, Jonathan understood what the Elder Gull had told him. "It's true! I am a perfect, unlimited gull!"

Jonathan learned so much he longed to return to the flock that had made him an outcast. At the Far Cliffs he found first one new outcast, then another, until he had seven students who learned to fly as well as Jonathan.

Then one day the eight of them flew right through the old home flock in a double-diamond formation at 135 miles per hour wingtip-to-wingtip. The elders of the flock cried "Outcasts. They're outcasts." "Sure they're outcasts," cried the young gulls, "but where did they learn to fly like that?"

Jonathan and his students relaxed on the beach at night, and gradually the young gulls gathered in the dark around them, listening to Jonathan's wisdom. Oh, they wanted to fly. But they said, "How do you expect us to fly as you fly? You are special and gifted and divine, above other birds." None is more special or divine than any other" Jonathan said. "The only difference, the very only one, is that they have begun to understand what they really are and have begun to practice it."

Fletcher Lynd Seagull was the name of that first outcast gull that Jonathan had met in the Far Cliffs. Fletcher became an instructor for the young gulls who believed. Then one day Jonathan said to Fletcher: "You don't need me any longer. All you need is to keep faith in your unlimited self. He'll be your instructor. I have other flocks, other Fletchers that need an instructor more than you." And with that Jonathan's body wavered in the air, shimmering, and then went utterly transparent.

Now what is this all about? Why have I left some parts of the story still untold? Why should I call a sermon by the name Jonathan Livingston Christian?

Well, first it's important to know that author Richard Bach is a pilot. There is so much to learn in life that simply is not comprehended if you are earthbound. This is what Jonathan's rebellion was all about. Down at the beach or a few yards above the water all there is to life is the struggle for survival. Jonathan's father said to him one day: "If you must study, then study food and how to get it. Don't forget that the reason you fly is to eat." Isn't that terrible that a father should say to his son, in effect, the purpose of life is to earn a living? There is one main purpose to life, and all the rest is incidental. The purpose of life is to discover and fulfill what God had in mind when he made us.

Down on the surface of the earth the hills seem so steep and hard to climb, but from a thousand feet up the 30- and 50-foot elevations are practically flat. And it's that way with life. Obstacles rise up in our paths—sorrows, burdens, setbacks—and they seem insurmountable, but viewed from the vantage point of a thousand feet closer to God, they all flatten to ripples. Compared to the mountains and chasms others confront, we live on a smooth plain. With God's help we are able to rise above the apparent limitations that frustrate a person who is weak in faith.

Now, with a view to helping you learn to fly, I am renaming each of you Jonathan Livingston Christian. Oh, you're still free. I haven't taken anything away from you. You can still choose to live like a two-legged creature, distinguishable from other mammals only by the power of speech and the wit to make tools. You can continue with first-things-first, continue until your deaths in the struggle for survival and shelter and the lordship of real estate. Or you can heed the promises of God. Jesus said: "The person who wants to save his own life will lose it; but the one who loses his life for my sake will save it. Put God's kingdom first in your life, and he will provide whatever it is you will need." You can do anything, but only by prayer and believing.

If you are going to be thought of as a Jonathan Livingston sort of Christian, you'll have to imitate his determination to succeed. Jonathan tried to develop a slow-flying technique and he stalled and fell into the sea like a rock. Still he tried again and again. He tried high-speed dives, so fast that when he stuck out a few feathers to end his dive his wings were nearly torn from his body. But he kept on until he perfected it. His single-mindedness, his devotion to perfecting his skill, made him an outcast and it just might make an outcast of you. But never mind. In your striving for perfection, you are not seeking cheers from the stands, but a "well done" from your Creator.

Jonathan Livingston Christian is also training himself for a future life. Jonathan Seagull's attitude of preparation stood him in good stead. How do your attitudes support you? If you are striving today to be better than yesterday—more faithful, more loving, more useful, more grateful—you'll not have any anxieties about a life hereafter. It can only be an enlargement, an amplification, a great expansion of the joys we've known right here. Jonathan Seagull didn't miss one beat of his wings. He was in midflight when two shining gulls escorted him to Elysian Field.

Now if it's true that heaven is merely an intensification of the perfection we have achieved in the present, then our present duties will be similar to the duties of angels. Jonathan Livingston Christian, that's you, will want to share your knowledge of perfection, spread the joy, tell the world, get someone else ready for the great journey. Jonathan Seagull was a compulsive flight instructor. He knew there would be others somewhere who wanted to know how to fly. You know how to fly, Jonathan Christian, and out there on the lonely Far Cliffs of this world there are lonely people who need to know what you know. Have you ever heard evangelism described that way? That's what it is. You may not claim a comfortable pew for your perpetual and private use and enjoyment. Unless you share it, it will lose its power to hold and lift you up in spirit.

I left out an incident in the other Jonathan's story. On the beach, his native beach, one Kirk Maynard Gull came to Jonathan, dragging his left wing. "I want to fly more than anything else in the world," he said.

"Come along then," said Jonathan. "Climb with me away from the ground and we'll begin."

"You don't understand. My wing. I can't move my wing."

"Maynard Gull, you have the freedom to be yourself, your true self, here and now, and nothing can stand in your way. It is the Law of the Great Gull, the Law that is."

"Are you saying I can fly?"

"I say you are free."

As simply and as quickly as that, Kirk Maynard Gull spread his wings, effortlessly, and lifted into the dark night air. The whole flock was wakened by his loud scream from five hundred feet up. "I can fly! I can fly!"

By sunrise nearly a thousand gulls gathered around Maynard. And Jonathan was there

to explain: "You must understand that a seagull is an unlimited idea of freedom, an image of the Great Gull, and your whole body, from wingtip to wingtip, is nothing more than your thought itself."

You, Jonathan Livingston Christian, are made in the image of God, made for perfection, made to find your life in giving it. You can fly. By faith you can fly and you'll know the destination of your final flight.

RECONFIRMATION OF FEDERAL JUDGES

Mr. HARRY F. BRYD, JR. Mr. President, in a column published in newspapers of Sunday, March 4, Clark Mollenhoff points out that, despite his conviction on charges of conspiracy, fraud, bribery, and income tax evasion, U.S. Circuit Court Judge Otto Kerner remains on the public payroll for $42,500 a year.

Mr. Mollenhoff states that Judge Kerner is technically on leave, drawing full pay but performing no duties.

Mr. Mollenhoff cites the case of Judge Kerner to illustrate the fact that Federal judges, once appointed, are rarely removed from office.

The column takes note of a proposal which I have made that the U.S. Constitution be amended to provide that Federal judges be subject to reconfirmation by the Senate every 8 years. It is my view that adoption of my proposal would increase the accountability of the Federal judiciary without harming its legitimate independence.

Mr. Mollenhoff's column reviews arguments I have made in behalf of limited, renewable tenure for Federal judges. I ask unanimous consent that the text of Mr. Mollenhoff's column, "Watch on Washington," be included at this point in the RECORD.

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

WATCH ON WASHINGTON—KERNER CONVICTION PROVES IT'S TOUGH TO OUST A JUDGE

(By Clark Mollenhoff)

WASHINGTON.—The conviction of U.S. Circuit Judge Otto Kerner on criminal charges of conspiracy, fraud, bribery and income tax evasion points up once again the difficulty in getting rid of a judge on such charges.

Kerner's continuation on the public payroll at $42,500 a year, pending his resignation or removal, demonstrates the inadequacy of the present machinery for ousting convicted federal judges.

The suave 64-year-old former Illinois governor, found guilty of connection with a race track scandal that occurred while he was in office, says he won't resign and that he will appeal to the Supreme Court.

In the meantime, he is technically on leave, drawing full pay, but with no duties. And, if the Supreme Court or a U.S. Appeals Court overturns the conviction, Kerner could be restored to active status, unless there is an impeachment action in the U.S. House Judiciary Committee.

The judiciary committee, headed for more than 30 years by Emanuel Celler, D-N.Y., has been delinquent in its policing of federal judges and amazingly understanding of the lax standards that many judges permitted themselves until relatively recently.

It was understandable why Celler was broadminded about conflicts of interest and judicial corruption. His law partner was identified in a trial of federal Judge Martin Manton in 1939 as the man who carried payoff money for Manton.

The lawyer continued as Celler's partner in a New York law firm throughout the time that Celler was chairman of the House Judiciary Committee, with the responsibility for initiating investigations and impeachment actions against judges.

The new chief of policing the judiciary is Rep. Peter W. Rodino Jr., a Democrat from New Jersey, who inherited the committee chairmanship when Celler left office in January. He is still an unknown quantity, but is enough steeped in machine politics in New Jersey that he is not expected to be innovative or aggressive in seeking to oust federal judges.

The rationale of Celler and others who defend the lack of aggressive investigations and impeachment actions is that no action must be taken that would tend to interfere with the independence of the judiciary.

Sen. Harry F. Byrd, Jr. is one of a small group who have had about enough of "the independence" of the judiciary, which they feel at times "borders on arrogance," even when the judges are honest.

The courtly Virginia Democrat is hopeful that the Kerner conviction will bring into focus the lack of adequate machinery to police federal judges and the need for providing an easier way to get rid of those "who exercise dictatorial powers."

His suggestion is a constitutional amendment to end the lifetime tenure of federal judges appointed in the future.

Byrd's amendment provides that federal judges serve in office for a term of eight years, at the end of which they would be nominated automatically for reconfirmation, unless they request otherwise. If reconfirmed by the Senate, the judges would serve an additional eight years.

In discussing his proposal recently, Byrd emphasized that he fully supports the concept of an independent judiciary.

"The amendment I have introduced simply provides a method by which the courts might be made more accountable," he said.

"The question arises at once: Is this a radical proposal, out of keeping with American tradition, or is it rather a reasonable means of achieving accountability of judges without destroying the basic independence?"

He noted that 47 states have fixed terms for their own judiciary and that of the three that have no such provision, only Rhode Island has life tenure for judges. Massachusetts and New Hampshire provide for mandatory retirement at age 70, Byrd said.

He said his proposal parallels the present Virginia system that the Virginia judiciary is appointed by the General Assembly. Despite the assembly's appointive power, the Virginia judiciary has never hesitated to strike down legislative enactments.

Although all Byrd's cospensors are conservative Democrats, he notes that a liberal Republican, former Sen. Robert M. Lafollette Sr. of Wisconsin had denounced the "alarming usurpation of power by the federal courts" and called for an end to life-time tenure for the judiciary.

Byrd recalls that impeachment was referred to by Thomas Jefferson as "a bungling way of removing judges—a impractical thing—a mere scarecrow."

He also points out that Lord Bryce, in his observation on American government, commented, "Impeachment is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use."

Byrd quoted a fellow Virginian, President Woodrow Wilson, as saying of impeachment, "It requires something like passion to set them a-going; and nothing short of the grossest offenses against the plain law of the land will suffice to give them speed and effectiveness."

All of the comments are worth reflecting upon as Kerner, a convicted felon, continues to draw full pay while appealing his conviction.

It will be interesting to note the reactions of new Chairman Rodino of the House Judiciary Committee and even of Chief Justice Warren Burger of the Supreme Court, who has been doing a lot of talking about the need for "judicial reform."

MILITANTS AT WOUNDED KNEE GIVE US A NEW OPPORTUNITY TO EXAMINE ANOTHER MYTH

Mr. HELMS. Mr. President, a myth is being buried at Wounded Knee, the myth of the revolutionary American Indian. Today the disruption there stands exposed for what it really is: the work of isolated, insignificant militants who are not supported by the great American Indian community.

Recently we have heard the myth that in the 1970's American Indians will assume the disreputable role played by a radical minority of American students in the 1960's.

The recent events at Wounded Knee, S. Dak., indicate that this myth is just another myth. The events at Wounded Knee indicate that only a tiny minority of American Indians will listen to appeals for radical, violent, disruptive activity. The events indicate that violent, radical Indians will wind up just as violent, radical students eventually did—rejected by and isolated from the majority of their peers.

But, unfortunately, the events at Wounded Knee indicate two other things, two very depressing things.

Unfortunately, it seems that every tiny minority of radical Indians is going to enjoy the same kind of loving media attention that radical students enjoyed just a few years ago.

Moreover, I am sorry to say that some governmental authorities are going to react to radical, violent, disruptive Indians just as many university authorities acted toward radical, violent, disruptive students. That is, the authorities are going to meet criminal activity with appeasement.

What disturbs me most about this, Mr. President, is that it is all so sadly familiar. It calls to mind the campus troubles of the last decade.

Between 1964 and 1970 the Nation's campuses were frequently disrupted by political agitation—often criminal, violent, and destructive. The disruptions had a number of professed motives and goals. But in one regard—in the most important regard—they were all the same.

In every case the disruptions involved only a tiny minority of the student pop-

ulation at the disrupted institutions. In every case the media—and television, in particular—rushed to disrupted campuses, strung their power cables, set up their lights, assembled the cameras, and hoped for the kind of action that would make a good 30-second film clip for the evening news.

And they usually got just what they were after.

Mr. President, the presence of the television media people inflamed the demonstrators' passion for publicity. And so we all got used to the ludicrous spectacle of shaggy young men and women telling a network newsman that they—the students—could not be heard in our oppressive society.

And who were these students? Invariably they were identified by the inquiring newsmen as "student leaders."

This, of course, was nonsense. Worse, it was unfair to the vast, peaceable, serious majority of American students who wanted nothing more than to get on with their studies. But the media people persisted in this business of identifying as a "leader" everyone who described himself as a "leader." The reason for this is clear: media people assume that any disturbance is justified. They assume that where there is smoke, our wicked, racist, oppressive society must have set a fire.

This thinking encourages violence; it erodes the rule of law; and it leads to the unnecessary suffering and death that inevitably results from the erosion of the rule of law.

It was 6 years from the first appeasement at Berkeley in 1964 to the deaths at Kent State University in 1970, but no serious person could have been surprised that deaths eventually were caused by the violence—appeasement—that gripped our campuses.

Now the grim drama of campus nonsense and violence is being played out at Wounded Knee. The cast is different, but the play is the same.

I do not want to judge from a distance the particular issues in dispute at Wounded Knee, other than to note this: The American Indian Movement was called in as an outside force to aid a group of local dissidents in their attempt to overthrow a duly elected Tribal Chief. The dissidents only called in the American Indian Movement after they, the dissidents, have failed four times to impeach the chief.

So the one thing that is obvious is this: The dissidents have proven—at least four times—that they are a minority. And now by their words and deeds they are proving that they are an antidemocratic minority. And whatever the issues are, what Lincoln said still is true: there is no grievance that is fit for redress by mob rule.

In the last few evenings the television news has shown us yet another crop of so-called "leaders." I have no doubt that the names of these "leaders" will soon join those of some famous student "leaders" from the past—Mario Savio, Mark Rudd, and others.

Last November a similar group of Indians—utterly disreputable, utterly unrepresentative of the great American Indian community—seized the Bureau of Indian Affairs building here in Washington. At that time, too, the authorities met criminal behavior with appeasement. The result was millions of dollars in mindless destruction at the BIA building, and the theft of valuable documents.

In addition, and make no mistake about this, another result of the appeasement in November is the situation today at Wounded Knee.

The worst thing is this. Unless appeasement ends at Wounded Knee, and ends now, we can be sure there will be worse violence in the future.

Only waste and tragedy can come from this process of accelerating violence encouraged by appeasement.

I would point out that some of the people currently involved at Wounded Knee were also involved in the destruction at the BIA building. This would seem like a fine time to arrest them and bring them to trial.

In any case, one thing is clear, the United States Government has the authority and the capability to restore order to Wounded Knee. Does it lack the will to do so? Thus far, it seems to. If, in the end, it does lack the will to govern at Wounded Knee, we can be sure that its ability to govern will be challenged elsewhere, and on a larger scale. So the time to act, and act decisively, is now.

SAFE SCHOOLS

Mr. GURNEY. Mr. President, another shocking incident of violence and disruption in our schools occurred recently—this time in the Charlotte-Mecklenburg school system in North Carolina.

This most recent example of conflict in our schools underscores again the need for an effective school crime reduction program—a program such as the Safe Schools Act which I proposed earlier this year.

On Tuesday, March 6, clashes occurred in not one but five different schools in this single district. According to news reports, at Garinger High School alone nearly 400 students were involved in the fighting.

In addition to these five schools, two others were still recovering from similar outbreaks which have happened within the past week. One of the two is closed completely and the other is operating on a modified class schedule.

All in all, it comes to a pretty grim total: Seven students hospitalized, numerous minor injuries, a dozen arrests, seven schools disrupted—two completely closed, and unestimated property damages, both public and private.

An isolated incident? Hardly. Beset as it has been for well over 3 years with school problems, Charlotte-Mecklenburg is just one of many school districts throughout the country experiencing school violence.

On February 27 of this year, a 16-year-old boy was killed and a 14-year-old girl wounded by gunshots fired by two other youths in a Richmond, Va., high school.

In the February 19 issue of Time magazine, an article entitled "Blackboard Battlegrounds: A Question of Survival" points out another bracing aspect of the school crime problem:

> An especially alarming aspect of school violence is the growing number of assaults upon teachers in many cities across the country. New York, for example, recorded 541 such attacks last year—almost double the 285 reported in 1971. Detroit averages 25 assaults on teachers every month. The result is that many teachers are afraid of their students and incapable of imposing the discipline needed for teaching.

Earlier this year I introduced S. 485, the Safe Schools Act, along with my colleague from California, Senator CRANSTON. An identical bill, H.R. 2650, has been introduced in the House by Congressman BINGHAM. At that time I explained at some length the need for such action and the purpose of this bill which is to provide Federal grants under title I, ESEA, for the establishment of school crime reduction programs.

I also stressed the point that violence and vandalism in our schools is occurring with alarming frequency and increasing severity. And I shall continue to stress this issue until we do something about it.

There is no single source of school crime. It can be any one or a combination of several problems: drugs, racial tension, peer group rivalries and pressures, or even the psychological imbalance of just one student.

Nor is it a confined problem. Although the metropolitan areas suffer most, there is no geographical restriction, no socioeconomic distinction, and no age limit where school crime is concerned. Even a surprising number of elementary schoolchildren are involved.

A growing number of parents are becoming more concerned about the safety of their child rather than what he is learning in school. Wary teachers and school officials question their own safety on the job. That shiny lunchbox in the third row could as easily contain a pistol as a peanut butter sandwich.

The point is that this whole phenomenon is not just a passing phase that will disappear like some sort of growing pain. It is a self-perpetuating scourge which must be stopped before more lives are lost, more bodies are broken, and more educational systems are destroyed and disrupted.

I believe the Safe Schools Act is a big step toward solution of these problems—a step which will encourage the mutual understanding of all those involved in school crime situations: parents, teachers, students, and the community in general. I encourage my colleagues to join with us in cosponsorship and support of the Safe Schools Act.

SIX GOVERNORS VIEW NIXON BUDGET

Mr. MUSKIE. Mr. President, last week the Subcommittee on Intergovernmental Relations heard from a bipartisan group of the Nation's Governors on the impact of the President's budget proposals on State governments. I welcomed the spirited and healthy exchange of ideas and differing viewpoints that emerged in the hearing.

The testimony of the six distinguished Governors demonstrated to me, at least, that many of them share the uncertainty and doubts many of us in Congress have voiced about the drastic cutbacks in Federal aid for social programs and the ability of State and local governments to absorb those cuts.

Because of the particular interest and importance of this testimony, I ask unanimous consent that the statements of Gov. Kenneth Curtis of Maine, Gov. Dale Bumpers of Arkansas, Gov. Jimmy Carter of Georgia, Gov. Daniel Evans of Washington, Gov. Wendell Ford of Kentucky, and Gov. Linwood Holton of Virginia be reprinted in the RECORD at this point.

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

TESTIMONY OF GOV. LINWOOD HOLTON OF VIRGINIA

We appreciate very much the opportunity to be here to discuss these matters with you.

I think this controversy should be recognized exactly for what it is, and that is, that it is a political battle between the Executive Branch of the Federal Government and the Legislative Branch of the Federal Government.

It is a very legitimate political controversy. The President has used a device, namely, impoundments, which are not novel or unique. As a matter of fact, the amount the President is impounding in the present fiscal year's budget is the lowest percentage impoundment in the last eight years.

How the President is using the device in a political battle to make the point that power and control of Federal spending should be decentralized to the states. Understandably this has evoked a massive outcry from the Congress of the United States because if you are handing it out today, why give up that opportunity? That is very simple to understand and I recognize that it is an over-simplification but this is why it has been so tough.

You recognized, yourself, Senator Muskie, how tough it was to get the General Revenue-Sharing Bill passed in the beginning and it was a simple political job. But, this President—this Administration—is seeking to give to the states a reincarnation—not of new Federalism but of the original Federalism; the way this country was established and the way it is going to have to go back if it is going to succeed economically.

If we are going to have prosperity without inflation—and goodness knows that is the problem today and that is what the President is trying to combat—he is trying to have this Congress, sir, discipline itself on the federal budget. You can have no discipline when you do not pass a single appropriations bill, adopt a budget—as every State in the Union does every year, being under Constitutional inhibitions against deficit spending which you folks are able to print money to make up the difference, but we can't.

Now in fiscal 1972, the federal government spent $231 billion. The President proposes using a device of impoundments among other divisions to hold spending this year to $250 billion. He proposes in fiscal 1974 to go to $269 billion, which is an eight percent increase. We are not in a position as Governors to talk about cuts because there will be no cuts; there will be increases. There will hopefully be a reorganization of the federal government, of the federal bureaucracy, if you please.

The President had proposed four general categories. I did this in Virginia and found it necessary to use six. I did it by the exact device that he is using now, that is, a voluntary Task Forces grouping of the agencies of the government of the State of Virginia and put voluntary chairmen in charge, just as the President proposes to put George Shultz, Earl Butz, Secretary Lynn and Secretary Weinberger in charge of the great broad areas of human resources, community development, economic affairs and natural resources.

He is attempting to replace these innumerable category grants with special revenue funds and to eliminate unsuccessful programs in favor of successful ones. I think as an example of that is Head Start with an increased funding. And I think his battle, yes his battle, to establish a reordering of these priorities is entirely in order and that the device of impoundment, not created by him, but rather by Thomas Jefferson who did it the first time, those devices are entirely legitimate devices to get the attention of the Nation and of the United States Congress to the fact that we have to control federal spending and that the best way to meet the needs of the people is to increase the utilization of the state and local governments. That is what the President proposes and he is not proposing a cut. He is proposing an eight percent increase in federal spending.

TESTIMONY OF GOV. KENNETH M. CURTIS

Senator Muskie and members of the Committee, as one of the Nation's Governors, I am extremely grateful to have this opportunity to appear before the Subcommittee on Intergovernmental Relations, and I wish to thank you and each member of the subcommittee for inviting me to testify on the impact of the administration's proposals for a new federalism, and especially his recent budget proposals.

Barely a month has passed since the President revealed his Federal budget proposals for fiscal year 1974 and his plans to reduce the FY 1973 budget by withholding funds already appropriated.

While the total picture of budget cuts, program transfers, program terminations and impounded funds is causing great confusion at the State and municipal level, the intent behind these actions is becoming quite clear. But I want to say at the outset that if the President's intent is to insist on the elimination of truly wasteful and unnecessary spending, I stand ready to support and assist him in his effort. If his intention is to find new and more efficient ways to deliver vital services to the people of this country, I enthusiastically support that effort too. But if the intent is simply to abolish a wide range of programs that, in Maine at least, have proven successful in meeting needs of the poor, the elderly, the sick and the disadvantaged, and in providing jobs, housing and education for those who won't find them without Government help, then I want to register the strongest possible protest.

Assuming for a moment the intent is to continue the current Federal commitment to these pressing needs, but in a new direction with greater dependence upon leadership at the state and municipal level, let me make the following points:

First, consideration must be given to the need for states and municipalities to plan and enact their budgets (for instance, the Maine legislature meets biennially).

Second and most important is the source of funds to finance the state budget.

In the current biennium, Maine's general fund budget is $422.5 million with an anticipated $265 million in Federal funds, for a total general revenue program of $687.5 million.

The highway budget includes $133.6 million of state money with $61.8 million anticipated in federal funds.

In total, in fiscal year 1972 and 1973, the state of Maine budgeted an anticipated $331.2 million of federal programs, in addition to $653.1 million of state funds.

So, rightfully or wrongfully, it is easy to see how dependent the states have become on federal assistance.

It is hard, indeed, to see how a transition to new methods of delivering the same level of services involving billions of dollars and millions of Americans can be managed between now and the cutoff dates that have been identified.

Therefore, the suspicion grows that the main thrust of recent administrative actions is one of cutting, rather than redirecting.

At any rate, you have invited me to give information on specifically how this new federalism would affect Maine. Because the structure of federal aid at the state level is so complex, it is always difficult to convert a federal budget into state and local-level facts.

Immediately after the budget message was released, I alerted state agencies to the urgent need to develop useable information and launched a cabinet-level effort to evaluate the President's cuts as to each federal program in Maine. I would like to give the subcommittee a preliminary summary of the results of this effort. These basic facts have emerged:

Impoundments and FY 1974 budget cuts by the President will directly strike over 80 federal programs in Maine and will indirectly affect many others.

The total loss in federal dollar aid will approach $110 million counting impoundment of $58 million in water quality funds, but not counting the total value of public facility and housing construction estimated in Maine at over $118 million.

Or multiplier effects on Maine's economy.

Or losses for years after FY 1974.

If we allow for these additional factors, the $110 million figure I have used becomes only a small fraction of the full loss to Maine. For example, last year $50 million in new housing construction, about 50 percent of total new housing starts, was under federal housing programs, yet the actual amount of federal subsidy was less than $4 million. In the Farmers Home Administration program alone, in fiscal year 1972 about $2.5 million in interest subsidy supported $25 million in housing loans for low income families.

Our State is predominately one of many small communities where Federal housing programs are the only basic means for purchasing a home.

If Maine were a prosperous State, or even if the impact of this new federalism were to be spread evenly across our population, I could be less concerned. But Maine is a State

which can hardly afford to lose revenues of any kind. Over my term of office as Governor, we have suffered chronic unemployment, currently running at 6.4 percent, continuing rural poverty, and a per capita income substantially below both the national and New England averages.

As in many other States and localities with economic problems, Federal aid has come to play an increasingly important part in providing essential public services in Maine. Total annual Federal outlays in Maine now approach $800 million, of which almost $200 million flows to State and local governments, where it is mixed in with other State revenues. So, Federal aid not only supplies a vital percentage of the cost of public services, but it also has become an inseparable part of many of these services. This means that when Federal support is cut, the whole structure of State and local governments is disrupted, and many more services and people are hurt than just those involved with the specific Federal programs.

Maine has a population of 1 million, and the minimum of $110 million we stand to lose over the next 18 months, translates mathematically into $110 for each Maine resident, or $275 for each Maine worker.

But, that is not a true picture of the way the President's economies will be felt because they are not directed evenly at the entire population. They are directed mainly at our poor, our elderly, our sick, our unemployed, our public schools and State university and our farmers. The $50 million in lost aid over and above water quality impoundments falls almost entirely in the areas of health, housing, educational and labor services to low and moderate income people as follows:

	Million
Health services	$12.0
Housing subsidies	8.5
Public education	5.6
Labor programs	3.0
Other social services	10.0
Total	40.1

Dollar figures cannot adequately convey the loss in human terms. These program cuts could eliminate over 2,000 Maine jobs, but even more important is that additional thousands of Maine people, earning low and moderate incomes, will have diminished access to health care, decent housing, good education, job training, day care and other services.

Obviously, it is nonsense to suggest that losses on this order can be made up out of Maine's new federalism general revenue sharing allotment of $31 million per year which we understand was to be helpful in holding the line on spiraling property taxes or out of our $250 million State budget without major new taxes, especially when some 65 cents of every tax dollar collected in Maine goes to the Federal Government already.

Again, let me state we have every wish to cooperate with the administration and the Congress in defining needs within our States and working together to meet them.

But, cooperation is impossible when massive changes are made in Federal programs with little or no notice or when we are left to puzzle out what is really happening to a program, while the cutoff deadline nears.

It is simply impossible to integrate State budgets and programs with appropriations and laws mandated by the Congress, if these laws can be rendered meaningless at any moment.

Senator Muskie, I know this is not the federalism Congress intended, and I want to especially thank you and your committee for your understanding and efforts in behalf of local and State governments.

STATE OF MAINE—IMPACT OF FEDERAL IMPOUNDMENTS, PROPOSED BUDGET REDUCTIONS AND TERMINATIONS—PRELIMINARY SURVEY FEBRUARY, 1973

SUMMARY

[Dollar amounts in millions]

	Fiscal year 1973	Fiscal year 1974	Number of programs
Agriculture	$0.48	$2.1	7
Economic development		2.5	8
Education	.42	5.2	20
Environmental quality	30.7	32	4
Health	2.54	9	18
Housing	1.4	7.1	11
Manpower	.45	2.5	6
Natural resources	$1	$1.5	2
Social services (OEO, Model Cities, Social Security, IV–A, etc.)	1.5	8.5	6
Transportation	5.6		1
Total	43.9	68.9	82
Value of housing construction	19.5	30	

AGRICULTURE

Program affected	Anticipated funding level, fiscal year 1973	Impact of Federal impoundments, proposed budget reductions, and terminations: Estimated dollar loss, Fiscal year 1973	Estimated dollar loss, Fiscal year 1974	Action date	Who/what is affected?
DEPARTMENT OF AGRICULTURE					
Agricultural Stabilization and Conservation Service: Rural environmental assistance	$1,200,000	[1] 300,000	[3] 1,400,000		4,000 farmers and landowners participated. Increased erosion, river pollution, underground water pollution.
Program No. 10.050: Soil water conservation Grants (50–50 match)					
Water bank program No. 10.062	[4] 15,000	[1] 15,000	[3] 15,000		30 landowners will lose $150,000 collectively over normal 10-year contract period. Waterfowl acreage eventually lost.
CCC—Oat loans	?	(5)	(5) (6)		Approximately 40 loans where interest rates have been raised from 3.5 to 6 percent.
Storage facility (Silo) loans, No. 10.056	?	[1] 100,000	[3] 100,000		Approximately 10 loans per year at $8,000 to $10,000 each.
Cooperative State research: Payments to experiment stations, No. 10.203.	900,000	54,148	[3] 170,000		Represents 20-percent reduction in Federal funds to Marine Agricultural Research Station. Cut represents about 7 percent of total budget.
Food and Nutrition Service: School milk program, No. 10.556	486,324		[3] 386,400		Expect drop from $486,324 to less than $100,000. Some 800 Maine daily farms affected.
Cooperative Extension Service, No. 10.500	1,160,000	[1] 8,900	[3] 82,800		Support of farm and domestic services.
ECONOMIC DEVELOPMENT					
New England Regional Commission, No. 48.001	[6] $7,700,000		[3] 1,000,000		Public facility construction $400,000; coastal planning $50,000; Executive staff $100,000; Bangor area—Integrated project, center projects, $375,000/jobs eliminated or affected at least 100; list of representative projects through fiscal year 1972 attached.
ECONOMIC DEVELOPMENT ADMINISTRATION					
No. 11.301–304 (business loans, public facility construction grants, planning services, and feasibility studies).	1,500,000	(7)	[3] 1,500,000		List of representatives projects through jobs; fiscal year 1972 attached eliminates or affects at least 25 jobs exclusive of construction—Lewiston industrial park application pending, in doubt.
SMALL BUSINESS ADMINISTRATION					
No. 59.001–59.012 (guaranteed and direct loans, disaster loans, displaced business loans, and local development corporation loans).	10,000,000		Unknown		

[1] Impoundment.
[2] Reduction, program continues.
[3] Program terminated as of June 30, 1973.
[4] In new 10-year contracts.
[5] Information not available.
[6] For entire New England region.
[7] Frozen as of January 1973, not accepting new applications.

NEW ENGLAND REGIONAL COMMISSION—SUMMARY OF MAINE GRANTS THROUGH FISCAL 1972

A. Supplemental grants:	
1968:	
Bangor International Airport	$425,000
1972	360,000
1969:	
Wastewater Institute	20,000
Augusta Sewage Interceptor Facility	250,000
St. Agatha Sewage System	29,340
Calais Sewage Treatment Plant	82,500
1970: Portland Ferry Terminal	200,000
1971: Northern Aroostook Regional Airport	74,800
1972: Brewer Industrial Park	60,000
Total	1,501,640
B. Demonstration projects:	
1969:	
Wastewater institute	25,000
1971	50,000
Oil import testimony	7,000
1970:	
Drug abuse councils	8,000
Aquaculture planning conference	5,000
Housing demonstration	53,000
1971:	
St. John—Aroostook R.C. & D. project	500
1972	500
Threshold to Maine R.C. & D. project	500
1972	500
Bangor Growth Center	500,000
1972	[1] 450,000
Ft. Williams Marine Research Center	16,700
1972	75,000
Greater Portland Council of Governments	4,000
GPCOG comp. code enforcement training program	14,500
Newton Municipal Airport—Jackman, Maine	8,000
1972:	
Ocean Disposal of Rubber Tires	35,000
Maine Fisheries Development Corporation	30,000
Maine State Personnel Project	4,000
School Health Curriculum Development	3,800
Title IV—A—Community Coordinated Child Care	25,542
Washington County solid waste project	11,500
Elderly health program	40,900
Operation healthmobile	44,350
Biddeford Airport	$4,000
Houlton Airport	3,000
Total	1,420,292
C. Studies:	
1967:	
State public investment plan	39,657
1968	59,657
1969	59,957
1970	51,920
1971	51,680
1969:	
Occupational skills study	25,247
Cold weather construction survey	15,000
Machiasport evaluation	10,000
Food industry—Economic analysis	8,753
1970:	
Maine coastal study	30,000
Management of thermal effluents study	10,000
Bloodworm culture study	6,000
1972	6,000
1971:	
Growth center evaluation	2,500
Maine coast natural areas inventory	30,000
1972	8,000
Coastal zone management	20,000
1972:	
State management grant	100,000
Transportation planning	70,000
Maine medical school	40,000
Maine energy policy study	24,000
State airport system plan	50,000
Total	718,371

Breakdown by type of program:	Amount (millions)	Percent
Action	$2.56	78
Planning	.54	16
Studies	.18	6
Total	3.28	100

[1] Includes $260,000 listed as Bangor International Airport supplement g rant.

EDA PROJECTS—MAINE (THROUGH FISCAL YEAR 1972)

[In thousands]

Project	Obligated	Planning	Technical assistance	Public works	Business loans	Working capital
Pride Inc., Brewer	June 1969	57				
	June 1970	28				
	December 1970	53				
	December 1971	53				
Eastern Fine Paper Corp.:						
Brewer—Feasibility study	September 1969		2			
Water conservation	do					270
Life Sciences Park study	October 1972		48			
Woodchip study	March 1972		30			
Lincoln Pulp-Paper Co	March 1971				2,000	
Town of Milbridge commercial pier	May 1971			114		
North Regional Airport—Frenchville:						
Construction/airport	March 1971			369		
Terminal building	October 1972			114		
NM Regional Planning Commission	June 1969	34				
	June 1970	32				
	June 1971	30				
	June 1972	30				
	June 1972	10				
Maine Sugar Industry (OBD study)	May 1969		4			
	June 1969		137			
	January 1969		39			
	December 1969		10			
Saco Valley Industrial Development Corp.: Manufacturing shock absorbers	December 1970				3,544	
Lubec-Milbridge: Boat landing and facilities	October 1969			184		
Jonesport: Public landing and boat facilities	June 1970			455		
Passamaquoddy Reservoir:						
Sewer collection treatment-water district	November 1970			436		
Study—Resources	June 1970		13			
Feasibility—Estimate house: Prefabrication plant—Washington County	February 1969		15			
Eastport Memorial Hospital: Elevator—alter	December 1971			110		
Eastport—3-site study: Industrial park	June 1970		3			
Lubec—Feasibility commerical pier	January 1972		1			
Sewer system—Greenville	June 1972			661		
				205		
North Penobscot Pulpwood, Lincoln, supplier of pulpwood	June 1969				145	
Bangor International Airport—Arrival building	June 1972			360		
Feasibility study	June 1969		9			
City of Brewer: 80-acre/Industrial park	August 1969			388		
Mattawaumkeag Wilderness Park	February 1972			367		
City of Bangor: Industrial—Sanitary sewer	June 1971			77		
Chapman Precision Product, Bangor—Machine parts	March 1969				300	
U of M aeronautical education program	January 1969		3			

EDUCATION

Program affected	Anticipated funding level fiscal year 1973	Impact of Federal impoundments, proposed budget reductions, and terminations: Estimated dollar loss Fiscal year 1973	Estimated dollar loss Fiscal year 1974	Action date	Who/what is affected?
UNIVERSITY OF MAINE					
1. Nursing education programs at UMA and UMPG	$222,412		[1] 222,142		Undergraduate nursing program; Faculty and students will be discharged and/or turned away fiscal year 1974. Baccalaureate degree program for nursing will also be curtailed by discharge of faculty and turning away of students in fiscal year 1974.
2. Social welfare program—UMPG	69,500		[2] 40,000		More than 100 students now enrolled would be affected. Termination June 30, 1974.
3. Allied health programs:					
(a) Medical technology	35,000		[1] 35,000		Technological and dietetics programs at UMO.
(b) Health care administration			[1] 80,000		To fund a proposed associate degree program.
(c) Dental hygiene			[1] 74,000		To fund the initiation of a long planned program at UMB starting fiscal year 1974.
(d) New proposals			[1] 150,000		Submission of new project proposals for UMB, UMA, and UMPG.
4. Land-grant university programs	200,000	[3] 200,000	[1] 200,000		Basic support funds since the 1930's for research, teaching, and public service objectives. Bankhead-Jones terminated.
5. Higher Education Act of 1965 (programs to be terminated):					
(a) Title I	100,000	[3] 20,000	[1] 100,000		Community Service and continuing education program—UMO.
(b) Title II	7,272		[1] 7,272		College library programs.
(c) Title VI	53,000		[1] 53,000		Undergraduate instructional equipment.
(d) Title VII	300,000		[1] 264,000		Construction of academic facilities.
			[4] 36,000		Higher Education Facilities Act and 1202 Commission.
Interest subsidy	400,000		[1] 250,000		Loss of 3 percent interest subsidy on construction on new loans—estimated at $250,000 annually.
6. Other programs:					
National Science Foundation:					
Institutional grant	27,500		[3] 13,500		Research assistant at UMO.
Graduate traineeship	11,750		[1] 11,750		UMO.
Polar research program	24,000	[3] 24,000	[1] 24,000		UMO scientific assistance.
National Institute of Mental Health	96,000		[1] 96,000		Mental health support grant.
National Institute of Health	25,000		[1] 25,000		Full professor in zoology terminated.
DEPARTMENT OF EDUCATION					
Elementary/Secondary Education Act (ESEA):					
ESEA title I—Programs for disadvantaged children	150,000		[1] 150,000		Eliminates 11 administrative people who approve, monitor, and evaluate programs involving $6,500,000 allocated to local school systems involving approximately 80,000 students.
ESEA title II—Provides books for school libraries	432,000		[1] 432,000		Eliminates 2 administrative people who procure and account for $382,000 in materials purchased to upgrade some 950 school libraries.
ESEA title V—Strengthens State departments of education	443,000		[1] 443,000		Eliminates 30 specialists filling positions specifically designed to originate, implement, monitor, alter, and modify techniques and procedures which will improve educational services at all levels.
Public library services	930,000		[1] 930,000		Eliminates 29 full-time and 10 part-time employees who administer, supervise, and evaluate services to public libraries and who provide program services to public school children.
Aid to impacted areas—Public Law 874	3,500,000	([5])	[3] 1,400,500		Reduction starts July 1, 1973. Eliminates funding for students who live off Federal property. Subsidy represented ½ regular offbase per student education cost in that local area.
Neighborhood Youth Corps, No. 17.222	2,000,000	[3] 200,000	[1] 200,000	June 30, 1973	Presently 840 enrollees working in 113 local projects. Work time cut from 15 weeks each to 5 weeks. Local project directors no longer receiving pay. Summer program enrolls 3,800 students in jobs. Program terminating.
ENVIRONMENTAL QUALITY					
DEPARTMENT OF ENVIRONMENTAL PROTECTION					
Construction grants for sewage treatment plants, No. 66.400	$48,300,000	[3] 29,000,000	[3] 29,000,000		44 municipl sewage projects required by state law to be under construction by Oct. 1, 1973 will not be started. Major population centers of Portland and Bangor are affected. Total construction work will be $64,500,000 instead of $142,400,000 under full funding, or a loss of $77,900,000 in construction work.
Water resources research, No. 15.951	140,000	[3] 40,000	[3] 40,000		Loss or research funds to water resources center, UMO.
FARMERS HOME ADMINISTRATION					
Municipal water system grants, No. 10.418	1,000,000	[3] [6] 490,000	[4] 1,000,000		Sewer grant applications for 26 communities rejected.
HUD water and sewer grants, No. 14.301	2,000,000	[6] 1,200,000	[4] 2,000,000		Funded 1 project in fiscal year 1973 before moratorium (Bangor $750,000) and 6 applications were pending including 1 from Old Orchard Beach for $1,253,000 which would have qualified for funding. Others—Lewiston $89,500, Lisbon $46,500, Auburn $750,000 Waterville $366,500—might have qualified. In fiscal year 1972 funded 3 projects for total of $1,180,000.
HEALTH					
Regional medical programs, No. 13.249	$2,000,000	[3] 1,200,000	[1] 2,000,000		33 activities contribute to the financial support of: 100 allied health personnel; 109 nurses; 109 physicians. Improvement in health care delivery, 1972: 2,316 health providers received training to improve their skills affecting 592,000 Maine residents. 596 new types of health personnel have been trained affecting 342,000 Maine residents. 400 rural low-income children in York County have received medical care for the 1st time. 900 nurses and 350 physicians have been trained in coronary care affecting 48 Maine hospitals. Health care system for Stonington and adjacent area affecting 4,000 people. Note: These figures include loss of approximately $628,000 in specific projects for the University of Maine.

Footnotes at end of tables.

Program affected	Anticipated funding level fiscal year 1973	Impact of Federal impoundments, proposed budget reductions, and terminations: Estimated dollar loss Fiscal year 1973	Estimated dollar loss Fiscal year 1974	Action date	Who/what is affected?
DEPARTMENT OF HEALTH AND WELFARE					
Health facilities construction program (Hill-Burton hospital construction), No. 13.220.	$5,000,000	----------	[7] 5,000,000		[1] Approximately 25 percent of population currently served by outmoded or poorly distributed hospital beds—primarily rural areas.
Emergency medical services program, No. 13.249	200,000	----------	165,000		[2] Moneys may be in another part of Federal budget but, if so, no one (including Washington) knows where. If out training programs for about 5,000 emergency health service personnel will be curtailed.
Family planning programs, No. 13.217 (see No. 49.006 also)	600,000	----------	300,000		[3] The $300,000 loss is a probable net loss of service moneys due to HEW being required to assume costs of family planning programs previously funded through OEO without appropriate increase in HEW funding. Approximately 10,000 women are potentially affected.
Venereal disease control, No. 13.205	126,000	----------	18,000		[2] Approximately 1,000 persons at risk of getting VD (estimate).
Immunization program, No. 13.268	130,000	----------	18,000		[3] Approximately 10,000 children needing immunization (estimate).
COMMUNITY MENTAL HEALTH CENTERS, NO. 13.240					
Bath-Brunswick Mental Health Center: Community mental health staffing program.	0	[3] 400,621	[3] 400,621	----------	Inpatient, outpatient care, mental health education, and consultation. This 8-year grant would have totaled $2,749,831 services for Bath-Brunswick area.
Mid-coast mental health center: Community mental health staffing program.	0	[3] 404,673	[3] 404,637	----------	Inpatient, outpatient care, mental health education, and consultation for Rockland area. This 8-year grant would have totaled $2,787,470.
Augusta State Hospital: Hospital improvement project	0	[3] 94,264	[4]	----------	Academic program for young patients whose education was interrupted by mental illness. Program was approved then cut before implementation.
13.746 Rehabilitation Services—Basic support	2,719,500	[3] 374,300	[3] 374,300	----------	General restructuring and improvement of all bureau services and programs. Costs would include evaluation of effectiveness, efficiency, and productivity. Additional direct service support to various subprograms will also be affected.
	----------	0	[3] 368,000	----------	Approximately 1,000 disabled people will be denied service under the ongoing basic rehabilitation service program.
					New projects planned—Now dead
	----------	0	----------		Renovation and expansion of a facility which provides rehabilitative programs for blind and visually handicapped people will not take place. This facility serves 100 people per year. $65,500.
	----------	0	----------		A facility at a major medical center which would provide rehabilitation services to severely disabled people will not be established. 60 people per year will be affected. $169,500.
	----------	0	----------		A unit which would rehabilitate deaf people will not be established. Approximately 100 people per year will be affected. $128,200.
	----------	0	----------		2 units to rehabilitate handicapped youth will not be established. These units would serve approximately 200 handicapped youth per year.
	----------	0	----------		2 rehabilitation units in the State hospitals will not be established. These units would serve approximately 200 mentally ill people per year. $120,000.
	----------	0	----------		Expansion of the CORE rehabilitation program will not take place. Approximately 2,000 physically and mentally handicapped people will not receive rehabilitation services. $736,000.
63 Rehabilitation Services—Special projects	101,800	[1] 30,430	[1] 39,700	----------	A master's degree training program will not be established. Rehabilitation manpower will not receive intensive academic training and will, therefore, not be as effective or efficient as could be. The flow of trained manpower will be curtailed. In-service and academic training will be cut in half. Workshops, seminars, academic course work, staff upgrading, and publications will weaken the effectiveness of rehabilitation workers.
	----------	[3] 7,500	[3] 16,000	----------	The existing project to rehabilitate public assistance recipients will have to cut service. The cost of goods and services rising without funds to accommodate them will cut services to approximately 60 people.
	----------	0	----------		2 project programs designed to rehabilitate public assistance recipients into employment will not be established. Approximately 800 disabled people will not receive rehabilitation services. $320,000.
	----------	0	----------		Planning and coordination of services to the spinal cord injured and wheelchair confined will not be developed. Indirectly, approximately 500 such people will be affected. $27,000.
HOUSING					
MAINE HOUSING AUTHORITY					
Interest subsidy—Homes for lower income families, No. 14.105 (sec. 235, HUD).	$845,000	[3] 600,000	[3] 845,000	[1] July 1, 1974	Expect over 900 new mortgages to be refused. This money subsidizes the interest portion of home mortgage payments—the amount of subsidy depending on mortgagee's income. Outstanding mortgages not affected. (Contract is between bank and individual.) (Bank then received interest subsidy from Federal Government—HUD).
Interest reduction payments—Rentals and cooperative housing for lower income families, No. 14.103 (sec. 236, HUD).	375,000	[3] 250,000	[3] 375,000	----do [1]	Prohibit construction of 400 apartment units. This money subsidizes interest payments to the developer. Current mortgages not affected. Contract is between sponsor and bank while subsidy is from Federal Government.
Public housing—Acquisition (with or without rehabilitation and construction, No. 14.146–147 HUD); conventional bid, turnkey, acquisition.	[5]	[3] 10,000,000	[1][3] 14,000,000	----do [1]	Includes direct grants for new construction or rehabilitation Would eliminate construction of 600 apartment units per year
Leased public housing—HUD, No. 14.148 (sec. 23)	[5] ----------	----------	[5][1]	----do [1]	Prompt action by HUD (Manchester) saved 320 new units, fiscal year 1973 representing full expected allotment.
Urban renewal—HUD No. 14.307	Modest	----------	[1] Unknown	July 1, 1974	There are 16 projects in Maine. All have received their basic grants but chance for supplemental funds lost.
HUD "NDP" program, No. 14.306	2,300,000	400,000	1,900,000	----do	A multi-year program, just underway. 4 Maine projects: Lewiston, Portland, Bangor, Waterville. Will be wound up by July 1, 1974.

Footnotes at end of tables.

HOUSING—Continued

Program affected	Anticipated funding level fiscal year 1973	Impact of Federal impoundments, proposed budget reductions, and terminations: Estimated dollar loss Fiscal year 1973	Estimated dollar loss Fiscal year 1974	Action date	Who/what is affected?
Code enforcement grants, No. 14.309	$821,000	821,000	[1] 821,000	[1] 1974	Project grants for rehabilitation of private homes. Administered by municipal agencies.
Housing rehabilitation grants, No. 14.308	428,000	0	[1] 428,000	[1] 1974	Grants and loans for rehabilitation of private homes. Administered by the urban renewal agencies. Note: Of the 6,169 housing starts in 1972, 3,164 were subsidized. Estimate housing starts to reduce to 3,000 for 1973 as result of Federal change in support. Present funding levels are based on 1972 expenditures.
FARMERS HOME ADMINISTRATION					
Housing loans for low-and moderate-income families in small communities, No. 10.410.	([10])	([11])	([12])([1])		Puts program out of reach of many low-income families by terminating low-interest availability as of January 1973. About 1,200 families would have used low interest feature in fiscal year 1973 for home purchases. About 50 percent of FMHA loan volume is new construction. About 70 percent of loan volume is with interest subsidy for low-income borrowers.
Emergency loans, No. 10.404		([5])	([5])([2])		The $5,000 forgiveness clause has been eliminated. Interest rate boosted from 1 to 5 percent.
Open space: HUD, No. 14.303; Grants for land acquisition and development.	500,000	[6] 150,000	[13] 200,000	July 1, 1974 [1]	5 Maine communities urban improvement—parks, etc.
Neighborhood facilities: HUD, No. 14.302; Construction grants for community centers of various kinds.	1,000,000		[13] 500,000	do [1]	4 Maine communities.
MANPOWER					
DEPARTMENT OF MANPOWER AFFAIRS					
MDTA institutional training, No. 17.215	$981,000	173,000	([7])		Disadvantaged unskilled individuals needing skill training. Approximately 300 program participants affected for fiscal year 1973. Potential fiscal year 1974 effect unknown.
Unemployment insurance—Grants to States contingency funds, No. 17.225.	56,000	42,000	([8])		May require redirection of staff within department from support functions and services to payment effort for unemployment insurance claimant. Note: Funding levels for fiscal year 1974 are not known at present pending approval of budget for fiscal year 1974. All manpower training moneys are in question at present for jobs optional (JOP), MDTA, JOBS—NABS.
Indian mainstream projects, 3 projects $15,000 each, No. 17.223		45,000			Number of individuals affected not known.
Employment service, No. 17.207			([9])		Potential staff reductions. If actual will result in decrease in support services in areas other than direct applicant/employee services and placement functions.
Public employment program, No. 17.229 (also called EEA)	4,580,000	0	2,500,000	[1] 1974	Actual funding in fiscal year 1973 represented a rate of 25 percent less than fiscal year 1972. Complete phaseout during 1974. Jobs established in fiscal year 1972 equals 1,511: 25 percent reduction in fiscal year 1973 equals 444; to be phased out in fiscal year 1973–74 equals 1,067.
Concentration employment program, new careers	2,057,000	[3] 206,000			Reduction of 30 jobs and 115 training slots for Maine CEP. Curtailment of new careers and elimination of Mainstream.
NATURAL RESOURCES					
Forest fire prevention grants, No. 10.650	$500,000	[2] [3] 104,000	[3] 104,000		These forest fire prevention costs must be covered by State funds
Outdoor recreation—Land acquisition and development, No. 15.400.	2,000,000		[3] 1,500,000		Cuts in State capability to increase public recreational opportunities
SOCIAL SERVICES					
CITY OF PORTLAND					
Community development, Model Cities, No. 14.300	$1,800,000	None	1,200,000	June 30, 1974 [4]	13,000 people in Portland benefit directly or indirectly from services delivered to "inner city" section where bulk of low-income residents live. 450 persons are employed to operate about 35 services. The Model Cities grant generates additional $3,800,000 in matching funds or private donations to these programs for total annual impact of $5,600,000 spent for people needs. $1,700,000 of the generated money comes from private sources that have become ineligible under new HEW. FR guidelines published Feb. 16, 1973.
CITY OF LEWISTON [14]					
Community development, Model Cities, No. 14.300	2,000,000	None	1,400,000	June 30, 1974 [4]	14,000 people live in Lewiston and benefit directly or indirectly from services to lower income neighborhoods. 300 people are employed to operate 28 services. The Model Cities grant generated an additional $1,300,000 in matching funds or private donations to these programs for total annual impact of $3,300,000 spent on people needs. There is no special breakdown on private contributions. Note: Services include: 1. Child care; 2. Food and services to elderly; 3. Recreation programs and facilities; 4. Education for special students and new facilities; 5. Law enforcement aides; 6. Housing services.
SOCIAL SECURITY					
IV–A 16 and related services, Nos. 13.748, 13.758, 13.761 (day-care, and other social services to aged, blind, disabled, AFDC (past, potential, present)).	12,000,000	[2] [3] 1,500,000	[2] [3] 3,400,000	Mar. 1, 1973	Services will be terminated or reduced to 39,000 people in the last quarter of fiscal year 1973 and an additional 34,000 during fiscal year 1974. Reductions will be caused pursuant to new regulations which eliminate groups from eligibility who previously were eligible.

Impact of Federal impoundments, proposed budget reductions, and terminations

Program affected	Anticipated funding level fiscal year 1973	Estimated dollar loss Fiscal year 1973	Estimated dollar loss Fiscal year 1974	Action date	Who/what is affected?
OFFICE OF ECONOMIC OPPORTUNITY					
Community Action agencies	$2,334,000	----------	[4] 2,334.000	----------	Community Action agencies are the major social service and delivery system serving rural Maine and Maine low-income people. Through Community Action agencies efforts, additional funds both Federal and non-OEO and State and local moneys have been mobilized. (Result in approximately $5,000,000+ additional dollars.) This total program effort is dependent on the existence of Community Action agencies. If the agencies are eliminated then the following programs will be eliminated: 1. Community Outreach—Provide information and referral services and crisis support to approximately 150,000 people. 2. Childrens services—(Headstart)—Provide educational, health and other support to approximately 2,700 low-income children. 3. Community health services—Provides various kinds of services including dental, immunization clinics for children, lead poisoning screenings and transportation to clinics for approximately 8,500 people. 4. Economic development—has created opportunities for supplementary income for Maine citizens particularly senior citizens and rural both serving approximately 1,900 people. 5. Family planning services—Serving approximately 12,000 women. 6. Housing services—Includes house outreach, location of emergency housing, house counseling, home rehabilitation programs and house construction. Serving approximately 3,000 families. 7. Job placement and job counseling services—Presently serving approximately 1,000 people. 8. Nutritional programs—Provides educational and administrative support for donated food programs. Affecting approximately 64,000 people. 9. Senior citizen programs—Provides such services as hot meals, recreation outreach, part-time employment affecting approximately 20,000 senior citizens. 10. Youth programs—Provides for various youth activities and job programs for youths. Serving approximately 500 people. In addition, Community Action agencies generate a total annual payroll of $4,500,000 employing approximately 1,000 people of which 60 percent are from the low-income sector. The State OEO Offices which provide technical assistance for the functions is terminated as of June 30, 1973.
Pine Tree legal services	506, 000	----------	Unknown	----------	Same level proposed by new legal corporation but continued 6 months at a time.
Health service demonstration project: Rural Health Associates, Farmington, Maine, Franklin County.	1, 000, 000	----------	Unknown	Unknown	Grant pending to HSMS, Department of Health, Education, and Welfare. ($1,008,000). If grant not funded—800 low-income families, 600 low-income single persons will lose all medical benefits (since package includes all needed inpatient and outpatient health services. Additional 600 families, 80 single persons will lose partial benefits. (These needed medical services not offered in the Government package in medicaid programs under which they are covered.)
Penbay Medical Center, Rockport, Maine	912, 000	----------	Unknown	Unknown	Grant pending to HSMS, Department of Health, Education, and Welfare, for $1,037,000. If not funded, 4,000 persons will lose all medical benefits offered in the grant-transfer to RHS services package—additional 1,500 persons will lose partial benefits.
TRANSPORTATION					
DEPARTMENT OF TRANSPORTATION					
Federal aid highway program, No. 20.205	$26, 600, 000	[3] 5, 600, 000	*Unknown	----------	*1973 Federal aid highway program currently pending congressional action. Federal funds are currently being withheld from the Maine Department of Transportation in the amount of approximately $5,600,000. This represents the difference between the 1973 apportionments of Federal funds made to the State of Maine, and the obligational authority established by the Secretary of Transportation. The continuing uncertainty of the availability of Federal funds creates considerable difficulty in providing effective scheduling of proposed projects.

[1] Program terminated as of June 30, 1973.
[2] Reduction, program continues.
[3] Impoundment.
[4] T above and proposed for special revenue sharing.
[5] Information not available.
[6] Frozen as of Jan. 1973.
[7] Federal funds.
[8] $14,000,000 total amount activity, including construction, subsidy, new commitments.
[9] $3,000,000 in new construction, $720,000 in subsidy.
[10] $50,000,000 total loans.
[11] $7,000,000 in subsidized loans, $3,500,000 in construction, $400,000 in interest subsidy.
[12] $30,000,000 in subsidized loans, $15,000,000 in construction, $2,500,000 in interest subsidy.
[13] Minimum.
[14] The Model Cities program ends 12 months sooner than Federal Government had promised. Thus, city loses $2,000,000 it had planned for fiscal year 1975.

STATEMENT OF GOV. DALE BUMPERS

I would like to preface my remarks by stating that never during my tenure as Governor, have I found it so difficult to plan and budget to meet the needs of my state. Twenty-three point three percent or $192,657,372 of $826,092,843 of the budget funds which were expended by the various state agencies during the last fiscal year were federal in character. (This doesn't include funds spent for Higher Education or by LEAA.) The ambiguity and uncertainty we face while trying to work with the federal government during this time of change, increases daily in terms of new impoundments, changes in impoundments, new eligibility guidelines, anticipated guideline changes, proposed budgets, proposed budget cuts, and the continued uncertainty of what funding priorities at the federal level will even remotely fit the needs of Arkansas. I know other states face similar situations, but with roughly one quarter of our state's revenue coming from federal sources, we need answers now.

The departments of state government report effective executive impoundments of $84.8 million in programs which either flow through their department or are related to the work performed by the particular depart-

ment. (See attached material on impoundments.)

The potential impact of the President's proposed budget is even more alarming. Current figures show a potential loss reported by the various agencies of state government of $77.3 million, while the figures are changing, the implications are clear: Social and human service programs, and rural development programs are being cut.

On the other hand, the President's budget promises greater initiative at the local level, less restrictive guidelines and great economics in administration. I champion these goals. The basic problem is the apparent federal priorities for spending do not correspond with our needs. And rather than meeting our goals, we find ourselves in a state of crisis.

For too long we have had overlapping federally funded programs through various agencies of state and local government. There is little coordination between them; the result is often a limited impact on the recognized need or problem. This only leads to the general public perceiving a waste of their tax dollar and a sense of frustration by program participants or recipients because the problem remains unsolved. I feel that new federal initiatives with proper development, can achieve the goal of more effectively and efficiently meeting our needs. To achieve this goal all levels of government must understand and concur in developing national priorities. Also, if we are to shift responsibility to the local level we must also develop the administrative ability to meet these responsibilities.

It is my conviction that the funding priorities of this administration's budget are inconsistent with the needs of our country; much less Arkansas. I can recognize that some federal domestic programs that proved unsatisfactory or inappropriate must be curtailed or eliminated. But, the priorities developed for making these cuts must be carefully established to make certain that the human needs of people are recognized.

The immediate application of restrictive guidelines and impoundments of federal funds leaves us unable to continue worthy programs. While Special Revenue Sharing may provide future relief, we are in an immediate crisis.

The facts are that at least 75% of Arkansas' existing social service programs are either closing their doors, or are in the midst of a financial crisis.

An example is community mental retardation centers. Less than 18 months ago we had 20 such centers caring for 400 children. Now we have 82 centers caring for just under 2000 children. We may have to close virtually every one of the new centers started in the past year and a half. This situation has developed because the new federal guidelines completely alter the philosophy and character of the program. These guidelines are the result of limitations placed on Title IV–A funds and prohibitions on the use of private funds for matching purposes. Such restrictions in guidelines certainly do not comply with the "spirit" of making local government and local people more responsive and responsible to local needs.

The key to all our problems with the Social Services regulations relates to a narrow categorical grant program philosophy. The "targeting" or providing specific services for a narrowly defined categorical group to accomplish limited objections is unworkable in a state that is made up of very small cities, towns and rural hamlets.

It is not logical to provide limited services to blind children who are welfare recipients when there are no services available for the other 90% of our blind children. Individuals are never encompassed by a single need category such as a welfare mother or a physically handicapped individual.

The irony is that the Social Services under Title IV–A and XVI were reasonably flexible and responsive to both individual and community needs. We responded to the federal offer, and now the contract is being broken. Is it to be the same with the next program that comes along? New programs are discarded before they have the opportunity to show success or failure.

General Revenue Sharing does not provide relief. In Arkansas' Department of Social and Rehabilitative Services alone, losses of federal support will equal half of the state's general revenue sharing funds. The losses include 1.5 million for Mental Health (IV–A, XVI, XIX), 5.5 million for Mental Retardation (IV–A, XVI, XIX, ESEA I), 1.6 million for Juvenile Services.

While these amounts may sound small to those who think in billions, they are highly significant percentages of Arkansas' total programs.

Our Juvenile Services program is a good example of how various policies eliminated support for a good program.

The Juvenile Services Budget for FY 1973 included 30% federal support from Title IV–A of the Social Security Act, 15% from Title I of the ESEA, and 3% from vocational education funds. Each source has been eliminated with different methods. Title IV–A has excluded all of our programs for delinquent, dependent and neglected youth by restrictive guidelines. The support for education has simply been phased out by Executive Action. Future promises of special revenue sharing do not help us fund critical programs which have already been cut back. It is bad business and bad economics to shut down critical programs with no provision for a transition to new funding methods. We cannot plan for the future on the basis of a federal program that *may* pass.

Arkansas has been spending a significant portion of the total State budget in providing an outstanding institutional program for the retarded. Retarded persons are not "warehoused" in Arkansas. Each individual has a program that moves toward return to the community and toward independence. This program budget for 1973 included $5,466,000 federal funds out of a total budget of over $17,000,000. Most of the federal funds were from Titles IV, XVI, and XIX (ICF) and approximately $800,000 from Title I, ESEA, and other grants.

Under new guidelines for these programs our most optimistic estimate is $1,000,000 and it could run as low as $300,000.

We have been advised that we would realize substantial benefits due to HR1 and the Federal Government's take over of payments for the aged, blind and disabled. This is not only no help at all to us in FY 1973 but will cost us an additional $10,000,000.

In the area of Health Care, I heartily agree with the President's goal of providing adequate primary health services to all of our citizens. Arkansas' need for more family physicians is acute. There are areas in Arkansas that have only one physician in an entire county. We recently prepared a plan for submission to the State Legislature that addresses itself to meeting this need. Included in the plan was a dramatic expansion of the University Medical Center increasing its emphasis on family practice and expanding services and facilities to increase our student enrollment about 50%. We anticipated a $30,000,000 expansion with $18,000,000 from state and the balance from federal funds. We are now told there will be no federal funds. It is paradoxical that the Administration's budget places a priority on primary health care, yet eliminates funding for expansion of medical school services and capital improvements.

An additional problem is the Administration's announced intent to mandate manpower revenue sharing. Arkansas will lose approximately 26% of its federal funding for Manpower Training. Current inventory indicates that over 21,000 people in Arkansas are receiving training or employment from these programs. Legislation is needed calling for adequate funding while incorporating the funding with an option for public service employment. In rural states, this option is a very valuable tool which provides employment in areas where the economy is lagging.

I am concerned about the future of programs which encourage rural development. Since its inception in 1965 EDA has spent $55,680,602 on 228 projects in Arkansas. This has accounted for approximately 29,000 new jobs. These funds were often the critical difference in small rural communities as to whether they lived or died. The same applies to the water and sewer loan and grant program of the Farmers Home Administration and to the Title V Regional Commissions (Ozarks). Project funds spent by the Ozarks Regional Commission in Arkansas since 1968 total only $11,065,092 but have accounted for 4,545 jobs, 2,065 students enrolled in continuing programs, and a total federal impact of $24,249,489 within the state. These funds are the most useful of all because of the fact that plans for overall development are conceived locally and decisions for spending are made locally. The Title V Commissions in my opinion offer a pure form of revenue sharing (within the framework of an overall development plan). In addition they offer the capacity to deal with problems on a regional basis. These programs should be continued until a suitable alternative is provided.

There is a universal desire to eliminate waste, eliminate ineffective programs and avoid a tax increase, but while alternative programs are being developed, we should not dismantle or cripple worthwhile programs. State and local governments should be assisted in expanding their administrative capacity so that we can responsibly meet new challenges. It makes no sense to trim programs designed to improve local government or loan federal officials to local government, while at the same time piling additional responsibilities upon local government.

We need a federal approach which will permit the states to assume greater responsibility for comprehensive program development as opposed to the narrow categorical approach. Detailed eligibility requirements for many categorical programs create red tape, excessive administrative overhead, massive federal bureaucracy, and a nearly impossible problem in coordinating and integrating programs.

Historically, city and county officials have not thought in terms of human services, but in terms of roads, parks, streets, police protection, fire protection, etc. Unless broad funding categories are defined at the federal level, priorities will be out of balance at the local level.

Between the present abused and unworkable restrictive program and open revenue sharing, there is a responsible and well balanced approach for Congress.

Congress should not respond legislatively to the categorical problems of individuals which are infinite in their variety, but to the much broader categorical needs of states and communities. We, as a State, need funds for human services and economic development. How we organize them and who we include should be the state's prerogative.

APPENDIX

The following tables represent a partial analysis of the impact of the President's proposed budget and impoundments on the various Departments of the State of Arkansas. While the figures are constantly changing, the implications are obvious as the priorities and categories where reductions occur are analyzed:

POLLUTION CONTROL AND ECOLOGY—BUDGET

Program	Fiscal year 1973 (national)	Fiscal year 1974 (national)	Percent change
1. Sec. 106(a), grants for pollution control programs	$60,000,000	$75,000,000	+25
2. Title II, treatment works grants	5,000,000,000	6,000,000,000	+20

POLLUTION CONTROL AND ECOLOGY—IMPOUNDMENTS, FISCAL YEAR 1973

Programs	State share authorized	State share released	Loss
1. Sec. 106(a), grants for pollution control programs	$600,000	$228,200	—$371,800
2. Title II, treatment works grants	17,500,000	7,000,000	—10,500

EDUCATION—BUDGET

	1973	1974	Percent change
1. Title I, ESEA:			
(a) Aid to LEA's children of low income families	$20,852,899	(1)	
(b) Aid to State agencies:			
(1) Handicapped:			
(a) School for blind	61,049	[1] $47,043	—22
(b) School for deaf	109,681	[1] 89,301	—18
(c) State hospital	17,590	[1] 14,600	—12
(d) Department of Mental Retardation	479,770	[1] 379,599	—25
(e) University medical center	1,918	[1] 1,400	—26
(f) Department of Social and Rehabilitation Services	66,568	[1] 47,870	—29
(g) Easter Seal	14,486	[1] 10,638	—28
(2) Juvenile services	202,807	[1] 169,364	—16
(c) Special grants for urban and rural schools	555,693	(1)	
(d) Aid to LEA's children of migratory agricultural workers	553,837	(1)	
(e) State administration	225,000	(1)	
2. Title II, ESEA:			
(a) Aid to school libraries	757,949	0	100
(b) State administration	50,000	0	100
3. Title III, ESEA:			
(a) State programs	1,134,158	1,134,158	0
(b) State administration	150,000	150,000	0
4. Follow through (EOA):			
(a) State technical assistance	42,176	41,000	—2
(b) Planning grant	50,000		
5. Migrant student record transfer section	1,818,542	1,855,270	
6. Title V, ESEA:			
Pt. A (strengthening State departments of education)	427,024	0	100
Pt. C (planning and evaluation)	48,000	0	100
7. Title VI, ESEA, education for the handicapped:			
(a) State grant program	372,783	[1] 372,783	0
(b) Special education and manpower development, pt. D, secs. 631 and 632	87,787	87,787	100
8. NDEA, title III:			
(a) Equipment and minor remodeling (LEA's)	0	0	100
(b) State administrative costs	[2] 13,815	0	100
9. Grants to public libraries	426,333	0	100
10. EPDA State grants, pt. 2		0	100
11. EPDA pt. D, career opportunity programs	10,000	11,000	
12. Vocational education	[3] 5,267,109	(4)	
13. Adult education	785,866	[1] 785,866	
14. Manpower Development and Training Act	1,988,165	2,265,199	+12
15. Approving agency for veterans	114,172	137,859	+16
16. Civil defense, adult education	48,972	51,323	+5
17. School for the blind:			
(a) Title 1, ESEA assistance	61,049	[5] 47,043	—22
(b) Vocational education assistance	10,361	[6] 10,325	
(c) Deaf-blind centers, EHA pt. C	29,527	56,218	+48
18. School for the deaf:			
(a) Title 1, ESEA assistance	109,681	[5] 89,301	—18
(b) Vocational education assistance	90,000	[6] 100,000	+10
Total	35,046,602	5,689,748	[7] —80

[1] ERS.
[2] For 1st 3 quarters, fiscal year 1973.
[3] Total based on annual allotment in line with amounts provided through continuing resolution or 1st 3 quarters already received. Of the amount, it is anticipated that $1,924,442 will be applied o expenditures at the 14 postsecondary vocational-technical schools (GHF and FVT funds).
[4] ERS. This is based on information available from the National Council of Chief State School Officers Feb. 10, 1973. It reflects the President's recommendation and assumes that ERS will allot funds to States on basis of previous vocational education formula (this may not be a valid assumption).
[5] As estimated by Title I Administrator in Department of Education. Not available.
[6] Included in Item 12—Part A for Vocational Education. $30,000,000 loss.
[7] Approximate.

EDUCATION—IMPOUNDMENTS

Programs	Fiscal year 1973 State share approximate	Fiscal year 1973 State share released	Loss
1. Library commission:			
(a) Library service (title I)	$535,902	$381,344	$154,558
(b) Construction (title II)	139,336	0	139,366
2. Vocational, technical and adult education			49,522

[1] Due to freeze on hiring, enrollments, etc.

DEPARTMENT OF FINANCE AND ADMINISTRATION—BUDGET

Program	Fiscal year 1973 (in Arkansas)	Fiscal year 1974 (in Arkansas)	Percent change
EEA [1]	$6,101,900	0	—100

[1] This includes funds for the Governor's office only. For complete funds see Manpower.

FINANCE AND ADMINISTRATION—IMPOUNDMENTS

Program	State share authorized	State share released	Loss
EEA	$6,101,900	$5,667,978	$433,978

MANPOWER—BUDGET

Program	Fiscal year 1973 (in Arkansas)	Fiscal year 1974 (in Arkansas)	Percent change
1. Institutional:			
(a) MDTA	$1,620,024	(1)	
(b) CEP	751,685	(1)	
Total, institutional	2,371,709	$1,828,588	—22.9
2. On-the-job-training:			
(a) JOBS (optional)	448,800	(1)	
(b) Public services careers	687,180	(1)	
(c) CEP	388,803		
Total, OJT	1,524,783	1,418,048	—77
3. Work support programs:			
(a) NYC (in school/summer)	5,037,356	(1)	
(b) NYC (out of school)	1,987,894	(1)	
(c) Operation Mainstream	888,986	(1)	
(d) CEP	710,954	(1)	
(e) Public service careers	275,257	(1)	
	8,900,447	7,787,891	—12.5
EEA (PEP)	9,447,468	5,004,103	—47.2
Total, work support	18,337,915	12,791,994	
Total	23,374,514	17,190,940	

[1] Manpower Revenue Sharing.

MANPOWER—IMPOUNDMENT

Program:	Loss
A. Manpower council:	
1. Jobs, regular	$406,278
2. MDTA (RAR) (JOPS) (sec. 241)	44,220
3. Public service careers, plan A	192,735
4. MDTA (RAR) (sec. 241)	316,731
5. NYC, in school	7,164
6. NYC, out of school	41,541
7. National contractors: Arkansas Council of Farm Workers	127,000
B. ESD:	
8. Rural concentrated employment program	722,597
9. NABS—JOBS	247,244
10. MDTA (sec. 231)	371,750
11. MDTA (sec. 241)	250,000
12. JOBS optional program	283,593
C. Miscellaneous:	
13. NYC State parks projects	19,968
Total	3,030,830

FEDERAL BUDGET INFORMATION, FISCAL YEAR 1974

Program, OEO eliminated from fiscal year 1974 budget	Fiscal year 1973 national funding	Fiscal year 1974 proposed funding	Percent increase or decrease	Designated agency to receive funds
Job development, administration, economic development, cooperative support, general services, neighborhood service centers, and general community programing, VISTA support, housing.	$302,301,323	0	100 percent decrease.	Not available.
Senior opportunities/services.[2]	9,337,295	----------	----------	ACA.
Legal aid	60,205,854	$71,500,000	20 percent increase.	Legal Ser. Co.
Health, medical, and nutrition services.	105,164,732	147,000,000	40 percent increase.	HEW.
Emergency food and medical services.	226,842	0	----------	Not available.
College student coordination	217,679	0	----------	Not available.

[1] All programs which were funded by local community action agencies, using local initiative or versatile funds. Programs were designed and funded locally, based on local decision. Funded from community action funds.

[2] The administration suggested that appropriations for AOA programs for the aging (nearly $200,000,000 for title III services and title VII nutrition) could be used, at the option of local and State governments to continue SOS programs.

NOTES

Title III B, EOA of 1964 and amendments, 1973 funds $37,173,123; proposed 1974 funds, $40,000,000.00—moved to Department of Labor; Arkansas' share, 1972, $483,000.00; 1973 share $476,000; 1974, unknown.

Department of Labor to be funded 1974, $1,400,000,000; 2-program division.

1. State and local, $950,000,000: MDTA, WIN, CEP, PSC, JOPS, NYCi/s, s, o/s, Mainstream.
2. National Program, $450,000,000: Job Corps, jobs, R. & D., migrants.

EEA is not included in 1974 budget.

OFFICE OF ECONOMIC OPPORTUNITY—IMPOUNDMENTS

Program	
State Office Administration	$283,593

HEALTH—BUDGET

Program	Fiscal year 1973 (in Arkansas)	Fiscal year 1974 (in Arkansas)	Percent change
1. Communicable diseases	$577,119	$309,655	−40
2. Public health education: consumer health education program	35,000	0	−100
3. Engineering:			
A. EEA personnel	172,712	0	−100
B. Food protection services reporting program	150,000	0	−100
C. Vector control—Surveys or assistance to cities	50,000	0	−100
4. Hill-Burton Hospital: Construction grants, loans and loan guarantees	[1] 8,000,000	0	−100
5. Community mental health centers construction program	[1] 200,000	0	−100
Total	9,184,831	309,655	----------
Total loss	----------	8,875,176	----------

[1] Approximate.

HEALTH—IMPOUNDMENTS

Program:	Loss
1. Community mental health construction program	$163,258
2. Hill Burton hospital construction [1]	7,000,000

[1] A continuing level law passed by Congress was vetoed by the President. This contained fiscal year 1973 appropriations.

COMMERCE—IMPOUNDMENTS

Programs	Loss
1. Forestry Commission [1]—Cooperative fire contel funds	$110,000

[1] A program cut for fiscal year 1973 rather than an impoundment.

PLANNING—BUDGET

Program	Fiscal year 1973	Fiscal year 1974	Percent change
1. Land and water conservation funds	$2,147,976	$500,000	−76
2. HUD 701 funds	[1] 100,000,000	[1] 110,000,000	+10
3. HUD title VIII	28,000	0	−100
4. Comprehensive health planning	112,000	100,800	−10
5. Grants to State and local governments for outdoor recreation projects	2,100,000	450,000	−79
6. State arts and humanities programs	120,250	150,000	+19
7. Economic development programs:			
(a) Public works and grants	3,500,000	0	−100
(b) Planning assistance grants	460,000	0	−100
(c) Public works impact projects	1,800,000	0	−100
Total EDA	5,760,000	----------	----------
8. Total	[2] 10,268,226	1,200,800	----------
Loss	----------	9,067,426	----------

[1] National.
[2] Minus 701.

PLANNING—IMPOUNDMENTS

Programs	Loss
1. Farmers Home Administration	[1] $61,178,240
2. Comprehensive health planning	28,800
Total	61,207,040

[1] 18 month moratorium.

HIGHER EDUCATION—BUDGET

Program	Fiscal year 1973 (in Arkansas)	Fiscal year 1974 (in Arkansas)	Percent change
1. Library resource grants	$87,363	0	−100.0
2. Instructional equipment	84,213	0	−100.0
3. Land grant institutions support	184,672	$57,248	−69.0
4. Community services	172,072	0	−100.0
5. Water resources research	190,000	152,950	−19.5
6. Nursing capitation grants	76,326	0	−100.0
7. Agricultural research	257,000	207,000	−19.4
8. Student assistance:			
(a) Nursing loans	138,939	69,485	−50.0
(b) Nursing scholarships	111,371	55,685	−50.0
(c) Equal opportunity grants and direct student loans.[1]			

9. Construction.—The President's budget includes no money for construction grants and funds for new interest subsidy grants also appear to have been eliminated. Since it is not known definitely how much construction would be done under this program, the exact cost is difficult to project. Act 103 of 1973 authorizes new community colleges in Arkansas. Assuming that 5 new colleges were established, the loss of the interest subsidy grants would amount to over $300,000 to the State and the amount could run as high as $14,000,000 when considering the loss of construction grants once thought possible but now very questionable.
10. Medical center.—It appears that the loss in Federal funds for support of programs could easily exceed $2,800,000 in fiscal year 1974. The information is somewhat sketchy due to several programs being couched within larger subcategories in the President's budget and the possibility that guidelines might place a heavier emphasis on 1 subcategory than another.

[1] One of the largest areas of change is in student assistance programs. The equal opportunity grants (EOG) and direct student loan (NDSL) funds have been eliminated for the 1974 fiscal year. In their place, however, are to be substituted a program of basic opportunity grants (BOG) and increased funds for interest on guaranteed student loans secured at banks and other sources. The NDSL funds amounted to well over $1,500,000 in fiscal 1973 and the EOG funds were over $1,000,000. The BOG funds could replace the EOG funds and, if lending sources in-State can be located to provide the capital, the guaranteed loans could replace the NDSL funds. There have been instances in the past, however, where students have had some difficulty in locating a lending institution for a guaranteed loan.

HIGHER EDUCATION—IMPOUNDMENTS

Programs:	Loss
1. Bankhead-Jones	$171,036
2. McIntyre-Stennis	43,950
3. Special extension for nutrition	62,057
4. Water resources research	40,000
5. Medical center—general research support	60,000
Total	377,043

HIGHWAY—IMPOUNDMENTS

Program:	Loss
1. Forest highway funds	$790,299

SRS—IMPOUNDMENTS

Program:	Loss
1. Public service careers	$18,000
2. Arkansas alcohol abuse program:	
(A) Central Arkansas	50,000
(B) Texarkana	50,000
C) Southeast Arkansas Mental Health Center	199,780

TESTIMONY BY GOV. JIMMY CARTER BEFORE THE SENATE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS, FEBRUARY 27, 1973

Mr. Chairman and members of the Subcommittee on Intergovernmental Relations.

I have already submitted to the Committee as written testimony a copy of a speech which I made recently to the National Press Club concerning developing problems with state-federal relationships. But there are several additional points which should be emphasized:

First of all let it be made clear that most of our people favor a federal budget either in balance or with a total figure designed for optimum effect on our nation's economy.

My own choice would be a balanced budget. Since the method of preparing the federal

budget is part of the problem, a suggestion may be in order. The first step in the process should be to establish the overall budget amount with mutual agreement between the Presidential and Congressional leaders.

There might also be a prior legal agreement serving as a restraint on Congress that any funds appropriated in excess of this total figure could be reduced by the President in a prescribed manner, but no program should be cut more than perhaps 10%. The meat-ax approach which has been adopted this year is an open admission of inability to determine which parts of programs are effective and which are not.

Any other so-called impoundment of funds should be eliminated except as specifically authorized in advance by Congress in the appropriate legislation.

A state lawsuit against the federal government, with the consent of Congress, should be initiated immediately to let the Supreme Court (which would have original jurisdiction) decide without delay whether or not the President has a right to impound appropriated funds in direct contravention of the expressed will of Congress. The State of Georgia is considering initiating such a lawsuit.

Commitments to state and local governments on which their financing and program plans are based should never be abruptly terminated except in a national emergency and then after thorough discussions with the state and local officials.

I believe that tax reform is needed to insure fairness and perhaps to permit a balanced budget. Since 1968 an already existing imbalance has been aggravated by subtracting about $20 billion from corporate and personal income tax and by adding about $25 billion to the payroll tax, primarily on the first $10,800 of earned income for social security payments.

Since revenue sharing has resulted in a shift of financing burdens from the federal government to those within the states, tax inequities have been increased. In general this represents a shift in taxation from the progressive income tax to the more regressive sales tax and property tax.

Another great need is to remove the shroud of secrecy from around the government leaders in Washington. There should be reestablished some means for governors and other officials to communicate easily with those in the federal Executive Branch who actually make decisions. In some instances it seems that the Cabinet Officers have become figure heads and have little decision-making authority.

Another handicap to state-federal harmony is that there is no definition of national goals which even if unilaterally expressed by the Administration would tend to encourage cooperative effort by the Congress and by different levels of government.

In spite of the lip service being paid to "New Federalism", local and state influence is actually being reduced because major decisions are made without consultation (and sometimes even in secret) and what flexible local funds exist must now be used along with revenue sharing funds to finance important categorical programs which no longer have the support of the Administration.

In the entire process the poor and afflicted are the losers because tax loads are shifted to them and categorical programs designed for them are being eliminated.

We all recall the promises made prior to the enactment of general revenue sharing that it would be "new funds without requiring transfers from existing Federal programs." We remember promises that "the money will be in addition to existing programs. Each [State, city, and county] will receive revenue sharing money in addition to any benefits, services, or money it is now obtaining from the Federal Government." These promises appear to me to have been broken—and now top Administration officials, as recently as this past Sunday, are denying on nationwide T.V. that the promises were ever made.

Mechanisms for encouraging interstate cooperation, regional planning and innovative government action are being abolished. For instance, there is no money in the President's proposed budget to continue the operation of the recently established and very important Title V Commissions.

All in all, Mr. Chairman, I am very much concerned about the breakdown in intergovernmental cooperation and in the commensurate weakening of our system of Federalism.

The essence of the problem is governmental secrecy which results in abrupt and unilateral decisions at the federal level. State and local officials are jerked and snatched to and fro in a gigantic game of "crack the whip". What has developed as a serious enough problem in Washington has often caused chaos in state and local planning and budgeting.

I hope that this Committee and the Congress will do what it can to afford mayors, governors and other concerned citizens a chance to speak for our people on future proposals—such as special revenue sharing. Perhaps what is needed in this particular instance is a special committee authorized by Congress and made up of officials from all branches and levels of government (as well as from private groups) to study the categorical grant system and make recommendations to the Congress on what programs, if any, could profitably be collapsed into special revenue sharing proposals.

We want to be partners again in a responsive and responsible system of government and we hope that you and the Congress can help us.

The Impact of New Federalism on State and Local Government

(Comments by Daniel J. Evans, Governor, State of Washington, Before U.S. Senate Committee on Governmental Operations, Subcommittee on Intergovernmental Relations, Senator Edmund S. Muskie, Subcommittee Chairman, February 1973)

INTRODUCTORY STATEMENT

I appreciate being invited here today by the Committee and to have this opportunity to present testimony on a subject which I feel is of utmost importance to the success of state and local government administration. My concerns regarding the present and future state of federal and local governmental relationships are common among any other state and local officials in the State of Washington. Therefore, I feel that I speak for many of them as well as myself here today.

Relationships between federal government officials and state and local officials have deteriorated to the point where basic structural changes will have to be introduced if we are to succeed in our prime task, that of supplying the citizens of our country with the governmental services they require. Federal Government has become too big and inflexible to effectively consider the needs of local communities and their citizens and the state and local governments just do not have the fiscal resource flexibility to accomplish these tasks. The time is long overdue for serious consideration of these basic structural problems. I do support enthusiastically the concept and policies of President Nixon's philosophy of New Federalism, because I believe the implementation of this philosophy will result in more effective and responsive services to the citizens of our country.

State and local frustrations in Washington State with the present intergovernmental relationships result from the same fundamental problems of dealing with the Federal bureaucracies as are experienced by public officials in other areas of the country. Many of our current problems and future challenges are unique to our area and our priorities differ from other states. The development of the State of Washington is still in its formative stages and the citizens have a "once-in-a-lifetime" opportunity to plan and coordinate state growth that will assure a quality of life for future citizens. Inadequate planning, continued confusion and/or the warping of state, local and federal priorities could endanger this opportunity.

The overwhelming majority of state and local officials and many private citizens that I have had the opportunity to talk to during the recent election campaign are extremely concerned that the Federal Government has grown too large. Some 40 years ago expenditures of state and local governments were more than three times those of the Federal Government. Today this pattern has reversed, with the Federal Government spending in excess of the total of both the state and local governments. Many frustrated public administrators believe that federal resources could be better allocated if they were planned and managed by state and local governmental units themselves and this, I am sure, is echoed by a large segment of public opinion.

I hope, in the next few minutes, to focus upon what I believe to be major immediate problems, to provide some examples of our frustrations in dealing with these problems, and to very briefly discuss some proposed solutions.

President Nixon has introduced several proposals to Congress that would begin to implement the policies formulated upon the concept of "New Federalism." Very briefly, these are: proposals to reorganize and consolidate several major departments; decentralize federal governmental decision-making by the organization of ten federal regional councils; and the general and special revenue sharing programs.

It is this last component, special revenue sharing, that I would like to address at this time.

THE CATEGORICAL GRANT

During the late 1960's in the State of Washington, it became increasingly apparent that the requirements for public service were outgrowing the fiscal resources available to provide the services. Thousands of people were induced to migrate into our state by a highly accelerated local economy. Many new public facilities and increased services were required in a vastly shorter timeframe than originally planned. However, our state and local tax structure, based primarily upon, and constitutionally limited to, property and sales taxes, could not produce the revenue growth required to keep pace with our increasing need for services. The fiscal problems of both our state and local governments were intensified by the very nature of the tax structure. The majority of the burden fell upon the low and modest income citizens of our state. In contrast, federal tax revenues, based primarily upon a progressive income tax structure, increased at a much faster rate and automatically grew as the national economy expanded.

Congress recognized this widening gap between the demand for local services and the revenues available as a national trend at a much earlier date and introduced the con-

cept of federal grant-in-aid programs. In 1957 categorical or specific purpose grant-in-aid programs developed to provide fiscal resources to state and local governments totaled $3.8 billion. At the present time, there are over 1,000 individual categorical grant programs distributing over $40.0 billion in federal grants each year.

This uncoordinated proliferation of grant programs has created a highly complex and frustrating administrative nightmare, with which our local officials have to cope. Each grant program has been independently enacted with a specific national purpose in mind, has its own allocation and matching funds formulas, and includes a multitude of regulations, organizational requirements and program planning, management and audit instructions. Yet, in spite of these rigid and inflexible procedures, the real needs of our citizens have not been met and we at the state and local government levels are confronted with a vast, complicated and expensive administrative bureaucracy.

The expense of this redundant and unnecessary administrative activity associated with categorical grant program management was vividly demonstrated to me recently. Our state budget office advised me that on a recent Housing and Urban Development project, amounting to $1 million, the cost of only the preparation of the proposal, including the necessary applications, and the administration of the contract would amount to $30,000. At the same time, they also advised me that on a recent Law and Justice grant for $10 million, the comparable costs for the same activities amounted to $30,000.

This accounting, which encompassed only a small portion of the costs of administering a categorical grant program, indicates that a tenfold reduction in administrative costs could be achieved by including more funds in special revenue sharing programs.

RECENT EVENTS IN THE STATE OF WASHINGTON

A classic example of the failure of the present federal systems to respond to local needs can be illustrated by recent events in the State of Washington. Early in 1970 layoffs by our largest industrial employer began to signal a serious downturn in our state's economy. There were indications that we could expect thousands of additional persons to be unemployed for extended periods of time, and it became obvious that our priorities had to be realigned in a very short order. Our priorities had been ordered for the highly accelerating economy which we had been experiencing during the preceding three years. An immediate re-direction was necessary to implement the specific emergency unemployment, public assistance and other human resource programs required to provide for the human needs of our citizens.

Both the state and local governments were faced with immediate and severe losses of tax revenues and it became apparent that they could not respond alone to the crisis. It was obvious that help would be required from the Federal Government and that large amounts of aid would be required to provide emergency income maintenance, social services and the impetus to economic development necessary to initiate a recovery.

The onerous task of soliciting for federal funds during this period is now past history. After many, many trips to Washington, D.C. to confer with federal departments and our congressional representatives, it became apparent that the typical federal grant-in-aid program was too inflexible to respond to the needs of our particular crisis.

As a result of considerable and extended efforts by myself and other state officials, local officials, private citizens and the members of our congressional delegation, Congress did enact legislation providing for emergency employment, and unemployment compensation in crisis areas throughout the country.

One particular item which received considerable national and international publicity was associated with the Department of Agriculture's food stamp program. The Department's regulations provide for the distribution of food stamps to low income families regardless of whether they were able to qualify for state public assistance. However, during July 1971, *at the depth of our decline,* the Department revised its food stamp regulations which resulted in a significant portion of the approximately 26,000 families receiving food stamps, but not receiving public assistance, to become ineligible due to increased income eligibility standards. In addition, the food stamp program as designed, was for short term emergency use only.

On still another front, attempts by local officials, our congressional delegation and private citizens to persuade USDA administrators to temporarily modify regulations in order to allow for the distribution of surplus agricultural commodities within the state proved embarrassing to all concerned. During our prolonged negotiations with the USDA, the citizens of Japan proceeded to donate a shipload of food to our citizens. Needless to say, that not long after this incident had received considerable national publicity, the USDA did make a decision to allow the simultaneous use of surplus commodities and food stamps within our state.

Many similar situations, occurring during this period, can be used to illustrate our frustrations in establishing local priorities and urging federal departments to respond to the crisis without having the proper mechanisms established to do so. However, I would like to proceed with a few examples of our present problems of working with categorical grant programs which we believe to be of equal importance.

In addition to the problems connected with the establishment of broad state priorities, are the day-to-day frustrations concerned with detailed program planning and management. Detailed program regulations constantly multiply, disappear and modify in response to everchanging administration and congressional thrusts. Because of the magnitude of programs relative to the various governmental functions and services, state and local agency planners and administrators are rarely finished evaluating and implementing one regulation when another is issued.

MEAT AND POULTRY INSPECTION

A specific example of federal over-regulation of a categorical grant program is our recent experiences relative to USDA's regulations and procedures concerning the federal meat inspection program.

Present requirements provide for state financial participation in federal meat inspection program on a 50–50 matching basis. The United States Department of Agriculture manages this program from Washington, D.C. through our state Department of Agriculture. All program regulations have been developed by USDA for uniform application throughout the country. The regulations are highly structured, rigid, arbitrary, and provide little flexibility to state administrators. State administrators did not contribute to the development of the detail regulations but are charged with the responsibility of their day-to-day application.

USDA regulations provide a multitude of program guidelines, inspector qualifications and training procedures, inspection standards, regulations concerning who will be inspected, designate where and how the inspections will take place, and set forth detailed reporting procedures.

An attitude has developed among state program administrators, inspectors and producers that, I am sure, will interest the committee. Dissatisfaction and distrust of federal bureaucrats has become more increasingly evident as a result of this type of over-regulation and centralized management. State program administrators and inspectors who have to cope with the day-to-day inspection problems, bear the brunt of expressions of this dissatisfaction. Since the federal regulations have been imposed upon the states, state officials have recommended to USDA that the legislation be amended to modify the matching requirements to provide for an 80–20 matching ratio. This recommendation has not been accepted by USDA and the Department has indicated that it is a state program and that a 50–50 matching ratio is favorable to the state. At the present time, state relationships with USDA relative to the meat inspection program have deteriorated to a level where we feel that the Department should be given the opportunity to fund, regulate and manage *their* program one hundred percent.

Now, the original intent of the federal meat inspection legislation was to provide strong, uniform quality control over United States meat production. Poultry inspection was recently added to the legislation and fish and other seafood will probably be next.

I believe that it is in the best public interest to protect our citizens from disease and poor quality meat and poultry products. We have had an excellent inspection program in our state for years. However, I feel that the need to comply with regulations and procedures that were designed for the most part to regulate large meat producers and packers in the mid-west is not necessarily the most effective method to regulate meat production in the State of Washington.

Some confidence must be displayed by USDA and other federal agencies in our ability to design and administer programs. Broad program guidelines and standards could be issued by the federal departments. The states should be allowed to participate in the programs by developing detailed regulations and standards which would be approved for compliance by USDA.

THE MATTER OF SOCIAL SERVICES

One additional item that I would like to address at this time is the manner in which the Federal Government has provided for social welfare services. Specifically, my comments are directed toward the social services component of the Social Security Act.

In the late 1950's the original Social Security Act was amended to provide social services to those persons in need of public welfare. The broadening and expansion of this provision during recent years is a classic example of federal incrementalism. The federal Department of Health, Education and Welfare was organized to facilitate and enable the implementation of this legislation and to institutionalize its growth and development. Federal funds were channeled through the Department of Health, Education and Welfare to state governments based upon, in most cases, a 50–50 federal-state government matching ratio.

By the mid-1960's social service eligibility requirements were broadened to include not only present welfare recipients, but those individuals who had previously received welfare or were most likely to become eligible in the future. In some specialized situations, federal requirements permitted matching funds to be allocated to private institutions outside the jurisdiction of state governments.

State governments were led into the undesirable situation of seeking one categorical grant program after another to obtain needed funds for these expanded federal programs. The purpose, rules and regulations of many of these programs were not completely understood by local level administrators and were not always carried out in the manner intended by Congress. During recent years, state expenditures in the human resources area have doubled and tripled, yet little has been accomplished to meet the real needs of our disadvantaged and handicapped citizens. State priorities have been warped and its tax revenue structure and fiscal management abilities strained to provide the state matching funds.

Both Congress and the Federal Administration, in recognition of these problems, in

1972 placed a lid on spending for social services. The once federally encouraged expansion followed immediately by the imposition of a severe expenditure ceiling and a still lower recommended budget level will result in the lay-off of personnel and the termination of services to the poor, who are at this point, simply bewildered by the change in direction, and becoming increasingly distrustful of their government. The full impact of this major thrust and subsequent contraction in services to the disadvantaged will not be understood for many years.

One last illustration of the problems encountered by both state and federal governments in specific grant program management relates to specialized library services. An amendment to the social services title of the Social Security Act provides for a program of specialized library services to minority and disadvantaged persons. Our State Library was strongly encouraged to apply for funds and to implement a program for the State of Washington. After many months of negotiations between federal and state officials, the contract, an organization plan and a program plan were approved. Again, after many months of negotiations between our State Library and the local libraries participating in the program, contracts were approved to initiate the service.

While we did have some difficulty dealing with the federal regulation which stipulated that the eligibility of each minority or handicapped individual participating in the program had to be established, ultimately this problem was finally cleared up and the services were about to begin when Congress placed a lid on social service funding and the program had to be cancelled.

On this effort relatively large amounts of money have been expended on a vast amount of planning and paper work and a great number of minority and disadvantaged citizens have been disillusioned by government.

INCREASED CITIZEN INVOLVEMENT

The fundamental issue in each of the problems I have cited is embodied in both the general and special revenue sharing concept.

Who can best respond to the needs of our citizens?

Congress has expressed concern as to whether or not local officials would really spend the revenue sharing funds on the kind of programs and in a manner that would achieve the necessary results. Congress has further questioned whether local officials, who have difficulty responding to or overcoming local pressures can effectively meet the needs of local citizens. It has also been assumed that Congress, because it is removed from the local pressures, can be more responsive to these needs. Perhaps the reason for these concerns and corollary assumptions were true in past times, but times have changed and the state and local governments have changed. They have become more responsive to the needs of their communities while Congress, because of its distance from local problems, has become less responsive to these issues.

Today we have reached a point in representative government that radically differs from the government that existed a short decade ago. State legislatures across this country have been redistricted to provide far greater representation of the people. We now have a broader participation in the election of our state and local officials. Our young citizens now have a chance to vote and participate in state and local decision-making. The use of modern communication techniques have increased public awareness of critical issues thus giving these citizens a greater opportunity for direct input into the governmental decision-making process.

As I have talked to Governors and other public officials in other states, I find that the explosive increase in the number of citizens who express their views to their state representatives or visit their state capitol is not a unique phenomenon in the State of Washington.

A striking example of this desire to participate in government recently occurred at our state capitol in Olympia. Almost 1,000 people from the small town of Snohomish came to Olympia, not to protest, but to express their concern over the need to reform our state tax system. These people, who made up over one-half the population of the town, were concerned with the level of state support to local education. Businesses were closed in Snohomish and schools were let out so that school children could participate and express their views on this critically important issue of school finance.

It could be true that at one time the state and local governments were unrepresentative and unresponsive to the people and that Congressional action was necessary simply to get programs initiated and insure that the necessary improvement did take place.

Times have changed and it is now at the state and local government level where our citizens can and do provide a direct input into the operation of government. This is something they have not been able to do at the Federal Government level because all too often the only testimony heard in Congress is not from the general public who are involved in the issues, but from powerful special interest groups organized and financed to lobby for their particular solutions to local problems.

A CHANGE IN CONGRESSIONAL ATTITUDE IS REQUIRED

I believe that one of the most serious obstacles standing in the way of basic programmatic changes is the attitude of federal representatives. Over the years they have grown distrustful of state and local governments. This lack of trust manifests itself in a no-confidence attitude toward the capabilities of local citizens to run their own affairs. By an equal measure, the practice of returning public funds to the people who earned them through using arbitrary and restrictive techniques has resulted in a growing distrust among our citizens toward all levels of government.

Our citizens are developing a high level of insight into governmental administration and its problems. Techniques are being developed to enable citizens to become aware and therefore, more involved in government. In a real sense, times have changed, and Federal Government representatives must become aware of the significance of this growing change and develop new means of restoring public confidence in government.

I believe the general and special revenue sharing proposals of the President are an important first step in restoring public confidence in government. The State of Washington has shared revenues with local governmental units for years. Our state budget for the 1973–75 biennium includes state-collected revenues that are shared with local school districts, cities and counties which total in excess of $1 billion. This has been our practice for approximately 40 years. Included within this sum are amounts which will represent 24 to 28 percent of city and county general purpose funds and few strings are attached to the expenditure of these funds. The amounts shared are derived from a number of tax revenue sources that were designed to share revenues. The cities and counties share liquor, motor vehicle excise, motor vehicle fuel, public tax revenues and profits, fines and fees from liquor sales, recreational vehicle registrations and revenue resulting from the leasing of state lands.

At the local governmental level, highly trained professional administrators and part-time citizen officials working with involved citizens set goals and priorities, plan programs, develop detailed budgets, allocate and administer funds. Very often projects are not approved (as for example Seattle's 1970 Mass Transit Proposal) or scrapped by the citizens when it has been determined that they are too expensive or ineffective (as for example Seattle's R. H. Thompson Expressway).

It is my opinion that many very capable individuals have entered state and local government service during recent years. The recent recession in the State of Washington introduced new highly qualified individuals into government service and special effort has been under way during my entire administration to encourage individuals from private commerce and industry to join government. Management techniques and skills developed by the private sector are being introduced into governmental administration to an increasing degree.

We have consolidated many state agencies into a limited number of functional departments. Departmental procedures are being streamlined. State statutes are being reviewed and modernized, program procedures and instructions updated and simplified, and our communication lines with local citizens improved through the organization of a new Community Development Agency.

During recent elections, the voters of the state approved a Washington Future Program, authorizing the sale of $415 million in state capital investment bonds during the next six years. This program will be directed by a small staff, a one page set of guidelines, and a two page application form. However, we anticipate that one of our major problems will be concerned with the application for, and administration of, the necessary federal matching funds.

SPECIAL BLOCK GRANTS

Based upon the historical experience of our state, I believe a major step toward the elimination of the distrust, confusion, resentment and frustration between citizens and government and among the levels of government can be achieved through the use of the block grant concept of special revenue sharing.

The narrow targeting of categorical programs is a formidable barrier to the coordination of resources to meet the needs of individual communities which differ across our state. The solution is simply to do away with the many narrow categories and to provide responsible state and local authorities and citizens with the power to use federal money in ways they themselves devise. Special revenue sharing or block grants which merge functionally related categorical programs into large accounts for flexible use by state and local officials would eliminate much of the terrible tangle of grant programs, which are a primary source of confusion and distrust.

The U.S. Department of Justice, Law and Justice Program is a commendable example of how special revenue sharing would work. The Department of Justice, Law Enforcement Assistance Administration, issues a series of program guidelines. The state, working with the local communities, develops a state law and justice plan. The plan is submitted to LEAA for approval. LEAA, in turn, allocates a block of funds to the state and the state distributes the funds to the local communities according to the plan. Administrative problems are resolved between the state and local governments with a minimum of frustration. While there were a few initial procedural problems, the program by any measure must be considered successful and a specific example of how federal administrative cooperation with local government can be achieved.

CONCLUSION

I would like to restate my strong support of the concept of New Federalism and, in particular, the application of special block grants.

Categorical grants characterized by many over-lapping and duplicated programs, loss of efficiency and the misguided imposition

of federal priorities on state and local communities have created a bureaucratic nightmare.

The continued support of the categorical grant concept represents the continuation of the federal government's distrust in the capabilities of communities to manage their own affairs.

A willingness by Congress to join with the states in an enthusiastic adoption of the special revenue sharing programs will result in a significantly higher portion of each taxpayers dollar reaching the ultimate beneficiary of these programs.

STATEMENT BY GOV. WENDELL H. FORD OF KENTUCKY TO THE SENATE GOVERNMENT OPERATIONS COMMITTEE'S SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS ON PRESIDENT NIXON'S PROPOSED BUDGET FOR FISCAL 1974

The purpose of this statement is to provide a realistic, matter-of-fact assessment of the $268.7 billion budget submitted to the Congress by President Nixon for Fiscal Year 1974.

The stated objectives of President Nixon's budget are:

(1) to curb government spending in an effort to reduce inflation;

(2) to move away from big government and place more responsibility with state and local governments;

(3) to avoid an increase in taxes; and

(4) to work toward achieving a balanced budget by Fiscal Year 1975.

Viewed in the abstract, these are commendable objectives. Analysis of the proposed budget for Fiscal Year 1974 shows, however, that the stated objectives and the actual impact of the Nixon budget are two entirely different matters.

I favor fiscal restraint. I favor reduction of the federal deficit. I favor the philosophy of state and local governments assuming more responsibility in delivering needed services to the people. And I favor the concept of people doing more for themselves.

Yet the rhetoric does not coincide with the budget proposals, and unfortunately, what has thus far been advanced for public consumption from the White House is not the reality of this budget. It is, therefore, incumbent on the Congress, the Governors and local officials to clearly explain that what Mr. Nixon is saying and what his budget dictates are most assuredly not one and the same.

I believe we have a coordinated responsibility to first make the public aware of what can actually happen to our social, economic, and environmental systems, then try to alter the programs so they will indeed come more into line with the President's publicly expressed intentions.

Without this generation of a new spirit of leadership on all our parts, we will have to assume a share of the blame for what appears inevitable through the implementation of this budget.

The contents of the proposed budget make a mockery of stated objectives.

(1) In curbing government spending in an effort to reduce inflation, why must the main brunt of this effort fall upon many domestic programs serving important human and social needs? Is this the price to pay for the relaxation of price and wage controls under Phase III? The record of the Nixon Administration in dealing with the cruel problem of inflation does not inspire confidence. As with the proposed budget, the approach of the Administration in seeking to curb inflation seems more inspired by desire to protect the economically and socially privileged, rather than to improve the performance of the economy in serving the needs of the people.

(2) Reducing the role of the Federal Government and placing more responsibility with state and local governments is a desirable shift in political structure. However, it is totally unrealistic to believe that this shift can be accomplished upon the preemptive command: Sink or swim. In Kentucky we have recently undertaken a full-scale reorganization of state government to strengthen our capability to take on more responsibility as well as improve efficiency and effectiveness in program planning and implementation. As foresighted as our effort may have been, it was based on the common sense realization that there must be an orderly transition in the devolvement of Federal programs to the state and local levels of government. The proposed budget for Fiscal Year 1974 clearly does not provide for an orderly transition.

This lack of proper transition is very apparent in the Administration's proposed changes in economic development programs—such as abolishing Economic Development Administration (EDA) aid programs.

EDA funds have been cut off entirely for any new projects. This means that projects in early planning stages for EDA funding will come to a halt. Even if the funding for the Rural Development Act of 1972, to which the President proposes to shift financing, is quickly approved; many months will be required to set up the Federal administrative mechanisms to handle new development projects. Additionally, the Rural Development Act is administered by the Department of Agriculture, which certainly is not as well oriented to industrial and commercial development as the Department of Commerce which administers EDA. Planning and initiation of new projects will be delayed or entirely halted—and Kentucky's economic development will be slowed. Such rash actions of the Administration present a profound threat to the entire concept of shifting Federal responsibilities to state and local governments. That is, the disruption and dislocation of programs involved in the proposed budget could—indeed will likely—discredit the idea that state and local governments can successfully assume greater responsibility.

(3) Avoiding an increase in taxes is perhaps the most deceptive of the stated objectives of the proposed budget. Throughout the Nation, state and local officials were told by the Nixon Administration that General Revenue Sharing was being provided to relieve fiscal crises facing state and local governments. The proposed budget for Fiscal Year 1974 is clearly at variance with the avowed purpose of General Revenue Sharing. State and local governments will be thrown upon their own resources to try to sustain programs slashed or terminated in the proposed budget. This is completely contrary to the fundamental idea underlying revenue sharing, which is that there is economic and social advantage in using Federal taxing power to support programs administered according to priorities set at state and local levels of government. The proposed budget is a retreat from revenue sharing.

As a further example, the proposed budget does not avoid increased taxes. It actually increases the most regressive of taxes as evidenced by increased Medicare charges and costs to be borne by those least able to pay.

What the budget shifts from the Federal government to the state and local government is the acute problem of balancing income and expenditure.

Another way of looking at the President's tax posture is that he is shifting the federal deficit to states while increasing the costs of states to subsidize the rest of his budget.

(4) With respect to balancing the Federal budget in Fiscal Year 1975, considerable skepticism must be expressed. The ability of the Nixon Administration to properly manage the economic and financial condition of the Nation has yet to be demonstrated. The greatest threat to attainment of a balance of income and expenditure in Fiscal Year 1975 is clearly the continuing failure of the Nixon Administration to bring the Nation's economy to full employment. The proposed budget for Fiscal Year 1974 would have direct adverse effects on employment, and indirect, or secondary, effects of an adverse nature on public confidence and expectations. Rather than promising a balanced budget in 1975, the proposed budget for Fiscal 1974 has in it the seeds of economic failure and disillusionment.

The tragedy of the Nixon budget for 1974 is not just in the termination and crippling of specific programs. The greater tragedy is its rejection of the alternative of devising an orderly transition of Federal responsibilities to the state and local levels of government.

Additional comments are submitted concerning specific programs and fiscal impact the 1974 proposed Federal budget will have upon the state of Kentucky. However, there is no way to determine the full impact of the proposed budget, because many changes require substantive legislation which has not yet been submitted to the Congress, Also, programs such as the navigation and flood control projects, administered by the Corps of Engineers, which are scheduled for a $500 million cutback in Fiscal 1974 cannot be adequately analyzed because the proposed budget does not indicate project priorities.

HUMAN RESOURCES

The first area of concern is the Administration's lack of support for meeting human needs. Mr. Nixon's budget message states, "The 1974 budget for human resources program, like the three that have preceded it under this Administration, reflects my conviction that social compassion is demonstrated not just by the commitment of public funds in hope of meeting a need, but by the tangible betterments those funds produce in the lives of our people.

The President is correct in stating that his budget strives to meet human needs like the three that have preceded it under his Administration. The only problem is that the states are just learning what the President means when he says "tangible betterments" and it took the currently proposed regulations by the Department of Health, Education and Welfare in regards to social services under the Social Security Act to teach us this.

"Tangible betterments" refers to the financial status of the Federal purse and not to the lives of our people. Under the proposed regulations of the Department of Health, Education and Welfare, the state of Kentucky stands to lose in excess of $15 million for the provision of social services to our needy citizens. For example, services for emotionally disturbed and abandoned children and for the prevention of drug abuse are severely diminished. The regulations as written would require a sudden and almost complete change in the type and level of social service program the state could deliver through the help of Federal matching funds. This is a perfect example of "tangible betterment" for the Federal purse while we forsake the needs of our nation's poor.

The President's Budget Message states the following objective: "We can and will find better ways to make the most of our human resources—through the partnership of a restructured Federal government and strong state and local governments and with the help of a socially committed private sector that is bolstered by a revival of individual initiative and self reliance among our people." The private sector is willing. Yet the proposed social services regulations preclude the use of donated money from private and

voluntary sources, and impose severe restrictions on use of funds from public sources as the state's share for Federal matching. This contradiction in words and actions is dramatic.

Congress has mandated a ceiling of $2.5 billion for social services and yet the President's budget only proposes the expenditure of $2 billion. The Department of Health, Education and Welfare should assist states by providing guidelines which enhance the states' capability to respond to identified social service needs. Instead, the proposed regulations so severely restrict the social service delivery capability of states as to raise the legitimate question—is it the Administration's intent to dismantle social services entirely?

Another example of the contradictions inherent in the President's budget are the major changes proposed in the Medicaid program. On the one hand he says that the proposed changes will be more beneficial to the nation as a whole, while on the other he has stated that the cost to Medicare patients will increase. How can it be beneficial to the nation as a whole when several million Medicare recipients will be forced to dip into what little savings they may have to pay the increased cost, or the states will be forced, from their limited resources, to see that the elderly people have adequate hospital care? Although, the increased cost to Kentuckians in terms of dollars and cents is incalculable, we know that there are approximately 330,000 Kentuckians covered under the Medicare Insurance Program who will be affected. The President's program calls for the deductions for hospital services to be raised from the present $72 to a deductible which will require the beneficiary to pay the actual first day room and board charges plus 10 percent of actual hospital charges thereafter.

The Department of Health, Education and Welfare said the changes are aimed at establishing "a cost awareness on the part of the Medicare consumer which, besides its effect on over-utilization, should inhibit hospital price increases." Who really contributes to over-utilization? The Administration points a finger at the Medicare recipient. I do not believe that the Medicare patient is the major cause of over-utilization. How many people can walk into a hospital and admit themselves, or how many hospitals will accept a man walking in off the street as a patient? A doctor has to admit a patient and the hospital has to accept him. The doctors and the hospitals contribute to over-utilization to a far greater extent than the patients. Penalizing the patient because of mismanagement over which he has no control cannot be morally justified.

It has been estimated that since 1967 United States hospitals have probably overcharged the Medicare program in excess of three hundred million dollars. The responsibility for the end cost of the Medicare program lies primarily with the Department of Health, Education and Welfare administrators. If an effective review system were utilized to eliminate "overutilization," I believe we would not be faced with placing more financial responsibility on the Medicare beneficiaries. Utilization by doctors and hospitals of out-patient facilities would greatly decrease Medicare costs.

The proposed shifting of costs for medical services are just as traumatic to the Medicare recipient. The present deductible of $60 and 20 percent of remaining cost are proposed to be increased to $85 and 25 percent of all remaining charges. President Nixon has said, "The changes will reduce the financial burden for one percent of all Medicare patients who are hospitalized more than sixty days, when they now have to start paying a share of their bills." I submit that the "reduced financial freedom" will accrue to the Federal government—not to the Medicare recipients who are *already* paying a share of hospital and doctor bills. The Administration's proposal is an apparent attempt to shift the health care crises to the shoulders of those who are least able to pay for medical services, primarily the elderly on minimum fixed incomes.

Administrative costs for medical services are estimated to run as high as thirteen percent of benefit payments, which is an astounding figure for administration. If the President is desirous of trimming the budget, he should start with the administrative costs of his own programs and not at the expense of the elderly people who are covered under Medicare.

The President's 1974 budget proposes a legislative change which would eliminate the eligibility of adults for dental services under Medicaid. Such a cut would deny dental services to approximately 13,000 Kentuckians annually. The federal participation in this program, in Kentucky, is about $243,000 per year.

The termination of the Hill-Burton program as proposed in this budget will cost my state an estimated $5.8 million next year in much needed health facilities construction money. We are not trying to expand hospital beds needlessly in our state, but rather need to modernize, upgrade, and replace over 1,500 hospital beds and 700 nursing home beds that are below acceptible standards of modern day care. If these funds are terminated, the improvements of these facilities will have to be delayed indefinitely.

The elimination of federal support for immunization of children against measles, rubella and polio will mean that approximately 150,000 of Kentucky's children will not receive these services next year. Kentucky is still feeling the effects both financially and emotionally of the last rubella epidemic in our state. The epidemic cost Kentucky families dearly in terms of lives and disabling handicaps. We feel that the rubella immunization program should be continued.

EDUCATION

Elementary and secondary education

The President's proposed budget would entirely eliminate programs supported under Titles II and V of the Elementary and Secondary Education Act (ESEA) and Title III of the National Defense Education Act (NDEA). Elimination of these programs means no Federal aid for school support services such as libraries, textbooks, and audio-visual aids; no Federal aid to strengthen the State administration of educational programs; and no Federal matching (50–50 ratio) funds for remodeling laboratories and classrooms in elementary and secondary schools. The elimination of these programs will result in a loss of $2.9 million to Kentucky.

Abolishment of the Federal subsidy to school districts for non-military employees with children who live on private property will cost Kentucky schools $3.5 million. Abrupt termination of this program will cause serious financial problems for many local school districts. No program with potential financial consequences of this magnitude should be abruptly terminated, but should be phased out in an orderly process.

The Administration has explained (p. 1077, Appendix, The Budget of the U.S. Government, Fiscal 1974) its proposed amendment to reduce the current year appropriation request for the Elementary and Secondary Education Act by $15.8 million, with this statement: "The proposed decrease takes into account the availability of General Revenue Sharing funds for local educational agencies." However, the State and Local Fiscal Assistance Act does not permit local governments to expend general revenue sharing funds for educational programs.

Libraries

The budget proposes elimination of all categorical aid programs for public, local school, and college libraries. In addition to $1.4 million loss to local schools for library aid, Kentucky's public libraries will lose $1.0 million for library services.

Termination of aid for local libraries apparently rests upon the assumption that local governments will use General Revenue Sharing funds to replace the discontinued categorical grant programs. Such actions are clearly at odds with the original promises made when revenue sharing became a reality.

Apparently the Nixon Administration does not consider adequate library resources as a necessity for the development of a sound basic educational program. Such lack of library support could seriously jeopardize the accreditation of elementary and secondary schools and our institutions of higher learning.

Education revenue sharing

Special education revenue sharing, as proposed in the 1974 budget, would combine some thirty narrow categorical aid programs into an educational assistance package categorized into five broad-purpose grant programs. It is impossible to assess the total effect of this program change on Kentucky because the special education revenue sharing legislaion has not been introduced in Congress. It is clear, though, that some programs will suffer significant reduction. For example, Titles I and III of the Elementary and Secondary Education Act would be continued under special education revenue sharing, but in the 1974 federal budget these activities would be continued at the 1973 funding level. Thus we would have "continuation reduction" for some of the programs being folded into education revenue sharing.

Legislation for education revenue sharing should provide advance funding for state agencies to assure sufficient time for adequate financial and program planning. The present situation, in which delayed appropriations are common practice, creates such uncertainty that thorough planning is impossible.

Education revenue sharing legislation should also recognize that all states and local governments have problems of a varying nature and of a different magnitude. To accommodate these differences, the state governments must be permitted latitude in deciding program priorities, and they must be provided with a realistic level of financial support.

In examining the President's proposal for special education revenue sharing submitted to the last Congress, we found that federal aid for education in Kentucky would have been less than under the categorical programs, except that the proposed legislation guaranteed that each state would not receive less than the average received in recent years under categorical programs. Such a guarantee in this year's legislation is essential for Kentucky.

The use of 1970 census data in calculating allocations next year makes it even more important that any legislation include a guaranteed continuation support level. In Kentucky, as in certain other states, population has been increasing, but the relative growth rate has been less than the Nation. Therefore, Kentucky would receive less of the total aid available—unless rather large increases are made in the federal appropriations. Lacking such increases, the poorer states, like Kentucky, will receive a lesser share of the federal education dollars in 1974.

Higher education

Over the last few years, Kentucky's institutions of higher learning have been financially buffeted by changes in federal regula-

tions as well as changes in federal funding. Increased social security contributions and federally mandated changes in workmen's compensation regulations, unemployment insurance guidelines, and in occupational safety regulations have drastically raised costs for our state institutions. Last year alone the increased cost to one of our institutions was over $2 million.

The same institution will lose approximately $1 million a year in federal support under the proposed budget. Gentlemen, this is a net loss of $3 million in funds for direct program support. The only way the institution can absorb such loss is to cut back programs.

It is especially distressful that our institutions of higher learning face significant reduction in federal support at the very time that federal laws and regulations, as well as inflation, have substantially increased their costs of operation. Improvements in workmen's compensation, unemployment insurance, occupational safety, and social security with respect to employees of universities and colleges is desirable, but we should be concerned that financial support be sufficient to avoid impacting institutional budgets to the point that instructional programs are damaged.

The President's budget requests full authorization of $959 million for Fiscal 1974 and a supplemental appropriation of $622 million for Fiscal 1973 to fund the Basic Opportunity Grants Program authorized by the Education Amendments of 1972. The full funding of the Basic Opportunity Grants Program is a step in the right direction to assist needy students of our state to attain a college education. However, it appears that along with the recommendation of full funding for the Basic Opportunity Grants, the President has disregarded a provision of the Education Amendments of 1972 which bars the awarding of Basic Opportunity Grants in any fiscal year, if the appropriations for Supplemental Educational Grants, Work-Study Payments, and National Direct Student Loans are less than specified by law.

The President's proposed budget for 1974 does not satisfy these minimums. The Basic Opportunity Grants Program is laudable, but Kentucky will take a step backwards without support of the companion programs. With no money available to supplement the Basic Opportunity Grants from the scrapped National Direct Student Loan Program and the Educational Opportunity Grant Program, many students may be left marooned with only half the aid they need to attend college.

Kentucky's public and private colleges and universities received $20.8 million in federal support from the National Direct Student Loan, Student Educational Opportunity Grants, and College Work-Study programs last year. The probable support under the Administration's proposed budget for these programs will approximate $3.1 million, which is entirely for college Work-Study Payments. This represents a potential deficit of over $17.0 million in institutionally controlled student aid funds which cannot be replaced by Basic Opportunity Grants and Federal Insured Student Loans, especially where the decisions on recipient selection and award amounts are made outside the educational institution.

A viable student aid program must continue to include substantial funds, which can be targeted by the educational institution on students having substantial financial need. Therefore, funding of the existing campus-based programs at the levels required by the Educational Amendments of 1972 should have priority over funding of the new Basic Opportunity Grant Program.

Moreover, students and parents need to know very soon what to expect from student assistance programs for enrollment in the fall semester of 1973. Hasty implementation of the Basic Opportunity Grant Program with its new needs analysis requirements and administrative structures may result in greater confusion than we experienced with the Federal Insured Student Loan Program in the fall of 1972. Implementation of the Basic Opportunity Grant Program is at least four to six months behind right now for Fiscal 1974. The prudent course may be to delay implementation of this program until Fiscal 1975 and shift the funding to the other programs already in operation.

The President's proposal creates serious problems for students in Kentucky, for in some of our institutions over 50 percent of the student body requires some form of financial assistance in order to attend college. It is further complicated by the fact that 45 percent of all students attending a college or university in Kentucky come from families with incomes of less than $9,000 and 22 percent from families with incomes below $6,000. As you can see, opportunities for education will be limited for some students in Kentucky, because not enough avenues of financial aid will be available to meet college expenses.

A major contradiction in the President's budget is in the area of health education. We have heard the President talk about improving the delivery of health services and lowering the cost of medical care through advanced and innovative delivery systems and by proper use of medical personnel. In an effort to extend the services and knowledge of our physicians, we should educate and train doctor's assistants and various other para-professionals in the delivery of medical care. Just as our schools are getting geared up to provide this instruction, the President proposes a budget that reduces drastically the federal funds necessary to support the programs. It is estimated that our public universities alone stand to lose in excess of $750,000 in nurse and allied health manpower training funds. How can we be expected to improve the quality of medical care in Kentucky without these funds to educate the essential personnel?

The President's budget contains $31.4 million for interest subsidies on past loans obtained in the private market for construction of academic facilities. The Department of Health, Education and Welfare has said that no new loans will be subsidized and no funds for direct loans or grants will be made.

College enrollments are stabilizing, and the need for expanding college campuses has diminished. However, our institutions still have a very serious problem in replacing facilities that are antiquated or obsolete. Without interest subsidy grants, our colleges and universities will not be able to modernize and update their campus facilities to keep abreast of the educational needs of a rapidly changing society. The loss of these grants will increase our financing cost by as much as 4.5 percent or over $1 million a year for anticipated construction projects on our campuses.

Agriculture is one of Kentucky's most vital economic resources and is an indusry that concerns us greatly. We are constantly looking for ways to improve our own agricultural industry for we believe its viability is vital to the economy of our state. It troubles me greatly to see the President take over $300,000 away from my state's agricultural research program. Apparently he feels there is no need to try to improve upon our farming techniques or to try to find methods of increasing productivity. It is especially ironical that the President should cutback for such research at the very time that rising food costs are a major national issue.

ECONOMIC DEVELOPMENT

Economic Development Administration

The proposed budget eliminates all Economic Development Administration (EDA) activities. This abrupt halt of EDA activities will stifle the industrial development thrust that has been attained in many economically depressed areas. If such development funds are totally eliminated, Kentucky will be forced to provide an additional $3–5 million annually from state funds to carry out essential industrial development and related activities—such as construction of industrial sites in depressed areas of eastern Kentucky.

Additionally, immediate abolishment of EDA will have a severe impact on Kentucky's ability to construct vocational education facilities. It was anticipated that Kentucky would receive approximately $8.6 million over the next two fiscal years for state and local vocational facilities. Now we are quite uncertain about the future source of funding for these much needed educational facilities.

Discontinuing EDA Title V planning grants to regional development districts would mean the loss of approximately one-quarter million dollars in planning grants for the area development districts in Kentucky. In order to maintain area planning operations on a continuation basis, all or part of the EDA share must be met from other state or federal sources. The President proposes to shift support of such sub-state planning agencies to Comprehensive Community Planning (HUD 701) funding. However, the proposed budget increase for HUD 701 programs is only one-fourth of the amount that is cut in similar EDA funds.

Outdoor recreation

Budget reductions for the U.S. Department of Interior's Land and Water Conservation Fund, which supports the Bureau of Outdoor Recreation (BOR), will result in a loss of nearly $2 million for the state. These funds provide the essential land acquisition dollars to promote the economic and recreational opportunities of Kentucky. Since tourism and recreation play such an important part in Kentucky's economy, this will be a severe setback for the state—and an additional, unanticipated drain on state dollars.

Rural environmental assistance

An end to the 30 year-old Rural Environmental Assistance Program (REAP), formerly known as the Agricultural Conservation Program, will deny Kentucky farmers $5 million in cost-shared programs that emphasized the conservation of our soil, our trees, our water, and other natural resources.

Housing

On January 5, 1973, the federal government established a moratorium on all new low income subsidized housing programs. This includes both the HUD 235 and 236 programs as well as the Farmer's Home Administration 502 program. The Farmer's Home Administration programs, as well as the HUD 235 program for renovation of existing housing, has been cut off completely since there is no pipeline of advanced commitments. The effect of this moratorium on HUD programs for open space public housing, rent subsidy, rent supplement, public facilities loans, and water and sewer project grants is a freeze on nearly $30 million for various projects in Kentucky, that are currently in the application stage. In the Fiscal 1974 budget proposal, no funds have been requested for these housing subsidy programs pending a review by the Nixon Administration. With this complete freeze, and the resulting uncertainty about any future federal funding for housing, state and local governments are put in the

precarious situation of not having any incentive for planning new housing developments, since the Administration seems reluctant to make available any funding. The drastic need for housing is clear; but with the funding cut, we will see a severe decrease in low and moderate income housing.

Development conclusions

In appearance, the Administration's proposals are to shift funding of programs currently financed by EDA, Model Cities, Urban Renewal, Rural Electrification Administration, and many other rural and urban community development programs to the Rural Development Act of 1972 and the proposed Urban Community Development Revenue Sharing programs. In fact, however, the Administration's proposals would cut total dollars for development activities. True, state and local governments would be able to undertake urban renewal or model cities projects—if they discover some magical way to stretch one dollar far enough to buy two dollars in program services.

Additionally, the proposed Urban Community Development Revenue Sharing is not to be effective until Fiscal 1975. This will create a totally unnecessary delay in planning and initiation of new projects between the time that the categorical programs are terminated and the time that the new urban development program would begin.

NEIGHBORHOOD YOUTH CORPS SUMMER JOB AND RECREATION PROGRAM — CITIES' URGENT NEED

Mr. JAVITS. Mr. President, as Members know, each year in recent years I have found it necessary to seek additional funds under a supplemental appropriation for the Neighborhood Youth Corps summer job and recreation program, which is administered by the Department of Labor.

The summer job program provides employment opportunities with public and private nonprofit agencies for economically disadvantaged youth, 14 through 21 years of age; the recreation component serves poor youth 6 to 12 years of age.

Never has the situation been worse than it is this year.

The National League of Cities-U.S. Conference of Mayors documents a need for an aggregate of $505,517,789 to provide a total of 1,018,991 job opportunities for this summer and to meet minimal needs in the recreation and transportation components of the program.

The administration now plans to provide nothing specifically for this program.

It had requested originally $256,503,000 for the creation of 575,700 slots, but it has asked the appropriations committees to rescind that amount.

As I believe that the situation is so serious, I wrote the President on February 20, 1973, urging him to submit revised and amended budgetary requests for fiscal year 1973 to meet these needs. In that letter, I was joined by 26 of my colleagues, Mr. ABOUREZK, Mr. BIBLE, Mr. Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CASE, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. HASKELL, Mr. HATHAWAY, Mr. HART, Mr. HATFIELD, Mr. HUDDLESTON, Mr. HUGHES, Mr. HUMPHREY, Mr. KENNEDY, Mr. MCGEE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. RANDOLPH, Mr. TUNNEY, Mr. MONDALE, Mr. WEICKER, and Mr. WILLIAMS.

If action from the administration is not forthcoming, I intend joining with my colleagues to seek these funds under the supplemental appropriations bill, which is now originating in the House and will be considered here shortly.

So that Members may measure the effect of these cuts in their own areas and be fully apprised of the situation, I ask unanimous consent that a copy of the letter to the President dated February 20, 1973, together with a letter dated January 12, 1973, from the League of Cities, and accompanying tables, and a letter dated February 2, 1973, from the Secretary of Labor be printed at this point in the RECORD.

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

U.S. SENATE,
Washington, D.C., February 20, 1973.

Hon. RICHARD M. NIXON,
President of the United States, The White House, Washington, D.C.

DEAR MR. PRESIDENT: We are writing to urge you to submit revised and amended budgetary requests for fiscal year 1973 for an aggregate of $505,517,789 for the Neighborhood Youth Corps summer job program and related transportation and recreation components for the coming summer. The Administration's revised budget request for fiscal year 1973 does not request any funds for the program.

As you know, the Neighborhood Youth Corps summer jobs program, which is authorized under the Manpower Development and Training Act of 1962 and the Economic Opportunity Act of 1964, provides work experience opportunities with public and private non-profit agencies, and related transportation for economically disadvantaged youth, fourteen to twenty-one years of age; the recreational component of the program funds meaningful activities for poor youth six to twelve years of age.

Our request consist of the following elements:

$476,887,788 for the Neighborhood Youth Corps summer job program to make available an aggregate of 1,018,991 job opportunities, as outlined in detail below; last year the Administration provided 740,200 opportunities with an aggregate of $316,250,000.

$24,946,580 for the recreation component; last year a total of $14.8 million was provided.

$3,683,431 for the transportation element; last year $1.2 million was made available.

These requests are documented on a city-by-city basis in the enclosed letter dated January 12, 1973 and attachments to Senator Javits from the National League of Cities-United States Conference of Mayors, which represent the Nation's cities.

As stated in the National League of Cities letter, the amounts requested are those which the cities may "effectively utilize". In fact, the overall needs are much greater; for example, the Department of Labor estimates that in the job program more than 1.8 million poor youth could benefit—almost twice the number which may be covered under our request.

The Administration's position is set forth in the enclosed letter dated February 2, 1973 from the Secretary of Labor, Peter J. Brennan, which states:

"Under the President's revised 1973 budget, the Manpower Training Services appropriations does not contain funds for the funding of a 1973 NYC Summer Program. Instead, local sponsors of EEA projects will be permitted to use, to the extent they desire, 1973 EEA funds for a summer employment program. In addition, States and local communities may elect to use existing Manpower Training Services funds available in the communities to supplement the EEA summer program."

While we recognize and share the Administration's general concern with respect to limiting federal expenditures during the current fiscal year, we believe that funding for the Neighborhood Youth Corps should be given the highest priority and attention. Although, the Administration has been successful in reducing unemployment nationally from six percent to five percent, disadvantaged youth in poverty areas continue to face unemployment rates ranging from thirty to forty percent. The Neighborhood Youth Corps program is designed for that group and provides a meaningful alternative to wasted summers of restlessness.

The Emergency Employment Act of 1971 (EEA) cannot be viewed as an adequate alternative source of funding to meet the employment needs of poor youth. As you know, the Act is designed to reach all ages and socio-economic groups and coverage is largely at the discretion of State and local sponsors. Unfortunately, experience indicates that coverage of poor youth will not be adequate to their needs. Of the 138,170 job opportunities presently funded under the $1.0 billion available nationally, only 14,150—or approximately 10.2 percent—are held by poor youth under the age of twenty-two; even if the Administration's request for an additional $250 million for fiscal year 1973 is appropriated, it is quite clear that the aggregate number of slots that could be made available to poor youth from these new sources will not begin to meet the needs which we have documented.

Similarly, manpower training services funds available in communities will not be satisfactory alternative sources of jobs for poor youth; in fact, if the Administration's new requests for fiscal year 1973 are appropriated, appropriations (not taking into account the Neighborhood Youth Corps summer program) will fall approximately $200.0 million below the actual level for fiscal year 1972.

We were very gratified by your support for a supplemental appropriation last summer and we urge you to respond to these needs at the earliest possible time so that poor youth can make plans for a profitable and meaningful summer and the communities and agencies responsible for administering the program may ensure the most effective use of funds.

Very truly yours,

Jacob K. Javits, James Abourezk, William D. Hathaway, Frank E. Moss, John V. Tunney, Dick Clark, Hubert H. Humphrey, Harrison A. Williams, Jr., Edward M. Kennedy.

Walter D. Huddleston, Jennings Randolph, Harold E. Hughes, Alan Bible, Gaylord Nelson, Philip A. Hart, Clifford P. Case, Edward W. Brooke.

Alan Cranston, Quentin Burdick, Floyd K. Haskell, Edmund S. Muskie, Gale McGee, Walter F. Mondale, Mark O. Hatfield, Mike Gravel, Howard W. Cannon, Lowell P. Weicker.

NATIONAL LEAGUE OF CITIES,
U.S. CONFERENCE OF MAYORS,
January 12, 1973.

Hon. JACOB K. JAVITS,
U.S. Senate, Old Senate Office Building, Washington, D.C.

DEAR SENATOR JAVITS: In response to your request for information, we have made in-

quiries as to the cities' 1973 needs for the summer Neighborhood Youth Corps slots. The information we have received from the 50 largest cities shows that the total number of slots these 50 large cities could effectively use this summer is 421,930.

On the basis of our contacts with a sample of smaller cities, we estimate that their needs and the number of slots these smaller cities could effectively utilize total 597,061.

Combining these figures—the total for the 50 largest cities with estimated needs for the balance of the Nation—the present real need for 1973 is 1,018,991 slots nationwide.

We trust that these statistics will be helpful to you in pointing up the critical need for an adequate appropriation for the summer Neighborhood Youth Corps.

Sincerely,

ALLEN E. PRITCHARD, Jr.,
Executive Vice President, National League of Cities.
JOHN J. GUNTHER,
Executive Director, U.S. Conference of Mayors.

SUMMER NEIGHBORHOOD YOUTH CORPS

	Rank (in size)	Slots					Amount (1973 need)[2]
		Population	1972 need	1972 actual[1]		1973 need	
Region I: Boston	16	641,000	5,000	5,213	(4,692)	6,400	$2,995,200
Region II:							
Buffalo	28	463,000	4,268	2,238	(2,014)	6,834	3,198,312
Newark	35	382,000	14,563	7,000	(6,300)	14,563	6,815,484
New York	1	7,868,000	77,500	54,800	(49,320)	77,500	36,270,000
Rochester	49	296,000	4,650	1,030	(927)	4,650	2,176,100
Region III:							
Baltimore	7	906,000	9,420	7,712	(6,941)	9,420	4,408,560
Norfolk	47	308,000	2,625	2,200	(1,980)	3,500	1,638,000
Philadelphia	4	1,949,000	12,500	8,571	(7,714)	15,000	7,020,000
Pittsburgh	24	520,000	9,265	5,670	(5,103)	9,265	4,336,000
District of Columbia	9	757,000	36,000	8,999	(3,599)	20,000	9,360,000
Region IV:							
Atlanta	27	497,000	3,408	4,680	(4,212)	5,388	2,521,584
Birmingham	48	301,000	2,135	2,757	(2,481)	2,774	1,298,232
Jacksonville	23	529,000	1,735	637	(573)	2,500	1,170,000
Louisville	38	361,000	3,500	2,250	(2,025)	3,500	1,638,000
Memphis	17	624,000	2,394	1,935	(1,741)	2,394	1,120,392
Miami (Dade County)	42	335,000	8,226	5,429	(4,886)	8,226	3,849,768
Nashville	30	448,000	2,000	1,700	(1,530)	2,000	936,000
Tampa	50	278,000	6,515	2,649	(2,384)	6,515	3,049,020
Region V:							
Chicago	2	3,367,000	40,000	31,617	(28,455)	40,000	18,720,000
Cincinnati	29	452,000	3,000	3,592	(3,233)	5,000	2,340,000
Cleveland	10	751,000	11,100	12,457	(11,211)	12,500	5,850,000
Columbus	21	540,000	2,000	1,650	(1,485)	1,800	842,400
Detroit	5	1,511,000	25,000	18,488	(16,639)	25,000	11,700,000
Indianapolis	11	745,000	2,500	2,100	(1,890)	3,000	1,404,000
Milwaukee	12	717,000	3,000	3,379	(3,041)	3,379	1,581,372
Minneapolis	32	434,000	2,735	1,800	(1,620)	3,080	1,441,440
St. Paul	46	310,000	1,025	1,120	(1,008)	1,300	608,400
Toledo	34	384,000	990	1,400	(1,260)	1,400	655,200
Region VI:							
Dallas	8	944,000	2,280	1,505	(1,355)	2,280	1,067,040
El Paso	45	322,000	3,000	1,168	(1,051)	4,672	2,186,496
Fort Worth	33	393,000	1,507	155	(140)	1,507	705,276
Houston	6	1,233,000	3,560	5,284	(4,756)	5,664	2,650,752
New Orleans	19	593,000	5,000	3,085	(2,776)	5,000	2,340,000
Oklahoma City	37	366,000	1,530	1,010	(909)	1,539	716,040
San Antonio	15	654,000	5,514	5,080	(4,572)	6,000	2,808,000
Tulsa	43	332,000	1,011	771	(693)	1,011	473,148
Region VII:							
Kansas City	26	507,000	4,000	3,580	(3,222)	4,000	1,872,000
Omaha	41	347,000	1,670	867	(780)	1,670	781,560
St. Louis	18	622,000	5,910	8,060	(7,254)	9,000	4,212,000
Region VIII: Denver	25	515,000	2,100	2,038	(1,834)	2,100	982,800
Region IX:							
Honolulu	44	325,000	2,800	791	(711)	2,800	1,310,400
Long Beach	40	358,000	432	384	(345)	432	202,176
Los Angeles	3	2,813,000	24,568	25,319	(22,787)	27,491	11,700,000
Oakland	39	362,000	5,850	2,050	(1,845)	5,850	2,737,800
Phoenix	20	582,000	17,000	3,964	(3,567)	17,000	7,956,000
San Diego	14	697,000	4,510	4,733	(4,259)	5,500	2,574,000
San Francisco	13	716,000	8,000	4,000	(3,600)	8,000	3,744,000
San Jose	31	446,000	3,535	1,910	(1,719)	3,535	1,654,380
Region X:							
Portland	36	382,000	5,000	2,500	(2,250)	5,000	2,340,000
Seattle	22	581,000	5,000	2,163	(1,947)	5,000	2,340,000

SAMPLING OF CITIES OTHER THAN 50 LARGEST

	Slots					Amount (1973 need)[2]
	Population	1972 need	1972 actual	1972 actual	1973 need	
Akron, Ohio	275,425	1,216	1,190	(1,071)	1,351	$632,268
Albany, N.Y.	114,873	540	449	(404)	690	280,000
Albuquerque, N. Mex.	243,751	1,000	815	(733)	1,000	468,000
Amarillo, Tex.	127,010	1,092	820	(738)	1,200	561,600
Baton Rouge, La.	165,963	225	150	(135)	250	117,000
Columbia, S.C.	113,524	1,825	2,030	(1,827)	2,030	950,040
Columbus, Ga.	154,168	1,820	1,720	(1,548)	2,000	936,000
Dayton, Ohio	243,601	1,500	1,320	(1,188)	2,500	1,170,000
Des Moines, Iowa	200,587	750	750	(675)	750	351,000
Erie, Pa.	129,231	950	950	(855)	950	444,600
Flint, Mich.	193,317	1,800	920	(828)	2,000	936,000
Fort Lauderdale, Fla.	139,590	540	600	(540)	600	280,800
Gary, Ind.	175,415	4,447	3,500	(3,150)	4,447	2,081,196
Greensboro, N.C.	144,076	871	880	(792)	968	453,028
Hartford, Conn.	158,017	2,730	2,495	(2,245)	3,000	1,404,000
Jackson, Miss.	153,968	757	403	(363)	757	354,276
Knoxville, Tenn.	174,587	1,520	1,520	(1,368)	1,520	711,360
Lansing, Mich.	131,546	900	460	(414)	1,000	468,000
Lincoln, Nebr.	149,518	350	386	(347)	400	187,200
Little Rock, Ark.	132,483	1,320	72	(65)	1,320	617,760
Mobile, Ala.	190,026	900	756	(680)	950	444,600
Montgomery, Ala.	133,386	500	557	(501)	570	266,760
Riverside, Calif.	140,089	150	75	(67)	150	70,200
Santa Ana, Calif.	156,601	2,550	1,900	(1,710)	2,800	1,310,400
Savannah, Ga.	118,349	600	550	(450)	650	304,200

Footnotes at end of table.

	Population	Slots 1972 need	Slots 1972 actual	1972 actual	Slots 1973 need	Amount (1973 need)[2]
Shreveport, La	182,064	637	628	(565)	700	327,600
Syracuse, N.Y	197,208	1,365	1,200	(1,080)	1,500	702,000
Tacoma, Wash	154,581	600	588	(529)	600	280,800
Wichita, Kans	276,554	980	1,075	(967)	1,075	503,100
Winston-Salem, N.C	132,913	850	750	(675)	850	397,800
Worcester, Mass	176,572	825	705	(634)	900	421,200
50 largest total		410,831	278,490	(250,641)	421,930	197,463,240
Balance of cities		537,893	461,732	(415,559)	597,061	279,424,548
Total		948,724	740,222	(666,200)	1,018,991	476,887,788

[1] All figures in the above chart represent 10-week slots except the first column under "1972 actual" which are 9-week slots.

[2] Dollar figures represent 10-week, 26-hour slots at $1.65 per hour.

SUMMER RECREATION SUPPORT PROGRAM (RSP)

	1972 need	1972 actual	1973 need
Region I: Boston	$180,000	$168,000	$350,000
Region II:			
Buffalo	120,000	123,000	125,000
Newark	140,000	100,000	200,000
New York	2,934,000	2,336,000	2,934,000
Rochester	95,000	68,000	136,000
Region III:			
Baltimore	335,000	302,910	335,000
Norfolk	180,000	132,000	201,500
Philadelphia	700,000	543,000	1,000,000
Pittsburgh	165,000	168,000	200,000
District of Columbia	364,000	245,000	364,000
Region IV:			
Atlanta	180,000	143,000	180,000
Birmingham	170,000	120,000	170,000
Jacksonville	175,000	150,000	250,000
Louisville	130,000	96,000	130,000
Memphis	305,000	264,000	305,000
Miami (Dade County)	192,000	126,000	192,000
Nashville	150,000	150,000	200,000
Tampa	175,000	132,000	175,000
Region V:			
Chicago	2,100,000	913,000	2,100,000
Cincinnati	175,000	135,000	175,000
Cleveland	205,000	230,000	380,000
Columbus	211,000	132,000	211,000
Detroit	897,000	399,000	897,000
Indianapolis	195,000	130,000	260,000
Milwaukee	155,000	144,000	160,000
Minneapolis	96,000	63,000	130,000
St. Paul	58,000	36,000	58,000
Toledo	120,000	84,000	120,000
Region VI:			
Dallas	$285,000	$228,000	$285,000
El Paso	200,000	194,000	250,000
Fort Worth	173,000	108,000	175,000
Houston	440,000	350,000	440,000
New Orleans	300,000	306,000	500,000
San Antonio	400,000	324,000	500,000
Tulsa	115,000	92,000	200,000
Oklahoma City	170,000	108,000	170,000
Region VII:			
Kansas City	130,000	118,000	200,000
Omaha	96,000	61,000	96,000
St. Louis	384,000	254,000	405,000
Region VIII: Denver	170,000	126,400	170,000
Region IX:			
Honolulu	99,000	70,000	140,000
Long Beach	125,000	72,000	125,000
Los Angeles	650,000	552,000	650,000
Oakland	125,000	104,000	125,000
Phoenix	200,000	144,000	288,000
San Diego	200,000	164,000	825,000
San Francisco	250,000	180,000	250,000
San Jose	100,000	85,000	100,000
Region X:			
Portland	135,000	89,000	135,000
Seattle	129,000	89,000	129,000
50 largest total	15,928,000	11,451,310	18,096,500
Balance of cities	6,030,000	3,548,690	6,850,080
Total	21,958,000	15,000,000	24,946,580

SUMMER YOUTH TRANSPORTATION PROGRAM (SYTP)

	1972 need	1972 actual	1973 need
Region I: Boston	$20,000	$10,000	$20,000
Region II:			
Buffalo	13,000	7,500	13,000
Newark	39,500	23,437	69,300
New York	251,400	149,130	500,000
Rochester	12,000	7,500	15,000
Region III:			
Baltimore	35,000	21,100	35,000
Norfolk	12,000	7,500	25,600
Philadelphia	24,360	24,360	100,000
Pittsburgh	22,000	12,650	22,000
Washington, D.C	38,700	22,960	100,000
Region IV:			
Atlanta	30,000	12,080	30,000
Birmingham	24,000	13,790	24,000
Jacksonville	14,000	6,300	14,000
Louisville	12,500	7,500	12,500
Memphis	18,000	11,860	18,000
Miami (Dade County)	23,000	12,000	23,000
Nashville	12,000	7,000	12,000
Tampa	17,000	7,500	0
Region V:			
Chicago	70,000	42,240	70,000
Cincinnati	15,000	7,920	15,000
Cleveland	35,000	19,310	35,000
Columbus	17,000	8,640	17,000
Detroit	75,000	36,560	75,500
Indianapolis	15,000	8,480	15,000
Milwaukee	65,000	47,280	66,192
Minneapolis	20,000	12,380	75,000
St. Paul	12,500	7,500	12,500
Toledo	15,750	7,990	20,000
Region VI:			
Dallas	$23,990	$19,340	$23,990
El Paso	58,900	38,900	77,800
Fort Worth	15,000	8,130	15,000
Houston	45,000	25,060	0
New Orleans	25,000	14,790	25,000
Oklahoma City	25,000	14,000	25,000
San Antonio	26,570	14,570	26,570
Tulsa	12,500	7,500	20,000
Region VII:			
Kansas City	50,000	13,970	50,000
Omaha	15,000	13,500	16,000
St. Louis	43,500	25,790	43,500
Region VIII: Denver	29,000	18,320	29,000
Region IX:			
Honolulu	15,000	7,500	15,000
Long Beach	16,000	7,500	16,000
Los Angeles	82,870	82,870	164,000
Oakland	28,000	15,000	28,000
Phoenix	23,000	11,740	25,000
San Diego	30,000	14,360	30,000
San Francisco	25,000	11,970	25,000
San Jose	8,160	7,500	9,000
Region X:			
Portland	13,000	25,000	25,000
Seattle	32,100	19,060	32,100
50 largest total	1,608,940	979,487	2,155,552
Balance of cities	1,141,060	520,513	1,527,879
Total	2,750,000	1,500,000	3,683,431

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, February 2, 1973.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: This is in response to your letter to Secretary Hodgson concerning the Neighborhood Youth Corps Summer Program.

The Summer NYC Program for the summer of 1972 provided a total of $332,250,000 of which $175,700,000 was in the basic appropriation and $156,550,000 was in the supplemental appropriation. These amounts funded a total of 740,200 enrollment opportunities.

Under the President's revised 1973 budget, the Manpower Training Services appropriation does not contain funds for the funding of a 1973 NYC Summer Program. Instead, local sponsors of EEA projects will be permitted to use, to the extent they desire, 1973 EEA funds for a summer employment program. In addition, States and local communities may elect to use existing Manpower Training Services funds available in their communities to supplement the EEA summer program.

Next year under the Manpower Revenue Sharing approach contained in the 1974 budget, elected officials will be able to plan the level of summer programs determined by them to best meet their local needs.

Sincerely,

PETER J. BRENNAN,
Secretary of Labor.

SENATOR CLAIBORNE PELL ADDRESSES AACJC NATIONAL CONVENTION, LOS ANGELES

Mr. CRANSTON. Mr. President, I invite the attention of the Congress to an important address made by the distinguished chairman of the Senate Education Subcommittee, Senator CLAIBORNE PELL, before the national convention of the American Association of Community and Junior Colleges, February 26, in Los Angeles.

I was pleased to have Senator PELL, and the many members of AACJC, together in my home State of California. Senator PELL's message underscores the turn we have taken in national policy—through the Education Amendments of 1972—toward addressing the needs of the consumers of educational services. I believe his address also shows how we are broadening and balancing the postsecondary options which should be available to all Americans wishing to pursue further study.

All of us should recognize, as does Senator PELL, that the new Federal standard of student financial assistance—the basic educational opportunity grant—will be the key to fulfilling these policy directions. For the first time, the cherished dream of equality of opportunity in higher education is within our reach as a national target—but within our reach only if all of us, and particularly the colleges themselves, will make every effort to see the BOG's work.

I join Senator PELL in his challenge to the States to put their postsecondary houses in order, to bring vocational education, the community college, and the graduate schools together as colleagues and peers, and to the community college movement to exert leadership in bringing about these changes. Senator PELL's words should be heeded by all who are concerned about the welfare and progress of postsecondary education.

I ask unanimous consent that Senator PELL's remarks be printed, at this point, in the RECORD.

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

I wish to thank you for your kind invitation. This audience—you who personify the community and junior college movement in this country—is one that I have wanted to meet with for quite some time. For many reasons I am most happy to be here.

When it comes to making postsecondary education available and meaningful for more Americans, one naturally thinks of the community and junior colleges. More and more Members of Congress are coming to recognize the vital role of the community and junior colleges. Indeed, the Education Amendments we passed last year were indicative of that recognition.

It seems especially fitting, too, that I meet you here in California, the mecca of this movement—where the 94 community colleges, if my arithmetic is correct, enroll almost every tenth student pursuing any form of higher education in this country. When that one millionth student is enrolled in a California community college, there should be an official celebration. For, in addition to being a statistical mark, it will signify a milestone in our goal of making postsecondary education available to all.

You and I want essentially the same things out of this great enterprise we call education. I think we have the same general sense of its potential. I think we share much the same vision and much the same dream. The junior and community colleges help make that dream a viable one.

By now most of you have heard several speeches about the Education Amendments of 1972, and read volumes on it. And I do not intend to give just another speech about that bill. Without dwelling at great length on its details, let me simply stress what I think are its main thrusts.

First, let me say that I am not sure that the two-year colleges yet entirely appreciate how prominent and advanced is their role in this legislation. Your mission, and the needs of your students, figure in almost every dimension of the bill—from the reforms in student financial aid to the incentives for state planning. You have achieved the general recognition you deserve and you have scored several specific gains in the bill. I think that high among your own priorities now should be a commitment to see that these gains become operational. To be specific, let me cite what I see as the most important of these gains.

First, the entitlement approach, or GI bill concept, toward student financial aid. For the first time, it can be possible for every low- and middle-income student who needs help to obtain that help and attend your colleges.

No longer will schools be in the agonizing position of turning away scores of applicants for Educational Opportunity Grants, simply because you have only enough federal dollars to cover grants for a half or a third of them. Now we have *two* kinds of Education Opportunity Grants—the Basic Opportunity Grants, and the Supplemental Opportunity Grants. Your students in great numbers will be eligible for both. Every low-income student you enroll will, according to his degree of need, qualify for the Basic Grant. This is what we mean by entitlement. (All this of course depends on adequate funding.)

Second, part-time students who are carrying at least a half-time load are now eligible for the various forms of student financial aid, again according to degree of need. This was a legislative battle that the community colleges led. You and your Washington spokesmen spearheaded this proposal and you won. I see it as a major breakthrough for your colleges.

Third, you now have a community college law—a specific title of your own. Going back four years, you collaborated with Senator Williams to write the first Comprehensive Community College Act. (Incidentally, February could be specified as Community College Month, since it was just four years ago this month that Senator Williams first introduced that bill.) The Williams bill has become Title X of P.L. 92-318. To be specific, it gives start-up support, the leasing assistance, and a high-level community college unit in the U.S. Office of Education to serve as both the advocate and the watchdog of the community and junior colleges under federal programming.

Perhaps most important, Title X also calls for comprehensive and coordinated state planning. There are enormous implications to this aspect of the bill. Let me make it clear that it was not the Congressional intent to force states to form super boards or coordinating agencies—although, if this is the route a particular state is traveling, or wants to travel, that is the state's option. Clearly this choice belongs to the state, and that is what Congress wanted.

It is equally clear that Congress wants the states to put their postsecondary houses in order. If the states want to continue to enjoy federal support for a large share, and possibly an expanded share, of the postsecondary education costs, then they will have to show a greater variety in both institutions and services and a greater accessibility to them in order to serve both more people and a broader range of needs.

It makes no sense for a handful of the big institutions to receive most of the support, with the smaller institutions sharing the crumbs, when these smaller schools are absorbing most of the enrollment increases and are mounting many of the important reforms.

It makes no sense for the community and junior colleges to be getting fewer dollars per student for lower division work than the universities get for the same work, when the two-year colleges are educating the larger relative share of less-advantaged students (considering both economic and educational hardships) and are also enrolling an increasing number of the dropouts from both secondary and postsecondary education.

On the other hand, it makes no sense for a state to establish a technical school across the street from a community college or vice versa and let them duplicate each other's programs. In too many states, we have a surfeit of schools of postsecondary education, with colleges stumbling over each other trying to lure and serve the same students, while other sections and other large groups go unserved by any form of comprehensive postsecondary education. If that overworked word "opportunity" is going to mean anything, then we must have comprehensive postsecondary schooling within reasonable commuting distances of all. Educators like to talk about "life-long learning"—surely it is clear to everyone that the kind of world we live in now demands it—yet I think education itself has a long road to travel in facing and making the adjustment. This is why the Congress has put such emphasis on planning. As I said earlier, if the states and colleges want more help, they must serve more people. They must serve broader needs.

All of us know that there are those in education who think this comprehensiveness, or this emphasis on service, only dilutes and weakens higher education—that it erodes standards. I take an opposite view. The farther education goes to meet the challenge of serving all who have a legitimate claim to greater knowledge and stronger technology, the stronger and more relevant it will be. And in the process of meeting this test, I think education stands to learn a great deal that is yet undiscovered about the learning process.

Briefly, then, what I see as the main emphasis of the Amendments of 1972 can be summarized in one word: commitment. The Act approaches the question of national policy for higher education from a new angle: it makes a commitment to the consumer, the student.

By the same token, the Act makes a commitment to change. It seeks to eliminate the old double standard—favoring traditional liberal arts studies over technical or occupational studies. Such a double standard in our society is nonsense. To underscore our point, we provided generous funding in Title X for stronger postsecondary occupational development and we made the new Bureau of Occupational and Adult Education (absorbing the old division of Adult, Vocational and Technical Education) rank equally with the Bureau of Higher Education.

In writing this type of legislation, we have also attacked the old pecking order. Communication and progress in education have long been hampered by elitism. Those who savor the trickle-down process will continue to do so at their own peril. The salvation of education will lie in the graduate school, the community college, the vocational agency, and the elementary-secondary system all dealing with each others as peers.

Last but not least, the bill makes a commitment to education. It casts a new vote of confidence in you and education. More educators need to grasp this point. However, there are some who are so busy grumbling that the bill does not embody their pet formula, or favor their particular empire, that they remain blind to the fact that it goes far beyond any federal acts of the past in the support it promises to both students and institutions.

All of this brings me to the issue uppermost in your minds—the real business of our getting together. Where do we go from here? We can only be outraged when we consider the funding authorized by the bill against the sum the White House has proposed for its implementation. The dollar discrepancy is five billion dollars. The President's budget proposals would not even pay for the programs that the Administration itself lobbied to have written into the bill.

If the Administration gave the priority it should to education, the rules and regulations to implement the Basic Opportunity Grants, the Pell Grants, should already be in print. But even at this late hour—more than eight months after the Act became law—the technicians in the U.S. Office of Education are still fumbling over the language.

Dalliance on implementation of the bill is only half of the threat from this Administration. We are faced with an Executive Branch which seeks to cut expenditures in all areas which serve people. The cut in education funds is disastrous.

While an outgoing Secretary of Defense talks about increasing the Defense Budget from a record $74 billion to more than $80 billion, it appears that this same Administration wants to cut back on the already sparse budget for education. The present Administration has vetoed four HEW Appropriations bills. In 1971, $4.4 billion for the Office of Education was vetoed. In 1971, $2.1 billion for child care was vetoed. Last year, President Nixon twice vetoed the Labor-HEW Budget. And even when appropriations bills have not been vetoed, funds have been impounded.

I believe that our fight for higher education expenditures is only beginning. We must present a united front to the President. It is estimated that it will take approximately one billion to fully fund our new grants in their initial year, not the $600 million the Administration has requested. Added to this is another $600 million to fund the existing student assistance programs.

One of our first actions should be a concerted effort to see that education authorizations are meaningfully funded. We must call upon this Administration to forget the rhetoric of blaming bureaucrats for our problems and to make clear its stand on education. We must call upon it to hold the line on the Defense Budget, or even cut it, and take that money and use it to improve education and training for our nation's youth.

S. 659 is a magnificent edifice, one which all the post-secondary education components took part in erecting. We must now prepare for a battle which, when we are victorious, will see our national priorities changed. When national priorities are changed, funds will be available to both students and institutions. To attain this end, I need your help, and ask you to join those of us in Washington and throughout the nation who would reorder the present priorities and place our national treasure where it can best aid our future—in our youth.

The Nixon Administration budget figures are not going to stand as the last word on education funding. Certainly they will not, if I have any role to play. And I intend to play a strong role in the fight for the funding of this legislation. I support a ceiling on federal spending. But I insist that the Congress—not the Executive—be the one to determine how this money will be spent and just what the priorities should be.

Here, too, is where I think you as community and junior colleges come in.

When I used the word "presence" to describe higher education involvement or noninvolvement in Washington, I had two things in mind.

I think you are going to have to get more involved. Not only are Frank Mensel and your association going to have to be a strong presence, but more of you as spokesmen for your communities and your students are going to have to get involved.

We know from long experience that education authorizations are not self-enacting. They arise because people lobby for them. You—and the other college groups as well—are going to have to get much stronger in this role. Congress will meet you more than halfway—I think we amply show that in this Act—but you now have to make the case for funding. You are going to have to collect the data, and you are going to have to carry it to the Hill.

This you must do if you want the new grants. If you want Work-Study. If you want Title X support. And if you want the fondest of your dreams—the institutional support.

CHARGES MADE BY RETIRED ARMY LT. COL. ANTHONY HERBERT

Mr. GOLDWATER. Mr. President, on February 27, I placed in the CONGRESSIONAL RECORD numerous documents and records bearing on the charges of retired Army Lt. Col. Anthony Herbert that the U.S. Army was out to destroy him, because of allegations he made concerning alleged war crimes in Vietnam.

Included in that material were documents which Colonel Herbert had earlier said were signed by the Secretary of the Army Robert F. Froehlke, Generals William Westmoreland, Winant Sidle, and others and would prove the Army was intent on destroying him, because he had embarrassed the high command. A close study of those documents will show that they in no way substantiated Colonel Herbert's claim nor were they signed by all the people he said had signed them.

Mr. President, I might say that Colonel Herbert is actively engaged in attempting to promote the sale of a book he wrote with a New York Times reporter which included his charges and many other unsubstantiated statements and allegations reflecting on the armed services of the United States. To this end, he continues to travel around the country making his charges on radio and television talk shows in the hope of attracting more public attention to his book. In order that the record of this case might be as complete as possible in the public record, I ask unanimous consent at this time to place in the RECORD numerous fact sheets put out by the Army on the Herbert case together with letters which Maj. Gen. Winant Sidle has written in reply to magazine articles and interviews written about Colonel Herbert and incorporating his unfounded allegations. I am also including in these insertions reviews, both critical and complimentary that have been published about the colonel's book. Another insertion is the transcript of the Washington, D.C., Metromedia TV show, "Panorama," on which Colonel Herbert appeared recently and on which I had an opportunity to question him by telephone concerning allegations he made during an appearance with me on the Dick Cavett Show on January 23.

Mr. President, I realize that this is requesting an unusual amount of material to be placed in the CONGRESSIONAL RECORD, but I believe that when the Army of the United States and the military in general have received such indictments which in the main are unprovable, then it is necessary to have the entire record so that the readers of the CONGRESSIONAL RECORD within the Congress and around the country will have the full material and be better able to make their own judgments relative to this man.

Believe me, as a former member of the military and one who respects a professional soldier, it is not easy for me to do this, but Colonel Herbert has brought this on himself when he distorted the facts on a national television show on which I was a panelist and he has repeated those charges across the Nation. Colonel Herbert had an excellent record as an enlisted man, but when he became an officer the attributes he learned as an enlisted man seemed to have disappeared.

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

METROMEDIA, INC., "PANORAMA" WITH COL. ANTHONY HERBERT

PROCEEDINGS

Mr. ———. —through those leaves, through those branches, and through some other young American that's standing out there in the jungles.

Mr. ———. True.

Mr. ———. Do you think the army's still out to get you even though that you're no longer in it?

Mr. ———. Now wait a minute. The army is not out to get me, the army. It is not a fight between Colonel Herbert and the United States Army.

Mr. ———. Well the army—when I say the United States Army, I'm talking about that the people who run the United States Army——

Mr. ———. I think they have to discredit, they have to discredit.

Mr. ———. —the power structure. To discredit you.

Mr. ———. Absolutely.

Mr. ———. You think they're still out to discredit you.

Mr. ———. Oh, certainly.

Mr. ———. How—what would happen if the, for instance Senate Armed Services Committee, which now holds documents that were classified which apparently were given to you and you gave them to Senator Goldwater and Senator Goldwater now has presented them to the Senate Armed Services Committee. What happens if they do not take those documents and subsequently hold hearings. Let's just say——

Mr. ———. If they take those documents and do not hold hearings, it just shows one more thing that we'd better be wary of in America. That once again you can't turn to your Senate or your Congress or any of legitimate solution to any problem, and that means one more niche closer to Brave New World.

Mr. ———. Would you be satisfied if they had hearings and the whole file on Colonel Herbert, Colonel Franklin, General Barnes, be opened up and looked at?

Mr. ———. Sure. Let me say this——

Mr. ———. As General Barnes says, that he would make public everything if it was up to him.

Mr. ———. Well let's make it up to him

and let him make it public, you know. I've been saying that for four years, you know. So if General Barnes doesn't mind, and Colonel Herbert doesn't mind, and Mike Wallace doesn't seem to mind, you don't seem to mind, the American people don't seem to mind; the only people that seem to mind is William Westmoreland and the generals. So why do they mind. I mean, there's no national security involved.

Certainly open up the entire hearings. The thing is this. The only good thing that can come out of it all is for Congress or the Senate of the United States to have a complete hearing on this entire case and to show whether these are isolated instances in Vietnam, or were they SOP like the rest of us are saying, a lot of us are saying—Standard Operation Procedures. If they are, not with the aim of punishing General Barnes, not with the aim of punishing Colonel Franklin, because that does nothing, that's a loss also. But to find out what went wrong, why it went wrong, and do something about it. And prove Herbert a liar or accept what Herbert says is the truth and find out who did the lying and the covering up in the entire——

Mr. ———. And the main war crimes charge that you elicit in the book is the fact that it was supposedly done by South Vietnamese troops, right, under an American officer in charge?

Mr. ———. That's one particular crime.

Mr. ———. That was 21 that you——

Mr. ———. No, I never reported 21 ever in my life, I reported eight.

Mr. ———. Eight.

Mr. ———. That's right. The army says 21, that was——

Mr. ———. Wasn't it the one that triggered I'm talking about.

Mr. ——— Hm?

Mr. ———. The one that triggered isn't the one I'm talking about, the one that you were first aware of.

Mr. ———. On February 14th.

Mr. ———. 1969.

Mr. ———. That was the—

Mr. ———. It was an American supervisory lieutenant.

Mr. ———. That's right.

Mr. ———. A couple of points I want to clear up. Both you took a polygraph test, a lie detector test. And—

Mr. ———. I took one, and I presented it to the press, and the press had it and it's been published in the papers. The army says Colonel Franklin took one, let's see it.

Mr. ———. You don't think—do you think he did not?

Mr. ———. Did you see it?

Mr. ———. No.

Mr. ———. I don't know, I said see it. I haven't seen it in the papers.

Mr. ———. They also reported, the army also reported that Colonel Franklin was telling the truth in his polygraph test.

Mr. ———. Well let's see the polygraph test, I showed mine.

Mr. ———. Where is he now? Where is Colonel Franklin?

Mr. ———. He's up here at Fort Belvoir I believe. The thing is—look, why don't you call Colonel Franklin and sit him in the chair here this week.

Mr. ———. I'd like to.

Mr. ———. Colonel Franklin, and fire questions at him on these particular war crimes. You see, the thing is this. The army says he took a polygraph, I've never seen it in the newspapers. Reporters have asked for it and they haven't received it. Reporters have asked to talk to Colonel Franklin and they haven't talked to Colonel Franklin. Suddenly we have a man who's—Colonel Douglass—who has the audacity to say on national television on 60 Minutes that I had this answer all the time for four years, but the reason I didn't come forward, no one asked me. I mean, that's equivalent to about a—if I got that out of one of the patients down there in the clinic, I'd ask—I'd really look into it very closely. I mean, the thing is that this doesn't even hold water.

One more thing.

Mr. ———. Yeah.

Mr. ———. General Barnes stated on that program, to Mike Wallace or to ———, that he relieved me for—because I was so vicious and everything, and now he was going into pacification. It's interesting to note that four years ago when General Barnes was under oath under Article 138, he was asked specifically why he relieved me, and his answer was I don't know, you'll have to ask Colonel Franklin, he did it. Now he couldn't remember one week after he relieved me why he did, but suddenly four years later his memory returned, you know.

Mr. ———. One final question I must ask you.

Mr. ———. Yeah.

Mr. ———. Why did you wait 18 months?

Mr. ———. But I didn't. We have——

Mr. ———. To formally present atrocity charges.

Mr. ———. You see the word formal is the trickle in it, the trickle theory. The word formally means that they were receipted for, that they were receipted for. I waited 18 months to get a receipt for them because they would not receipt for them till the day before I was supposed to go at 11:00 o'clock the next morning to federal court in Atlanta, Georgia. Then and only then would they receipt for them.

We have a line of witnesses from Vietnam, who knows I reported them, from Fort Leavenworth, Kansas, who knew I reported them, at Fort McPherson, Georgia, who knew I reported them. It was not 18 months before I reported them, I reported them each day as they had occurred, we have a polygraph to attest to the fact that I reported them on April the 4th, that morning, and we have witnesses all along the way to show a continuing reporting of these particular crimes until the formal report was accepted, only after I threatened to go into federal court with a civilian lawyer the next day, and the charges were all laid out.

Mr. ———. Can we pause, we've got a friend of yours on the phone.

Mr. ———. Yeah.

Mr. ———. His name is Goldwater, he's a Senator.

Mr. ———. Good.

Mr. ———. And you've talked to him before.

Mr. ———. Yeah, on the Cavett show, right.

Mr. ———. And he said if you have any documents I'll be glad to put them before the Senate Armed Services Committee and that's exactly what you did.

Mr. ———. Okay.

Mr. ———. So we have him on the phone, I think.

Mr. ———. We'll pause briefly and by that time we'll get it.

Mr. ———. Yeah, we'll pause and come back and maybe he'll talk with us.

Mr. ———. Okay.

Mr. ———. He said on the program that I called him, but he refuses. That makes a big difference.

Mr. ———. Did you, did you try to get ahold of Franklin?

Mr. ———. Did he call in? No, no, I don't mean that, I'm talking about Goldwater? Did he call in himself?

Mr. ———. We are back, and our guest is Colonel Anthony Herbert, and I think on the phone is Senator Barry Goldwater. Senator.

Senator GOLDWATER. Yeah.

Mr. POVICH. Maury Povich, how are you, sir.

Senator GOLDWATER. Yes, I just happened to come back in my office and the staff was watching television, watching Colonel Herbert, and while he did send me a pile of papers, in fact they were sent by a radio station in San Francisco, they did not contain the document that he referred to, or we both referred to. Let me read you from the transcript of the Dick Cavett Show, this is Colonel Herbert speaking.

Since then of course we have obtained a document which I talked about yesterday, and this document is signed by Secretary of the Army Froehlke, it's signed by William Westmoreland, it's signed by General Seidal, it's signed by General Kerwin among generals. And it says in effect that item one we will once the publicity dies down, we'll get this guy. And I'm just quoting that out of transcript I have. And If Colonel Herbert will send me that letter, signed by those generals, we can get along with this thing.

The Armed Services Committee is anxiously awaiting it.

Mr. POVICH. Okay, Colonel, would you like to respond to the Senator.

Mr. HERBERT. Yes, the Senator knows, and you know because of the release in the New York Times yesterday, what those papers say. Those papers are signed by the men who I say signed them. As the reporter says there, he has exactly the same papers as Senator Goldwater has. He interprets them a little differently than the Senator does, apparently, because it says basically just what I said.

In addition to that there are other attachments to that document which was—and Senator Goldwater is well aware of them—that are classified. And he as a general and as a senator has every right to have them. They are the 35 statements and five documents which are referred to in that particular papers I gave him that refer to an annex G. He has access to them and he can get them.

Once again we're in this shuffle business. Here we are right here, by a reporter from the Times, who read through those documents. He sees it a little differently than Senator Goldwater does. If the—the document speaks for itself, the papers speak for themselves, and he can read them, or he has PIO men who can read them for him.

If there's no reason to—if it doesn't say what I say, publish them, publish them for the American people, the same ones I gave to Mr. Goldwater. And let's see what the people think about them.

Mr. POVICH. Senator, would you want more data before you feel the Senate Armed Services Committee could have hearings on them?

Senator GOLDWATER. What I'm referring to is a letter that the colonel said he had, signed by Froehlke, Westmoreland, Seidal, Kerwin among generals, And this is a letter which he specifically stated on the air before the American people, outlined the way the army was going to get him. Now in the papers that I received there's no classified information, there's no relationship at all, the only thing that could come close to it was a question as to whether or not he would be awarded a presidential recognition of service and an army recognition of service, both customarily given to men who are retiring from the service. There was some question about that.

But I can tell the colonel that he has not sent me the letter that he referred to twice in the Cavett Show and promised to send me, and I'm beginning to wonder if he has any.

Mr. HERBERT. All right, let me ask you this Mr. Goldwater. However General Kerwin recommended in his memorandum to General Westmoreland that no adverse action be taken against Colonel Herbert, should be taken "at this time, at least partly because any action at this time would undoubtedly be misconstrued by the press as undue influence on the investigation of the colonel's charges against General Barnes, which was then proceeding. The colonel's charges against Colonel Franklin had been dismissed one month before the date of this document. Colonel Herbert said in an interview and it goes on and on. Was this in error?

Senator GOLDWATER. Well, now, you're not answering the question, Colonel.

Mr. HERBERT. Well what's your question, good, I'll ask it—answer it.

Senator GOLDWATER. Go on about what you said on the Cavett show, quoting from the same—

Mr. HERBERT. Are you going to hinge on the word letter?

Senator GOLDWATER. I know the letter you're referring to is not the letter you told me that you had.

Mr. HERBERT. What letter did I tell you about. What letter did I tell you about, Senator?

Senator GOLDWATER. You told me about the letter that I'm going to read your statement on right now.

Mr. HERBERT. Okay.

Senator GOLDWATER. I continue, quoting you.

Mr. HERBERT. All right.

Senator GOLDWATER. And then the Secretary of the Army and General Westmoreland says, then we will accuse him of violating regulations, and of lying to the press, and then it says in effect that he did not lie to the press and that he did not violate regulations, and then he says, well, we can't get him legally. What we will do is we will get him for moral reasons, in other words we'll file a false morals charge against him. We will do this administratively, and we won't have to answer to the press, and I think they'll buy it.

Now you have never sent me a letter stating that, nor are there any statements to that effect in the papers I have received.

Mr. HERBERT. Do you see in that paper, general, however we cannot get anything against him at this time, "an officer may be eliminated from the service for moral or professional derelictions, subject to the right of an officer to request retirement in lieu thereof."

Senator GOLDWATER. This is not the paper that you are referring to in the—

Mr. HERBERT. Certainly it is, you're, you're hedging around the bush. These are the papers—

Senator GOLDWATER. I'm not hedging around the bush, I'm trying to get you to admit that you're wrong.

Mr. HERBERT. About what?

Senator GOLDWATER. About this whole statement that you've made before the American people—

Mr. HERBERT. No.

Senator GOLDWATER. —and go around the country making.

Mr. HERBERT. No, I—

Senator GOLDWATER. I want to put this to the Armed Services Committee.

Mr. HERBERT. You won't?

Mr. ————. Wants to.

Senator GOLDWATER. I don't think you have it. I want to put it before it—

Mr. HERBERT. Well go ahead.

Senator GOLDWATER. The Armed Services Committee is anxiously awaiting it.

Mr. HERBERT. Then that's it, what you have.

Senator GOLDWATER. You stated you had a letter, a letter, not letters, a letter—

Mr. HERBERT. Oh, come on.

Senator GOLDWATER. —signed by these people.

Mr. HERBERT. The American people will laugh at you for saying something like that. What you're saying is I have a single letter, a letter signed by all these people. The letter I was referring to is the entire case which you have there, which includes all of those signatures as read by the New York Times and published yesterday.

Senator GOLDWATER. Are you—

Mr. HERBERT. Once again, you're hedging on the word—okay, I don't have a single letter, if that makes you happy.

Senator GOLDWATER. Why did you say you had?

Mr. HERBERT. I never said a letter, I'm talking about—maybe——

Senator GOLDWATER. Yes. you did.

Mr. HERBERT. Misuse of words.

Senator GOLDWATER. You said it twice on the Dick Cavett Show and I have a transcript right here in my hand.

Mr. HERBERT. Okay, Senator, I don't have a letter, I have those letters which I sent you which are bound into one document which I gave you. If you think the people are going to hear this and be fooled by such a simple technicality, I think you underestimate the American people. I don't have a single letter, does that make you happy?

Senator GOLDWATER. Why did you say you had? That's what you said—you said you'd give it to me——

Mr. HERBERT. My ————'s bigger than your ————, I mean——

Senator GOLDWATER. You sent me this pile of papers—

Mr. HERBERT. —this is ridiculous.

Senator GOLDWATER. Actually, it doesn't say anything one way or the other.

Mr. HERBERT. Oh, what? Okay.

Mr. POVICH. Thank you very much for calling, Senator.

Senator GOLDWATER. Okay.

Mr. POVICH. I appreciate it. Do you have any other information colonel that you could supply—

Mr. HERBERT. Like what?

Mr. POVICH. The committee, the Senate Committee.

Mr. HERBERT. Certainly.

Mr. POVICH. In order to get this in the open.

Mr. HERBERT. Certainly. Who do I give it to that's going to put it in the open?

Mr. POVICH. Well, let's not say Senator Goldwater, let's say some other senator.

Mr. HERBERT. Who?

Mr. POVICH. Well, I can give you a list of Senators, okay?

Mr. HERBERT. Give me one that will do something.

Mr. POVICH. We'll try to find one.

Mr. HERBERT. No.

Mr. POVICH. Hold on for a second and we'll be right back.

Mr. WILLIS. Maury, can I just interrupt just a second. I think it should be said that we attempted to get a number of people from the army to come on here with Colonel Herbert. Now the call from Senator Goldwater really came out of left field, I did not expect that.

Mr. POVICH. It was on his own. The army was, we might add, was very uncooperative with us. We inquired about people coming on with you, as you have stated, you're not their most pleasant——

Mr. HERBERT. Yeah, but you see——

Mr. POVICH.——pleasant——

Mr. HERBERT. —they want to go off on tangents with Grimshaw in the case. And let people like Westmoreland come out here and face me, where we can ask each other questions. Let people like General Barnes come out here and face me, where we can ask the questions on the war crimes right on down the line. They want to go off on all these little side issues, no such luck. I know how the machine works and I'll stay with the central issues, pounding and pounding and pounding, and the American people have it there and they're going to look at it and they know what is so.

It's the same as this technicality of Goldwater saying there, I want a letter. Like, I quit doing that when I was eight years old, really and truly. I mean, just keep—I mean, I admit there is not a one sheet letter signed by all these people, autographed by them.

Mr. WILLIS. But he could have sincerely believed that you had referred to a letter.

Mr. HERBERT. No, he didn't, because when we walked off that program, I offered him the same papers that he has right now and he refused them. Then when I was out in California doing a program in Los Angeles, his son made a statement in front of some people out there and said my dad's been trying to get you to get those papers, and I said, good, I'll give them to you and you deliver them to daddy. And he wouldn't take them either. That's how it took a newsman to get them to him.

Mr. POVICH. Fellow on the line now is a producer for 60 Minutes, at least that show, they have many producers. His name is Barry Landow, Barry, how are you.

Mr. HERBERT. I'd never guessed it.

Mr. LANDOW. Fine thanks. Tony was saying that he doesn't—that there's no one willing to take them on, on the main issues, and I'm perfectly delighted to. I would like to make a couple of things clear first, number one, regarding those documents. I had also seen them, Herbert had sent them to us several weeks ago, and I also thought they do not, they do not support at all what Herbert says they did.

Also I happened to speak with the New York Times reporter yesterday who wrote that article, he also does not feel they support what Herbert said they did on the Cavett show. If Tony doubts that, he could call the New York reporter and ask him.

Mr. HERBERT. Then what?

Mr. LANDOW. And another thing, as far as Goldwater wanting to let those documents go, I have a copy, so does the Senate and Senator Stennis have copies, so does anyone else who wants them can get copies of registered letters which Senator Goldwater—two of them which Senator Goldwater sent to Herbert—asking him to send him, please, those documents.

Mr. HERBERT. Um hum.

Mr. LANDOW. I also have a letter which Goldwater sent to Stennis saying he was trying to get hold of those documents, had not received them yet, and would subpoena Herbert if necessary to get them.

Mr. HERBERT. Does he have them?

Mr. LANDOW. With what Tony says.

Mr. HERBERT. Does he have them?

Mr. LANDOW. Does he have what?

Mr. HERBERT. The documents.

Mr. LANDOW. I think he does, but——

Mr. HERBERT. Who gave them to him?

Mr. LANDOW. Tony, just a minute, please. But Tony——

Mr. HERBERT. Who gave them to him?

Mr. LANDOW. On the Dick Cavett Show. I also have a transcript of that show, and anyone else who wants it can get it, and you did refer to a single letter, I couldn't understand why at the time. And you also said that it said many things which it did not, and which the New York Times reporter who wrote that piece yesterday agrees it did not.

Mr. HERBERT. It says what I said it says.

Mr. LANDOW. But let's go onto the major isues now the——

Mr. HERBERT. The war crimes.

Mr. LANDOW. No, Number one, you've been going around the country also attacking me. Saying that the reason that we did the piece on 60 Minutes was because I had wanted to write a book with you, is that correct?

Mr. HERBERT. No.

Mr. LANDOW. Well, what is your position, then?

Mr. HERBERT. I just said it's interesting to note you asked to write the book and were turned down. I just told here on this program, Barry, I don't know why you did it.

Mr. LANDOW. Well, why do you bring up the point about me wanting to write a book about you——

Mr. HERBERT. Because it's very significant.

Mr. LANDOW. Unless——

Mr. HERBERT. It is significant and so——

Mr. LANDOW. Well why do you, why do you——

Mr. HERBERT. Wait a minute, Barry, let me talk for a minute. It is also significant that you had an autographed copy of that book, autographed by J. Ross Franklin, for all the things you're doing for him in this, right?

Mr. LANDOW. I have an autographed copy of the book——

Mr. HERBERT. Did you read it?

Mr. LANDOW. Just a minute. I have an autographed copy of the book.

Mr. HERBERT. Would you read it?

Mr. LANDOW. From Franklin in my office, not at home.

Mr. HERBERT. What does it say?

Mr. LANDOW. I'm going to tell you if you let me finish.

Mr. HERBERT. Okay.

Mr. LANDOW. From Franklin, thanking me because I was the first person to start digging into this thing.

Mr. HERBERT. Read the quote.

Mr. LANDOW. I asked Franklin—the book is in my office, I'm at home.

Mr. HERBERT. Do you want me to quote it for you?

Mr. LANDOW. Go ahead.

Mr. HERBERT. Okay, it's for all the things you are doing for the army in this case.

Mr. LANDOW. Tony, do you have a copy of it in front of you?

Mr. HERBERT. No.

Mr. LANDOW. How do you know what it says?

Mr. HERBERT. You know what it says.

Mr. LANDOW. Look, let me read a letter if I may, it was written to——

Mr. HERBERT. You don't want to talk about the autograph, right?

Mr. LANDOW. I do have an autographed book, that is correct.

Mr. HERBERT. What does it say?

Mr. LANDOW. What's wrong—what does that have to do with——

Mr. HERBERT. A lot, an awful lot.

Mr. LANDOW. Tony, just a minute. You are talking about going off into side issues. Don't you think you're going off into a side issue?

Mr. HERBERT. Okay, we won't go off onto side issues, let's go into——

Mr. LANDOW. I have an autographed book signed by Franklin, what does that have to do with the validity of the 60 Minutes piece?

Mr. HERBERT. Because when it comes for all the things you are doing for me, or us, or the army in this case, and it's before you ever talked to Colonel Herbert or the witnesses, a lot, Barry, a lot.

Mr. LANDOW. It's not what it said, and you know, and as you know I spoke to you first, approximately one and a half years ago, and at that time Tony Herbert——

Mr. HERBERT. Um hum.

Mr. LANDOW. As you know, I fully believe in you and in your case, which is why I did want to write a book about you.

Mr. HERBERT. Um hum.

Mr. LANDOW. Now, thank God, I didn't go near the subject.

Mr. HERBERT. Then you were suddenly turned down for writing that book, and suddenly you no longer believed in me any longer, right?

Mr. LANDOW. Turned me down for writing the book, why did you send me——

Mr. HERBERT. You turned me down, right?

Mr. LANDOW. I still have it if anyone wants to look at it——

Mr. HERBERT. I said you turned me down.

Mr. LANDOW. Just a minute. Why did you send me a draft proposal, a first chapter, and outline of the book, which I still have.

Mr. HERBERT. I never sent you a draft proposal, you called Wooten's office and got a draft proposal from the New York Times of what we were doing.

Mr. LANDOW. That's a lie and Wooten will deny it.

Mr. HERBERT. All right.

Mr. LANDOW. And also do you know, Tony Herbert, Jim Wooten no longer knows what to think about you.

Mr. HERBERT. Oh, well let Wooten come out and say that.

Mr. LANDOW. Okay, why don't you ask him? Ask Wooten.

Mr. HERBERT. No, you'd better——

Mr. LANDOW. Now can I go on to read a very interesting letter that was written to the man who was the co-author of Herbert's first book——

Mr. HERBERT. 1953, right——

Mr. LANDOW. ——on the Korean War.

Mr. HERBERT. ——Barry, here goes the same old business, 1953——

Mr. LANDOW. ——This letter was written to the co-author after the man tried to check out some of Herbert's statements. And the letter says——

Mr. HERBERT. This is a key issue.

Mr. LANDOW. Can I talk, can I finish. When I saw Herb over the new year, I was appalled about how bad his memory has grown.

Mr. HERBERT. I was older then.

Mr. LANDOW. Can I finish? He was very mixed up on many facts and points of information. I would advise you to——

Mr. HERBERT. (Inaudible).

Mr. LANDOW. Check carefully any facts used in promotional work carefully. These things can backfire.

Mr. HERBERT. Yeah.

Mr. LANDOW. In all confidence, I knew Herb better than anyone in the company, and he was always thrown to exaggeration and looseness in this way.

Mr. HERBERT. So in 1953——

Mr. LANDOW. To say this as a friend, who understands him, and not in the least way to deprecate him. He's just that way.

Mr. HERBERT. A central issue.

Mr. LANDOW. This was written almost 20 years ago.

Mr. HERBERT. The central issue that you're talking about is telling me in 1953, that letter from a private in 1953 who was in a book, suddenly discredits this here today, is this right?

Mr. LANDOW. The letter was not in the book, Tony, the letter was written to the author——

Mr. HERBERT. No, I didn't say the letter in the book I said about——

Mr. LANDOW. And the man who was your closest buddy.

Mr. HERBERT. The role in the book in 1953, is what you're falling back on. And that and a guy out of the cave, and I killed a duck and threw a sandbag out of a helicopter to discredit this book, is that right?

Mr. LANDOW. That's not right, and you know it. The main point would be, you have brought out in a 60 Minutes piece which I feel does discredit your book, is that on the—for the worst atrocity, the February 14th slayings of five people by South Vietnamese police with an American advisor standing by, you claimed in that same day, on February 14th, you reported that crime, first by field radio to Colonel Franklin, and then you flew immediately back to your base and reported it personally to Franklin.

Mr. HERBERT. Um hum. What did Bill Hill tell you?

Mr. LANDOW. On that day the army claimed that Franklin was on R&R in Hawaii.

Mr. HERBERT. What did Bill Hill tell you?

Mr. LANDOW. Let me finish.

Mr. HERBERT. Okay.

Mr. LANDOW. We set out to prove whether or not he was. We proved——

Mr. HERBERT. How about answering the question what Bill Hill told you——

Mr. POVICH. Better make it quickly Barry because we're going to be off the air. I know you know what that means.

Mr. HERBERT. Captain Hill told you what occurred on that day, what did Captain Hill tell you?

Mr. LANDOW. Captain Hill told me, and he'll tell you this if you phone him up and ask him, Captain Hill told me he could not be at all sure that Colonel Franklin was in Vietnam on that day. You told me Hill——

Mr. HERBERT. What did Hill tell you on that telephone down there, Barry. He told you that he could almost positively say that Franklin was on the ground that day in Vietnam.

Mr. LANDOW. Because, because Hill had said——

Mr. HERBERT. Did he tell you that, yes or no?

Mr. LANDOW. Can I finish? Because he had——

Mr. HERBERT. Did he tell you that?

Mr. LANDOW. He told that—he said on the telephone, that he thought that Franklin was there. I flew——

Mr. HERBERT. Thank you.

Mr. LANDOW. Just a minute. I flew out to Okla——

Mr. HERBERT. Did he tell you that Franklin was on the ground that day?

Mr. LANDOW. Can I finish talking?

Mr. HERBERT. Yeah.

Mr. LANDOW. I flew out to Oklahoma personally to ask Hill whether or not he saw Franklin there that day.

Mr. HERBERT. And suddenly he didn't.

Mr. LANDOW. He told me that he had not.

Mr. HERBERT. Suddenly he——

Mr. POVICH. All right, thank you very much, Barry I—thank you very much for calling. I find this all terribly fascinating, thank you, I appreciate it. We have kind of like run out of time, we're going to break and come back or what? We're going to break and come back, okay.

We're doing something that is six years that it's happened, has it?

Mr. WILLIS. Never happened before.

Mr. POVICH. We are going past 2:00 o'clock because we find the subject so fascinating, and so terribly interesting. So that we—and it was a very awkward place for us to cut off, Lieutenant Colonel Herbert and Barry Landow. Maybe Landow will get back on and we'll talk some more, and maybe we won't. But, you understand now that, I mean you're——

Mr. HERBERT. I understood all along, the thing is this. Let's talk about not what Landow says people told him, let's talk to the people. Call the people that he names, or go out and investigate the people. I say they'd say something completely different. I was present when he talked to Bill Hill down at Atlanta——

Mr. POVICH. Bill Hill is your company commander.

Mr. HERBERT. He was a company commander who is still on active duty. Hill told him, item one that he was still on active duty and therefore were under certain restrictions. He told him item two that he was on the radio that day and he could almost positively put Franklin on the ground that day, although he didn't witness him or see him or remember a date four years ago, he remembers the incident out there and hearing Franklin and reporting on the radio.

Larry Cahilla, the helicopter pilot, remembers hearing the report on the radio down there. But—okay, we go onto this. Here's a man who says let's stick to the central issues, so he pulls out a letter from a guy named David Finestein, who is New York City. Call David Finestein, ask him what the real import of that letter was and why it was written.

You'll find out that I didn't agree with the book in 1953 either, it was an as told to, it was done overseas without giving me any chance to sign it was what I wanted in the book. I also wrote a letter to the same, almost to the same effect, saying that there were some of the things that were changed around, et cetera, et cetera. Call Finestein and ask.

Mr. POVICH. But——

Mr. HERBERT. He's available in New York.

Mr. POVICH. Captain——

Mr. HERBERT. Go ahead.

Mr. POVICH. I mean Bill Hill is also quoted in the 60 Minutes show—

Mr. HERBERT. Did you——

Mr. POVICH. ——as saying you were the best company commander he's ever seen, but you were a liar.

Mr. HERBERT. No, that's not what Bill Hill says at all. That's what Landow says that Bill Hill said to him. Call Bill Hill and talk to Hill. Now—and remember Hill is still in the army and Grimshaw. Call Mike Daguerky, he's a company commander, he's at Fort Bragg, North Carolina, call Mike Daguerky and ask what happened to him for refusing to make a false statement against me. Go, call him and ask him on your show tomorrow or the next day.

Mr. WILLIS. What did happen to him?

Mr. HERBERT. All right, and he made a case of it in the army. He was at Gordon Military School and went up and said what he thought was the truth, people asked questions about my case and he told them. He was called in and reprimanded for it. Suddenly he was given a bad efficiency report and now his entire military career is in effect over. Because he would not make a false statement against me. Call him and ask him.

I'll give you a letter by Jim Grimshaw which I have right back in the hotel right now, saying in effect that he went up to visit Ernie Webb and how unpopular they both were because they were supporting my case. It makes a difference when you become unpopular in the army and you've got a half a million dollars riding on it.

Mr. POVICH. Well what conclusion do you draw on all these contradictory statements, quotations, evidence, testimony that comes forward?

Mr. HERBERT. Okay, the conclusion is that the Congress of the United States must have a complete investigation, get all of the documents out in the open, call the witnesses in, permit the right to cross examination, and find out who's telling the truth. If it's that important, I think it is, you apparently do or we wouldn't be running over.

Mr. POVICH. You have thought it was that important or you wouldn't have gotten on the show on this day——

Mr. HERBERT. That's right.

Mr. POVICH. In 1971 to talk about it, originally.

Mr. HERBERT. And I still think it's that important. So then let's do it.

Mr. POVICH. Landow only asks for the same thing, Goldwater only asks—Landow on this show, at the end of the show——

Mr. HERBERT. So who's on the spot to produce?

Mr. POVICH. The only, the only—I think both of you. I both think the United States Army is on the spot to produce and you are on the spot to produce.

Mr. HERBERT. Okay, good then let's have a complete impartial investigation, and we'll produce what we have, and let the army produce what they have, and bring all the witnesses up. That's all we've all been asking for for four years, for a complete congressional investigation into the entire fiasco or whatever you want to call it, and let's find out who's telling the truth.

Mr. WILLIS. Have you been approached by anybody from the Senate Armed Forces Committee, or anybody from Congress?

Mr. HERBERT. Well, I was approached from a Senator for a specific letter with four autographs on it.

Mr. POVICH. Yeah, but don't you understand his position there.

Mr. WILLIS. Let's get an answer.

Mr. HERBERT. Certainly I understand his position, and I understand what he's doing. I mean, let's face it, Barry Goldwater's a General in the United States Military, Armed Forces, he's been known for his hawkishness, and what have you. I'm saying let's have a complete congressional investigation and lay it all out in the open. The army has all the statements, let them put it out there. Let's see. The onus is on the army to produce, I have produced. There's a book right there that is a production, it has been produced, it's got documents in it and there are more documents to back it up. Now it's on the army to refute it with evidence, not with talk, but with evidence. Put out the hard evidence and let's see it.

Mr. POVICH. No one really though has ever questioned the integrity of Barry Goldwater.

Mr. HERBERT. You don't—I'm not questioning his integrity, you know, I mean that's saying something that I'm not saying. I'm merely saying that there is a legitimate reason for not looking at it, because of what happened in Vietnam.

Mr. POVICH. Do you think that Barry Goldwater would not like to see an open, impartial hearing on the matter, because he is a general and he doesn't want to see a bad mark on the army?

Mr. HERBERT. Would I believe that Barry Goldwater doesn't want to see a complete investigation and out in the open, yes. Yes.

Mr. WILLIS. For what reasons?

Mr. HERBERT. I don't know.

Mr. POVICH. I don't believe that he wouldn't want an impartial investigation.

Mr. HERBERT. Well if you don't believe it, then——

Mr. POVICH. Because he's never given anything in his past history, his attitudes towards anything——

Mr. HERBERT. Okay, are you telling me that—are you telling me right now——

Mr. POVICH. That he would not want the truth known.

Mr. HERBERT. Are you telling me that the business about a letter, I don't have this, I have this, I don't have this, I don't have a specific letter, was a grown up, was a Senator's approach?

Mr. POVICH. Yeah, that's exactly the way they reply to things, they—you've got something, show it to me.

Mr. HERBERT. I did, he has it. He's hinging on the fact that it's not a letter. You're saying he's not hinging on that fact?

Mr. POVICH. No, I'm hinging on the fact that he doesn't believe you gave to him what he thought you said you had.

Mr. HERBERT. I say it is what I said I had. I may have misused the word letter or document interchangeably, but the thing is it is what I say I had, and he has it in his possession.

Mr. WILLIS. Are you saying it's a composite then of letters?

Mr. HERBERT. It is, it's a group of memorandums is what it is, stapled together as one case. And the stapling together made—use the word letter for it, or letter or case or document. But it's a series of memorandums back and forth between these people.

Mr. WILLIS. I asked you before but—you have not been approached by any member of Congress?

Mr. HERBERT. I'm not going to say I haven't been approached by any member of congress. You mean have I—on this particular document?

Mr. WILLIS. On the book, the issue involved.

Mr. HERBERT. No.

Mr. POVICH. On an impartial investigation.

Mr. HERBERT. Not since the book, no, no.

Mr. POVICH. Did you try to go elsewhere?

Mr. HERBERT. I haven't tried to go anywhere since the book has come out, the book is there. I mean, congressmen read, and they have the book, it's obvious. Now it's up to the congressmen who work for us, I don't work for the Congress. I mean, suddenly the whole thing has gone topsy turvy. I work for Barry Goldwater, I work for the President, the hell I do. They work for me, I pay their wages. They work for you and you and there people out here. They are the public servants. The thing is, it's laid out there, the accusations are there, then it's time they looked into them, you know.

I mean in England, when they had a book "Operation Nordpole" it caused a big investigation, they looked into it. When they had the Profumo affair they looked into it. There are the accusations and the charges congress has it available, the public has it available, and they can read it for themselves right there. What is congress going to do about it. There is my accuse right there.

Mr. POVICH. But don't you think that it's—if this does not bring about what you would like to see, this impartial investigation, isn't it incumbent upon you to go out and get more evidence?

Mr. HERBERT. Oh. I'm not the investigator, I have enough evidence, I have the evidence.

Mr. POVICH. No one could say you are the investigator, you are, you just said it.

Mr HERBERT. Yeah.

Mr. POVICH. You are the accused here.

Mr. HERBERT. No, that's not what I said. J'accuse me I accuse you, I accuse the army for the cover ups, that's what j'accuse means. Emil Zola. Not that I am the accused.

Mr. POVICH. No, no, you are the accusor.

Mr. HERBERT. Yeah.

Mr. POVICH. You have made these accusations.

Mr. HERBERT. And I do right now, I make them again.

Mr. POVICH. Do you say that you have more documents?

Mr. HERBERT. I'm not going to call them documents, see, cause then they're going to zero in on the word documents. I have more evidence, okay.

Mr. POVICH. Who would you give that to right now if you had to give it to anybody?

Mr. HERBERT. I would give that stuff to anybody who would come out in the open and say, okay, we are going to have an investigation, bang, and this begins on such and such a date, present what you have, and let the army present the rest of it, and demand—congress has the right to demand—those papers off the United States Army. Let them demand, they have the right to demand, and the army has two choices.

The men can come in there and declare executive privilege, which is corrupt in itself, unless you're the executive, which in effect says yes, you're telling the truth, I'm not going to give you the evidence cause I'm caught behind the eight ball. Or they come in and lay it on the line and let's let an impartial investigation, not under congressman ———, not an armed forces investigation, not that type, Senate Armed Forces or congressional armed forces subcommittee, but a group of congressmen selected down there, the Cunnings; the Proxmire's, the Harold—the Hughes, and people like this, who have shown their goodwill and want to do things like this, and will present it all, certainly.

Mr. POVICH. I don't want to—we're working overtime, all of us, can you stick around for just a few more minutes?

Mr. HERBERT. Sure.

Mr. POVICH. We're coming right back.

We are back and we're talking with Lieutenant Colonel Anthony Herbert, and maybe we can finish this all up. Barry Landow is back on the phone, I think.

Mr. HERBERT. One point, let's talk specifically about what I gave Goldwater, cause I think the people are getting confused.

Mr. POVICH. All right.

Mr. HERBERT. It is not a letter, it is a set of memorandums, papers, documents, whatever you want to call. They're memorandums and letters and typed and papers back and forth, and articles between the men who I named, Kerwin, Seidal, Westmoreland, Westmoreland's office, people like this here, including the Secretary of the Army. They are bound together, they are stapled together, and they have a case number on it. And it is titled "The Need for Any Unusual Actions to be Taken Against Colonel Herbert". Unusual,

and I'd like to stress that word, unusual actions to be taken against Colonel Herbert.

The thing is, the information is in there, a lot of it is in their couch and I'll go in there and explain it to Mr. Goldwater if he doesn't understand it. He can fly me out there or I'll get out there myself if he wants to sit down and discuss it line by line, and I'll show him in those papers the refutation of claims the army made, including one you showed me out of a paper today.

One is the army claimed that—one time they claimed that Westmoreland was not aware that the—that Hensley was the investigator because Westmoreland did not order the investigation. It states in there specifically that he did.

The army has been saying right along that I filed for redress, then was not granted redress, and then filed charges against the general and the colonel. I say that that's not so, it shows in there chronologically that—well I'd like to say——

Mr. POVICH. I know, I know.

Mr. HERBERT. Chronologically it shows that I filed the charges against General Barnes and Colonel Franklin, and then was passed over, rather than the other way. It's a very significant fact. But these things are in there.

Mr. POVICH. Now let's try to finish up with Barry Landow. Yes, Barry.

Mr. LANDOW. First of all, before—I would like to get back to February 14th, I think that's significant.

Mr. POVICH. 1969.

Mr. LANDOW. But before that, Tony, when we did an interview with you, we asked you about those documents and about how to face value they really didn't add to what you said they did.

Mr. HERBERT. On face value.

Mr. LANDOW. On the Cavett Show. Now you told me, you told Mike Wallace at the time. that maybe they didn't but you had lawyers who said that they did. Could you please give me the name of those lawyers?

Mr. HERBERT. No, I cannot.

Mr. LANDOW. Why not?

Mr. HERBERT. Can you give me the names of—could you give me the complete statement that Bill Hill made you—Could you—would you answer some questions for me first?

Mr. LANDOW. Just a minute, I'm asking you—

Mr. HERBERT. No.

Mr. LANDOW. You said you have lawyers to——

Mr. HERBERT. Yeah, I am not going to give you the names of my lawyers.

Mr. LANDOW. —who substantiate your claim. Don't ask, don't throw back another question. Give me the names of the lawyers.

Mr. HERBERT. Okay, I am—okay, I'll tell you, I am not going to give you the names of my lawyers.

Mr. LANDOW. Okay.

Mr. HERBERT. All right, does that answer your question?

Mr. LANDOW. I assume that's (inaudible).

Mr. HERBERT. Now let me ask one now.

Mr. LANDOW. Now just a sec, let's go to February 14th. You say Franklin was in Vietnam on February 14th.

Mr. HERBERT. That's right.

Mr. LANDOW. You say that in your book.

Mr. HERBERT. That's right.

Mr. LANDOW. You told that to every reporter who ever talked to you about it—

Mr. HERBERT. I say I reported to him that night after that action, yes.

Mr. LANDOW. Now in your—the army however, and—claims that Franklin was in Viet—in Hawaii. So it is for Franklin.

Mr. HERBERT. I also stated that in the book, didn't I?

Mr. LANDOW. Right? Okay, now you got hold of the hotel receipt from Ilikai Hotel in Hawaii where Franklin was, that showed that Mr. and Mrs. Franklin were there from the 7th to the 14th of February in Hawaii, which already would have been February the 15th in Vietnam. That would seem to knock down your case, but then you said, no. Colonel Franklin checked out a couple of days before, and Mrs. Franklin stayed over and paid the bill, is that correct?

Mr. HERBERT. I say that Mrs. Franklin checked out.

Mr. LANDOW. And you also say in your book that Mrs. Franklin signed the hotel—the receipt——

Mr. HERBERT. That's the one that I gave you.

Mr. LANDOW. Yeah, and you say that in your book. Now—and you sent it to me, too.

Mr. HERBERT. Yes.

Mr. LANDOW. And to check out, I checked with the Ilikai Hotel and asked them what was that document that you said was the hotel receipt. It turned out Tony, as you know because I've told you this before, it turned out that it wasn't the receipt for checking out, it was the registration slip.

Mr. HERBERT. Why is it signed down at the bottom, after the total, and why is it signed on the 14th?

Mr. LANDOW. It's not signed down—I have it in front of me——

Mr. HERBERT. Well read it.

Mr. LANDOW. And it's not signed at the bottom after the total, and you know that.

Mr. HERBERT. Read what it says.

Mr. LANDOW. It's simply, it's simply the registration slip.

Mr. HERBERT. Does it have all of the amounts of money on it?

Mr. LANDOW. It doesn't, because it's the registration slip.

Mr. HERBERT. Wait a minute, Barry. I gave you one with the total amounts of money on it.

Mr. LANDOW. I have it right in front of me, and I'd be pelased to make it available to the TV station, ———, any one of them.

Mr. HERBERT. Go ahead, make it available. It shows that she signed it, not him.

Mr. LANDOW. It says that she signed it, but it happens to be the registration slip.

Mr. HERBERT. Okay, if you say so Barry.

Mr. LANDOW. I will show it to anybody else, anyone else——

Mr. HERBERT. Well good——

Mr. LANDOW. To look at it and check on it.

Mr. HERBERT. I say it's a receipt, I say it's the receipt when she left the hotel.

Mr. LANDOW. Tony, the hotel looks at this form—and I'll make it available to anyone who wants it——

Mr. HERBERT. I know Barry, we were the ones who presented it to you, remember?

Mr. LANDOW. That's correct.

Mr. HERBERT. That's right.

Mr. LANDOW. And the hotel looked at the form, and they said, uh-uh, that's the registration.

Mr. HERBERT. Um hum. I'm telling you——

Mr. LANDOW. That sort of shoots down your case.

Mr. HERBERT. It's signed on the day she left. What day did she leave Barry, tell me that?

Mr. LANDOW. Mrs. Franklin left on the 14th.

Mr. HERBERT. Okay. Now I go back to the same thing.

Mr. LANDOW. Hold it, just a minute.

Mr. HERBERT. Wait a minute, let me talk for a minute now. Mrs. Franklin left on the 14th, now I go back to the same thing. That the wife does not leave at the same time or before the husband, the husband leaves, the wife sees him off and leaves the next day or any day after that she wants to.

Mr. LANDOW. No, Tony——

Mr. HERBERT. Oh, yes.

Mr. LANDOW. It's also possible that the husband may see the wife off. There's no rule—

Mr. HERBERT. It's possible but highly improbable.

Mr. LANDOW. Apart from the hotel receipt, which we have, as you know we also spoke with two officers who flew——

Mr. HERBERT. What were their names, Barry?

Mr. LANDOW. They also flew—there were two officers.

Mr. HERBERT. What were the names of those two officers?

Mr. LANDOW. Can I finish talking, please?

Mr. HERBERT. Yeah.

Mr. LANDOW. Thank you.

Mr. HERBERT. Are you going to give me the names of them?

Mr. LANDOW. If you'll let me finish talking I'd be delighted to. We also talked with two officers who said they had flown with Franklin from Vietnam to Hawaii, and returned with him——

Mr. HERBERT. Tell who they were.

Mr. LANDOW. Can I finish.

Mr. HERBERT. Ahhh—

Mr. LANDOW. Returning to Vietnam on February the 16th. Now those two officers had reason not to like you—

Mr. HERBERT. Why?

Mr. LANDOW. As we'll understand, which is why we didn't put full reliance in their word.

Mr. HERBERT. But you're implying that they're telling the truth, Barry.

Mr. LANDOW. I didn't, I'm not saying that. They were part of the evidence.

Mr. HERBERT. Did they have a reason to lie?

Mr. LANDOW. Certainly they did.

Mr. HERBERT. But why, who are they?

Mr. LANDOW. Tony, without getting into names I'm admitting they had reason to lie which is—

Mr. HERBERT. Who are they?

Mr. LANDOW. Who are they?

Mr. HERBERT. Names.

Mr. LANDOW. They're Colonel Nicholson and Major Crouch.

Mr. HERBERT. And who was Major Crouch, tell the people.

Mr. LANDOW. Tony, without getting into it—you're going off on side issues now—I am admitting——

Mr. HERBERT. Oh, no, no, no, Barry, these are the central issues. Here once again comes together the same people that I said. Tell them who Nicholson is.

Mr. LANDOW. Colonel Nicholson was the previous commander of your battalion.

Mr. HERBERT. That's right. Tell them who Crouch was.

Mr. LANDOW. Major Crouch was the—on the brigade staff——

Mr. HERBERT. Yeah, and one of the real culprits in the book, right?

Mr. LANDOW. You had accused him of trying to take an illegal R&R.

Mr. HERBERT. Ah ha. Now, where was Nicholson really on those particular days, did you go check out the Australia business?

Mr. LANDOW. Mr. Herbert, in fact we did, after you made the charge, and we found out that Nicholson had gone to Australia, but three or four weeks after he returned from R&R in Hawaii. He went to Australia——

Mr. HERBERT. How did he do that?

Mr. LANDOW. He went to Australia on leave, very simple.

Mr. HERBERT. Now, Barry, you know better than that.

Mr. LANDOW. Now what are you going to say, you're sort of speechless.

Mr. HERBERT. You don't get any two or three R&Rs in Vietnam.

Mr. LANDOW. I'm not talking about R&R, he went there on leave, we checked out with the Australian Broadcasting Company because they did a program on him when he was there, and they confirmed what he said.

Mr. POVICH. Can I ask a question, Barry? Was Bill Hill's statement, which is apparently a very crucial statement, was his entire statement then what you presented in these documents?

Mr. LANDOW. No, what Bill Hill says in the transcript of the telephone interview,

which Tony has, which I have, what Bill Hill says is that at the time he thought that he, that Franklin was in Vietnam on the 14th, he doesn't say he was certain of it.

Mr. HERBERT. What did he——

Mr. HERBERT. Okay, yeah.

Mr. LANDOW. When—since it was a very serious bit of evidence, I flew out to Oklahoma, had a face to face conversation with Hill, at first telling him this is all off the record, he said no, he doesn't want.

Mr. POVICH. He doesn't want what, the interview or off the record?

Mr. LANDOW. That I say what he said, and you can check with him.

Mr. HERBERT. You can always check it, you see.

Mr. LANDOW. Hill said no, I'm not all certain that Franklin was in Vietnam on the 14th, in fact how could anyone be certain three years after the facts.

Mr. HERBERT. Franklin's certain.

Mr. LANDOW. Franklin is certain because he was on R&R and has hotel bills to prove it.

Mr. HERBERT. Oh.

Mr. LANDOW. And every other person who Herbert mentioned——

Mr. HERBERT. I'd like to ask one more question. Let me ask you a question on Bill Hill and——

Mr. LANDOW. Let me finish.

Mr. HERBERT. —don't just keep saying. Oh, come on Barry, you're just rambling, let me ask you a specific question. What did Hill tell you in that conversation about why he couldn't be quoted, and you know what he told you and I was standing there when he told you. About the pressures that were on him.

Mr. LANDOW. It wasn't, it wasn't about the pressures that were on him.

Mr. HERBERT. What did he tell you on the tape?

Mr. LANDOW. I have the transcript of the phone conversation and it doesn't say that, and I'll make that available, to anyone who wants it.

Mr. HERBERT. Okay, go ahead, ask him for it and play it.

Mr. LANDOW. Your congressional investigation.

Mr. HERBERT. Will you make it available for the public here.

Mr. LANDOW. I'd be delighted to.

Mr. HERBERT. Sure, play it.

Mr. POVICH. We'd like to have it, we'll get in touch with you. I thank you, such great cooperation. Just a minute.

Mr. HERBERT. Good. Play the Hill tape.

Mr. POVICH. We will.

Mr. HERBERT. Great.

Mr. POVICH. When we get it we'll play it, definitely.

Mr. HERBERT. All right.

Mr. POVICH. As soon as we get it.

Mr. HERBERT. He promised it.

Mr. POVICH. He said he would give it to us, didn't he? All right. I'll get a transcript of our show to make sure that he said that.

Mr. HERBERT. Good, good.

Mr. POVICH. We'll be back in a moment, when we do we're going to have another phone call I think.

Mr. WILLIS. It's Senator Goldwater on the phone again.

Mr. HERBERT. It's a wonderful tape.

Mr. POVICH. For those of you who are waiting for the 2:00 o'clock movie, it's going to come on slightly later but it'll be joined in progress.

Mr. WILLIS. I might say the title is "Rage in Heaven" and it's pretty stormy down here right now.

Mr. POVICH. I don't want to consult the movie, but I'm sure this drama laid out is as equal.

We have on the phone now—unfortunately Senator Goldwater probably had to go to the Senate to answer a quorum call, but with us is the administrative assistant or press assistant, I don't know. Is this Tony Smith or someone else?

Mr. KILGORE. No, this is Leonard Kilgore, the Senator's administrative assistant.

Mr. POVICH. Oh, Leonard, Maury Povich, how are you?

Mr. KILGORE. Right. He stood by here for about the last ten minutes but decided to go ahead on over to the Senate floor. And he wanted it fully understood that he is giving to the Senate, and they will be published in the Congressional Record in the morning, all of the documents that were sent to him by Mr. James Dunbar of KGO radio in San Francisco.

Mr. POVICH. Which are the same documents which Colonel Herbert said that he would send to Senator Goldwater, correct?

Mr. KILGORE. I gave them to Dunbar to give to him.

Mr. POVICH. Right. Thank you—okay, fine Leonard, thank you very much.

Mr. KILGORE. Okay.

Mr. POVICH. I appreciate it, thank you. Well——

Mr. HERBERT. That's good.

Mr. POVICH. We have to unfortunately wrap up, but I thank you very much for the indulgence, first of all that we went so long, it has to be the longest interview I've ever had on this show, it's almost an hour and a half.

Mr. WILLIS. It is, not since we started six years ago when we were originally on for three hours have we gone past 2:00 o'clock.

Mr. HERBERT. Which proves the effectiveness of the book, because part of it is to drive everything out in the open which it's apparently doing, and that's good.

Mr. WILLIS. I sincerely hope so.

Mr. HERBERT. And once it's out in the open I think people can decide for themselves.

Mr. POVICH. I think that anyone who is connected with the case, fascinated by it, interested in it, would want nothing better than to see an open, impartial investigation.

Mr. WILLIS. Colonel Herbert, thank you very much for being with us today on Panorama, this has been, truly Maury, one of the most unusual programs we have ever had, we're indebted to you for it. How many times do you get telephone calls from the Hill wanting to talk about this and—I don't know where the other fella was, up in the New York?

Mr. POVICH. No, he was here.

Mr. WILLIS. Oh, he was here. Well, we thank them both, all of them involved for being with us here today, on the telephone or here in person.

DEPARTMENT OF THE ARMY, OFFICE OF THE SECRETARY OF THE ARMY,
Washington, D.C., October 8, 1971.

Information for Members of Congress:

LT. COL. ANTHONY B. HERBERT

The following is the substance of a news release being made today.

Secretary of the Army Robert F. Froehlke announced today that he has completed his review of the file concerning the unsatisfactory efficiency report received by Lieutenant Colonel Anthony B. Herbert at the time of his relief from command in 1969 and has decided to remove this efficiency report from Lieutenant Colonel Herbert's official records. Considered in the review were the reports of the boards which had previously denied Lieutenant Colonel Herbert's request for redress of his relief and his two appeals of the efficiency report.

The Secretary's review showed that there is no indication in any of the records in Lieutenant Colonel Herbert's file that his relief from command was, in any way, connected with reporting or non-reporting of war crimes, atrocities or similar misconduct. Therefore, the Secretary feels that there is no need to delay the action on Lieutenant Colonel Herbert's efficiency report until final decisions in unrelated investigations still in progress are reached.

The unsatisfactory efficiency report reflected that Lieutenant Colonel Herbert was relieved—despite his tactical and technical skills, and his personal bravery—because both his immediate supervisor and his brigade commander stated that they had lost confidence in his judgment and could no longer tolerate what they considered his inability to work in harmony with his colleagues.

While this review centered on Lieutenant Colonel Herbert's relief from command and one particular efficiency report, the Secretary of the Army necessarily considered the matter within the broader framework of Lieutenant Colonel Herbert's many years of service. He bore in mind that this efficiency report, covering only 58 days of duty, might have reflected an unfortunate exception to a record of otherwise effective service. Further, he considered the comment by I Field Force Vietnam on the report of the board proceedings that stated that the efficiency report contained some unwarranted expressions of opinion. In addition, he considered the earlier recommendation by Third U.S. Army, where he is now assigned, that the efficiency report be removed from Lieutenant Colonel Herbert's file.

Since this action will constitute a material change in his file, Lieutenant Colonel Herbert's records will be forwarded to a standby selection board for further consideration. In the event the board selects Lieutenant Colonel Herbert for promotion to Regular Army Major, he can, if he desires, continue on active duty. Should the board not select him for promotion, Federal statute requires that he be retired effective March 1, 1972.

Secretary Froehlke said that he originally intended to delay the announcement of his action on Lieutenant Colonel Herbert until the conclusion of the current investigation of Lieutenant Colonel Herbert's war crimes allegations. However, since the review of Lieutenant Colonel Herbert's record and his war crimes allegations proved to be two entirely separate matters, due to the lack of mention of war crimes and atrocities in the Lieutenant Colonel Herbert file, there appeared to be no legal requirement or logical reason to delay this announcement.

DEPARTMENT OF THE ARMY, OFFICE OF THE SECRETARY OF THE ARMY,
Washington, D.C., October 15, 1971.

Information for Members of Congress:

MAJ. GEN. JOHN W. BARNES

The following is the substance of a news release being made today.

Major General Roland M. Gleszer, Commanding General, US Army Military District of Washington, today announced that he has dismissed the court-martial charges preferred by Lieutenant Colonel Anthony B. Herbert against Major General John W. Barnes. LTC Herbert had charged MG Barnes with violation of regulations and dereliction of duty in failing to report alleged war crimes allegedly reported to him by LTC Herbert. The dismissal followed an official inquiry into the charges conducted pursuant to the Uniform Code of Military Justice, and resulted from General Gleszer's conclusion that the available evidence did not establish the commission of the alleged offenses. This inquiry was conducted over a period of 6 months. The resultant report consists of some 3000 pages of sworn testimony, involving 52 witnesses and over 100 documents and memoranda.

FACT SHEET

November 5, 1971.

This paper addresses the circumstances of personnel actions concerning LTC Anthony B. Herbert, including his relief from command; his appeals of that relief and its associated efficiency reports; his initiation of war crimes allegations; his initiation of courts-martial charges against two Army officers; and the Army's actions concerning all of these matters.

LTC Herbert served in Vietnam from September, 1968, to June, 1969. While assigned to the 173d Airborne Brigade, he was the Acting Inspector General, from September, 1968, to February, 1969, and the Commanding Officer, 2d Battalion, 503d Infantry, from February, 1969, to early April, 1969. The Brigade Commander and Deputy Commander were Brigadier General John W. Barnes and Colonel J. Ross Franklin, respectively.

EFFICIENCY REPORT ACTION

After repeated counseling by General Barnes and Colonel Franklin that in their opinion his performance of duty was not acceptable to them and had to be improved, LTC Herbert was relieved of command of his battalion on 4 April 1969 for unsatisfactory performance of duty. Subsequently, as required by regulations, an efficiency report was submitted concerning LTC Herbert's performance as a battalion commander. Upon his relief from command, he was reassigned to the Capital Military Assistance Command in Saigon.

On 9 April 1969, LTC Herbert formally requested a redress of wrongs under the provisions of Article 138 ("Complaints of Wrongs"), Uniform Code of Military Justice. This article permits a member of the Armed Forces to complain to any superior commissioned officer about an unredressed wrong allegedly committed against him by his commander. The complaint is then forwarded for action to the officer exercising court-martial jurisdiction over the officer against whom the complaint is made.

After receiving the complaint, the officer exercising court-martial jurisdiction, Lieutenant General Charles A. Corcoran, Commanding General, I Field Force, Vietnam, directed Major General Joseph R. Russ, the Deputy Commanding General of I Field Force, to conduct a formal investigation to determine whether LTC Herbert's relief of command was proper. For five days, General Russ heard testimony from thirty-eight witnesses, including Colonel Herbert. After consideration of the testimony and evidence presented, General Russ concluded that no action was warranted to reverse LTC Herbert's relief from command. General Russ found that General Barnes "acted on the facts as he knew them, his judgment of LTC Herbert's character, and his lack of confidence to entrust the lives of others" to Herbert, and that Barnes believed that Herbert was relieved "for the good of the Brigade." Accordingly, General Russ recommended that no redress be granted concerning LTC Herbert's appeals from relief from his command.

On 20 May 1969, General Corcoran approved the findings and refused LTC Herbert's request for redress. However, so that LTC Herbert could present his case fully in any subsequent appeal of the adverse efficiency report, he was provided a copy of all the evidence presented during the proceedings.

In recent months, LTC Herbert has repeatedly alleged that his war crimes allegations during his period of command were the primary cause of his relief and poor efficiency report. However, there is no documentary evidence that LTC Herbert, General Barnes, or Colonel Franklin raised this issue before the Russ board, and General Russ states that Herbert did not raise it at any time, orally or in writing. Furthermore, none of the many witnesses interviewed in this case has corroborated LTC Herbert's statement that he made such allegations orally either to General Barnes or Colonel Franklin. LTC Herbert has recently stated that he raised the matter upon his reassignment to the Saigon area after being relieved of command, and he has named two colonels to whom he allegedly made such statements. Both colonels have stated that, although he discussed the matter of his redress with them, he in no way mentioned any war crimes or atrocities.

Upon LTC Herbert's return to the United States in July, 1969, he was ordered to report as a student to the U.S. Army Command and General Staff College at Fort Leavenworth, Kansas. However, as a result of the adverse efficiency report he received as battalion commander, the Army deleted his name from the attendance list and he was assigned as Assistant G3 (Operations and Training) at Headquarters, U.S. Army Garrison, Fort Leavenworth.

While at Fort Leavenworth during September, 1969, LTC Herbert submitted to Headquarters, Department of the Army, his first appeal from the adverse efficiency report. A special review board at Headquarters, Department of the Army, determined that the evidence submitted by LTC Herbert did not justify withdrawing or altering the efficiency report. He was notified of the decision on 22 December 1969. Again, the issue of war crimes allegations and of the failure to investigate them by the Commanding General, 173d Airborne Brigade, was not raised.

As permitted by Army regulations, LTC Herbert appealed from the adverse efficiency report for the second time on 4 September 1970. A separate board of different membership considered the evidence submitted and denied his second appeal. LTC Herbert was notified on 25 May 1971. The issue of war crimes was not raised.

In an action unrelated to the war crimes allegations and the charges preferred against MG Barnes and COL Franklin, the Secretary of the Army, Robert F. Froehlke, after consultation with the Army Chief of Staff, directed on 4 October a third review of LTC Herbert's unsatisfactory efficiency report of April, 1969. Considered in this review were the efficiency report, the report of the board that had heard LTC Herbert's request for redress of his relief, and LTC Herbert's two appeals.

While this review centered on Herbert's relief from command and one particular efficiency report, the Secretary also considered the matter within the broader framework of LTC Herbert's many years of service; and he bore in mind that this efficiency report, covering only fifty-eight days of duty, might have reflected an unfortunate exception to the record of otherwise effective service. As the result of this review and with the recommendation of the Chief of Staff, Secretary Froehlke directed that the efficiency report in question be removed from LTC Herbert's file. Secretary Froehlke was able to make this decision without reference to the war crimes and atrocity allegations and charges leveled by LTC Herbert since these allegations and charges were not mentioned anywhere in the voluminous file of material associated with LTC Herbert's relief nor with his efficiency report.

The withdrawal of LTC Herbert's unsatisfactory efficiency report constituted a material change in his file, and his records were therefore forwarded to a standby promotion board for further consideration. The board recommended LTC Herbert for promotion to Regular Army major. The Secretary of the Army concurred and on 22 October forwarded the recommendation to the President through the Secretary of Defense. The President subsequently sent LTC Herbert's nomination for promotion to Regular Army major to the Senate. Senate action is still pending. Should the Senate approve the President's nomination, LTC Herbert will under federal statute be allowed to remain on active duty.

WAR CRIMES ALLEGATIONS

The earliest Army record of LTC Herbert's allegations of war crimes is 28 September 1970, almost eighteen months after having been relieved of his command, when he formally complained to the Inspector General, Third Army, about a number of war crimes alleged to have occurred in the area of operations of the 173d Airborne Brigade. Upon receiving the allegations made by LTC Herbert, the Department of the Army on 13 November 1970 initiated an investigation of some twenty-one incidents. Those incidents were alleged to have occurred during the period mid-1968 to mid-1969. Initially, a special task force of sixteen persons was designated to investigate completely all of LTC Herbert's allegations of war crimes. This task force was later expanded to include an additional thirty-two criminal investigators and administrative personnel in a worldwide investigate effort. The task, which spanned seven months, involved locating and interviewing scores of prospective witnesses in the United States and foreign countries—many who had retured to civilian life. The final interview was conducted on 23 June 1971. Some 333 persons were interviewed during this investigation in thirty of the forty-eight continental states, as well as in Hawaii, the Philippine Islands, Vietnam, Okinawa, Australia, New Zealand, Mexico, and Germany.

The criminal investigation conducted by the CID determined that seven of LTC Herbert's twenty-one allegations had sufficient substance to merit action or further investigation. Two of these had been acted upon at the time of their occurrence in the 173d Airborne Brigade, resulting in Article 15 punishment in one case and a general court-martial in the other, and the CID investigation did not produce any evidence contrary to the brigade investigation's findings. Two others were offenses involving Vietnamese against Vietnamese, and since American forces did not order or participate in the acts, they were not under United States military jurisdiction. The remaining three allegations concern the maltreatment of detainees—suspected Viet Cong and Viet Cong supporters—who were held for identification and interrogation. These cases are pending action by the officers who exercise general court-martial jurisdiction over the subjects of the allegations still under military jurisdiction. These allegations were not included in LTC Herbert's charges against General Barnes. Of the remaining fourteen charges, insufficient evidence was available to prove or to disprove three. Two charges were not criminal and hence were referred to the Inspector General for investigation. An extensive investigation produced insufficient evidence to corroborate either allegation. Three had been previously investigated by the 173d Airborne Brigade without charges' being brought, and the CID found no additional evidence. Six allegations—five based on hearsay—were uncorroborated.

CHARGES AGAINST MG BARNES, COL FRANKLIN

In late 1970 and early 1971 LTC Herbert was advised on several occasions that the investigation of his allegations was continuing. On 15 March 1971 Herbert preferred charges under the provisions of Article 92, Uniform Code of Military Justice, against General Barnes and Colonel Franklin for failure to report and investigate alleged violations of the law of land warfare and for dereliction of duty. Under the provisions of the *Manual for Courts-Martial*, they were notified of the charges, which were referred to the general court-martial convening authorities having jurisdiction over the accused officers.

On 15 July 1971, Major General John H. Cushman, Commanding General, Delta Regional Assistance Command, RVN, dismissed the charges against Colonel Franklin on the basis of the findings of an official inquiry extending over more than two months. These findings considered all evidence compiled by the CID investigation conducted in the United States as well as additional testimony taken in Vietnam and in the United States. In General Cushman's view, there was insufficient evidence that Colonel Franklin had ever been made aware of the incidents cited in the charges to warrant the initiation of a court-martial.

Major General Roland M. Gleczer, Commanding General, Military District of Wash-

ington, directed an official inquiry into LTC Herbert's charges against General Barnes. This inqury has been completed and after reviewing the evidence, General Gleszer announced on 15 October that the evidence did not establish the commission of the alleged offenses against General Barnes. Accordingly, he dismissed the charges against him.

The MDW investigation, which took six months, included some 3,000 pages of testimony involving fifty-two witnesses and over one hundred documents and memoranda. LTC Herbert had preferred charges against General Barnes with respect to three incidents. In fairness to all concerned, the Army has deferred public statement on this matter until the independent investigation was concluded. The investigation determined that:

One of the incidents, which involved the mistreatment of a detainee, had been investigated at General Barnes' direction at the time, but the investigating officer had found insufficient evidence to substantiate the allegation.

Two of the incidents involved solely Vietnamese committing illegal acts against other Vietnamese. MG Barnes was not required to investigate incidents solely involving Vietnamese personnel. However, in one of the incidents involving the killing of detainees, no evidence corroborating LTC Herbert was discovered to show that MG Barnes was aware of the incident, and in the other, involving looting, MG Barnes ordered an informal investigation carried out and the results reported to him. Later, the report of a CID investigation corroborating the conclusions of that investigation was forwarded to appropriate officials of the Army of the Republic of Vietnam.

FACT SHEET

NOVEMBER 17, 1971.

This paper presents information obtained from Third US Army and addresses recent publicity concerning the cancellation of Lieutenant Colonel Anthony B. Herbert's leave to appear on the Dick Cavett Show, a description of his duties at Fort McPherson, LTC Herbert's allegations of harassment and invasion of privacy, and the current status of his retirement and leave plans.

CANCELLATION OF LEAVE

During September and October 1971, LTC Herbert's commanding officer authorized a series of absences—ordinary leaves, administrative absences, and temporary duty—from Fort McPherson, Georgia, to help LTC Herbert attend to personal affairs. His most recent absence had been the period 28–31 October 1971. These absences permitted him to appear several times on radio and television, including the Dick Cavett Show of 30 September 1971.

When LTC Herbert's personal problems appeared to have been resolved, his commanding officer determined that continued short absences were no longer necessary, and that LTC Herbert should devote full time to his assigned duties, as expected of all members of the Army. LTC Herbert's appearance on a national television show outside the Atlanta area was not considered to be sufficient justification for continued absences from his duties. However, he was given permission to appear at a television station in Atlanta for an advance videotape filming or a split-screen interview for the Dick Cavett Show on the evening of 2 November 1971. This authorization was orally given to LTC Herbert at approximately 5:00 PM, 2 November 1971, responding to LTC Herbert's written request which had been submitted one hour earlier.

In granting LTC Herbert this permission, it was determined at Fort McPherson that such an appearance must not be at Government expense nor interfere with his performance of assigned duties during normal working hours. He was further told that permission for similar appearances would be considered on a case-by-case basis. The same policy applies to all Army personnel appearing on national radio and television networks. Otherwise, the Army did not restrict LTC Herbert from contact with the news media, except for those prohibitions which apply to all Army personnel.

News media comments to the effect that General Westmoreland had denied LTC Herbert leave to appear on the Dick Cavett Show are completely false.

It has been reported that LTC Herbert's current duty assignment is not a meaningful position. On the contrary, LTC Herbert is assigned as the Assistant Director of Industrial Operations at Fort McPherson. The directorate has staff responsibility for logistical support of the post, including communications, housing, transportation, supply and maintenance, food service, and supporting facilities. All these functions must be accomplished smoothly and efficiently if the post is to operate properly. Currently, this agency oversees the expenditure of 16.5 million dollars per year.

COMPLAINTS OF HARASSMENT

Inquiries into LTC Herbert's treatment at Fort McPherson have revealed no substantiation for his complaints of harassment and invasion of privacy. He has been asked, orally and in writing, to substantiate his public complaints. To date, LTC Herbert has failed to provide any details as requested.

On 1 November 1971, LTC Herbert failed to salute properly, and he was corrected. The military custom of saluting, and the commanding officer's corrective action in this instance, are not considered harassment.

RETIREMENT APPLICATION

LTC Herbert has voluntarily submitted an application for retirement to be effective 1 March 1972. This decision has rested entirely with him. LTC Herbert also applied for and received a 30-day emergency leave effective 10 November 1971. This request was granted on a physician's recommendation in the interest of his family's health.

DECEMBER 1971.

This paper addresses (1) Lieutenant Colonel (LTC) Anthony B. Herbert's allegations of war crimes and other serious incidents, and the findings of the agencies which investigated them; and (2) the relationship of those allegations and findings to the results of the preliminary inquiries conducted pursuant to *Manual for Courts-Martial* into the conduct of Major General (MG) John W. Barnes and Colonel (COL) J. Ross Franklin, whom LTC Herbert accused of failing to report and to investigate certain of the alleged war crimes.

It is important to note that two types of charges have been leveled by LTC Herbert. First, he has charged that war crimes were committed in the area of operations of the 173d Airborne Brigade in the Republic of Vietnam. Second, he has charged that MG Barnes and COL Franklin violated the provisions of the Uniform Code of Military Justice by failing to investigate and to report specific war crimes of which they allegedly had knowledge. These two types of charges should be carefully distinguished. They will be discussed in turn.

(1) WAR CRIMES ALLEGATIONS

On 28 September 1970, approximately eighteen months after his relief from command, LTC Anthony B. Herbert, a former battalion commander in the 173d Airborne Brigade, made a sworn statement to the Third Army Inspector General alleging war crimes in the area of operations of his former unit. These allegations were forwarded to The Inspector General, Department of the Army, on 1 October 1970. Because it was determined that possible criminality was involved, the investigative responsibility was transferred to the U.S. Army CID Agency (USACIDA) three weeks later.

During the period 2–6 November 1970, LTC Herbert was interviewed by USACIDA officials in Washington. Based on these detailed interviews, twenty-one separate allegations were identified. Four charged criminal acts of which LTC Herbert claimed personal knowledge; fifteen charged criminal acts knowledge of which was based on what he stated he had heard from others; two pertained to matters of morale and discipline, incidents which could not be considered war crimes.

The U.S. Army CID Agency, responsible for investigations of possible crimes in the Army, conducted an exhaustive inquiry into LTC Herbert's charges. This inquiry revealed that seven allegations (#1–7 below) had sufficient substance to warrant action or further investigation. The following summary is provided:

Allegation

1. Members of 1st Battalion, 50th Mechanized Infantry, under an unidentified lieutenant, cut the ears and/or fingers from several Vietnamese.

Results of Investigation

The incident was investigated by the CID at the time of the incident. Two persons were convicted by general court-martial.

Allegation

2. Personnel of the 173d Airborne Brigade illegally manipulated enlisted club financial transactions.

Results of investigation

The source of LTC Herbert's knowledge was his former Inspector General non-commissioned officer. The incident was investigated by the CID at the time. The investigation established larceny of $120. Two persons were given Article 15 (nonjudicial) punishment.

3. Members of a Vietnamese unit, accompanied by an American captain advisor, looted a village during a sweep-and-search operation.

Results of investigation

Two American officers stated that they witnessed the looting by Republic of Vietnam (RVN) Regional Forces from Tam Quan District during March, 1969. There was contemporaneous inquiry by the 173d Brigade into this incident. The injury made clear that, as a result of an American officer's actions, the looted items were returned to the Vietnamese villagers at that time.

The American advisor did not have command authority over the Vietnamese unit. Since all offenders were Vietnamese nationals, the results of the later USACIDA investigation were transferred to U.S. Military Assistance Command, Vietnam for forwarding to appropriate RVN officials.

Allegation

4. Members of an unidentified South Vietnamese unit, accompanied by an American lieutenant, advisor to the Tam Quan National Police, killed five Vietnamese detainees who had been taken from United States troops. The throat of one of these detainees, a female, was cut in the present of LTC Herbert.

Results of investigation

Four individuals were located who claim witnessing the execution of detainees by the Vietnamese police on 14 February 1969, but no one could substantiate the execution of the female detainee. The lieutenant advisor who accompanied the Vietnamese unit denies seeing or hearing about any detainee killings.

LTC Herbert stated that he orally reported the incident to COL Franklin on 14 February 1969 immediately after its occurrence. LTC Herbert claims that statements were later obtained by an officer of the 172d Military Intelligence Detachment from detainees con-

firming the deaths. There were no witnesses to LTC Herbert's alleged report to COL Franklin nor was any evidence found to substantiate LTC Herbert's charges.

COL Franklin stated that no one reported anything to him concerning this incident. He adds that he was on leave in Hawaii at this time. A check of hotel records in Honolulu confirms that COL Franklin was registered until 7:30 p.m. on 14 February 1969, or 3:30 p.m., 15 February, Vietnam time. Because of the distance between Vietnam and Hawaii, COL Franklin could not have returned to brigade headquarters before 16 February 1969.

The intelligence officer to whom LTC Herbert referred recalls discussing information about detainees with him but denies obtaining statements from detainees which support this allegation.

The American advisor did not have command authority over the South Vietnamese unit. Since all alleged offenders were Vietnamese nationals, the investigation was forwarded to U.S. Army, Vietnam, to be furnished to appropriate RVN officials.

Allegation

5 & 6. A young female detainee being interrogated in an American compound was struck in the face by an American interrogator, and electricity was transmitted into her body from a field telephone.

Two female detainees were mistreated by Vietnamese interrogators while in an American military intelligence compound. One was struck on the back of the hands with a stick and the other struck in the face with a stick and hit by hand on the breast.

Results of investigation

These allegations are still under investigation. No comment can be made pending completion of command actions, since to do otherwise might prejudice the rights of those allegedly involved.

LTC Herbert stated that he orally reported the incident to COL Franklin. There were no witnesses to this alleged report and no evidence was found to substantiate the claim.

Allegation

7. A Vietnamese detainee was field interrogated by having water forced into his nose and mouth until he became unconscious. American military intelligence personnel were involved.

Results of investigation

Witnesses to field interrogation were located. Two persons, both now returned to civilian life, who participated in the interrogation admitted the use of water during the interrogation.

LTC Herbert stated that he orally reported the incident to COL Franklin. COL Franklin stated that LTC Herbert never reported such an incident to him. Although LTC Herbert claims that the 173d Airborne Brigade Command Sergeant Major overheard this report, the Sergeant Major denied hearing any such report.

Allegation

8. An American lieutenant, reported as having been mistakenly killed by one of his own patrols, may have been murdered by American troops whom he had threatened to turn in for smoking marijuana.

Results of investigations

LTC Herbert's alleged source of this allegation stated that the lieutenant was killed accidentally in his own ambush and denied that he told LTC Herbert that the lieutenant may have been murdered. All members of the ambush patrol state that the death was accidental. The casualty report does not indicate any foul play. USACIDA investigation concluded that the lieutenant's death was accidental.

LTC Herbert stated he orally reported the incident to COL Franklin.

COL Franklin recalls hearing about an officer's being accidentally killed by his own men, but stated that if there had been any specific allegations of murder with any supporting evidence, it would have been investigated further.

He was informed that the lieutenant's death had been investigated at the time, and there was no indication of foul play.

Allegation

9. An American enlisted man refused to return to the field with his unit because the unit had fired on unarmed Vietnamese villagers to test weapons.

Results of investigation

Several persons stated that they knew the enlisted man in question, since discharged from the Army, and commented that he was a problem soldier and had had psychological difficulties.

The former company commander recalls an incident in which a weapon was test-fired into a rice paddy but denies that any villagers were killed or wounded. A former officer states that while on an operation with the enlisted man's company, the officer test fired an M–79 grenade launcher at a tree in an open area. After the last round was fired, the company received and returned small arms fire. The area was searched immediately, and no casualties were found.

The brigade investigating officer stated that after the enlisted man in question reported the incident to him, the brigade investigating officer interviewed witnesses named by the enlisted man, and stated that they could not substantiate the complaint.

Allegation

10. Christmas cards were prepared depicting a Vietnamese body, the face of which had been shot away, and a 173d Airborne Brigade patch either pinned or nailed to the forehead.

Results of investigation

A brigade investigation was ordered at the time to determine the circumstances surrounding the alleged incident. The investigation determined that a card had been produced, and its originator received a reprimand.

The USACIDA investigation confirmed the findings of the brigade. A copy of the Christmas card obtained by USACIDA shows no patch affixed to or carved into the body in any way. The deceased was considered a combat death. Using the picture of the dead body on a Christmas card was a thoughtless act, but not a violation of the law of war.

LTC Herbert stated that he discussed the Christmas card incident with COL Franklin. There were no witnesses to their alleged discussion.

COL Franklin does not recall discussing the incident with LTC Herbert. He knows that the incident was fully investigated by the brigade.

Allegation

11. It was common practice for Mike Strike Forces (Vietnamese) under the operational control of the 173d Airborne Brigade to burn villages.

Results of investigation

No corroboration could be obtained for this allegation. LTC Herbert could not provide specific information to substantiate the allegation, and be further qualified his initial remarks by saying that only some huts in villages, not whole villages, were burned.

Allegation

12. Vietnamese civilians were indiscriminately shot on the beach at Tuy Hoa by American soldiers.

Results of investigation

LTC Herbert stated that his knowledge of this alleged incident was based on a statement supposedly made to him. The source of LTC Herbert's knowledge, when interviewed by USACIDA, did not corroborate LTC Herbert's information.

Allegation

13. An American lieutenant platoon leader panicked and killed women and children in the An Lao Valley area.

Results of investigation

LTC Herbert's allegation was based on hearsay. LTC Herbert's source stated that LTC Herbert misunderstood his comments. On 21 January 1971, LTC Herbert in a statement to USACIDA asserted that he may have misunderstood the remarks made to him concerning this allegation.

Allegation

14. A former military photographer of the 4th Infantry Division has photographs of a "massacre" which occurred in the 4th Infantry Division while the division was commanded by Lieutenant General Peers.

Results of investigation

LTC Herbert's knowledge of this alleged event was based solely on hearsay. Investigation revealed that his source of knowledge relied on a memorandum, which referred to photographs of persons killed in action and gathered at a central collection point. The USACIDA investigation determined that the memorandum did not refer to war crimes. Both the author of the memorandum and the photographer denied any knowledge of a war crime in connection with the photographs.

Allegation

15. Members of the 1st Battalion, 50th Mechanized Infantry, had a known *modus operandi* for perpetrating sex crimes on their female detainees.

Results of investigation

No corroboration could be found for LTC Herbert's allegations. LTC Herbert's knowledge was secondhand, and his source of information, when interviewed by USACIDA, denied that he told LTC Herbert that the 1st Battalion had any sex crimes *modus operandi* or that there, in fact, was such a method of operation.

Allegation

16. Long-range reconnaissance patrols of I Field Force, Vietnam, raped Vietnamese civilians.

Results of investigation

LTC Herbert's knowledge of this alleged incident was based solely on hearsay. The source of Herbert's information, when interviewed by USACIDA, did not corroborate LTC Herbert's statement.

Allegation

17. American military forces mistreated Vietnamese detainees in the American compound at An Khe by pulling them up from a leaning rest position by the hair of the head.

Results of investigation

The USACIDA investigation found no evidence to impugn the findings of an investigation conducted by the brigade.

The conclusion of the investigating officer was that insufficient evidence existed to substantiate the alleged assault on the detainees. He concluded that no positive identification of alleged participants was, or could have been, made. Part of this brigade investigation report contained a statement by LTC Herbert. Additionally, the report contained other statements concerning this incident.

Allegation

18. Fourteen unidentified American soldiers from 1st Battalion, 50th Mechanized Infantry, while on a village sweep operation, took a young Vietnamese girl from her family and repeatedly subjected her to rape and sodomy.

Results of investigation

Several brigade staff members recall that such an incident was investigated at the time of its alleged occurrence. The victim could not identify her alleged assailants. A report of the investigation was submitted to U.S. Army, Vietnam, and to the Department of the Army.

Allegation

19. An American lieutenant refused to return to the field with his unit because the company commander had previously ordered the execution of a Vietnamese detainee under his control.

Results of investigation

LTC Herbert claimed receipt of a written statement from a lieutenant who refused to return to the field under a particular company commander, because the company commander, via a radio transmission, ordered the execution of a detainee. LTC Herbert claimed that he furnished the lieutenant's statement to COL Franklin. The company commander denied the allegation that he had ordered a detainee killed. The name of the lieutenant provided by LTC Herbert proved erroneous; however, a former platoon leader meeting the description provided by LTC Herbert was located by the CID. He denied making any complaint to LTC Herbert. He further denied ever giving such a written document to LTC Herbert. The former lieutenant stated that he went to the field when ordered and never discussed the matter with LTC Herbert.

Allegation

20. Widespread use of marijuana in the 173d Airborne Brigade substantially impaired combat readiness and the state of discipline.

Results of investigation

COL Franklin does not recall any officer's refusing to go to the field for any reason.

The allegation that the state of discipline and of combat readiness in the 173d Airborne Brigade was greatly impaired could not be substantiated by a USMACV investigation. While it was found that some soldiers used marijuana, the investigation concluded that the brigade remained at a high state of readiness and effectiveness. This conclusion was further substantiated by the unit's outstanding combat record.

Allegation

21. An entire American company at a firebase was "crashed" on marijuana when its position was attacked. As a result, a large number were killed and wounded without offering resistance.

Results of investigation

LTC Herbert had no direct knowledge of the attack. The allegation was not substantiated by USMACV investigation. On 7 September 1968, the company was attacked at a firebase in Vietnam. In the ensuing action, six American soldiers were killed, and thirty were wounded. Fifteen enemy soldiers were killed. The evidence indicated that the casualties were not attributable to the use of marijuana.

(2) CHARGES AGAINST MG BARNES AND COL FRANKLIN

The details of the allegations against MG Barnes have been noted in a Department of the Army Fact Sheet of 5 November. Two points are especially significant.

First, at the time of his original interview with USACIDA in November, 1970, LTC Herbert in a statement signed under oath has denied that he had ever directly reported any alleged war crimes to General Barnes.

Second, LTC Herbert's charges against MG Barnes involved his allegedly failing to investigate and to report three war crimes (allegations #3, 4, 17). The inquiry revealed inadequate evidence to show that MG Barnes knew of one incident (#4) and produced proof that the other two incidents (#3, 17) were investigated shortly after the occurrence of the alleged incidents. Since allegations #3 and 4 involved only Vietnamese personnel, under applicable U.S. Military Assistance Command, Vietnam (USMACV) regulations, MG Barnes had no obligation to report to USMACV. Allegation #17 had been investigated by the brigade, and the report of investigation was reviewed at brigade headquarters with instructions to forward it to higher headquarters in RVN. As a result of these determinations, the inquiry into the charges, the first step in the judicial process, found insufficient evidence to proceed further.

Charges against COL Franklin involved seven incidents (allegations #3–7, 10, 19). As with MG Barnes, COL Franklin was charged with failure to report and to investigate war crimes, not with having committed any such crimes. The USACIDA investigation established that two of the incidents (#3, 10) were in fact investigated by brigade officials at the time of the occurrence of the alleged incidents. As to the other five incidents, there is no corroborating evidence that LTC Herbert told COL Franklin of the alleged war crimes (#4–7, 19). Of those matters of which it was shown COL Franklin knew, the question of whether allegation #3 was reported has already been discussed. The brigade investigation into the Christmas card incident (#10) concluded that no war crime was suspected when the investigation was initiated, and it revealed that no war crime was committed. Hence, no obligation was imposed on COL Franklin to report it under applicable regulations.

LTC Herbert did not claim that COL Franklin tried to conceal all twenty-one war crime and serious incident allegations he ultimately levied. LTC Herbert states that he only reported nine "war crimes" to COL Franklin (#3–8, 10–11, 19).

Some comment has been made about polygraph ("lie detector") examinations taken during the course of the inquiry. The value and reliability of the polygraph test are in serious question, and therefore, the results derived from such a test are generally inadmissible into evidence in both military and civilian courts. Nevertheless, some investigative agencies do utilize polygraphs as an investigatory tool. During the course of the inquiries into LTC Herbert's charges against MG Barnes and COL Franklin, *both* COL Franklin and LTC Herbert underwent such a test. COL Franklin's test was part of the official inquiry. The investigating officer was present and witnessed the examination. Among other questions, COL Franklin was asked if he remembered LTC Herbert's reporting to him the killing of Vietnamese nationals by Vietnamese police at Cu Loi in February, 1969 (allegation #4). He was also asked if LTC Herbert mentioned any war crime investigations to him during 25 March–4 April 1969. COL Franklin replied "no" to both questions, and the official examiner concluded that COL Franklin's answers to all questions were truthful.

LTC Herbert was offered an opportunity to take a polygraph examination on the same conflicting testimony and under the same conditions as COL Franklin. LTC Herbert declined, but he instead took a private polygraph examination administered by a qualified examiner of his choice. The Army investigating officer took no part in this examination. The examiner concluded that LTC Herbert was truthful when he answered "yes" to two questions: (a) "Did you on or about February 14, 1969, advise COL Franklin of the killing of Vietnamese detainees?" (b) "On or about April 4, 1969, did you personally request MG Barnes to conduct an investigation?"

At best, the polygraph tests demonstrate that both COL Franklin and LTC Herbert believed that each was telling the truth when he so testified.

As indicated in the earlier DA Fact Sheet of 5 November, the recommendation of the Secretary of the Army, after consideration by a standby promotion board, that LTC Herbert be promoted to Regular Army major is not related to LTC Herbert's allegations and charges. The Secretary had earlier ordered an adverse efficiency report signed by COL Franklin and indorsed by MG Barnes removed from LTC Herbert's files. The Secretary had considered the matter within the framework of LTC Herbert's many years of service; and he bore in mind that this efficiency report, covering only fifty-eight days of duty, might have reflected an exception to a record of otherwise effective service. The Secretary was able to make this decision without reference to the allegations and charges leveled by LTC Herbert, since these allegations and charges were not mentioned anywhere in the voluminous file of material, including LTC Herbert's lengthy testimony associated with LTC Herbert's relief from command or with the efficiency report appeals.

FACT SHEET

THE HERBERT CASE

Army personnel continue to be concerned over the allegations and charges made against some members of the U.S. Army by LTC Anthony B. Herbert and his critical public statements about Army leadership. News coverage has tended to report only LTC Herbert's statements, and questions from the field indicate the SPOTLIGHT published on 12 November on this subject has apparently received insufficient local distribution. This SPOTLIGHT is intended to relieve current concern within the Army by summarizing the entire case to include developments not covered in the original SPOTLIGHT. Commanders are urged to make maximum internal distribution, especially to officers.

For easy reading, this SPOTLIGHT is divided into two parts: a brief synopsis of the case followed by a more detailed treatment supporting the synopsis.

SYNOPSIS

On 4 Apr 69, LTC Anthony B. Herbert was relieved from command of a battalion in the 173d Airborne Brigade in Vietnam because of unsatisfactory perfomance. He received a low efficiency report for the 58-day period of command. His immediate appeal of the relief was turned down in Vietnam after an investigation involving 5 days of sworn testimony from 38 witnesses.

After returning to the U.S. in Jul 69, LTC Herbert appealed the low efficiency report twice to HQ, Department of the Army. Both appeals were turned down. On 4 Jun 71, he was told that he was not selected for the second time for promtion to Major, Regular Army. Therefore, he would have to retire on 1 Mar 72, as required by law.

In Sep 70, after LTC Herbert appealed his efficiency report the second time, he complained to the Inspector General, Third Army, that he knew about war crimes or serious incidents occuring in the 173d Brigade from about mid-1968 to mid-1969. The resulting Army CID investigation found that only seven of some 21 allegations had substance, and only two of those require further investigation.

Before the CID finished this investigation, LTC Herbert charged MG Barnes and COL Franklin, his former brigade commander and deputy commander in Vietnam who had written his low efficiency report, with failing to report and investigate certain of the alleged war crimes. These charges were made in Mar 71 and were dismissed after official inquiries into the charges by the accused officers' commanders.

In Mar 71, LTC Herbert began saying publicly that MG Barnes and COL Franklin had relieved him because he had reported war crimes to them and they were unwilling to investigate. The Army, following the Attorney General's guidelines, could not comment publicly until the inquiries into the charges

against MG Barnes and COL Franklin were finished.

Four separate Army investigations have shown LTC Herbert's charges of "cover-up" of war crimes to be groundless. There is no evidence, other than his recent statements, that he ever reported war crimes to higher authority until some 18 months after he was relieved from command. Neither does the evidence show any relation between his war crimes allegations and his low efficiency report and his appeals of that report. After a third review of LTC Herbert's file by the Department of the Army was directed by the Secretary of the Army and Chief of Staff, Army, the Secretary of the Army had the low efficiency report removed from LTC Herbert's file on 4 Oct 71. Since the report might have been an exception to what otherwise appeared to be a record of effective service, LTC Herbert was later promoted to Major, Regular Army.

At Fort McPherson, where LTC Herbert is now stationed, he has said publicly that he and his family have been harassed, that he has been muzzled from talking to newsmen, and that he has been forced to retire from the Army. These charges are untrue. LTC Herbert has been unwilling or unable to provide details concerning the alleged harassment. No tighter restrictions have been placed on LTC Herbert's TV appearances and press interviews than those which apply to every soldier under Army regulations. LTC Herbert's application for retirement was approved on 7 Dec. 71. With his recent promotion to Major, Regular Army, he could have remained on active duty beyond 1 Mar 72, his requested retirement date. His decision to retire is entirely his own.

DETAILED SUMMARY

I. Relief from command

LTC Herbert served in Vietnam from Sep 68 to Jun 69. While assigned to the 173d Airborne Brigade, he was the Acting Inspector General from Sep 68 to Feb 69, and the Commanding Officer, 2d Battalion, 503d Infantry, from 6 Feb 69 to 4 Apr 69. The Brigade Commander and Deputy Commander were Brigadier General John W. Barnes (now MG) and Colonel J. Ross Franklin, respectively.

LTC Herbert was relieved from command of the 2d Battalion, 503d Infantry on 4 Apr 69 for unsatisfactory performance of duty. As required, MG Barnes and COL Franklin submitted an efficiency report on LTC Herbert's performance. After being relieved, LTC Herbert was assigned to the Capital Military Assistance Command (CMAC) in Saigon. CMAC was a subordinate command of II Field Force, which in turn was subordinate to MACV (Military Assistance Command, Vietnam).

Five days after his relief, LTC Herbert formally requested a "redress of wrongs." This action, permitted under Article 138 of the Uniform Code of Military Justice (UCMJ), is designed so that any soldier who believes he has been wronged by his commander can make an official complaint.

LTG Charles A. Corcoran, the officer then exercising general court-martial authority over General Barnes and Colonel Franklin, appointed MG Joseph R. Russ to investigate. General Russ, after hearing the testimony of 38 witnesses over a 5-day period in formal hearings, concluded LTC Herbert's relief was warranted. There is no mention of war crimes in the nearly 200-page record of General Russ's investigation, and General Russ says that war crimes were not mentioned.

LTC Herbert submitted an appeal on the adverse efficiency report in Sep 69. He was notified in Dec 69 that a Department of the Army Board considered and denied his appeal. LTC Herbert appealed a second time in Sep 70. Again, a Department of the Army Board denied the appeal, and LTC Herbert was notified in May 71. In neither appeal was there any mention of war crimes.

With this unsatisfactory efficiency report in his file, LTC Herbert was twice considered but not selected for promotion to Major, Regular Army. He was removed from the list of students to attend United States Army Command and General Staff College. He was informed he would have to retire on 1 Mar 72 because of the two promotion pass-overs.

In Oct 71, based on a detailed personal review by Lieutenant General Kerwin, Deputy Chief of Staff for Personnel, of LTC Herbert's file and the contested efficiency report, the Army Chief of Staff, General W. C. Westmoreland, accepted General Kerwin's findings and recommended to the Secretary of the Army that the adverse report be removed from LTC Herbert's file. The Secretary reviewed the file and directed that the efficiency report be removed. The Secretary said that this action was taken in fairness to LTC Herbert, whose adverse efficiency report, covering 58 days, might have reflected an exception to what otherwise appeared to be a record of effective service. The decision did not involve LTC Herbert's war crimes allegations, since there was no mention of them in any part of the record. A promotion board then reconsidered LTC Herbert's file—minus the adverse efficiency report—and recommended he be promoted to Major, Regular Army. By normal procedures, the President nominated LTC Herbert for promotion, which was confirmed by the Senate on 12 Nov 71.

II. War and allegations

On 28 Sep 70, about 18 months after his relief from command, LTC Herbert made his first war crimes complaint, of which there is any confirmation, to the Army in a sworn statement to the Third U.S. Army Inspector General at Fort McPherson, GA. These allegations were forwarded to the Department of the Army and in Oct 70 were sent to the U.S. Army Criminal Investigation Agency (USACIDA) for investigation.

LTC Herbert was interviewed by the USACIDA during 2–6 Nov 70, and 21 separate allegations were identified. Four involved criminal acts of which LTC Herbert claimed personal knowledge; 15 involved criminal acts which LTC Herbert said he had heard about; and two involved matters of morale and discipline. All had allegedly occurred from mid-1968 to mid-1969 in the area of operations of the 173d Airborne Brigade.

The USACIDA investigation used 48 investigators and administrative personnel, took 7 months, involved locating and interviewing some 333 persons in 30 of the 48 continental states, Hawaii, and seven foreign countries. Many of the witnesses had returned to civilian life.

Seven of the 21 allegations had sufficient substance to merit action or further investigation. Two of these had been investigated at the time they occurred by the 173d Brigade and resulted in a general court-martial in one case and Article 15 punishment in the other. The USACIDA investigation confirmed the results of the original Brigade investigations. Two other allegations turned out to be offenses involving Vietnamese and were not under U.S. jurisdiction. The other three cases alleged maltreatment of detainees—suspended Viet Cong and Viet Cong supporters—while they were being held for identification and questioning. No action was taken in one case because the alleged offenders had returned to civilian life. The other two cases are still open. Final decisions concerning these cases and the U.S. personnel involved will be made by the commanders who have court-martial jurisdiction over them.

Of the remaining 14 allegations, three could be neither proved nor disproved, and 11 were unsupported.

III. Charges against MG Barnes, Col Franklin

LTC Herbert did not charge either MG Barnes or COL Franklin with war crimes. However, on 15 Mar 71, LTC Herbert preferred charges against MG Barnes and COL Franklin for failing to report and investigate some of these alleged violations of the law of warfare and for dereliction of duty in failing to investigate them.

MG Barnes. LTC Herbert charged MG Barnes with failing to investigate and report three of the 21 allegations. The Commanding General, U.S. Army Military District of Washington (CG, USAMDW), who had general court-martial authority over General Barnes at the time of Herbert's charges, directed an official inquiry into the charges. After 6 months of investigation, and some 3,000 pages of testimony involving 52 witnesses and over 100 documents, the CG, USAMDW dismissed the charges against General Barnes, because they were not supported by the evidence. In fact, in Nov 70, LTC Herbert himself signed a statement under oath, which denied that he had ever directly reported any alleged crimes to MG Barnes.

One of the allegations, involving the mistreatment of a detainee, had been investigated at the time of its occurrence at MG Barnes' direction, thus showing that no cover-up had taken place.

The other two allegations concerned incidents in which only Vietnamese were involved. In one case, the investigation showed MG Barnes was unaware of the incident. In the other case, he was aware of the incident, and despite the fact he was not required to investigate, he did so informally. The report of CID investigation supported the results of MG Barnes' earlier investigation.

In summary, LTC Herbert's charges against MG Barnes were not substantiated.

Col. Franklin. The charges against Col. Franklin alleged that he failed to investigate and report seven of the 21 war crimes allegations. The Commanding General, Delta Regional Assistance Command in Vietnam, the officer having general court-martial authority over Col. Franklin, determined by official inquiry that LTC Herbert's charges were unsubstantiated. The CID investigation showed that two of the seven alleged incidents were investigated by the Brigade. There was no evidence to confirm LTC Herbert's claim that he, or anyone else, informed Col. Franklin of the other five alleged war crimes.

In one case, LTC Herbert could not have informed Col Franklin at the time alleged since Col Franklin was in Honolulu.

In one case, no evidence was found to support LTC Herbert's claim of having informed Col Franklin. The witness named by LTC Herbert as having heard him inform Col Franklin denied hearing any such report.

In the other three cases, no evidence confirmed the allegation that Col Franklin was aware of the alleged incidents.

Both Col Franklin and LTC Herbert passed lie detector tests. Col Franklin's test was conducted by the CID. LTC Herbert's test was conducted by a qualified civilian examiner after he refused to take a test given by the CID under the same conditions as that taken by Col Franklin.

In summary, LTC Herbert's charges against Col Franklin were not substantiated.

IV. LTC Herbert's allegations of mistreatment at Third Army

Cancellation of Leave and the Dick Cavett Show. During Sep and Oct 71, LTC Herbert's commanding officer authorized a series of absences—ordinary leaves, administrative absences, and temporary duty—from Fort McPherson, Ga., to help LTC Herbert attend to personal affairs. These absences permitted him to appear several times on radio and television, including the Dick Cavett show of 30 Sep 71.

When LTC Herbert's nomination to the Senate for promotion to Major, Regular Army, was announced in late Oct 71, his commanding officer concluded that the re-

quirement for special absences to handle personal affairs had been met and that LTC Herbert should devote full time to his duties. Consequently, his request for 2 days' leave to appear on the Dick Cavett show in New York City on 2 Nov 71 was not considered justified, especially since he had been absent during 28–31 Oct 71, just 2 days before. However, he was given permission to appear at a television station in Atlanta for an advance video tape filming of a split-screen interview for use on the 2 Nov Dick Cavett show. This authorization was given orally to LTC Herbert at about 1700 hours, 2 Nov 71, in response to his written request submitted an hour earlier. LTC Herbert had ample time to reach the Atlanta television studio for the Cavett show.

General Westmoreland's Alleged Involvement. Comments that GEN Westmoreland had denied LTC Herbert leave to appear on the Dick Cavett show are completely false. GEN Westmoreland was not involved in this matter.

Muzzling. Claims that LTC Herbert was refused permission to speak to the press are false. His interviews with newsmen after he claimed he was muzzled clearly indicate that the Army did not restrict LTC Herbert's access to the press. He was and is under no more restrictive limitations than any other officer in the Army.

LTC Herbert's Assignment. Claims that LTC Herbert's current duty assignment at Fort McPherson is not a meaningful position are incorrect. LTC Herbert is assigned as the Assistant Director of Industrial Operations at that post, a job formerly known as Assistant G4, LTC Herbert's office has staff responsibility for logistical support of the post, including communications, housing, transportation, supply and maintenance, food service, and supporting facilities. At present, this office oversees to spending of $16.5 million per year, and the work of over 180 personnel at Fort McPherson.

Complaints of Harassment. On 1 Nov 71, LTC Herbert failed to salute properly, and he was corrected. Correction of deficiencies in military courtesy is a normal procedure, not harassment.

Inquiries into LTC Herbert's treatment at Fort McPherson have shown there is no substance to his complaints of harassment and invasion of privacy. He has been asked orally and in writing to substantiate his public complaints to the Inspector General, Third Army. To date, he has failed to provide any details.

V. Application for retirement

LTC Herbert's decision to retire with 20 years' service is entirely his own. Since his promotion to Major, Regular Army, he is eligible to continue his Army career. However, he has asked to retire effective 1 Mar 72, and this request was approved on 7 Dec 71.

VI. Summary

1. Despite thorough investigations, no evidence has been discovered to support LTC Herbert's claims that he was relieved from command in Vietnam because of his allegations that his superiors "covered up" war crimes. In fact, there is no mention of war crimes in any documents connected with his relief, in the record of the board of inquiry (Russ Board) which examined the relief, or in his subsequent two reclamas to the Department of the Army.

2. The Secretary of the Army withdrew the efficiency report which dealt with LTC Herbert's relief from command, because the report involving 58 days of duty, might have been an exception to a record of otherwise effective service. War crimes or war crimes allegations were not involved.

3. There is no evidence, other than LTC Herbert's recent statements, that he reported allegations of war crimes until some 18 months after his relief from command.

4. His charges that the two officers who relieved him from command covered up war crimes were unsubstantiated by thorough investigation. These charges were preferred almost 2 years after his relief.

5. LTC Herbert, although asked, has been unwilling or unable to provide to the Army details of his alleged harassment at Fort McPherson during Oct-Nov 71.

6. LTC Herbert's decision to retire with 20 years' service is entirely his own. His application to retire on 1 Mar 72 was approved on 7 Dec. 71.

NOVEMBER 24, 1971.

LETTERS TO TIME,
Time and Life Building,
Rockefeller Center,
New York, N.Y.

DEAR SIR: I was interested in your article on LTC Anthony Herbert in the 22 November 1971 issue. I know nothing of his activities in View Nam; however, he served under me in the 3d Special Forces Group at Fort Bragg, North Carolina from December 1963 to July 1964. I terminated him from service with the elite Green Berets because he assaulted a fellow officer and consistently demonstrated his inability to get along with his fellow officers or with non-commissioned officers. I also discovered that I could not depend upon his word. The efficiency report that was submitted on him at the time would have caused him to show cause as to why he should be retained in the Army. I understand he took action (unknown to me) to have the damaging report removed from his official file.

Sincerely,

J. B. BARTHOLOMEES,
Colonel, Infantry, Fort Bragg, N.C.

DEPARTMENT OF THE ARMY,
Washington, D.C., July 18, 1972.

Mr. MICHAEL LAURENCE,
Senior Editor,
Playboy Magazine,
Chicago, Ill.

DEAR MR. LAURENCE: I was delighted to receive your letter of June 21 inviting my comment on your magazine's interview with LTC Herbert in your July issue. I do have considerable comment.

As is the case with many male Americans, I have read your magazine off and on for many years. During this time you made one point clear to all your readers—you refused to countenance the use of "falsies."

Your July issue has severely eroded your credibility on this point. Playboy does use falsies, in this case Lieutenant Colonel Anthony Herbert.

I suppose it is the underdog syndrome which persuaded you to publicize Colonel Herbert, but I find it strange that you would accept Herbert's charges and allegations without seeking the Army's side of the story. The Army has spent thousands of man hours investigating Herbert's multiple accusations and found little or nothing to substantiate most of them. Let me give you a sampling of errors and misleading statements from your own interview.

First, your article's headline: "A candid conversation with the 'supersoldier' who was forced to leave the Army for exposing war crimes—and high-level cover up—in Vietnam."

Non-fact No. 1: LTC Herbert was not forced to leave the Army. He applied for retirement on his own volition on November 9th, 1971. His application was approved on December 7th, 1971 and he retired without honors (at his request) and was placed on the Army's retired rolls as of March 1st, 1972.

Second, and this criticism is partially of Playboy, you selected as one of his interviewers one Robert B. Johnson, Jr. Mr. Johnson, you should have added, is former Captain Robert B. Johnson, Jr., a West Pointer who decided to become a conscientious objector and a dedicated opponent to the War in Vietnam and of all things military. I am not criticising Captain Johnson for his decision; I am criticising you for failing to acquaint your readers with the non-objective attitude of the interviewer.

Third, even Colonel Herbert's biographical data is misleading as outlined by Playboy. Some examples:

1. No one knows, and it is not possible to know whether he was the "most decorated enlisten man" in the Korean War. Without in any way attempting to equate the various awards for valor, I would point out that there were 59 Medals of Honor awarded to Army enlisted men in that War, plus a significantly greater number of Distinguished Service Crosses, neither of which Herbert received. Let me make clear that I greatly admire Colonel Herbert's bravery—winning three Silver Stars and a Bronze Star was an outstanding achievement. But having said that, there is no way to go on to claim that number as the highest. Well decorated I'll buy; most decorated just can't be supported.

2. He did not take the first group of American paratroopers in to the Dominican Republic in 1965. Two battalions of the 82d Airborne Division arrived in the Dominican Republic at approximately the same time as the advance elements of the division. Colonel Herbert commanded neither of these battalions.

3. His tenure as a green beret was short lived. He was, in fact, fired while in Special Forces training at Fort Bragg in July of 1964 because he assaulted a fellow officer and, in the words of his former group commander, he "consistently demonstrated his inability to get along with his fellow officers or with noncommissioned officers." I am enclosing a copy of a letter written by this commander to *Time* magazine about LTC Herbert. You will find it interesting.

4. Herbert was not forced to investigate his war crimes allegations at his own expense while stationed at Fort Leavenworth. He did not raise his war crimes allegations until September 1970, approximately one and one-half years after his relief from command. He had no way to investigate war crimes in any meaningful way as a member of the post staff at Fort Leavenworth, Kansas. A bit of re-emphasis is in order here. While Herbert would have people believe that he tried to report war crimes and was sacked for his humanitarian efforts, the facts are that he did not even raise the war crimes issue until some 18 months after his relief.

5. He did not win an all-Army trophy for the best reenlistment record in the country. The trophy was awarded to Third Army. Third Army had won this all-Army reenlistment trophy for four consecutive years prior to Herbert's assignment there. He was the staff officer who supervised reenlistments from August 1970 to August 1971 and therefore deserves significant automatic credit, but his overall effectiveness is somewhat questionable since two major installations in the Third Army area requested that he be forbidden to visit on reenlistment business, since he only succeeded in "screwing things up."

6. There was not any Army regulation "designed to prohibit Herbert from speaking publicly." Nor was any such individual order ever issued by any of Herbert's superiors.

So much for his biographical data. A simple check by *Playboy* with my office would have uncovered these errors.

Now let me give you some samples of the baloney in the interview itself. I will restrict myself primarily to his "factual" statements since the interview contains innumerable opinions, uncheckable generalizations, and non-researched statements which range from

ridiculous to partially true. A good example of an instant, uninformed Herbert opinion can be seen in his gratuitous remarks about Dr. Henry Kissinger. But his confusion and non-information is clearly evident from the following:

First. Luxury in Vietnam. The vast majority of the more than two million Army troops who served in Vietnam will debate this statement. Members of the 173d Brigade in early 1969 when Herbert was commanding his battalion will surely dispute his statement that his brigade had a "vast complex of swimming pools, pizza joints, steak houses, Dairy Queens, outdoor theaters and clubs with two or three bands playing every night." I happened to have served in the II Corps area at the same time and can state from personal experience that the 173d Brigade had no regulation swimming pools, although the troopers did find some relief in expedient swimming holes. On the fire support bases which my troops shared with the 173 Brigade I recall no pizza parlors, steak houses or Dairy Queens.

Second. Colonel Herbert doesn't even know the personnel strength of his brigade. He says "ten or eleven thousand men." Fact: The brigade's strength never exceeded six thousand men and was usually at the five thousand level. A fifty per cent error.

Third. Men with wine-tasting cups around their necks serving in Major General Barnes' Mess and a major who taught these men how to taste wine for General Barnes. Ridiculous. The major has emphatically denied this charge. I ate in General Barnes' Mess during the period in question both unexpectedly and by invitation and never saw any such thing. I invite you to contact other officers with knowledge of the mess—many are available.

Fourth. Only a few hundred men out of the ten or eleven thousand were actually out fighting. This is an amazing disservice to the four battalions of "grunts" (over 2,000 men), the artillery battalion (500 men), and the combat engineers, signal types, and many others who were out in the dust, mud, rain and heat fighting the enemy.

Fifth. The Pizza Chopper. I can find no one who was in the brigade at the time Colonel Herbert was there who has heard of the pizza chopper. Several individuals told me that a chopper was often set aside to send a hot breakfast to isolated fire teams who had no other way to obtain a hot meal. Herbert admits using a chopper for beer deliveries. But it is incomprehensible that anyone would believe his allegations that someone gave pizza priority over the wounded. This is a great disservice to our dedicated MEDEVAC personnel in Vietnam.

Sixth. Colonel Herbert's claim to having been awarded the title of best battalion commander in the brigade is false.

There was no such award in the 173d Brigade. General Barnes has stated that Herbert was, the worst of the 20 battalion commanders who served under Barnes and was the only one he had to relieve from command.

Seventh. Reporting of war crimes to Colonel Franklin. The Army CID has interviewed hundreds of witnesses on this allegation. In essence, there is no support for Herbert's allegations.

Eighth. Reporting of war crimes or atrocities to General Barnes. Colonel Herbert seems to have forgotten that in November 1970 in a statement he signed under oath, he denied that he had ever directly reported any alleged war crimes to General Barnes.

Ninth. After his relief, Colonel Herbert says he went to Saigon to complain about war crimes and saw "General Abrams' Inspector General, a Colonel Elder." Fact: General Abrams' IG was Colonel Robert Cook. Cook says Herbert did not see him. In answer to a press query last year, Herbert said he saw a Colonel Ashley. Ashley, then Chief of Staff of the Capital Assistance Command in Saigon, said that Herbert did come to see him concerning a reclama to his relief from command, but made no mention whatsoever of war crimes.

Tenth. A typical Herbert twist is his labelling of the Command and General Staff College at Fort Leavenworth, Kansas, as the "Army's College for Generals." Although it would be difficult for an officer to become a general if he were not a graduate, the college is designed to broaden an officer's knowledge of tactics, logistics and administration from battalion commander on up. About 50% of all eligible regular army officers are selected to attend the college. About 3% become generals.

Eleventh. Herbert's ignorance of how the Army operates is revealed in his accusation that General Westmoreland personally "did everything he could" to keep Herbert's case out of public view. General Westmoreland was not even aware of Herbert's allegations until I showed him the original New York Times article on Herbert in September of 1971. General Westmoreland did not appoint Major Hensley to supervise the CID's investigations stemming from the Herbert allegations. Hensley was appointed by his boss, Colonel Tufts. General Westmoreland did not know Hensley.

Twelfth. The Duck Case. I was genuinely surprised that *Playboy* did not check out this part of the interview. Irrespective of the state of the Army's image within the *Playboy* organization, it seems to me that a reasonably intelligent person would seriously doubt a report alleging that an Army General ordered his men to salute a duck. The facts are that the Army has checked out this matter with a number of officers and enlisted men who served with the Brigade at the time in question and can find no one who substantiates the story. In fact they all emphatically deny ever hearing of such an order. As far as Herbert's eating the duck is concerned Herbert's commander told me personally that he received the duck, the brigade mascot, from his predecessor and passed it to his successor some four months after Herbert left the battalion. His successor confirmed to me that he received the duck.

Thirteenth. Roughing up enlisted men. Despite Herbert's denials, the USACIDA has numerous statements to this effect. You will note that Herbert did not answer the interviewer's question on that subject. Instead, he took off on an officer in his battalion who is only one of the several individuals who accused Herbert of brutality. Herbert's remarks about this officer are also suspect. His principal duty was not that of a bartender. Moreover, Herbert's testimony about the officer's reluctance to engage in combat is contradicted by the award of the Silver Star to the officer in question on 27 March 1969 when Herbert still commanded the battalion.

Fourteenth. The Army does not admit in its own fact sheet that Herbert's charges were valid. Quite the contrary. The Army fact sheets show that no reasonable evidence could be found to support Herbert's charges of cover-up. I am attaching the fact sheets for your information.

Fifteenth. Other false allegations against General Westmoreland,

a. According to Herbert, "Westmoreland has said over and over again that even if war crimes have been committed, he doesn't consider himself responsible for them." Not true. I have a complete file of General Westmoreland's speeches, press conferences and public utterances and cannot find this statement or anything like it.

b. Again, according to Herbert, "Westmoreland, for instance, was a regimental commander in Korea. He lived it up behind the lines like the rest of them." Not true. General Westmoreland's command, the 187th Regimental Combat Team, was involved in some of the toughest fighting in the Korean War, and the regimental commander was with them.

c. Once more, in Herbert's words, "Westmoreland never learned anything about the Vietnamese—their language, their culture, anything. It made him nervous to be around them." Anyone who served with General Westmoreland in Vietnam, including me, knows that General Westmoreland has great empathy for the Vietnamese. He knows them and their culture far better than the vast majority of Americans who served in South Vietnam. Herbert, on the other hand, has been alleged to "hate their guts" and has been accused by some of physically mistreating them. Nor was Herbert ever associated with General Westmoreland in Vietnam. How can he know anything about how General Westmoreland operated?

d. "Generals, like Westmoreland, won't take any responsibility for the awful things that could have been avoided in Vietnam. Instead, they try to sell people this bill of goods about the heavy responsibility of sending men to their deaths, implying that this is so much harder than going out there themselves." The generals have taken full responsibility in accordance with laws, rules and customs of warfare. They have also gone "out there themselves which is attested to clearly by the deaths in combat situations of eight general officers and one colonel selected for promotion to the grade of brigadier general. A number more have been wounded in action.

I have only sampled the mistakes, misleading statements, and ramblings in the article in question. A study of the enclosed fact sheet should cast considerable additional doubt on LTC Herbert's expertise as a critic of the Army.

Sincerely,

WINANT SIDLE,
Major General, GS, Chief of Information.

PLAYBOY INTERVIEW: ANTHONY HERBERT

(A candid conversation with the "supersoldier" who was forced to leave army for exposing war crimes—and high-level cover-up—in Vietnam)

(NOTE.—In 1944, a gangly 14-year-old boy named Anthony Herbert ran away from his home in Herminie, a tough Pennsylvania coal-mining town, to join the Marines in the Pacific. His mother and his high school principal followed him, convinced the Marines he wasn't 17 and took him back home. Three years later he tried again and, along with a black friend, was accepted into the postwar volunteer Army. "We entered under the buddy system," Herbert recalls, "and were promised duty in the same unit, but the first thing they did was split us up. I complained to my commander and was told that Negroes and whites never serve in the same outfit. It was my first experience with segregation." He was still questioning the system 24 years later, and it finally cost him his military career.

(By any reckoning, that career was a remarkable one. At 22, he was the most decorated enlisted man in the Korean War, with a Bronze Star, three Silver Stars, four Purple Hearts and an array of additional medals from our Government and others. After a tour of world capitals as an "Outstanding Soldier" and a "Tony Herbert Day" in his home town, he hung up his uniform, got married and enrolled at the University of Pittsburgh to get a B.A. in English. But in 1956 he re-enlisted—as a second lieutenant—and went off on a tour of duty that took him from Germany (where he led the Rangers) to Africa (on classified intelligence missions) to the Middle East (where he scuba-dived from an intelligence ship) to the Dominican Republic (into which he took the first group of American paratroopers during the 1965 crisis) and finally to Vietnam (where he served with the Green Berets). Herbert also became an expert in nearly all the martial

arts, yet he found time to learn several languages, pick up a master's degree in psychology, write a book on Korea and do a psychological study of General Patton as part of his Ph.D. work.

(Back in the States in 1968 as an R.O.T.C. instructor at the University of Georgia, Lieutenant Colonel Herbert volunteered to return to Vietnam, where he became a battalion commander in the elite 173rd Airborne Brigade and quickly won another Silver Star, three more Bronze Stars, two Air Medals, an Army Commendation Medal for Valor and a recommendation for the Distinguished Service Cross. In September 1971, The New York Times quoted a letter to Herbert's wife from one of the officers in his battalion: "This guy is absolutely incredible. He is the perfect warrior—a supersoldier, if I ever saw one. He is brilliant yet simple, tough but gentle, and I believe he is absolutely fearless." The same article quoted a general who called him "one of the best, if not the best combat commander in the whole goddamned Army." He was definitely due a general's star. But on April 4, 1969, after only 58 days in command, he was abruptly relieved, given an efficiency report that eliminated all chance of future promotion and sent back to the U.S.

(What happened to "the perfect warrior"? Herbert says he was relieved because of his persistent attempts to report war crimes to his superiors and their desire to cover them up to protect their careers. The Army said it was "unsatisfactory performance of duty" but later withdrew this charge and left no official reason for his removal. Herbert was forced to investigate his war-crimes allegations at his own expense while stationed at Fort Leavenworth and later at a nondescript recruiting office in Atlanta's Fort McPherson. A few days after winning an all-Army trophy for the best re-enlistment record in the country, he was demoted to an even lesser post. Finally, in March 1971, he filed formal charges against his commanders in Vietnam, Colonel J. Ross Franklin and Major General John Barnes, accusing them of dereliction of duty, concealment of a felony and failure to obey regulations—all legalese for covering up war crimes. Since then Herbert has been charged with assault, forced to resign, heard his wife and daughter abused and seen his charges against Franklin and Barnes dropped.

(Concerned about the issues raised by the man some call a charlatan and others call the only honorable figure in the Army, PLAYBOY assigned two Vietnam veterans, Bruce Galloway and Robert B. Johnson, Jr., to unravel his complex story. They found it difficult even to begin, because of new Army regulations designed to prohibit Herbert, then still in uniform, from speaking publicly and because of his lawyer's fears that the interview would be confiscated by the Army and used to delay his retirement or as grounds for a court-martial. Finally, on the day of his retirement, they began. Here are their impressions:

("Chasing Tony Herbert was an exhausting job. The nights were very late, but the mornings came early with a call from him: 'The officers at Fort McPherson are already up and working. You'll never win the revolution in bed; let's get going!' His home is on a rapidly integrating, quiet suburban street in Atlanta and belies his past; the only military souvenir we saw was a miniature bayonet used as a letter opener. Physically, he's imposing. Even John Wayne would be hard put to outfight this man. And he projects the same sincerity and authority. For ten days we searched for inconsistencies in his story and could find nothing but a contradiction between his hard-bitten combat experiences and his gentle, friendly nature. He emerged as a kind of high-ranking, unfunny Good Soldier Schweik who salutes his superiors and, much to their dismay, does exactly what they order. He is a battle-toughened, intellectual ex-Army officer who has decided to use all his strength, his awareness of the system and his impeccable combat record to force that institution into reshaping itself. He is feared and hated within the Army for these attributes, but because of them, he may just possibly win.")

PLAYBOY. When did you first become aware of war crimes in Vietnam?

HERBERT. In 1965 and '66, on temporary assignment with the Special Forces, I was told to go out and execute Vietnamese as part of the Phoenix program—which had earlier been called Sphynx. Phoenix is a CIA-run operation that identifies members of the Viet Cong and sends teams out to eliminate them. They call it execution, but it amounts to assassination or plain murder; using the word execution only gives it a ring of legality. It implies that a man has been tried, judged, sentenced and now he's to be executed. My mission was to go out and wipe out a family and make it look like the V.C. had done it in order to get the villagers back on our side. Now, I just couldn't do this. I said no, that I would take any other mission, but I wouldn't go out and kill unarmed individuals. I asked, "Who identifies these people I'm supposed to kill?" The answer was, "Well, we have Vietnamese people from the area who'll take care of this." So I asked how we knew that a man didn't have a more personal reason for having this or that family wiped out. Maybe for revenge or, even worse, maybe he's a double agent and he's pointing out the good people instead of the bad people. It was too shaky a thing for me, so I said, "I'm not going to do it. If they're that bad and they're supposed to be killed, instead of a Vietnamese pointing them out with his finger, just hand him a rifle and let him point with *it*—and then squeeze the trigger." A sort of early Vietnamization program.

PLAYBOY. Who told you to do these things?

HERBERT. Well, the guy who was running it at that time, like everybody else in the program, had a cover name. You go in and meet Smith, Ward or Jones, a bunch of people with very short names. In a way, it covers guilt. You didn't do it; Mr. Smith did. It becomes unreal to you. That's why there's so much talk about unreality in the Vietnam war. The V.C. and the North Vietnamese are the dinks, the slopes, the gooks. They're the bad guys, we're the good guys. The airplane that fires miniguns all over is Puff the Magic Dragon. Areas, targeted for devastation are "free-fire zones." It's like going through the looking glass. When you come back to the real world, you step back through it, and the dead all jump back up.

PLAYBOY. Did you witness and report any war crimes during this period?

HERBERT. No, I didn't see any. If I had witnessed a war crime, I damn sure would have reported it. I had the same understanding of the Geneva Convention and the rules of land warfare then as I do now, and they haven't changed.

PLAYBOY. Did you hear any talk among other Army officers of war crimes during the build-up in Vietnam?

HERBERT. Sure, I did. I was with a naval-intelligence ship like the Pueblo in the Mediterranean as a liaison officer to do some intelligence diving and after that taught ROTC at the University of Georgia. At these places and at other stations around the world I heard young officers talk about "blowing away gooks" and that kind of thing but I thought they were green soldiers trying to be tough by talking tough. I felt all these war stories were exaggerations by weak men. It was hard for me to believe that American officers would talk like that and really *mean* it.

PLAYBOY. During this period, what were your views on the war?

HERBERT. I believed what the President said. I didn't know enough about what was really happening. All I was fed in the Army, of course, was the total propaganda line. I mean, I believed the Gulf of Tonkin story, that things had actually occurred like that. We weren't as fortunate as the citizenry today; we had no Dan Ellsberg to tell us differently. But even if it hadn't been like that, I would still have gone, gladly. It wouldn't have mattered to me what had occurred; the fact was that it *had* occurred and we were now there. Whether we were there legally or not made no difference; we just had to do the best job we could under the circumstances; stay alive and help those people as much as we possibly could. I believed we were over there to do good.

PLAYBOY. You returned to Vietnam in August of 1968, after the Tet offensive and after the mood of the country had obviously changed about the war. Did you want to go back?

HERBERT. Sure. I was still an officer in the Army and there was still a war going on over there, so I volunteered to return. I hadn't served a full tour in Vietnam and had never served with Americans. The early trips were spent with Cambodians, going across the border to monitor traffic on the Ho Chi Minh trail. I felt when I went back that I ought to see how *American* troops operated and learn about what was changing in the way of tactics and equipment. I hadn't even operated out of helicopters and I knew that was the going thing in the Army. I wanted to see how they were used in action.

PLAYBOY. What was your new assignment?

HERBERT. I became the Inspector General of the 173rd Airborne Brigade. When an enlisted man has no other recourse, he can go to the I.G., who then goes outside Command channels and theoretically serves justice. He investigates the case, sees whether there's any legitimacy to the man's complaints and then—without exposing the individual to any retaliation from above—takes some action to make things right. It comes from way back in the Army, from Von Steuben in the Revolutionary War; he was the first I.G. It's designed to make sure the enlisted man has a recourse for justice in the military.

Of course, that's not how it works today. When you take over as I.G., the general calls you in for a briefing and says, "Look, you're on my staff and I want you to know right away that your real job is to protect *me*." So as soon as a man comes in with a complaint, you find something to knock that complaint the hell out as unjustified before the man writes to Congress. But I had been an enlisted man, so I took the job to heart, the way it was intended. That was OK with General Allen, who was the brigade commander then. He had been an enlisted man himself. Later, however, General Barnes, the new brigade commander, and Colonel Franklin, the deputy commander, just couldn't tolerate an I.G. who did his job. It went completely against their personality and their type of training—the West Point-type training. The junior man had no rights; he never did. Everything was for the good of the commander's image, for the good of the brigade—which meant for the good of Barnes and Franklin. The key phrase used to justify any type of illegal action was always "for the good of the brigade." We can't let this get out and spoil our image. The civilians wouldn't understand. For the good of the brigade, you could cover up fraud and theft, rape and murder. For the good of the brigade, you could let people get away with anything—even if it violated the Geneva Convention or any other legal, moral or ethical code or set of standards.

PLAYBOY. You later became a battalion commander. Did you request the job?

HERBERT. No. While I was I.G., General Allen said he was going to assign me as a

commander. A lieutenant colonel who commanded the First Battalion of the 503rd Infantry was shot down in a helicopter and broke a leg or something and I was told that General Allen had decided I would take over the unit, to come down with all my combat gear ready to go to the field immediately. So I threw everything in my rucksack and went whistling down there—you know, going to be a *commander*. But when I got there, the brigade sergeant major told me something had happened; he was kind of pissed about it. It seems they had a West Pointer named Henning—who had been at West Point with Franklin, by the way—who had 20 years as a commissioned officer but had never had a command. He had been sent over to Vietnam to get his ticket punched—get his command time. That's the way it's done. Whether a man has a good combat record or not doesn't matter. If he's one of the boys—a West Pointer—and he's going to be selected for big things in the Army, he has to go out and command troops.

I congratulated Henning and went back to my job as I.G. Then General Allen called me in and said he was leaving, but he'd make sure I got the next battalion that opened up. About six weeks later, I took over Second Battalion and that was it. But Colonel Franklin told me, "Don't count on being here more than 30 days." The night Barnes gave me the battalion, he said, "I know you're neither a Leavenworth"—that's the Army school that's called the school for generals—"nor a West Point graduate. I hope you can handle the job." Well, I had been in three wars and I knew damned well I could do it as well as or better than the rest of them who were already doing it. But I just said, "Well, I'll try, sir." So I became a battalion commander.

PLAYBOY. Why 30 days? Was Franklin antagonistic to you?

HERBERT. I don't know. Maybe he just resented the fact that I wasn't a ring-knocker.

PLAYBOY. Ring-knocker?

HERBERT. West Point graduates wear these big class rings, and they're always tapping them on tabletops in case you forget they're wearing one. Maybe Franklin wanted a fellow ring-knocker to have that battalion. At least that's what the brigade sergeant major swears. Or maybe it was because I had been a little too dedicated as an I. G. and Franklin thought I might not be a good team player. Anyway, I didn't think about it much at that time. I had a battalion to get in shape, and I knew enough about the unit to expect some real problems.

PLAYBOY. What sort of problems?

HERBERT. There had been two attempts on the previous commander's life. There had been quite a few fraggings in that battalion, both officers and senior enlisted men. One man had both legs blown off; seven people had been wounded by a grenade, and a Claymore mine had been blown right at the tactical-operations center—a mine set to kill the staff, for Christ's sake. Something had to be done, and the way to start was by leveling. So I got all the troops out and said, "OK, a lot of you men have been convicted of minor crimes, like having marijuana, crimes you think you're not guilty of, but you've been charged and fined hundreds of dollars. You've been, in your estimation, screwed by the green machine. I'm not going to argue whether you were right or the preceding battalion commander was right. However, any punishment that he gave you, I can give the money back, I can clean your record, I can eliminate any charges that he made against you, because I'm the battalion commander now. That's the way it works in the Army. I'm going to take the first step. Those of you who are going home tomorrow, you stay clean until tomorrow and you'll go home with a clean record. Your whole year will be clean." Somebody had to make the first move. We didn't have any more trouble. The marijuana problem ended. Everything just ended.

PLAYBOY. Drug abuse seems to be one of the most persistent problems in Vietnam. Why?

HERBERT. The Army creates its own drug problem. The Army thinks a man who's kept busy won't take drugs, so it tries to keep soldiers busy at all costs by giving them meaningless menial tasks to perform, no matter what their qualifications or interests. On top of that, officers and N.C.O.s with nothing better to do harass the troops day and night. It's not fear of combat that drives most men to drugs in Vietnam—it's harassment and boredom. Also, the Army doesn't distinguish between marijuana and hard drugs, forcing the troops to use the least detectable—heroin. Not only does the Army drive enlisted men to look for an escape; its corrupt members help make that escape available to them. And look at the Army's current solution—burn the marijuana fields of Vietnamese farmers and then pay to cure, or at least dry out, heroin addicts as they leave Vietnam. Got to be sure "our boys" are clean before they get back to the real world. A month later, of course, it becomes a civilian problem, a family problem; the Government is absolved of its responsibility.

PLAYBOY. Some people think that the drug problem and the fraggings in Vietnam are evidence of a decline in the quality of the American soldier. Do you think there's any truth to that?

HERBERT. The men I served with in Vietnam are the finest soldiers this country has ever produced. Anyone who thinks he did more in World War Two than these guys did over in the jungles is just bull—— himself. The average grunt or sergeant in Vietnam would do *anything* you told him to. They were almost fatalistic about it. As long as it was legitimate and you were out there with them, it was OK, no matter what the chances of getting blown away. If you were out there with them, doing what they had to do, not trying to win promotions and decorations, then they'd do it all. The guys I was with in Korea who were considered really brave would be about average in the jungles of Vietnam.

There are people in the Army now who say that the troops that went over to Vietnam were a bunch of bums. But the people who are doing the crying are the people who are at fault. It was bad leadership that made some of these troops into substandard performers. Men just won't go out and fight and die for somebody who doesn't care about them, never sees them, never shares their risks while they're out doing the bleeding. If the troops didn't perform like the generals wanted them to, it was because the generals weren't doing their job. It's that simple.

PLAYBOY. What did you do that other commanders didn't to win the confidence of your troops?

HERBERT. I got everybody—including myself—out of the rear. You have to be over there to know just how important that is. You can find comfort—hell, *luxury*—in Vietnam, a war zone, that's unlike anything you could find this side of a Miami Beach resort hotel. The American people were paying for 500,000 troops over there, but the fact is that about 475,000 of these men were cooling their heels, living better than they could ever afford to live in America or any place else in this world, living like potentates, like kings. We just flaunted it. Cigarettes were free. Cigars were free. Beer was free. Whiskey was almost free. Everything was free. Now, a real trimmed-down fighting brigade, according to the manual, should be able to operate almost out of two little tents and a jeep—out of its back pocket. But our brigade, which was representative, had this vast complex of swimming pools, pizza joints, steakhouses, Dairy Queens, outdoor theaters and clubs with two or three bands playing every night.

PLAYBOY. You had all this in just your brigade?

HERBERT. Yes. An airborne *combat* brigade, no less. And all of this was for the enjoyment of those who never saw combat—all but a few hundred of our ten or eleven thousand men. But everyone was drawing combat pay. In this mess, General Barnes actually had men in white packets with little wine-tasting cups around their necks. I know a major whose responsibility was teaching these men how to taste wine for General Barnes. All this while the same few hundred guys, without any support whatsoever, were out there dying, humping it every day, day after day, for all these thousands of men toasting each other over the bar.

PLAYBOY. Apart from its demoralizing effects on those who had to do the fighting, did all this rear-area country-clubbing ever interfere with operations in the field?

HERBERT. All the time. We couldn't get what we needed for combat because it was being used for other missions. Like making life easy. The brigade had a pizza chopper, for example. If you ordered enough pizzas, a helicopter would deliver them. It was supposed to be based on the availability of the helicopter, but that was bull—. You wanted pizza, you'd get a chopper. Well, one day I had some wounded after a fire fight north of An Khe and I called for medical evacuation—a "dust-off." But the medical chopper was out somewhere and they said I'd have to wait. But I couldn't wait, so I ordered a stack of pizzas and I had a helicopter in no time flat. I put my wounded on—two woundeds and a guy with malaria. Later, I was called in and chewed out.

PLAYBOY. By whom?

HERBERT. General Barnes. He bitched at me for making unauthorized use of a pizza chopper. My men should at least have been in critical condition, he told me. Christ! Maybe he was peeved that I hadn't paid for the pizzas.

PLAYBOY. With all that high living in the rear, didn't your men resent being taken into combat?

HERBERT. Not much. They were doing what they'd been sent to do. And out in the field there was no harassment, no bull—, no make-work, no idle time. When you're out in the bush, you have to do your job and count on the other man to do his. Your life depends on it. So you get tight with the guys in your outfit and you take pride in what you do. A man can't feel much pride when he's back at an R&R beach tending bar or lifeguarding.

Well, I put a stop to a lot of that, and when my troops out in the field saw the guys who had been living it up back at base out there with them, that ended some of the resentment they'd felt before I took over the battalion. They also saw *me* out there, so they knew they weren't being run by remote control, being told to take risks their commander wasn't willing to take. They were also getting what was due them. Every man in the field, for example, was supposed to get a free beer a day. It was supplied and the men were supposed to get it. Previously, some swore to the I.G. office they had been charged a buck a can for beer that had been given to us free to give to them. And it was warm beer when they got it. So I took the beer to them every night myself; had a man put it in big rubber body bags. The ice melted overnight in the heat, of course, but the beer stayed cold. Anything that came in for the troops, my staff and I made sure they received it.

They were also supposed to have survival knives, a big hunting knife made for helicopter pilots in Vietnam. Everybody in Saigon was carrying one of the damned things on his belt, but the troops that needed them in the jungle didn't have them. The high ranks peeled them off and sold them on the

black market or kept them. So you'd see all these Saigon commandos with this big damned survival knife, and the guy in the jungle running around with a penknife. Well, a friend got me a set of these knives and I made a rule: Every private in the battalion was to have one of those knives. I said I'd better not find a single man above private wearing a knife as long as there was still one private without one; I'd better not find one corporal wearing one and some Pfc. without one. So instead of giving it from the top down, I gave it from the bottom up, as it's meant to be. And the troops realized right away what was going on. You can't bull—them, and when you don't try to, they appreciate it.

PLAYBOY. Considering the unpopularity of the war, weren't there any men under your command—despite your honesty and even-handedness—who simply didn't want to fight?

HERBERT. Some of the men balked at going into the field, but I really didn't have much of a problem with that. Some of them didn't want to be involved in this type of war, or they said they didn't believe in killing. I told them they didn't have to kill—just go out and do another job. There are a lot of other jobs in war besides killing. I let them rebuild temples and build hospitals for kids, or go out and administer minor medical treatment. They were quite satisfied, and that eliminated my rear-area problems. So well, in fact, that I got into trouble for it.

PLAYBOY. How could you get into trouble for eliminating discipline problems?

HERBERT. There is a letter from General Barnes to the effect that my men weren't getting enough delinquency reports—the things that MPs give guys for running stop signs and that sort of thing. I guess Barnes thought I was being soft on the men or something. But I didn't give d.r.s; the MPs did, and the reason my men weren't getting them was because they weren't back at base where the MPs handed them out. They were with me out in the field doing what they were sent to do.

PLAYBOY. Were your tactics in the field the same as other commanders', or did you have your own way of doing things out there, too?

HERBERT. In my battalion, we used basic infantry tactics that have been good since the time of Philip of Macedonia. There's a lot of nonsense talked about the new lessons of Vietnam and that sort of thing, but war is still war. The problem is still closing with the enemy and destroying him. But in Vietnam the Army figured we could win it with technology. So we bombed everything in sight, used artillery like there was no tomorrow, defoliated and all the rest. Somebody once said that in Vietnam we would use ammunition like a millionaire and use lives like a pauper. That sounds good; it has a nice ring; like something generals tack on walls behind their desks. But what happened was we started killing a lot of the wrong people. You don't know who you're killing when you fire artillery all over the place or call in a B-52 strike. When you use firepower indiscriminately, everybody gets killed—including Americans. I'd guess that about 50 percent of our casualties over there have been a result of our own weapons. We wanted to make it easier for the grunts, but visibility was so restricted in the bush that uncontrolled men firing just flat killed a lot of our own troops. The big reason for using so much firepower, of course—apart from giving the Air Force and the artillery a job to do—was so we could increase our body count. Theirs, not ours. We decided to measure success on the battlefield in terms of bodies.

PLAYBOY. Is that the way *you* operated?

HERBERT. Before I took over the battalion, men were given furloughs for bodies. I changed that. I gave furloughs for detainees, for live prisoners. We weren't out there just to kill. Prisoners can give you information, and in a guerrilla war, that's an essential commodity.

PLAYBOY. But your battalion did have the most kills of any battalion in the entire 173rd Brigade.

HERBERT. Yes, but we made sure *who* we killed. I cut down on the artillery. Cut down on the use of air strikes. Stopped assaults on villages. We tried to operate where the guerrillas were and to operate like them. We made sure we were killing the enemy, not just some farmer who happened to get in our way. Hardly any American units in Vietnam, for example, operate at night. But that's when the V.C. go to work. That's when they move, when they set up their assaults, when they make their mortar attacks. Obviously, if you want to stop them, you have to get out there at night, when they're on the move; not go into a village in the daytime, hoping the V.C. are holed up there, and blow that village apart. So we started setting up night ambushes along the trails.

I had to retrain my men in the fire discipline. With all the emphasis on firepower, everybody was in the habit of going to full automatic fire any time there was a fight, and all that does is guarantee you're going to kill everybody in the area—the enemy, innocent civilians and your own troops. I told my people we would use single shots, no bursts. And I made them go out and retrain with their weapons so they could hit what they were shooting at. Then I told the troops that when we heard automatic fire from any weapon, we would return that fire, because it would be considered enemy. Any man who switched to automatic had better watch his ass or he'd be dead.

PLAYBOY. Even if they obeyed the rules, didn't this tactic expose your own troops to considerable risk? There must have been times when they needed extra support and firepower.

HERBERT. When we did, we used it. You have to evaluate the situation and do what's necessary. I didn't sacrifice people for any policies. But the best way to answer that question is to look at the statistics. Only two of my men were killed in the 58 days I was in command of that battalion.

PLAYBOY. How did you manage to keep your casualties so low?

HERBERT. One of the best ways to take a lot of casualties in a helicopter assault is to land your choppers 300 or 400 yards from where the enemy is dug in and move across that ground to close with him. You have to go through his automatic-weapons fire, his mortars. You get tangled up with his mines and his booby traps. You lose some arms and legs and you become disorganized before you ever get close. You give up any advantage of surprise you might have had. You get discouraged. You give the enemy a chance to get out the back door after he's through chewing you up.

I decided that this wasn't the way to do it. I brought my choppers straight down on the enemy. I didn't have to go through any damn mine fields and have my men blown apart. And it gave the enemy two choices. He could fight and die or he could surrender. Some of them did fight and die, but a lot of them surrendered. Hell, I saw a sergeant knock out a tank in the Dominican Republic with a Coca-Cola. He ran up and threw a bottle of Coke at a rebel tank. The people in that tank thought the bottle was full of gasoline and they were going to be burned alive, so they got right out. You can be aggressive enough not to take casualties.

PLAYBOY. In spite of your combat record, you were relieved from command and rated by General Barnes and Colonel Franklin as 'unfit to serve as a commissioned officer in the United States Army."

HERBERT. Yes. One day I was given an award as the best battalion commander in the unit and the next I was out of a job.

PLAYBOY. How did it happen?

HERBERT. The day after I got that award, I went up to Franklin and said jokingly, "Sir, your best battalion commander would like to talk to you about some atrocity investigations." I had verbally reported to him about things I'd seen in the field and, as far as I could tell, nothing was being done. When I'd reported these incidents to Colonel Franklin, he'd given me a typical response. He said I was a liar or exaggerating. Then he tried to intimidate me by saying that maybe I was growing queasy and didn't have the stomach for guerrilla war. I also reported some of these incidents to General Barnes, who told me to deal directly with Colonel Franklin, that he himself wasn't going to touch it.

Franklin took care of it, all right—by dragging his heels. But I still didn't think he was being corrupt. Just tardy. But when I brought the subject up again the day after that award, he got real hard about it. So I told him, "OK, sir. I've reported crimes to you and none of them has been investigated. All the witnesses will be leaving Vietnam soon. Nobody's ever asked me for a statement. Nothing has been done. If I don't get an answer in the next week or so, I'm going down to field headquarters and make a report." He said, "You'll get an answer tomorrow morning."

That night a major came by and told me General Barnes wanted to see me in the morning. When I walked in to see him, he said I was being replaced. "We're going to tell the troops you're going to a high-level job in Saigon." I said, "It's because of the war crimes, isn't it?" Franklin was there and he jumped up and called me a liar and a cheat. Barnes said he didn't want to talk about it. I told the general that he owed me at least the courtesy of completing the investigation to see who was telling the truth. "Colonel Franklin has already investigated and I'm satisfied," he said. When I walked outside, Colonel Franklin caught up with me and said, "You have a very fine career ahead of you, so don't go down there making waves. The general said he'd give you an outstanding efficiency report if you don't make waves." And I said, "You don't know me very well. I'm not just going to forget about those crimes."

PLAYBOY. And you didn't.

HERBERT. Damn right I didn't. When I got to Saigon, I went to see General Abrams' Inspector General, a Colonel Edler. He suggested that I write out my side of the story but advised me not to raise directly the issue of war crimes. Sort of sneak it in was his advice. Make them think I was just out to get myself exonerated. They'd understand that. But investigate war-crime cover-up by the command? Never.

So I requested an investigation for erroneous relief of command and finally got it. One of Abrams' and Westmoreland's old West Point friends, Major General Joseph R. Russ, was assigned to investigate and report on the case. General Russ told me that war-crimes charges were out of the question under the terms of the investigation I'd requested. "If you can bring out these crimes in cross-examination, however, they can be made a matter of record." I was looking forward to cross-examining Barnes and Franklin, but when it came time for me and my Army-appointed lawyer to fly back to the 173rd Brigade area for the cross-examination of witnesses, suddenly there wasn't room for me on the plane. But General Russ's investigators said they would cross-examine for me. Nice of them, I thought. So that investigation was completed without a word about war crimes.

PLAYBOY. What exactly were your charges?

HERBERT. I made eight charges involving war crimes. Everything I reported occurred in January, February or March of 1969. Later I dropped one of the charges—concerning the murder of an American lieutenant by two of his men. The two men were killed later, according to the Army, and the investigation would only have caused needless suffering for the families involved. The others, however, I still stand by, and according to a fact sheet published on December 7, 1971, and released to Congress, so does the Army. There are 21 crimes listed on the fact sheet. The implication is that I reported all of them. Of my original eight, seven have been confirmed by the Army as occurring as I reported. I guess by adding the others they're trying to make me look like a real troublemaker, and by shooting their own charges down, make it look like my batting average isn't really all that good. I was asked about the others, since they were supposed to have occurred in the same area where my battalion was operating, so I just told the investigators what I had heard about the charges. I never claimed to have witnessed eevrything myself.

PLAYBOY. But you did witness the seven you reported?

HERBERT. Either in person or had them reported to me by someone of lower rank, which in the Army is the same thing.

PLAYBOY. Would you go through the charges?

HERBERT. OK. I'll read them to you: "Members of a Vietnamese unit, accompanied by an American captain advisor, looted a village during a sweep-and-search operation." The Army fact sheet says: "Two American officers stated that they witnessed the looting by Republic of Vietnam [RVN] Regional Forces from Tam Quan District during March 1969. There was contemporaneous inquiry by the 173rd Brigade into this incident. The inquiry made clear that, as a result of an American officer's actions, the looted items were returned to the Vietnamese villagers at that time."

Here's what happened: One of my company commanders on the ground saw that this looting was going on and reported it to my operations officer, who was flying over the area in a chopper. He called me over the radio and said he was going to land and put a stop to it. Later he came back and told me, "I got down there and found this rat—— captain who said he couldn't do anything because he was just an advisor and didn't have any control over the Vietnamese. I told him that I'd been an advisor and that he was full of —— and to make those people give back what they'd looted or we'd take our companies out of the area and leave him with his Vietnamese to fight the V.C."

He finally did make them return what they'd taken, and that was that I reported the incident—just like the book says I'm supposed to—and Colonel Franklin called me down and told me to submit my operations officer for a court-martial or some other kind of discipline. I said that since he was following my orders and under my command and was doing the right thing, I wouldn't do it. The whole thing ended there. In the fact sheet, the Army says that American officers corrected the situation, implying that everything was taken care of. But the officers who did the correcting were mine—a point the Army sort of glosses over. And I was supposed to punish them for it? It's straight out of Kafka.

The Army goes on to say what that rat—captain said: "The American advisor did not have command authority over the Vietnamese unit." That's outright bull—Anybody who's served in Vietnam knows damned well that the Americans may be called advisors, but we all know who's really boss out there. But who's boss doesn't matter anyway, since, as signatories to the Geneva Convention, we are required to stop war crimes committed by our Army and allied armies as well, apprehend the offenders, turn them over to their government for trial or try them ourselves. But the Army gets around the whole issue by stating in its report: "Since all offenders were Vietnamese nationals, the results of the USACIDA (U.S. Army Criminal Investigation Division Agency) investigation were transferred to U.S. Military Assistance Command, Vietnam, for forwarding to appropriate RVN officials." Now, three and a half years later, what the hell good will that do? If they ever turned the results over at all. Why doesn't Congress ask to see this paper? What did the Viets do about it?

OK, allegation number two: "Members of an unidentified South Vietnamese unit, accompanied by an American lieutenant, advisor to the Tam Quan National Police, killed five Vietnamese detainees who had been taken from United States troops. The throat of one of these detainees, a female, was cut in the presence of LTC Herbert." And here are the results of the Army's investigation: "Four individuals were located who claim witnessing the execution of detainees by the Vietnamese police on 14 February 1969, but no one could substantiate the execution of the female detainee. The lieutenant advisor who accompanied the Vietnamese unit denies seeing or hearing about any detainee killings."

No one can substantiate the execution of the female detainee? Bull—! I can I saw it with my own eyes. Others saw it, too. There's our man in particular from whom the Army has refused to take a statement swearing to it. From other Americans witnessed the execution of other detainees. But the lieutenant denies "seeing or hearing about any detainee killings." What does the Army expect from him? A confession? The Army is implying that the lieutenant is right and Colonel Herbert and four other eyewitnesses are wrong. Two American helicopter pilots and one of my sergeants have sworn that things happened just the way I reported them. I say let's go to court and we'll find out who's lying.

I also reported this incident to Colonel Franklin, who was in the air at the time it happened. He told me to stop interfering with the Vietnamese unit. Now, according to the Army: "Colonel Franklin stated that no one reported anything to him concerning this incident. He adds that he was on leave in Hawaii at this time. A check of hotel records in Honolulu confirms that Colonel Franklin was registered until 7:30 p.m. on 14 February 1969, or 3:30 p.m. 15 February, Vietnam time. Because of the distance between Vietnam and Hawaii, Colonel Franklin could not have returned to brigade headquarters before 16 February 1969."

Bullshit again. Franklin was in Vietnam exactly where I said he was on 14 February 1969. Eyewitnesses can substantiate it. He produced a hotel receipt from Hawaii for the 14th of February from the Ilikai, signed by his wife. Did Franklin, a paratroop colonel stand by while his wife took care of the bill? Hardly. Just picture it—standing there while wife handles the negotiations. Crap. You're on R & R and the wife joins you; five days later you go back and your wife stays on for a day or two. So he probably does have a hotel receipt with that date and his wife's name on it. Hell, I can produce a receipt from the U.S. with my wife's name—but I was in Vietnam on the day in question and so was he, sitting there telling me to forget about the murder of defenseless detainees.

Again, the Army's favorite way of dismissing such crimes: "The American advisor did not have command authority over the South Vietnamese unit. Since all alleged offenders were Vietnamese nationals, the investigation was forwarded to U.S. Army, Vietnam, to be furnished to appropriate RVN officials."

But with the next two allegations they can't say that, because the actual perpetrators were Americans and Vietnamese: "A young female detainee being interrogated in the face by an American interrogator and electricity was transmitted into her body from a field telephone. Two female detainees were mistreated by Vietnamese interrogators while in an American military-intelligence compound. One was struck on the back of the hands with a stick and the other struck in the face with a stick and hit by hand on the breast."

Now, the Army fact sheet says: "These allegations are still under investigation. No comment can be made pending completion of command actions, since to do otherwise might prejudice the rights of those allegedly involved." All right. But if the investigation is still pending, by what logic have they dropped my charges against General Barnes and Colonel Franklin for failure to report war crimes? By what right was Barnes subsequently promoted to major general? These last crimes took place within 100 feet of General Barnes's trailer. I reported what I saw directly to Colonel Franklin, but he, of course, denies any knowledge. Both Barnes and Franklin knew what was happening there; and if they didn't, they were derelict. Who is responsible for brigade interrogation techniques, if not the commander?

The next one I reported was this: "A Vietnamese detainee was field interrogated by having water forced into his nose and mouth until he became unconscious. American military personnel were involved." The Army's results: "Witnesses to the field interrogations were located. Two persons, both now returned to civilian life, who participated in the interrogation, admitted the use of water during the interrogation." You're damned right they're in civilian life, but they weren't in civilian life when I made the allegations. One of these men was a career soldier, a sergeant, first class. The Army let these men out so they wouldn't have to charge them. I guarantee that if the Army could have found anything to charge me with, they wouldn't have let *me* out. Incidentally, it was reported later that the man died.

Next is the one I agreed to drop, about the American lieutenant being killed. Then come the Christmas cards: "Christmas cards were prepared depicting a Vietnamese body, the face of which had been shot away, and a 173rd Airborne Brigade patch either pinned or nailed to the forehead." The Army investigation says: "A brigade investigation was ordered at the time to determine the circumstances surrounding the alleged incident. The investigation determined that a card had been produced, and its originator received a reprimand. The USACIDA investigation confirmed the findings of the bridgade. A copy of the Christmas card obtained by USACIDA shows no patch affixed to or carved into the body in any way. The deceased was considered a combat death. Using the picture of the dead body on a Christmas card was a thoughtless act, but not a violation of the law of war."

I didn't say there was a patch pinned or nailed to the forehead; that was added to the charges by whoever wrote up my allegation for the fact sheet. What I in fact said was that I thought there was a 173rd patch *somewhere* on the card. I only saw the card for a brief period of time. But what does it matter whether it had a patch on it or not? The important thing is that it was a color photograph of a Vietnamese with his entire face blown out and underneath it said something like "Peace on earth, from the peaceniks of C Company."

PLAYBOY. Was this C Company in your battalion?

HERBERT. Yes, but this occurred before I took over the battalion. When I took command, they were still trying to gather up the cards so they wouldn't get to higher head-

quarters. Colonel Franklin called me in and told me that if I got any of the cards to suppress the issue and get them to him right away. You know—take care of our own dirty laundry. The man responsible for the distribution of the Christmas card was an officer, and all he received for setting this kind of example was a verbal reprimand, or a letter, if anything. If a private had been responsible for this, a reprimand would have sufficed. But an officer? A captain? This was a "thoughtless act, but not a violation of the law of war." That's right. It's no violation of the law of war. It is, however, a violation of MACV Directive 20–4—which says that any crime or any indication of a crime, including mutilation of bodies, was to be reported to headquarters—and it was —— sure a violation of the Uniform Code of Military Justice, Article 133: conduct unbecoming an officer. The Army is looking for an out. So if I didn't charge conduct unbecoming an officer, they say it's not a violation of the laws of war. They choose whatever document it doesn't violate and use that as the criterion, realizing that the average reader will not make this distinction. I say this to the Army: Make that Christmas card public. Let the people judge for themselves whether it was a war crime.

Now, here's the final allegation I made: "American military forces mistreated Vietnamese detainees in the American compound at An Khe by pulling them up from a leaning rest position by the hair of the head." This occurred while I was I. G. The I. G. office was right next to the detainee compound. The I. G. sergeant saw American interrogators beating and abusing Vietnamese detainees. He told them to stop but they refused, so he came to get me. When I got there, the interrogators had stopped their brutality, but I could see myself that the Vietnamese had been badly mistreated. I went right to Lieutenant Colonel Bethea, who after talking to Barnes, told me Barnes said he would see that the incident was investigated.

Now, the man appointed to investigate was a Major Arnold, whose efficiency report was written by the support battalion commander who was responsible for what went on inside the detainee compound. Major Arnold was hardly the man to run the investigation, since any adverse findings would be a direct reflection on his own boss. Arnold's investigation concluded: "Not sufficient evidence existed to substantiate the alleged assault on the detainees" and that "no positive identification of alleged participants was, or could have been, made."

The Army's results, of course, found no evidence to impugn the findings of an investigation conducted by the brigade." But Colonel Felix Milhouse, who personally conducted a subsequent investigation of General Barnes, showed to me and my military counsel the statements of the men who did the interrogating. Their statements deny that they beat up detainees; they merely "tapped them in the mouth too hard with our fists." But they admitted that they "kept them on their feet all night"—a crime in itself—"and abused them to prime them for interrogation in the morning." The detainees required medical attention but received none. The reason why, according to the interrogators: "They didn't ask for it."

PLAYBOY. What about the other allegations on the fact sheet—the 13 that were made by others? Do you know anything about them?

HERBERT. Sure. One in particular. It's about the rape of a Vietnamese girl. I think the Army's response to this particular allegation tells a lot about how the minds of the generals work, how they deal with crimes against Vietnamese. It reads: "Fourteen unidentified American soldiers from First Battalion, 50th Mechanized Infantry, while on a village sweep operation, took a young Vietnamese girl from her family and repeatedly subjected her to rape and sodomy."

Anal intercourse is what it was, and 14 men *did* do this. They admitted it. Their defense was how humane they were; they pumped her bottom full of morphine so she wouldn't feel any pain. The soldiers just picked her up for interrogation—the prettiest girl they could find there—took her away from her mother and father and kept her for two or three days, repeatedly raping her and filling her with morphine. She was nine or ten years old.

Now, here are the results of the Army's investigation: "Several brigade staff members recall that such an incident was investigated at the time of its alleged occurrence. The victim could not identify her alleged assailants. A report of the investigation was submitted to U.S. Army, Vietnam, and to the Department of the Army."

The Army hierarchy have become masters of the half-truth. Do you know why she couldn't identify her assailants? She was dead. The soldiers had punctured her intestine and she died. By this kind of reasoning, a rapist should never allow his victim to live. There were, of course, other witnesses—the mother and father of the girl, other soldiers in the unit, etc. But the Army hierarchy, I assume, didn't consider the crime serious enough to investigate thoroughly.

PLAYBOY. You were relieved of duty in April of 1969, but the fact sheet wasn't released to Congress until December of '71. Was there a continuing investigation of your charges in the interim?

HERBERT. Yes. Mine. Here's how it happened. The first investigation took place in Saigon, right after I was relieved. Since I didn't get to cross-examine any witnesses, the subject of war crimes never came up. The investigation was confined to my relief and the justification for it, as well as the accuracy of that fitness report written by Colonel Franklin and signed by General Barnes. The report, written after my relief and after Franklin had assured me that Barnes would give me a favorable rating, was an attempt to establish me as a liar and to discredit my allegations.

My problem, according to Franklin and Barnes, was that I was "incapable of commanding a battalion in the sense of being part of a brigade team," "incapable of telling the truth," that my "lack of integrity" made me "unfit to serve as a commissioned officer in the United States Army." Franklin claimed under oath that the other officers in the brigade would attest to this, and to the fact that I was hated in the brigade.

These officers came on the witness stand, one after another—remember, they were Colonel Franklin's officers—and every one of them, except for Franklin, Colonel Bethea, the brigade executive officer, and General Barnes, said that I got along with them and they got along with me either as well as or better than they did with any other battalion commander in the brigade. General Russ, the investigating officer, concluded that any ill feelings that did exist were a result of my I.G. tour, not my command time. He never explained the little gems that resulted in what few ill feelings did exist. They came from my investigation of $180,000 missing out of unit funds, the disappearance of gold certificates, the slipping off of captured heroin into the black market, the buying and selling of R & R leaves to Hawaii for officers by members of the staff.

PLAYBOY. We can understand why Barnes and Franklin weren't among those who testified on your behalf. But how about Colonel Bethea? What did he have against you?

HERBERT. General Allen had given the Second Battalion to me instead of to Colonel Bethea, who had been General Barnes choice, so we didn't hit it off right from the start. When Barnes was asked, under oath, whether or not Bethea was scheduled for the Second Battalion before me, he tried to protect his ass by saying no, this was not true. Immediately after he testified, both Bethea and Franklin were called, also under oath, and both of them said, yes, it was true. There are more inconsistencies in their testimony than this—more than two dozen cases of false swearing which I documented as false. The Army was going to let them all pass.

PLAYBOY. Just drop them?

HERBERT. It wasn't put that way. I pointed out the false swearing and filed an official allegation. I was told later in Washington, D.C., "Well, yes, there was proof of false swearing in all these cases, but we're not going to do anything about this, Herbert, since these men are all going to be tried for war crimes anyway, and to charge them with false swearing would be comparable to having someone already convicted of rape charged with indecent exposure." After the war-crimes cases were dropped, I asked about the cases of false swearing. "Well, the statute of limitations ran out on that. Sorry." It was over.

PLAYBOY. But you did succeed in clearing your record?

HERBERT. When General Russ read the findings of his investigation, I thought at least I was going to be exonerated. They made the investigation, got the evidence, presented a firm case for redress and removal of the negative efficiency report from my file. Then—just like that—said no redress should be given. Unbelievable.

PLAYBOY. What happened then?

HERBERT. My Vietnam tour ended and I was reassigned to Fort Leavenworth to attend the Command and General Staff College—a necessary ticket for officers who aspire to make general. Which might indicate that the Army didn't feel I was totally unfit for service as a commissioned officer. When I got there, I went to the Army legal office and told them I wanted to report these war crimes. A few days later I got a call from Colonel "Buck" Newman of the Army's officer-personnel section. Colonel Newman said, "If you're going to get involved with war crimes, you're not going to have time to go to school." I got the message. I said I was going to go through with the war-crimes thing, so they said I couldn't attend the staff college.

Then the Army lawyers at Leavenworth told me I didn't have enough information to make war-crimes charges. Another stall. I had names, dates, places. They were supposed to gather the statements of other witnesses, but they told me I had to do it myself. When I tried to use Army facilities to gather statements, I was personally told by the commander of Fort Leavenworth, Major General John Hay, that I couldn't use the Army telephone system for this investigation. So I began using my own money to call people and fly around the country gathering statements. I spent most of my family's life savings doing this—about $8000 altogether.

When regular-Army promotion time came up, of course, they told me I couldn't be promoted in the regular Army while I was dealing with war crimes. Then they decided to send me to Fort McPherson, Georgia, where Westmoreland's old friend and ex-Army chief of personnel, Lieutenant General Connor, could keep close watch on me. The day after I got there, I went to see a civilian lawyer, Charles L. Weltner, who was handling one of the My Lai cases. He told me I could file charges in Federal court. But I decided that before we would do that—to be completely aboveboard—I would let my military superiors know what I was doing. General Connor, through his adjutant general, asked me to go through I.G. channels so that it wouldn't be made public and it could be handled "properly." I reported to the I.G., who turned the problem over to the USACIDA.

PLAYBOY. Which did what about it?

HERBERT. Over a year after I returned from Vietnam, after getting booted out of the Army's college for generals, after losing promotion and spending $8000, and finally

threatening to go to Federal court with my charges, the Army finally responded. But it wasn't simply "the Army." It was Westmoreland himself. Westmoreland proceeded to do everything he could to keep my case out of public view, because my charges were related to the My Lai cover-up.

PLAYBOY. Would you explain?

HERBERT. First, General Barnes's immediate superior in Vietnam during a period when I reported some of the crimes was Lieutenant General William Peers, who headed the Army's board of inquiry into the My Lai cover-up. If General Barnes had been brought to trial and asked if he had reported these crimes to General Peers and said yes, the Army would have been in an embarrassing spot. Second, Colonel Franklin was one of the members of the Peers Commission. Of all people to sit in judgment of war-crimes cover-up! Most of the Peers Report is still classified, but thanks to the investigative reporting of Seymour Hersh and an unknown patriot who gave a copy of the classified report to him, we know now the great extent of the My Lai cover-up. During the My Lai investigation, Colonel Franklin responded to one witness' recollections about the shooting of a woman who ignored an order to halt by saying, "Well, can you think of a better way to stop people that are running than doing that?"

PLAYBOY. Did Westmoreland try to stall—as well as to suppress the facts about—the USACIDA investigation of your charges?

HERBERT. Sure he did, but he also decided to sabotage it by appointing Major Carl Hensley to conduct the investigation. The first time I met Hensley, he told me he was going to prove me a liar. That was nothing new to me. I said OK, just get on with it. But it kept dragging on. October, November. Then they said it would be finished by Christmas. This was 1970. Then January, then February. On March 10, 1971, I went to Washington and saw Major Hensley. As the investigation had proceeded and he talked to the witnesses and so on, we had become a little more friendly. I asked him, "When are you going to finish this damn thing? Give me a date." And Hensley said, "You think we're stalling to let the statute of limitations run out against the general and the colonel, don't you?" I said, "You said that, but that's exactly what I think. But I'll prevent that by filing formal charges. Then you can take as long as you want to investigate." So I came back to Atlanta and filed formal charges. Five days later, the Army flagged my records and threatened to charge me with some vague, trumped-up crime. They thought I'd get scared.

Then, in the beginning of April, Major Hensley called me and admitted that he knew the crimes did occur the way I said they did and that he was going to get some results. He said he was going to see his boss, CID chief Colonel Henry H. Tufts, and lay it on the line. I asked Hensley if he thought Tufts would listen to him and he said, "He'd better or——I'll get back in touch with you." Colonel Tufts evidently was not altogether sympathetic to Major Hensley's concern for truth, because he sent him to the hospital for psychiatric evaluation. The psychiatrist told him to come back April 17. But two days before, Hensley put a shotgun to his head, pulled the trigger with his toe and blew his head off.

PLAYBOY. What do you think brought him to that point?

HERBERT. No one can say exactly. The Army says that Carl Hensley was mentally unbalanced. Well, if Carl Hensley was mentally unbalanced or having difficulties, they had to know this before Westmoreland personally selected him to conduct the investigation. So why did Westmoreland select him? With all his computers, couldn't he even pick a mentally balanced investigator? No wonder he was such a loser in Vietnam. The Army hierarchy figures that anybody who goes against them must be mentally ill. If you won't fall in line, you're crazy. For that reason, Carl would have been passed over for promotion. He would have been kicked out of the Service. No retirement pay, and he had six children. Carl would have had to go back to civilian life in so-called disgrace. He'd have had to work at a much-reduced wage scale at the most critical time, when he had these six children. So Carl Hensley, I think, chose the alternative that took strength, not weakness. Dead, he was worth survivor's benefits that amounted to well over $800 a month. I think concern about the future welfare of his family tilted Carl over the edge. I don't think the Army has answered for the death of Carl Hensley, the one honorable member of the entire investigating staff.

PLAYBOY. Your own sanity has been questioned by Barnes and others, who have said that you were excessively brutal. To turn your charges around, did you ever commit any crimes in Vietnam?

HERBERT. If I had done anything out of line, you can be damn sure the Army would have nailed me for it. Barnes told a newspaper that he couldn't understand a man like me who got down on the ground with his troops and went into an attack. You had to be a killer to do this, he felt. A general doesn't go out and kill people; all he sees are body counts. He doesn't have to pick up the pieces. When you're on the ground, you not only realize the problems the men on the ground are having but you realize the horror of war. The general can call in artillery on a free-fire zone and mow down hundreds of people—men, women and kids—without ever stepping out of his air-conditioned office; but when you have to go out and pick up the guts and the legs and the arms of babies, some a few days old, kids your own daughter's age, women your own wife's age, when you have to smell the stink and pick up these pieces and put them in rubber bags, the horror of what you're doing really comes through.

PLAYBOY. And you never contributed to this horror yourself, never participated in any action that was unnecessarily brutal?

HERBERT. No. Well, there was the duck.

PLAYBOY. Duck?

HERBERT. Yes, General Barnes had this pet duck that wore dog tags. This duck just walked around the area, around Barnes's imported flower bed. He had a plane fly flowers up from Saigon and he planted them in this barren plot. Enlisted men watered these flowers two and three times a day so he could smell his posies. This was the duck's private area. You may find this too much to believe, but General Barnes actually insisted that we salute that duck. Of course, I refused. It was a symbol of all the silly crap in Vietnam, the Mickey Mouse, why we have fragging in the first place. Well, I couldn't frag, so I took it out on the duck. Just crept up on him one night in true Ranger fashion and wrung his goddamn neck. Then the sergeant major and I sat down and made four duck sandwiches out of it and ate them. I think the sergeant major still has the dog tags for a souvenir. After we ate the duck, we had at least one sobering moment before we damn near choked laughing and eating. I think this is what General Barnes was referring to when he said I was a murderer, and when he was asked, "Murdered who?" he said, "I can't identify."

PLAYBOY. Despite your denials, a man identified as a former company commander of yours has said in interviews that you beat up detainees.

HERBERT. The man who made those statements was a lieutenant in the headquarters company of my battalion when I assumed command. His main job was tending bar at the officers' club. I ordered him to go back into the field, and he refused. He said the previous battalion commander had taken him out, that he only had a few weeks to go and he had done his share. I asked him what his share was and he said he had been out there in the field six months. I said I was sorry, he was being paid combat pay, he was a combat lieutenant and he would take off his apron and go back into the field with the grunts, a lot of whom had been out there a damn sight longer than six months. He still balked. I explained that I'd accept that from a private but not from an officer, that I'd just have to court-martial him if necessary. He finally agreed to go but said he would first like to go on R&R out of the country. I said, "Go ahead on R&R, but when you come back, if you only have ten days left in Vietnam, you're going to serve three of those days out there with the troops. You'll have the time to get a Purple Heart, a Silver Star, maybe even a Congressional Medal of Honor."

PLAYBOY. Did you send him out when he came back?

HERBERT. Damn right I did. Took him out on one operation. He did a fair job and was wounded very slightly. He came down to the beach we were on and wanted to be evacuated immediately for a few superficial cuts. I refused and tried to explain that he should act like an officer—get a grip on himself. I told him the battle was over, to get up on a hill where there were 18 bodies to be searched for documents and all. But the lieutenant got himself evacuated instead; guts are just not easy to come by for some. He went home that day.

Brigadier General S. L. A. Marshall, the military historian and tactician, is now claiming in the press that this man was a rifle-company commander of mine who fought valiantly under me for 58 days in combat and heard me "lie" when I said that there were 18 bodies on that hill. He says he could see that there were no bodies there. The Army and Marshall immediately bought his story. In fact, of course, he was a platoon leader under me for exactly one day of action. Before that, he was a headquarters company commander in the *bar*. The Army is claiming that this courageous company commander served his most terrible time in the Army under me because of my insensitivity and lying. They've farmed this out to Congressmen and handed it out to select newsmen, some of whom actually bought this crap, referring to me as "the notorious Colonel Herbert." If I was so notorious, why did they give me an honorable discharge? Hell, if I was notorious, I should have been court-martialed.

PLAYBOY. Have any of your other officers come to your support?

HERBERT. Four of my five company commanders said that I was the best officer they had ever served under.

PLAYBOY. And the fifth?

HERBERT. He said I was one of the *two* best. These are all sworn statements. Some of these men have also sworn that they also reported war crimes to Colonel Franklin and that nothing was done. My medical-platoon leader, who is the son of a retired Surgeon General of the United States Army, wrote that morale was terrible before I arrived and people didn't want to go into the field. When I came into the unit, I took the majority of the men, who were in the rear areas, and sent them into the field. After a very few weeks, the troops realized that I wasn't out there trying to pile up body counts—regardless of whose bodies they were—but only to kill the enemy.

PLAYBOY. Have Barnes, Franklin and the others named in your allegations ever been cross-examined about the charges?

HERBERT. There have been all sorts of investigations, hearings, lie-detector tests and the like, but no cross-examination of wit-

nesses by me or—as far as I know—by any of my former officers or by my lawyers. The Army has handled the whole thing in secret. Barnes and Franklin were investigated to determine if there was sufficient evidence to bring them to trial, and the Army decided there wasn't. Big surprise. But I haven't been charged with making false statements either. *Somebody* has to be lying. The Army admits in its own fact sheet that my charges are valid, but it's dropped everything with respect to Barnes and Franklin.

PLAYBOY. Other high-ranking officers—especially those involved in My Lai—have been investigated and some tried for covering up war crimes. Why haven't there been any convictions? Are they all innocent?

HERBERT. The Army isn't going to try itself and find itself guilty. It's ludicrous to hold the Army responsible for war-crimes investigations. Westmoreland has said publicly over and over again that even if war crimes have been committed, he doesn't consider himself responsible for them. If he isn't responsible, then nobody is except the man who actually pulled the trigger. Men like Calley. But we hanged a Japanese general named Yamashita after the Second World War. Not for anything he did personally. Not for any orders he gave. We executed him because he failed to take action that would have prevented his troops from engaging in criminal activity in the Philippines. Now, if that Japanese general deserved to be hanged because war crimes were widespread among the troops under his command, what about Westmoreland? Some of the actions he ordered *directly* are violations of the Geneva Convention—forced relocation of civilians, for instance. And what he didn't order outright, he certainly tolerated or, at the very least, like Yamashita, never made any effort to strictly prohibit.

Westmoreland never personally emphasized that under no circumstances would he tolerate brutality. What a commander doesn't emphasize, his subordinates won't care about. If Westmoreland had left no doubt in anybody's mind that commanders who allowed war crimes to happen would be punished, war crimes would have ceased long before My Lai. A commander is responsible for the actions of his men. But General Barnes won't be tried; like Colonel Franklin, knows exactly where that will lead—to himself. The My Lai trials tried to prove that only the man on the ground who actually participates is guilty. If they try only Calley—Calley was there and pulled the trigger—they're safe.

PLAYBOY. Whatever the responsibility for such atrocities, it's been argued that My Lai and other episodes like it are isolated incidents, the kind of unfortunate thing that happens in war when green troops are under too much pressure. Do you buy that?

HERBERT. It's a lot of bull—. What pressure? None of those Vietnamese they killed in My Lai were armed. They didn't take any casualties that day. People might want you to believe that little kids and old women over there are absolutely dangerous and treacherous, but that's just so much ——. There are incidents, of course, but if American soldiers can't take that kind of pressure, then we're in real trouble. And the main point is that the people Calley and those guys killed were the people we were sent to *help*.

But even if—the troops are scared and trigger-happy, their leaders are supposed to control them, to exercise some discipline over them. That's what military leaders are for. It's why we pay them a higher wage and dress them up. If Calley couldn't handle his men, he shouldn't have been a leader. And if his superiors couldn't handle him, they shouldn't have been where *they* were. Leadership is setting an example and making sure things are done the right way. It hasn't changed since Hannibal was kicking elephants in the —— on his way across the Alps.

PLAYBOY. Is this failure of leadership—especially in the area of war crimes—something new in the American Army?

HERBERT. There were incidents in Korea; there are in any war. I saw a sergeant slap a prisoner in Korea, just slap him, and that man was given a general court-martial. The difference in Vietnam is that such things—and far worse—have been condoned. There was indeed a failure of leadership.

PLAYBOY. Why in Vietnam and not in Korea?

HERBERT. After Korea, we went into the business of maintaining a large standing Army. We built a professional officer corps that was bigger than our entire Army had been before World War Two. In this professional Army, it was possible to advance only through a complicated system of seniority and a lot of politics. You weren't required to prove yourself in combat; just get the right jobs and know the right people. Westmoreland, for instance, was a regimental commander in Korea. He lived it up behind the lines like the rest of them. After the war, he became Maxwell Taylor's protégé. After a variety of assignments, he got the plum: over-all commander in Vietnam. It didn't make any difference that he didn't know anything about Vietnam or what we were supposed to be doing there. In all the time he was there, Westmoreland never learned anything about the Vietnamese—their language, their culture, anything. It made him nervous to be around them. But he was the fair-haired boy and he got the job.

PLAYBOY. Are you suggesting that it was a mistake to develop a large professional Army?

HERBERT. We need a very, very small standing Army in order to maintain expertise in the profession of military arms. I think we need a large National Guard and a large Reserve with people who represent all walks of life, have some military training, and who are ready to defend their nation against invasion. Period. The Army says there is this terrible menace out there and the next war will be so swift that we won't have time to mobilize. I fell for this—until I sat down and studied the lessons of history and realized that this simply isn't true. They may push the button and send the nukes, but a big Army couldn't do any more about that than a small Army could. In fact, the worst thing you could do would be to have all your Army already standing, because the enemy would know exactly where to send the missiles.

Anyway, no country can go to war unless all the indications are there. To go to war in China, the Russians have to move troops down to the Chinese border. They have to move out their artillery, they have to move certain stores and supplies. Whenever you see a country that shows all the indicators for war, that's when you mobilize and get ready to defend. If you have a standing professional Army, the Army is going to find a way to be used. It's going to look for causes. Instead of having the cause first and then mobilizing an Army to fight, we now have an Army searching for causes: like "saving" Vietnam. All they really want to do of course, is keep their jobs.

PLAYBOY. So you don't support the concept of a volunteer Army?

HERBERT. Not a bit. I'm afraid of what could happen in this country if we had a large all-volunteer Army. We've already seen the Army in the streets of our cities more in the last five years than in all of our history before that. We have an Army conducting surveillance of civilians. We have an Army that rounds up protesters in Washington and holds them as detainees. I saw what happened to detainees in Vietnam. A large Army, run by the same men who failed in Vietnam and who refused to abide by the Geneva Convention there, is a dangerous thing and I fear it. Once Vietnam is lost, they're sure to look for new causes in Latin America or Africa or the Middle East. A large Army of professional officers and drafted troops got us in enough trouble in Vietnam. I hate to think what a large *all*-volunteer Army could manage.

PLAYBOY. What, besides reducing the size of the Army, would you do to improve it?

HERBERT. First, I'd get all this war-crimes business out in the open. Conduct an investigation by Congress and let the chips fall where they may. If this Army—this country—is ever going to find its honor again, it'll have to face up to what it's done in Vietnam. The cover-up and the lies have to end, and the Army has to come clean—purge itself. I've said, half joking, that I thought all of these atrocities would stop if we just hanged a few generals. But I don't think we have to hang anyone; I don't believe that kind of punishment solves anything. We don't correct anything, though, by going on like nothing happened, by rewarding those—like Westmoreland—who were most responsible. And if there isn't anything for the Army to be ashamed of, if it was all Calley's fault after all, than an investigation by Congress would prove it once and for all.

PLAYBOY. Do you think there should be amnesty for war criminals as well as for deserters?

HERBERT. Amnesty for everyone. We've got to get on with things in this country. Let's have history judge whether the men who left the country were right or wrong. Those who were cowards will have to live with that. Those who left or went to jail for moral reasons won't have to apologize to anyone or do anything special to atone for sticking to principle. We never declared war. Congress never decided to go to war and the people never voted to go to war. A few men got us into that war—by lying about what they were doing. If they're still free and aren't living under any kind of sentence, nobody should have to—including Calley and the others who weren't strong enough to do the right thing under pressure and didn't have the kind of leadership they were entitled to expect.

PLAYBOY. You sympathize with Calley?

HERBERT. I don't exactly sympathize with him; I sure as hell don't think there's any good reason for what he did. But he's human. He was just a scared little loser trying to be a big man. So he struck out against women and children. With an M-16. In the general context of Vietnam, what he did wasn't all that immoral compared with the responsibility of the men who gave the orders. You don't excuse something like that, but you can try to understand and forgive.

PLAYBOY. But not the leaders?

HERBERT. They were the ones who made policy, who gave the orders. And they haven't asked for any sympathy; they still claim they were right. None of the people who are really responsible for war crimes in Vietnam has ever admitted doing anything wrong. They need to understand that the people who hired them think they did just about everything wrong. Generals like Westmoreland won't take any responsibility for the awful things that could have been avoided in Vietnam. Instead, they try to sell people this bill of goods about the heavy responsibility of sending men to their deaths, implying that this is so much harder than going out there themselves. What unadulterated horseshit.

Why in hell, just once in a while, don't these generals get out there on the booby-trapped trails and be "cowards" with the rest of us? I'll go back to Saigon and take the responsibility for sending *them* to their deaths. What they really ought to do is put a *private* in charge for a day each month and let him name the members of combat patrols. Let's let them send the generals out there and see then whether the generals think it takes more courage to go out there

and fight or whether it takes more courage to send others.

And this doesn't apply just to the generals; it also applies to the military mentality in Government. The Kissingers, you know. Kissinger is a fat little professor. I imagine when he was a little kid in the street, somebody kicked his ass and took his football and played a game with it, and gave it back when he was done. And all of a sudden here he is, a guy to make "tough" decisions. People in Washington are more worried about being "tough" than they are about making good decisions. I say on "Private's Day" throw Kissinger's name in the hat with the generals'.

PLAYBOY. Given your hostility to the Army, how did you manage to stay in it all those years?

HERBERT. Well, I don't hate *everything* about the Army. I gave a lot of good years to the Army and I believed in a lot of what the Army preached. I still do. And I did well in the Army. I received an early promotion to major and an early promotion to lieutenant colonel. I was one of the Army's top five percenters. I cut my hair, I shined my shoes, I did everything that was required, and I still felt the way I always have about right and wrong. This was very confusing to military minds. They figure that if you look like a sheep, you must *be* a sheep.

When I went all the way, reported war crimes just like the regulations say it's your responsibility to do, the Army jumped on me with both feet. I'm not doing my duty, the way they look at it; I'm just making trouble for the Army. Again, it's straight out of Kafka—or *Catch-22*. If you're guilty of war crimes, you'll be promoted or made commandant of West Point, or at least the President will come to your defense. But when you *report* war crimes, you'll get hounded and thrown out of the Army. But I don't hate the Army. I hate what's happened to it. I tried my damnedest to do something about it from within, but I couldn't get anywhere.

PLAYBOY. And now you're out.

HERBERT. Yeah. But before I retired, they got in a few last little humiliations. After everything was dropped and I was obviously going to leave the Army, there was still all this mindless harassment—the sort of games they play at West Point to humble a man and to make some jackass feel superior because he can order a freshman to eat his meals sitting at attention. I was called in, for example, and given lessons on how to salute, like I was a recruit in basic training who couldn't get it right and needed a little discipline. Why did they have to discipline me? For reporting war crimes? For going on the *Dick Cavett Show*? It got to the point of their getting soldiers to call my wife dirty names in front of me, to call my daughter dirty names in front of me, things like this, to antagonize me into saying something back or swinging out like a little kid. Petty ——. Foolish. I mean, I grew up a long time ago.

PLAYBOY. Well, their provocations didn't work, and you were mustered out in March without another black mark. How does it feel to be out?

HERBERT. My feelings are mixed. It's a relief to get away from the Alice in Wonderland atmosphere of the past three years. I was beginning to wonder if maybe everybody was crazy but me. Or vice versa. But I put a lot of my life into the Army. So in a way I'll miss it. I have a lot of good friends in the Service—most of whom support me even if it's just in private—and I'll miss them. But I'm excited about doing something new. I have a book coming out this fall about my life in the Army and the experiences of the past few years. I also have my training in psychology and look forward to putting that to use—teaching and writing.

But the biggest thing I have to do is stay active in making the public aware of what must be done before it's too late. Something *has* to be done and there are a few men back from Vietnam who have decided that the way to make peace with themselves and to really do something for the country is by bringing all of this out in the open. It's something that has to be done. Not for vengeance, but so we can avoid the even greater recriminations that will occur if this country doesn't honestly face the questions raised by Vietnam—war crimes and the runaway military.

We can't afford to go on hating each other and covering up. If we do, the whole thing will just fester like an open wound. I think that Vietnam could, paradoxically, be a blessing. We can learn from it and change and go on to become an even greater country. So I'll try to do my part. You know, every now and then someone will ask me why I'm doing all this, implying that there's something in it for me, that I'm making a buck or enjoying the notoriety. I just tell them, "I'm doing this for the simplest reason in the world: because it happened." But the question isn't really why I'm doing it, but why all the others—who saw the same things and who feel the same way I do—aren't doing it, too.

SOLDIER'S TALE

("Soldier" by Anthony B. Herbert, with James T. Wooten, Holt, Rinehart & Winston, 498 pp. $10.95; reviewed by Peter Braestrup)

Two years after My Lai broke, Lieutenant Colonel Anthony B. Herbert Jr. was apparently just what the media and some anti-war folk needed as their martyr-of-the-month: a vocal, bemedaled, up-from-the-ranks paratrooper who had protested war crimes in Vietnam and, as a result, had been relieved of his battalion command in the 173rd Airborne Brigade.

Herbert was the good guy. The bad guys whom he publicly accused of covering up atrocities were the two West Pointers, Major General John Barnes and Colonel J. Ross Franklin, the 173rd's commander and deputy commander, respectively, who fired him. Added later to the bad guys was the Army hierarchy that harassed him.

In the summer of 1971, after he filed formal charges at Ft. McPherson, Georgia, against Barnes and Franklin, Herbert went public. In a Life interview, he stirred Pentagon wrath by suggesting that GI atrocities would stop "if we'd hang (demote) a couple of senior commanders." Faced with an Army investigation, he enlisted the ACLU's legal aid in Atlanta and recounted Kafkaesque stories of official harassment.

But while he kept talking, the bad guys kept mum by Army order. The New York Times's Atlanta man, James Wooten, portrayed Herbert in his newspaper's Sunday magazine in October 1971 as a simple "super-soldier" who was broken by the brass because he tried to "go by the book" in Vietnam. The Times followed up with sympathetic editorials on Herbert. And the Dick Cavett Show featured the colonel and his accusations three times. Cavett called him a "war victim."

Senator George McGovern, then seeking the Democratic presidential nomination, announced in October 1971 that he would appoint Herbert as a campaign adviser once the colonel left the Army. Herbert, still at Ft. McPherson, demurred, suggesting there had been a "misunderstanding."

For its part, the Army extensively—if without enthusiasm — investigated Herbert's atrocity reports, discovered some partially founded in fact but cleared Barnes and Franklin of Herbert's charges of covering them up. The Army also cleared Herbert's record of the damaging Barnes-Franklin fitness report which accompanied his relief. In career terms, he was officially rehabilitated.

A few weeks later, on November 7, 1971, Herbert announced through the ACLU that he would retire from the Army to end the strain on his family. He had not established a war crimes case (the Army investigation record is still secret), but he had a $175,000 contract for a book, *Soldier*, which, with Timesman Wooten's help, he wrote.

Yet, Colonel Herbert's case remains far from clear-cut. It is clouded by the blunt facts of the Army's resentment against one of its own; after he went public, Herbert was assigned to supervise such things as the mortuary and the post laundry at Ft. McPherson. And its resolution is complicated by continued Army insistence—deplored by both Barnes and Herbert recently—on keeping secret its investigators' report on Herbert's charges. No less clouded is Herbert's own central contention, so uncritically accepted by some newsmen at home in 1971, that he was relieved of command in April 1969 only because of his concern over war crimes, which he had persisted in reporting to Barnes and Franklin.

The chronology, a bit scrambled in Herbert's account, is instructive:

On August 30, 1968, Herbert arrived in Vietnam, a latecomer to the war. Combat had slackened somewhat. The 173rd Airborne Brigade was on the Bong Son Plain in coastal Binh Dinh Province; once an elite unit, it was now plagued by lax commanders, GI black marketeers and pot-smoking draftees. Herbert, waiting for a prized battalion command, was named brigade inspector-general (watchdog) and proceeded to visit the "ass-in-the-grass" field units, shake up the vast rear echelon and alienate the headquarters staff.

On February 4, 1969, he was, nevertheless, given command of the brigade's 800-man 2nd Battalion, 503rd Airborne Infantry. By all accounts, including his own, he did a magnificent tactical job against scattered local guerrillas, making his unit tops in VC "kills," lowest in AWOLs, lowest in VD cases, etc.

In February and March 1969, by his own account, he repeatedly discussed war atrocities with Franklin and Barnes (who deny this). He and Franklin, in particular, did not get along: Frankling disputed Herbert's casualty claims and contended that Herbert had burned a hamlet (denied by Herbert).

On April 4, 1969, Herbert completed 58 brilliant days as battalion commander (seven medals, 84 enemy "body count" and 90 prisoners in February alone). Barnes relieved him of his command—a searing experience—and gave him the first bad fitness report of his career. Barnes said Herbert had created "intolerable friction" within the brigade.

In April 1969, in Saigon, Herbert asked for an official investigation of his relief. He did not mention war crimes, he said later, on advice from unnamed Army legal officers. Nor did he file a war crimes report directly to General Creighton Abrams, the U.S. Commander, as permitted, even demanded, by MACV directive 20-4. Cited in the My Lai courts-martial, this directive required that any allegation of a war crime be relayed not only to the next higher level but directly to U.S. headquarters in Saigon, bypassing the regular command channels.

In April and May 1969 an Army investigation, led by a major general, found after hearing testimony on both sides that Herbert was a fine leader, "admired by most of his subordinates." But on occasion, the general found, Herbert did "equivocate with the truth" and also battled with Franklin. He upheld Barnes' action and the adverse efficiency report. Herbert went home and petitioned the Pentagon to expunge, the efficiency report from his file.

On September 28, 1970, 18 months after his relief, after vainly seeking Pentagon redress, Herbert filed his first written war crimes report with the inspector-general at Ft. McPherson. Eventually, he spoke of others—totaling 21 atrocities. Only three cases were found in a lengthy Army investigation to

"have substance" and to be under U.S. jurisdiction. None, the Pentagon, said, involved Barnes.

In December 1970, the Pentagon turned down Herbert's plea for redress in his relief.

On March 15, 1971, Herbert formally charged Barnes and Franklin with "dereliction of duty" in failing to report specific war crimes to higher authority. The Army's Criminal Investigation Division investigated. Both Franklin and Barnes were eventually exonerated.

On October 22, 1971, Army Secretary Robert F. Froehlke, after reviewing Herbert's petitions for redress, ordered the Barnes-Franklin fitness report expunged from the record, in effect permitting Herbert to stay in the Army and win due promotion. The cover-up charges against Barnes were a separate matter still under investigation at the time, Froehlke said.

Herbert had little choice but to retire. By going public with his accusations, he had made plenty of enemies and critics within the Army.

For several newsmen in 1971, the on-the-record chronology seemed to make one thing clear: the war crimes issue arose late in the game. Colonel Herbert acted promptly and persistently to seek redress for his bad fitness report. Eighteen months later, he first reported war crimes in writing to a higher authority. Almost two years after his relief, he formally alleged a cover-up of some of these atrocities by the men who relieved him.

In a legal sense, Herbert's derelictions may be as bad as those he attributed to Franklin and Barnes. At any time in Vietnam, he could have heeded MACV-20.4 and mailed a notarized war crimes report direct to General Abrams, but he did not do so.

His book's word-for-word reconstructions of conversations about war crimes with other officers in Vietnam in 1969 are denied by those officers. And, on CBS's "Sixty Minutes" February 4, Mike Wallace said that CBS had spoken to many veterans who saw Herbert after his relief in Vietnam.

"Most of them admire Herbert," Wallace reported. "But to a man they say that Herbert never once said to them that he had been relieved because he tried to push war crimes charges."

On February 14, 1969, in Vietnam according to his book, Herbert recounted to Franklin the killings of Viet Cong suspects by South Vietnamese police. However, at the time, Wallace reported on CBS, Franklin was on leave in Hawaii, according to hotel records, his own testimony and other evidence.

What about it? Wallace asked Herbert.

"If he says he wasn't there (in Vietnam) I say he's lying," said Herbert.

Wallace: "Can you prove it?"

Herbert: "No, I cannot."

Why didn't Herbert have documents supporting his allegations (that he reported war crimes) in his book? Wallace asked.

Herbert: "I have lawyers just like you have lawyers. We didn't put everything out that we have."

The book is filled with highly readable tales of war and Army life. For example Herbert describes the heroism in Vietnam of Major Jim Grimshaw, one of his close friends. One day, wrote Herbert, Grimshaw alone entered a beseiged cave occupied by civilians and Viet Cong soldiers and emerged "carrying a baby in his arms" with the others peaceably following him out.

On TV, Wallace asked Grimshaw if he had indeed entered the cave and come out with the baby. "I did not, Grimshaw said sadly, adding later that in Herbert's accounts, "there's a nucleur of truth . . . but he's blown it out. He gone beyond that point and it's a shame."

Without whitewashing either atrocities or the Army, Wallace punctured the straight-shooter image that Herbert (and co-author Wooten) projected in *Soldier* and which Herbert successfully projected through much of the media in 1971. The available chronology of Herbert's case already casts doubt on his zeal in the matter of war crimes. Wallace's investigative journalism severely dented Herbert's credibility. Even his own pals said he stretched the truth.

More's the pity. Herbert's obvious love of the Army, his old sergeant's anecdotes of service life, his scorn for the Army's evolution from hard leadership to soft "cover-your-ass" careerism, his bitter laughter at the West Point Protective Association, his disgust at GI corruption in the Vietnam base camps, his pride in the infantry—all this rings true. But most of the book's pages devoted to Colonel Herbert's martyrdom do not, quite.

MILWAUKEE, WIS.
December 9, 1971.

Mr. ROBERT F. FROEHLKE,
Secretary of the Army,
Washington, D.C.

DEAR MR. FROEHLKE: I have become very concerned and disturbed about the recent publicity generated by Lieutenant Colonel Anthony B. Herbert and his allegations of misconduct by Major General John W. Barnes and Colonel Joseph Ross Franklin. Ironically LTC Herbert has stated that "the American people have a right to know," but before the American people believe what LTC Herbert is telling them, they have the right to know what type of man is pointing an accusing finger at his fellow officers.

Due to my personal experience as a company commander in LTC Herbert's batbalion, I am unable to accept any statement by this officer as authentic. From the moment LTC Herbert assumed command of our battalion in the 173d Airborne Brigade, he conspicuously displayed a complete lack of integrity. During my associations with this man, he had no compunction about fabricating stories involving anything from vital combat intelligence information to passing the table salt and the morale of the men and officers in his unit dropped from the very highest levels to an ignominious low in the 58 days of his command. I personally recall three specific incidents which I think typify this man's character.

(1) On the day he assumed command of the batallion, he assembled the officers for a customary introductory briefing. At this initial meeting, LTC Herbert openly boasted of his superb ability to fabricate any story whatsoever, for personal gain, and further praised himself for being "court-martialed twice," commenting that the army was unable to prove anything because he "could always get six or seven NCO's to swear to anything he wanted!"

From the instant I entered Officer Candidate School until my discharge four years later, my superiors had always emphasized the value and necessity for an officer's work and integrity to be of the highest standards. At the risk of sounding like a superpatriot, I can truthfully say with pride that (with the exception of LTC Herbert) this standard was proudly upheld by all of the officers I came in contact with. Quite frankly LTC Herbert's obvious and open pride in his ability to manufacture the untrue for personal advantage was abhorrently shocking, and has left an indelible scar on my memory of what was otherwise a proud and memorable experience of men ordered to perform in battle.

(2) At least twice, to my personal knowledge, LTC Herbert while counseling enlisted men in my company for disciplinary reasons, physically mistreated them by striking them. Unfortunately he permitted this nefarious method of "counseling" to become a standard, personal practice and it became common for him to boast of his ability to "handle" discipline problems in this manner.

For a commissioned officer to exploit his rank and abuse enlisted volunteers was completely without precedent in our unit, and absolutely forbidden in all branches of the armed forces. I do not think I have to express to you the effect that LTC Herbert's actions and open boasting about this method of "subduing" disciplinary problems had on our unit.

(3) During a combat operation at Phu Thu, Viet Nam on March 27, 1969, while my element was engaged with a hostile force, LTC Herbert asked me how many enemy KIA's (killed in action) we had. I told him that I had seen four. He replied, "Well there's sixteen right there," gesturing toward a point, five yards away, on an open beach. I told him that all I saw was "sand and water." He responded, "Well, they are right there," again pointing to the same location. Following the action LTC Herbert multiplied the number of actual enemy reported killed by five. Ten KIA's had been verified, but he reported fifty.

Although I am aware that there appears to be a generally accepted misconception in this country that Viet Nam KIA figures were always inflated, this was simply not true. Until LTC Herbert assumed command of our battalion all levels of command from USARV to and including our battalion had repeatedly placed heavy emphasis on accurate KIA figures. Previous to LTC Herbert's command, the battalion's policy had been to confirm, beyond all reasonable doubt, all KIA figures. Nevertheless, LTC Herbert openly violated what to us had become a cardinal rule.

From the beginning of LTC Herbert's command I was certain that his actions, such as those described above, would quickly lead to his replacement, and it came as no surprise to me when I learned that he was relieved of his command in less than two months after assuming it. Similarly, when he began his present public allegations against the Army and certain officers, I was confident that the Army would be able to exonerate itself and disclose the character of this officer. Unfortunately, it appears that some members of the public and press have chosen to believe LTC Herbert's accusations, and it is for this reason that I feel compelled to relate my experiences with this man. It is certainly with sincere regret that I disclose these adverse matters about a high ranking officer in the U.S. Army; matters which I can truthfully say were the only unfortunate experience I had with superiors while performing my duty in my four years of service.

There is one other incident with LTC Herbert which perhaps even more clearly reflects the tragic makeup of this man. However, since that incident involves other parties, I would prefer not to disclose it publicly at this time. However, I would be willing to discuss it confidentially if necessary.

Sincerely,

JAMES C. MCCANN,
(*Formerly Captain James C. McCann,* XXXXXXXX.

FORT BRAGG, N.C.,
November 24, 1972.

LETTERS TO TIME,
Times and Life Building,
New York, N.Y.

DEAR SIR: I was interested in your article on LTC Anthony Herbert in the 22 November 1971 issue. I know nothing of his activities in Viet Nam; however, he served under me in the 3d Special Forces Corps at Fort Bragg, North Carolina from December 1963 to July 1964. I terminated him from service with the elite Green Berets because he assaulted a fellow officer and consistently demonstrated his inability to get along with his fellow officers or with non-commissioned officers. I also discovered that I could not depend upon his word. The efficiency report

that was submitted on him at the time would have caused him to show cause as to why he should be retained in the Army. I understand he took action (unknown to me) to have the damaging report removed from his official file.

Sincerely,

J. B. BARTHOLOMEES,
Colonel, Infantry.

[From the New York Times Book Review, February 18, 1973]

"SOLDIER"

(Reviewed by J. Glenn Gray)

This is Anthony Herbert's own story of his long love affair with the United States Army, a love affair that ended sadly in Vietnam in 1969 and turned to bitter anger and recrimination. Beginning with his boyhood in a western Pennsylvania coal town, the long autobiography details his exploits of slaughter of enemy soldiers in Korea and Vietnam, his rise in the Army from an ill-educated private to a lieutenant colonel in charge of an infantry battalion with a master's degree in psychology, and ends with a blow-by-blow account of his public feud with the Army he loved and claims to love still. If hell hath no fury like a woman scorned, it is no less true of this professional soldier.

Herbert was ruled by two master passions: ambition to reach the top of the Army hierarchy and delight in front-line combat. The one passion tended to interfere with the other. He leaves us in no doubt about either. "Hell, I wanted to be the best in the Army." He is certain that he understands what leadership is "better than anyone I knew in or out of the military." His experience of lethal combat in two wars, his degrees in psychology plus tough Ranger schools and Special Forces training, combined to convince him that leadership can be taught and that he was destined for general's stars. As the "supersoldier" of Korea, lauded by President Truman and nearly everyone else, he had some claim to self-confidence. Tactfulness in relations with his superiors and skill in organizational politics were scorned as means to his goals, if we are to believe this account.

His love for direct combat contributed to his downfall. As battalion commander in 1969 for a brief period, he insisted on leading his troopers on patrols and killing Vietcong and North Vietnamese with great gusto. His division commander and the headquarters staff, accustomed to rear areas, were unable to understand an officer like him. Ironically, they considered him a killer, even a murderer; apparently higher ranking officers have nothing to do with such dirty work! Herbert's expressed contempt for most of his fellow officers from Westmoreland and Abrams down to his level and below it also was probably a cause of his dismissal from command and the consequent ruin of his military career.

In 1971 he resigned from the Army, but not before he attacked it ferociously in TV programs (the Dick Cavett show), in Life and other publications. His has become a celebrated case of the crisis in the military establishment. He charges the leadership with covering up atrocities in Vietnam because of overriding concern with its image, with corruption and with luxurious living in rear areas, and with gross inefficiency in prosecuting the war.

Doubtless he has large hopes for this book. To reform the Army is still his professed aim. Unable to do so within the service, he has used his own career as a test case to appeal to the public and civilian powers. How successful he will be in this latest attempt is questionable indeed.

In the present poisoned atmosphere toward all things military, most readers will not be inclined to doubt the truth of his specific charges—even if Herbert's boastfulness in tales of his exploits and his scrupulous avoidance of all atrocities of his own strain their credulity. His bizarre story of our soldiers being forced to salute a general's duck until he surreptitiously stole the duck and made a meal of it is a case in point. It was this general who relieved him from command and gave him the bad efficiency report that he was unable to have revoked despite strenuous efforts.

For the thoughtful reader, however, the main issue is Herbert's character rather than the truth of his allegations. He embodies the soldier as hunter and as beast of prey. As a boy he loved killing wild game and that love easily transferred, first in the Korean War, to killing human beings. His troops called him "the Animal," and he writes that he did not resent the title. "I could kill with my hands and do it better than the best of them." This stark delight in destroying lends a grim authenticity to an autobiography that is too long for one in early middle age. Most of us would like to believe that a man like Tony Herbert is a dangerous anachronism in our time. But the melancholy truth is that the guerrilla war in Vietnam brought back all the savagery and bloodlust of the primitive.

It must be said in the author's defense that he has a gentler side and considerable charm, judging from his appearances on the mass media. Many of his men and some fellow officers defend him vigorously. There is no doubt that he has plenty of raw courage and the aggressiveness of a Patton, a Skorzeny, and of the few similar officers he admires in this book.

One thing is obvious. The United States military organization will need years to recover from its present demoralization and the civilian distrust its recent performances have engendered. Neither Herbert nor his superiors are vindicated by the revelations here. It does not help for the reader to cry out: a plague on both your houses, as this one was often tempted to do. As citizens we are all involved; it is our Army under attack.

[Front cover and first advertising copy in Publishers Weekly, Nov. 13, 1972]

"SOLDIER," BY ANTHONY B. HERBERT WITH JAMES T. WOOTEN

Everyone who witnessed his electrifying appearances on the Dick Cavett show, read his *Playboy* interview, or followed in the media his struggle with the Pentagon will remember Lieutenant Colonel Anthony Herbert. His book, too, is unforgettable.

Soldier is his story—the *entire* story of an American life from its beginnings in a Depression-scarred Pennsylvania coal town through twenty years of pride and glory as the United States Army's "supersoldier": a paratrooper, a Ranger, a specialist picked for the most dangerous and sensitive missions, the most decorated enlisted man of the Korean War.

Tony Herbert describes this major part of his life in detail, with the passion, energy, and zest that marked his action-filled career as a combat infantryman.

And then he reached Vietnam. There he found that the ideals he had been taught—and by which he had lived—no longer seemed valid. He became the first career officer to blow the whistle on the pervasive scandal, corruption, cynicism, and complicity in atrocities. The resulting furor projected him into the headlines, ended his career, and brought him to a new kind of dedication. This too is in *Soldier*, the exciting and remarkable self-portrait of a man of action—and of honor.

Selected by 3 major book clubs: A Literary Guild Alternate; a Military History Book Club Main Selection; and a Book Find Club Alternate.

[From the San Francisco Chronicle, Feb. 19, 1973]

ANGRY WARRIOR WITH A HEART

(By William Hogan)

Tall, crew-cut with an athletic build, Anthony B. Herbert suggests a relaxed big league first baseman. He is the 24-year Army veteran, a Pennsylvania coal miner's son who enlisted at the age of 17, became the most decorated soldier of the Korean War, commanded a battalion in Vietnam as a lieutenant colonel before he quit the Army under a cloud. He was "incapable of telling the truth," his former commander and deputy commander in the field charged: "totally unfit to be an Army officer."

Actually, Herbert explains in his controversial book "Soldier," written with the journalist James T. Wooten (Holt), his superiors in a "corrupt" military milieu resented his rocking the boat, his bringing to light incidents of murder, torture, mistreatment of prisoners in Vietnam—and total inefficiency as modern warriors.

Herbert was in town last week on a promotional tour for "Soldier," which has taken him from the Mike Wallace CBS show to just about anyone who will listen to him. He is not an anti-militarist, he explained, not even anti-war. As a professional he was always prepared to fight. All he seeks is a better, more efficient Army—one taken away from Pentagon brass and turned over to total civilian control.

Herbert is afraid the generals are smarting because they "lost" in Vietnam. They would, he feels, like to redeem themselves and polish the old image in some new war, any war, to prove they can win in the field. He expects the brass to promote some "stab-in-the-back" theory, arguing it was the American people who let the army down in Vietnam—the same argument the German military made following its defeat in the first World War.

The soldier-author is against an all-volunteer Army, which would tend to be undemocratic. He believes in some form of conscription for everybody, including the handicapped. He argues that young people should perform some formal service to the country, in VISTA, the Peace Corps, working in ghettos, on Indian reservations, or in any branch of the military they choose. It could work, says this angry former officer who, before disillusionment set in, was headed for the very top of his profession.

Anthony Herbert will not be involved in any reorganization of the military, although he plans to write a book that could be a blueprint for such. He is far away from all that at present—working for a Ph.D. in clinical psychology at the University of Georgia.

[From the Military Book Club]

"SOLDIER," BY ANTHONY B. HERBERT WITH JAMES T. WOOTEN

"All I really knew for certain was that I wanted above all other things to be a soldier."

Those were Anthony Herbert's thoughts as he watched his two older brothers go off to World War II. A quarter of a century and three wars later he himself was truly a soldier's soldier. A "mustang" who rose to the rank of lieutenant colonel, he was an airborne infantryman and a member of two of the world's most elite fighting detachments—the U.S. Rangers and the Special Forces.

Told in his own words—in the straight-from-the-shoulder way of the professional soldier—this is the story of Lieutenant Colonel Anthony Herbert's turbulent and brilliant career.

"I had seen combat of all kinds and I had killed in battle and been wounded in battle, and I had won medals and awards and citations and commendations and decorations from my own country and several others."

Still a private when his unit first landed in Korea, Herbert saw combat from one end of the battle-torn peninsula to the other. In harrowing detail, he recounts those experiences. Separated from his unit, he fought alongside a platoon of Turkish soldiers and won their country's highest decoration. He tells what it was like for the battle-hardened foot-soldier during the retreat from the Yalu . . . and how it felt to assault a hill and reach the top as the only man still alive.

Before the hostilities ended, Herbert returned to the U.S. at the special invitation of President Truman—as the most decorated American soldier of the war.

"Once you get into that kind of endeavor [as a government agent], there's no telling what you might be asked to do."

After Korea, Herbert rose quickly through the ranks. As a major he "volunteered" to work with the CIA on some of their "little projects." These "little projects" took him to Vietnam, the Middle East and the Dominican Republic—where he worked with top-secret assassination teams—and later to Chicago, Illinois, where he played a large part in breaking up an enemy spy ring. Soon afterward, he was assigned to the 173rd Airborne Brigade in Vietnam, first as IG (Inspector General) and then as commander of the 2nd Battalion.

"We had the choppers, we had the weapons, we had the best technology and we had the best soldiers in the world—and the object was still to get there first with the most."

A veteran of both sides of army life—as enlisted man and officer—Herbert rebuilt his battalion around the foot soldier, the enlisted man and NCO who laid their lives on the line day after day. Not content to observe his men's operations from the safety and inaccessibility of a helicopter, he laid his life on the line, too. The results were what one would expect. The 2nd Battalion became the most effective and destructive arm of the 173d Brigade—the Brigade Westmoreland often referred to as the cream of the crop in Vietnam. Month after month his men scored the Brigade's highest grades in proficiency ratings in contact with the enemy, number of enemy killed, and men and supplies captured. And Colonel Herbert's breathtaking re-creation of the gut-wrenching realities of guerrilla warfare catapults the reader right alongside his battalion on search-and-destroy missions . . . patrols in 120-degree heat . . . medical evacuations . . . attacks and counterattacks . . . and the day-to-day struggle to stay alive.

His men loved him; the brass did not. Suspicious of his "gung-ho" attitude and tendency to speak his mind, his fellow officers were often at odds with the flamboyant, go-for-broke colonel.

"I had met heroes and scum, kings and cowards, generals and presidents, and I had enjoyed the hell out of every single minute of the whole thing."

One of the most honest and unprecedented military autobiographies ever written, and the first book of its kind to be offered by the Military Book Club, Soldier pulls no punches and leaves no corner of the soldier's life unlighted. Brutally honest about himself as well as about others, Colonel Herbert tells his story in straightforward, uncluttered detail, naming names, and, when necessary, pointing his finger. With unflinching candor, he reveals the ugliness of the Vietnam War and the stubbornness of his superiors. He witnessed atrocities against civilians. Wholesale robbery and black marketeering went unchecked. Marijuana and drugs were a part of almost every man's gear. And time after time, he was unable to create meaningful change—even in his own command. At last, without warning, he was relieved of command. When all attempts failed to rectify what Colonel Herbert considered an injustice (including a controversial appearance on Dick Cavett's television show), Colonel Herbert retired from the service.

Soldier is an invaluable retelling of what it's like to dedicate one's life to the service—and sheds new light on the war in Vietnam. But above all it is the life story of a soldier indeed, a soldier's soldier.

[From the Kansas City Star, Feb. 11, 1973]

NO FURY LIKE LIKE THAT OF A SON REJECTED

("Soldier", by Anthony B. Herbert with James T. Wooten.)

(By Lt. Col. H. G. Summers)

Lt. Col. Anthony B. Herbert, United States Army (Retired) has written an expose on the United States Army. Reflecting on this phenomenon, a story about John L. Lewis of the United Mine Workers came to mind. Lewis was bargaining with a group of mine owners when the owner's lawyer mentioned that he too, in his youth, had been a card-carrying member of the U.M.W. John L. arose, and in stentorian tones said, "It does my heart good to see a poor young miner go out into the highways and the byways of life and raise himself up to a position of power and influence." With beetling eyebrows he continued, "But it grieves me deeply to see such a man sell out the comrades of his youth for 30 lousy pieces of silver!" After reading Herbert's book, "Soldier," I know just how Mr. Lewis felt.

Unfortunately for the objectivity of this review, I also know how Herbert feels. As he sees it, he was reaching for the brass ring when some dirty S.O.B. pushed him off the merry-go-round. The Army—his admitted surrogate father—has scorned him, and hell hath no fury to match Herbert's wrath.

It is hard to be objective about Tony Herbert. It is especially hard for those who know him. Ten years ago Tony and I were classmates at the Infantry Advance Course and even then few were neutral about him. He was seen by some as the personification of the rough, tough airborne trooper and by others as a pompous, loudmouth full of bombast. Arrogant, forceful, assertive, he lived up to another John L. Lewis axiom—"He that tooteth not his own horn, said horn shall not get tooted." Tony Herbert was a brass band in full chorus.

A BITTER MAN

Four years ago at Ft. Leavenworth Tony had an office across the hall from mine. He had just returned from Vietnam and he was bitter about what he claimed was a raw deal. He had been unjustly accused, he said, and relieved of his command without cause. It is hard for one not a professional soldier to realize the enormity of such an action. Commanding troops in combat is the sole reason for an infantry officer's existence. He trains for this moment for years, and willingly endures all the trials and discomforts of his profession. It is the Golden Fleece. To have it snatched away after 20 years of effort is the ultimate insult.

As Tony told the story to me in 1969, he had, after much effort and over the objections of Col. Ross Franklin, the deputy brigade commander, been given command of an infantry battalion in the 173d Airborne Brigade. Franklin was miffed because of Herbert's assignment and was out to get him. Finally Tony was unjustly accused of committing a war crime by shooting a group of "civilians" from a helicopter. Herbert claimed that they were armed Viet Cong. Tony was summarily relieved of command reassigned pending investigation.

The subsequent investigation cleared him, but the efficiency report submitted for his command tour was the kiss of death for his career. While at Leavenworth Tony was appealing this report (it was ultimately removed from his file by the Secretary of the Army). The villain of Tony's story was Colonel Franklin, Brig. Gen. John Barnes, the 173d brigade commander, was only an incidental character. Unlike the 1973 version in "Soldier," there was no mention of war crimes or atrocities in the 1969 version, aside from the "unjust" accusations directed against Herbert as the excuse for relieving him from command.

THE FOCUS SHIFTS

Sixty per cent—over 300 pages—of "Soldier" is devoted to this episode. Now, however, the focus has changed. As anyone who has seen Tony on the Dick Cavett show knows, it is now General Barnes and Colonel Franklin who condoned war crimes, and Tony's unwillingness to condone such actions is now the reason he was relieved from command.

This is vengeance straight out of the Old Testament. His own career ruined by his relief from command for "war crimes," Tony has set out to ruin Franklin's and Barnes's careers, and if the Army gets tarred in the process, so be it. The "war crimes" charges are the perfect vehicle for winning public support, support that would be less than forthcoming over an internecine personality clash between a battalion commander and a brigade commander. It finds responsive chords with those who are searching for justification for their own evasion of the war by "buying" their way out while the poor whites and ghetto blacks died in their stead. It proves they made their decision not out of self-centered, selfish motives but to avoid an "immoral" war. Tony, a doctoral student in psychology, plays these chords like a concert pianist.

The truth of Tony's allegations is a matter of opinion. They were investigated and charges against Franklin and Barnes were dropped. Herbert claims they were covered up by the Army bureaucracy. What disturbs me is Tony's silence on these charges for years while his own case was being reviewed. As Tony well knew (he was brigade inspector general before being given command of a battalion) he had the right to complain in writing to the Inspector General of the Army in Washington, and such a written complaint would have required a formal investigation of the incidents.

As a lieutenant colonel, he knew full well that under Article 136 of the Uniform Code of Military Justice he had the right to complain in writing to General Barnes' superior, the commanding general of I Field Force Vietnam, who would have been required to make a formal investigation of the charges and make a written report to the Department of the Army in Washington of the results of the investigation.

To those who know him, and know of his hot temper (he reputedly punched out a lieutenant colonel when he was a lieutenant because of a disagreement) it is inconceivable that we would walk away from war crimes incidents and meekly just report the incidents to headquarters. More likely he would have checked the whole lot and kicked their tails out of the brigade area. (As Tony himself says, "they [his men] called me 'The Animal,' and I did not resent the name") Tony is no wide-eyed innocent caught up in a "Green Machine" beyond his comprehension. Tony is a professional soldier with over 20 years experience . . . a lieutenant colonel who knew the "system" like the back of his hand. He knew, and knows, precisely what he's doing.

"Soldier" is a vengeful, spiteful book by a man lashing back at those he believes "done him wrong." Given that, it is well-written, even fascinating. It is a morality play, and the good guys and bad guys stand out in vivid relief. Put in its proper perspective as a biased, self-serving, one-sided account of one man's frustrations with the "system," it is well worth reading. But don't accept this as the whole story of the United States Army in Vietnam.

[From Newsweek, Jan. 29, 1973]

WARRIOR WITH A HEART

("Soldier." By Anthony B. Herbert with James T. Wooten)

Anthony Herbert is a very impressive man, as no one who saw him interviewed by Dick Cavett in 1971 will have forgotten. A Pennsylvania coal-miner's son who enlisted in the Army at 17, he became the most decorated noncom of the Korean War and was sent on a tour of the U.S. and Europe as that war's outstanding soldier; a few years later his picture illustrated a training manual for the Army's elite Ranger corps. Over a twenty-year span, with temporary resignations to pursue his education, he served as a paratrooper, a trainer of Rangers and Green Berets, a battalion commander in the 1965 Dominican Republic intervention and in Vietnam. He rose to the rank of lieutenant colonel.

But is Herbert also "incapable of telling the truth," "a cold-blooded killer," "totally unfit to be an Army officer," a man in whom the qualities of "honesty, integrity and loyalty" are "totally lacking"? These things have been said of him since 1969 by Maj. Gen. John Barnes and Lt. Col. J. Ross Franklin, commander and deputy commander of Herbert's Vietnam unit, the 173rd Airborne, in explaining why Herbert was relieved of his battalion after 58 days in the field and shipped home with a negative efficiency report and the general's recommendation that he "never be allowed to command again."

Herbert has a different explanation for his removal and humiliation. After unsuccessfully appealing the Army's action for a year and a half, he brought formal charges that his superior officers in Vietnam had refused to investigate or act upon eight incidents of murder, torture or mistreatment of prisoners he called to their attention.

Damaging: "Soldier," a salty autobiography written with the help of The New York Times reporter who covered Herbert's war with the Army from his filing charges in March 1971 to his bitter resignation last year, is apt to induce apoplexy among its readers in the Pentagon. Herbert's sardonic portrayal of a demoralized, and demoralizing, military effort in Vietnam is presented from a particularly intimate and damaging perspective.

Herbert isn't "antiwar"; he is a crew-cut Spartan, a professional warrior who requested duty in Vietnam because "I wanted to fight." Once there, he says he made himself unpopular by trying to enforce regulations, ignoring the warning of a desk sergeant who told him, early on: "Sir, there ain't nobody here who gives a damn." Herbert was scandalized by the laxness of his combat brigade, an outfit of 10,000 men in which "some 7,000 people were assigned to support roles: steakhouses, pizza huts, clubs, headquarters, the General's mess. . . ." On an average day, he says, the brigade fielded fewer than 800 of its 10,000 troops. "On a countrywide basis, it meant that out of 500,000 men we had there at the peak of our involvement, less than 50,000 were engaged in the business of fighting in the field. . . . We had a 500,000-man Army fielding less than any one infantry division did in World War II or Korea."

Herbert rudely characterizes the ethos of this military bureaucracy as CYA, or Cover Your Ass—"the process whereby men in the Army find themselves pledging allegiance to a system of proprieties and paper-work rather than a personally demanding creed or a consuming purpose." The professional officers' corps in Vietnam, he charges, failed in leadership, preferring to sweep a My Lai under the rug rather than risk harming their brigade's paper records.

Herbert's indictment is vulnerable to the countercharge of belated, self-serving virtue: it has often been pointed out that his earliest public charge that his superiors covered up war crimes was made a full eighteen months after his dismissal from command. But Herbert's detailed reply here is convincing: repeatedly advised by Army lawyers to keep his war-crimes allegations separate from his requests for a review of his case, he filed formal charges only when the statute of limitations was about to run out. This hard-bitten combat veteran may also be suspected of exaggerating, in retrospect, his innocent outrage at field brutalities ("Oh, you son-of-a-bitch," he reports Colonel Franklin saying to him in exasperation. "You're so goddamned righteous").

Yet given a choice between Lt. Col. Anthony Herbert's story and the recorded statements of General Barnes and Franklin (particularly the latter's irrational testimony before the board of inquiry, published in an appendix to this book), it is hard not to feel that the Army ruled inconsistently and disgenuously in this case and that Anthony Herbert was railroaded. "Soldier" deserves the widest attention.

—WALTER CLEMON.

[A book review from the New York Times, Jan. 30, 1973]

HEROES AND VILLAINS IN VIETNAM

(By Christopher Lehmann-Haupt)

Oddly enough, it's a little like watching those World War II movies of the nineteen-forties. The good guys are so unequivocally good—tough, resourceful, independent-minded Americans who never for an instant doubt the difference between right and wrong—just average upright people like you and me. The bad guys, the enemy, are so horribly bad—so sneaky and hateful. And you just know all along the good guys will win out in the end—will break out of the prison camp, will return to Bataan, will take Corregidor, will bomb Tokyo. And it will all end in cheering, and tears will come to your eyes. Only in this case of "Soldier," written by Lieut. Col. Anthony B. Herbert, retired, with the help of James T. Wooten, a New York Times reporter—the enemy's is the United States Army; the good guys don't win out in the end; and, of course, it's not World War II, it's Vietnam.

The main hero in this case, Anthony Herbert, is, as you may recall, the former Army officer who tried to blow the whistle on certain atrocities he claims to have witnessed in Vietnam and who was brought to widespread public attention by an article by Mr. Wooten that appeared in a 1971 issue of The New York Times Magazine and by Herbert's subsequent appearance on the Dick Cavett television show. He is, from all appearances, the system's answer to Lieut. William L. Calley Jr.—a good soldier who knew what had to be done. But he has continued to find it impossible to get a proper hearing for his allegations. And so he has gone to the court of public opinion by telling his whole story in this book.

RISING STAR IN THE MILITARY

He tells it from the beginning to the end. How he grew up in a small mining town in Pennsylvania, the son of proud but poor Lithuanians whom the Depression had put in debt to the local company store. How he enlisted in the Army (with a birth certificate doctored by the local priest) because he believed there was no prouder calling than a military career. How he excelled at everything he turned his hand to, rose through the ranks, became America's most decorated enlisted man in the Korean war, took time off to advance his formal education, rejoined the service as an officer, continued to excel, was given increasing responsibility—training Special Forces, commanding a battalion in the 1965 Dominican Republic intervention, doing top-secret intelligence work all over the world; until, by the time he went to put in a tour of duty in Vietnam in 1968, he seemed headed for the very top of the Army command.

He tells it so as to give a clear, if overwhelmingly favorable, impression of the kind of soldier he was. How he believed in the Army system, but not in being an organization man. How he thought the fight in Vietnam could be won, but not the way we were going about it when he arrived there. How as Inspector General of the 173d Airborne Brigade he blinked at nothing and tried to clean up some of the incredible corruption that was undermining the war effort in Vietnam's central highlands. How, when he was eventually given the battlefield command he coveted, he made his ideas work, won the respect of his men, began to kill and capture the enemy (meaning the Vietcong and the personnel of the North Vietnamese army, not South Vietnamese civilians and children). And how, when he tried to play it straight and clean—and bring to light the incidents of murder and torture he witnessed—his superiors fudged, threw up obstructions, harassed him, relieved him of his command and, with the complicity of the entire Army command all the way to the Pentagon, eventually forced him into retirement.

It is, needless to say, a story to make one's blood boil. It is told with just the right mixture of indignation, humor, bitterness, resignation and outrage. It is filled with hard facts, telling illustrations, sharply etched villains and credible heroes. It is fast-paced, vivid, lively—a sort of Caine Mutiny in helicopters—thoroughly absorbing from beginning to end (or, perhaps it is a little repetitive and could have stood some cutting here and there). It is finally convincing—or at least as convincing as one man's side of the story, told through the medium of a ghost, can be. And it appears to be a very damning indictment of the United States Army.

COGENT COMMENT ON THE PAST

But isn't it all past history now? If America's involvement in war was a mistake to begin with, and if we are now getting out of Indochina, does it matter whether or not one reads this chronicle of a soldier who ultimately looks no further than at the honor of his profession? Is it really relevant any more?

I think it probably is, and not only because the simple matter of miscarried justice is raised. If "Soldier" is no longer to be read as a critique of the way current events are flowing, then it certainly can still be read as a cogent comment on the past as it pertains to the future. For Herbert does not see his experience as a random series of unfortunate events caused by a few villains he happened to run foul of. He thinks basic moral issues are at stake; he believes the entire Army chain of command is guilty of ducking them; and he theorizes that there were concrete reasons for this failure of moral kidney—reasons that relate to the country's recent history and reasons that will inevitably affect our future . . . unless the message gets through. This ought to be grounds enough to read his book.

Besides, as I said, it's a little like watching those World War II movies of the nineteen-forties. The good guys are really good, the bad ones are really horrid, and the difference between them is as clear as lightning on a summer night. And this in itself, in a book about Vietnam, is a rare and quite wonderful thing.

[From the Minneapolis Tribune, Feb. 12, 1973]

ANTHONY HERBERT VERSUS THE ARMY

Anthony Herbert (Lt. Col., U.S. Army, retired) was in town last week to promote his book, "Soldier"—and to advance the cause that has made him the most talked-about military man of the day. Herbert wants to show that he was forced to retire from the

Army that he reveres by upper-echelon officers whose alleged incompetence he detests. His goal is not only exoneration, but a halt to what he describes. with no reservations, as a disintegrating military service.

The validity of Herbert's charges remains open to question. But Herbert does not give the impression of being a crank. He is dispassionate in tone rather than vindictive when he calls Gens. Westmoreland and Abrams "losers." Although he thinks Mike Wallace misread the evidence on CBS's "60 Minutes," Herbert believes Wallace may have been innocently in error.

The crux of the issue is Herbert's charge that in Vietnam he discovered and reported American war crimes, only to have his reports ignored by superiors. He contends that his persistence in pressing war-crimes charges led to his being relieved of command and, ultimately, to retirement. "If I'm a liar," he said here last week, "the Army ought to prove it." Herbert invites the Army to make public its records of investigations in the matter.

At this point, several conclusions seem warranted. First, no public judgment ought to be made for or against Herbert—or for or against the Army in Herbert's case—until all the evidence is in. Second, disclosure of official records appears to be the only way to provide that evidence. The Army may have good reason for not releasing the records; if so, it is the Army's obligation to say what the reasons are.

Finally, it seems to us that larger questions are involved than that of whether Herbert was treated justly. American performance in Vietnam has never been a purely military question, but a matter of broad national policy as well. That is why we think the Herbert case could be an appropriate subject for an investigation by Congress.

[From Time magazine, Feb. 12, 1973]

CBS AND COLONEL HERBERT

When Lieut. Colonel Anthony Herbert started his war with the Army two years ago, he found a receptive audience among newsmen and the general public. It was the time of the My Lai trials, and the military was being subjected to a barrage of bad publicity. Herbert was a much-decorated professional officer whom the Army had lionized. His charges that superiors had ignored his reports of atrocities and were hounding him out of the service because of his accusations seemed highly credible. Dissenting voices (Time: Nov. 22, 1971) received relatively little attention.

Now CBS, on its *60 Minutes* show last Sunday, has taken a new and critical look at the Herbert case. As Correspondent Mike Wallace recounted the story, neither Herbert nor the press came out a winner. Wallace repeatedly challenged Herbert's veracity—occasionally to his face—and poked holes in the retired officer's new book, *Soldier* (*see* Books). Under Wallace's tough questioning. Herbert refused to reveal whether he had "documents" pertaining to his atrocity charges.

LONGEST ITEMS

Much of the digging had been done by Producer Barry Lando, who worked intermittently on the Herbert story for more than a year, interviewing scores of sources in the U.S., Viet Nam, Thailand and Germany. As a result, *60 Minutes* devoted half the program to the Herbert story—more time than it has ever given to one item. Among the specific points raised:

Herbert said that on Feb. 14, 1969, he witnessed the murder of five Vietnamese by South Vietnamese police under the control of a U.S. lieutenant. He claims to have reported this incident to Colonel J. Ross Franklin, deputy commander of his brigade, twice from the field and again in person later the same day. Franklin, he says, then called him a liar. Then *60 Minute's* produced Franklin's canceled check of Feb. 14 to the Ilikai Hotel in Honolulu; the check and the hotel register show that Franklin could not have been in Viet Nam until the following day. Herbert stuck by his story: "I know what I saw. I know what I did."

In his book, written with New York *Times* Reporter James T. Wooten, Herbert described how Major James Grimshaw, then a company commander, coaxed a group of suspected Viet Cong out of a cave, adding that he had recommended Grimshaw for a Silver Star never awarded by the Army. Grimshaw told Wallace that the incident had not occurred and that Herbert had never recommended him for a medal. In the program's most dramatic sequence, Grimshaw appeared in a New York studio to deny—in Herbert's presence—the charge that the Army had ordered him to discredit the book.

As a senior legal officer, Colonel John Douglass was the man to whom Herbert first complained after Major General John Barnes relieved him of battalion command on April 4, 1969. Douglass categorically denied Herbert's version of their conversation. According to Herbert, he spoke at length to Douglass and told him about the atrocities. Douglass said that it was a short meeting with no mention of bloodshed. "Why haven't you said this up to now?" Wallace asked incredulously. "Nobody's asked me," replied Douglass.

The program undermines Herbert's credibility without supporting the Army's. During his 58-day battalion command, Herbert earned a Silver and three Bronze Stars and was about to be recommended for a Distinguished Service Cross. Then he was abruptly relieved of his job. The explanation Barnes offered Wallace—that Herbert lied about enemy casualties and was a "killer"—seemed lame. Not surprisingly, *60 Minutes* endorsed Herbert's request that the Army make public all records of hearings and investigations related to his case.

THE PRESIDENT AND THE PRESS

Mr. ERVIN. Mr. President, on February 16, I was privileged to address a group of students and representatives of the media at Texas Tech University in Lubbock, Tex., regarding the relationship and current rapport between the President and the press.

I am deeply concerned over the aloofness and resentment that has characterized the recent workings between the White House and the press corps. When the free press is hampered by Government interference, the public's right to know is jeopardized.

I ask unanimous consent that the text of my remarks be printed in the RECORD.

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

THE PRESIDENT AND THE PRESS

I am indeed honored to be here this evening and to be the first recipient of your Thomas Jefferson Award. It is highly appropriate that an award of this type bear Jefferson's name. He, above all, appreciated the vital role which the press plays in a free society. His appreciation was often expressed in eloquent and unforgettable terms. In 1787, he wrote:

"The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

The Founding Fathers, of course, decided that we should have both government and newspapers. But they recognized the truth of what Jefferson was saying. Our system of government is premised upon the will of the people. And in order for people to make up their minds—whether it be in a voting booth or at the local PTA meeting—they need information. They have a right to get at the truth, for themselves. Government, Jefferson was reminding us, does not hold the corner on truth.

The press has the responsibility to present ideas, and to report events both within and without the government. While the Founding Fathers did not seek to institutionalize the press, or to provide it with special powers, they nevertheless recognized that a free press was essential. It is, as Walter Lippmann has observed, "not merely a privilege, but an organic necessity in a great society."

The First Amendment states that "the Congress shall make no law . . . abridging the freedom of the press." It is a clear and unequivocal prohibition, forbidding any governmental encroachment upon the right of the people to ascertain the truth for themselves in what they read or hear, and to govern themselves accordingly.

The press does not belong to the publishers or editors or the anchor men on the evening news. It belongs to the people. Regardless of how close one is to the workings of government, we are all dependent upon the press for information. Where the press is hobbled, we all walk a more uncertain path.

Rarely does government flagrantly violate the First Amendment. No newspapers are confiscated. No books are burned. Congress has passed no law forbidding criticism of its members.

What we do have is subtle erosion—a weathering away. The pillar of press freedom is not being attacked with the picks and shovels of official censorship, but by the wind and rain of threats and intimidation. The process is often almost imperceptible.

The Nixon Administration has lately been charged with responsibility for a deliberate effort at erosion of press freedom. Newsweek magazine described the recent clashes between the media and the administration as "without precedent in the history of the United States." Bill Monroe of the *Today Show* stated that in his opinion the administration is trying to "maximize governmental pressure and minimize media independence."

These are serious charges—particularly serious in view of the fact that we have had clashes between government and the press since the beginning of the republic. The press has a natural adversary role to whatever administration is in power. Still, Bill Small, CBS News Buerau Chief in Washington, contends "there's never been a frontal assault on the press as we have now."

I would like to look into this situation with you for the next few minutes.

I thought it was particularly interesting that one of the first things which Mr. Nixon did when he moved into the White House in 1969 was to order the removal of two wire service teletype machines and a three-screen television console from the oval office. These had been placed there by his predecessor the late President Johnson who liked to keep abreast of what the media was saying about him.

Mr. Nixon does not seem to have the same penchant. His relationship with the press has not been a particularly happy one. We remember, without my recounting them, some of his earlier outbursts of bitterness and resentment towards reporters. He now has established himself as a president aloof and disdainful of the media. His press conferences are rare. His interviews rare and often orchestrated in advance.

His view of the press, whether consciously directed or not, seems to have filtered down

to his subordinates whose speeches and comments have shown an extraordinary disdain for the role of the press.

We all remember the early statements of the Vice-President lambasting the so-called "liberal eastern press" and the network news commentators.

But over the past year we have also seen White House adviser Charles Colson predict in a television interview that the television networks "are going to be broken up one way or another in the next four or five years" because of "new technology in communications."

We have seen Herb Klein, White House Communications Chief, telephone NBC to complain that one of its reporters, Catherine Mackin, had been "unfair" to the President in interpreting remarks about Senator McGovern.

We have seen Ken Clawson, White House Deputy Director of Communications, charge the *New York Times* with "being a conduit of enemy propaganda to the American people" for some of its Vietnam war coverage.

We have seen presidential assistant Patrick Buchanan warn that if biased reporting continued "you're going to find something done in the areas of antitrust type action."

We have seen FBI Director L. Patrick Gray criticize newspaper and television reporting as "often inaccurate, biased and grossly unfair."

These officials, of course, have the right to make these statements. And perhaps they are not unjustified. If these comments were the extent of the administration's reaction to what it felt was unfavorable or unfair press treatment, they should be applauded as a healthy exchange between natural adversaries. But the reaction of the Nixon Administration has gone beyond mere charges of irresponsibility.

In 1971 we saw the White House direct the FBI to investigate CBS newsman Daniel Schorr, an administration critic, supposedly on the grounds that he was being considered for a position of employment which was never specified. It was a transparent attempt at intimidation, not necessarily at Schorr, but by implication at all the critical reporters.

We have recently seen the *Washington Post*, also a frequent administration critic on the war, excluded from covering the White House social events.

We have the controversial Pentagon Papers case, which, whatever one may think of the circumstances, was the first time that the government had sought to suppress the publication of a news story.

Another example of the administration's attempt to intimidate the media can be seen in a new proposal to govern the renewal of broadcast licenses. Last December Dr. Clay Whitehead, Director of the White House Office of Telecommunications Policy, announced an administration proposal to condition the renewal of broadcast licenses of television stations on whether in the judgment of the FCC the local station management is "substantially attuned to the needs and interests of the communities he serves." Dr. Whitehead later made clear that what was really sought was control of network news: "Station managers and network officials," he said, "who fail to act to correct imbalance or consistent bias from the networks—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable by the broadcaster's community at license renewal time."

Since it would be impossible for local station managers to push a button to shut off disagreeable portions of the network news programs, this proposal would encourage local managers to pressure the network news officials to drop comment critical to the administration. The ultimate arbiter of whether the local management had met these responsibilities would be the FCC. In effect, Dr. Whitehead's proposal would make the FCC the censor of so-called "bias and distortion."

I would suggest to you that even if this administration proposal fails to win congressional approval, the networks have gotten the message. If not, it was underlined by an apparently unconnected event which occurred about the same time. In December, the finance chairman of Mr. Nixon's campaign in Florida challenged the license of WJXT in Jacksonville. WJXT was the station whose reporters discovered some controversial statements of Nixon Supreme Court nominee G. Harold Carswell. The statements contributed to his failure to receive Senate confirmation. To make matters worse, the station is owned by the *Washington Post* and it will cost them about one-half of a million dollars to defend against the challenge. The owners of other stations must also wonder what will happen should they arouse the displeasure of the current administration. Most stations can ill afford to spend that kind of money to beat off challenges to their licenses. It is a high price for irritating the President.

Another example of the administration's asserting itself over the media involves public broadcasting. In the last Congress, the President vetoed the appropriation for the Public Broadcasting Corporation which in turn funds the Public Broadcasting Service. The appropriation which later came out of the 92nd Congress represented a substantial reduction in funding. The administration also made a point of arguing for more local control over public broadcasting.

One effect of that would be less network productions and less network public affairs programming critical of administration policies.

Recently, the Board of Directors for the Public Broadcasting Corporation, now controlled by administration appointees, announced that in view of the funds reduction it was withholding the funds for public affairs programming, and only affairs programming. The Chairman of the Board explained that public affairs programming is not a "desirable activity" for public broadcasting to be engaged in. And so, programs such as William Buckley's "Firing Line," "Bill Moyer's Journal," "Wall Street Week in Review," and "Washington Week in Review"—all of which had at one time or another been critical of the Nixon Administration and all of which had always been independent of the Nixon Administration—were not to be funded for the coming season.

Nine days ago, the Corporation Board announced that it had decided to fund some of these programs after all. I would again suggest to you that while this appears to be a concession to public affairs programming on the Board's part, the damage has been done. The producers of these programs which are allowed to return have gotten the message.

Incidentally, now that the Central Board is more sympathetic to the administration's views, we hear no more of decentralized control.

I would like to mention what has become one of the more obvious battlegrounds between government and the press—the matter of the so-called newsmen's privilege not to reveal the sources of confidential information to governmental tribunals. Last June the Supreme Court held in its controversial *Caldwell* decision that the First Amendment guarantee of a free press did not entitle a newsman to refuse to reveal the name of his informant before a grand jury. Since that decision, we have witnessed the spectacle of several newsmen going to jail for refusing to name their sources.

Reporters are now on the horns of a dilemma. If they refuse to reveal a source, they are held in contempt and thrown in jail. If they agree to reveal it, they lose their integrity as investigative reporters, their sources, and their stories. It is a dilemma that may frequently be resolved by the reporter's deciding it isn't worth the risk to write the story. In this case, the public is the loser.

The issue is not simply whether the reporters can be counted on to shield their sources, but whether the press can continue to function in its role as a conveyor of meaningful information to the public. Informants who were once satisfied with the reporter's pledge not to reveal their identity, are now going to hesitate to accept his word knowing that an indeterminate jail sentence may be in store for him. The cost to the public of this reluctance on the part of sources can not be determined. As A. M. Rosenthal has written, "We will never know what we might have known."

It is entirely clear, however, that every aspect of public affairs will be a little less open to public access. Rosenthal wrote:

"There will simply be fewer and fewer people in government and out of government willing to take the risk that the press will be willing to protect them. It will not all happen tomorrow but it will happen as long as this country is ready to say that the price of dissidence is exposure."

A free press depends upon access to information and the ability to protect confidential sources. These are its tools. Take them away and the press is free only to publish official news releases. And we the public never learn anything except what those in power want us to hear.

The present trend towards official secrecy within the government—overclassification, executive privilege, etc.—makes the preservation of inside informants doubly critical. Arthur Schlesinger in a recent speech said that the "secrecy system has become much less a means by which government protects national security than a means by which government safeguards its reputation, dissembles its purposes, buries its mistakes, manipulates its citizens, maximizes its power and corrupts itself."

In case after case, government secrecy seems to be aimed at just these ends, and not true national security. Our nation's security as a functioning democracy can not tolerate over-protected government, hidden purposes, unknown errors, a silent and manipulated people, or power corrupted by lack of public challenge and accountability.

As proof of Professor Schlesinger's indictment, a government witness in the Ellsberg case said recently that even a geography book could help a foreign power. That is only an illustration of government's exaggerated desire to shield itself and what it is doing from the press and from us. If they dared, they would hide everything, and they often seem to try.

If the disclosure of inside information to the public is not to be totally shut off, it is essential that the insiders not be discouraged from disclosing illegal or ill-advised conduct to the press.

While the administration has made great efforts to close itself off from an intruding press, the precise question of press subpenas now involves the present administration only indirectly. By and large its official stance towards protective legislation has been one of passive resistance. The Justice Department representative, testifying before a House committee last fall, stated that while the administration did not oppose a statutory newsmen's privilege in principle, he felt it was unnecessary. He also testified that the administration did support the Supreme Court's decision that the First Amendment did not require such a privilege. President Nixon himself has indicated that he would not be opposed to some type of qualified protection for the press.

Yet more than one observer has seen a

connection between the rash of federal subpenas a few years ago and the "open-season" which the Administration has apparently declared on the press. Certainly the rash of U.S. subpenas from the Justice Department and local U.S. Attorneys in 1969 and 1970 has done much to encourage similar actions by state and local government.

The matter of protective legislation will be the subject of hearings before the Subcommittee on Constitutional Rights which are scheduled to begin next Tuesday. I am hopeful that as a result of these deliberations, we will be able to arrive at some means of extricating the press from their present dilemma and in doing so preserve the people's right to know.

I might say that I do not feel the responsibility lies solely or even primarily with the Congress. Many of the problems which the press now faces are in fact not readily resolved by legislation.

It is a matter of changing a climate of opinion, of standing up and fighting for press prerogatives in editorial columns and broadcasts—of convincing the public of the rightness of your cause.

I think the media, despite the fact that they control communications, have been reluctant to use communications at their disposal. They are in fact eager to publicize any statements by the administration which attack press prerogatives—the reporters couldn't get to the telephones fast enough to report the latest Agnew attack. But the press hesitates to use the airwaves and editorial columns to rebut, or even to identify the critical issues involved.

The press simply has to shoulder the lion's share of the burden. Congress is not always aware of your problems and not always capable of coming to your defense.

But even beyond the question of the press mobilizing public opinion to defend joint press-citizen rights under the First Amendment, is a higher responsibility. The press is given a great right under the First Amendment to be free from government constraint. Along with that great right is a great burden. The press may not come looking for government help when the going gets rough.

Generations of press champions faced fine, jail and even worse to create the rights we now recognize as so dear. They expended much suffering and received much abuse from courts, kings and legislatures. It is no sign of a valiant, pugnacious, courageous press that in the 8 months since the *Caldwell* case we have seen so much petitioning for legislative help. The Justice Department was more than a little correct when it warned that the same Congress which protects your rights can later take them away. The first and primary defense of a vigorous press must always be the press itself—reporters, editors, and publishers.

We have been talking about the intimidating confines within which the press now finds itself. How effective these confines actually are in terms of stifling the press we will never know. Every reporter can cite examples of stories which haven't been written due to the reluctance of sources, the fear of being too critical of governmental policy or officials, or of being too controversial, or for fear of involvement in court action. But the fact that we cannot precisely identify our loss, does not mean there is no cause for concern.

I see in these examples a decided shift in the government's attempt to influence and control the media. The government, couching its tactics in terms of correcting "a bias" and "irresponsibility" in press accounts, seems to be making significant inroads into what was once the domain of the press.

I would certainly agree that elimination of bias and irresponsibility from the news media are legitimate and desirable objectives. But it is not up to government to determine what is "bias" and what is "irresponsible." The determination of truth is a personal thing. One man's bias may be another man's truth. The First Amendment simply does not give government the power to determine the information to which the public should be exposed. If we have a free press, then it follows that it will not always be "responsible." Any attempt by government to make it more "responsible," inevitably makes it less free.

It is clear that the press does not always live up to the standards which editorial writers like to ascribe to it. I doubt if anyone in this room feels that any of the nightly news programs or weekly news magazines is totally unbiased. But what might appear to some as a smirk on the face of Walter Cronkite, might appear to others as an indication of sympathy. Bias, like beauty, is largely in the eyes of the beholder.

If you don't think a television news show represents the truth, you can turn off your TV. If you don't think a magazine represents the truth, you can cancel your subscription. You have the right to expose yourself to whatever information you want. But to have the government prescribing what the truth is or limiting the information available for the citizen is contrary to the First Amendment.

Hopefully, where the public is given inaccurate or misleading information, there will be additional information forthcoming which will expose the earlier deception. Certainly the myriad of electronic and printed media which we have in this country today makes prompt corroboration or condemnation more likely than ever before.

Still, it may not happen. There is a risk that the wrong information will be relied upon, the wrong voice listened to. But, to my mind, it is a risk that we must take—a risk that a truly free people must take—to insure that their right to express themselves is not lost.

Alexis de Tocqueville in 1835, after observing the operation of American democracy, wrote that the press, despite its penchant for abuse, should not be restrained. "There is no medium," he said, "between servitude and license; in order to enjoy the inestimable benefits that the liberty of the press ensures, it is necessary to submit to the inevitable evils that it creates."

This is an eloquent and wise statement. You either have a free press or you don't. There is no middle ground—no room for qualification and no room for an officially sanctioned version of the truth. It is a cruel deception that we sometimes play upon ourselves that because the First Amendment says we have a free press, that we in fact do. Press freedom is only as real as the conditions which are imposed upon it. We must be conscious of the signals which indicate it is endangered.

THE PROFIT MOTIVE DESERVES RESPECT, NOT CONDEMNATION

Mr. HELMS. Mr. President, I would like to commend to the attention of this body an address that has recently come to hand. The speech is about business, and it was written by a businessman, and it was delivered to a group of college students not too long ago.

That in itself is almost enough to make it remarkable. In recent years, the public attitude toward business has taken a disturbing downward turn. In part, this is the businessman's own fault. Under fire from certain circles of the intelligentsia, too many businessmen have been afraid to fight back, or even talk back. They have quietly endured the media's romanticizing of the so-called public service sector; they have cringed at the sight of smear campaigns designed to undermine confidence in American products; and a few have even tacitly agreed with the premise that profitmaking is a slightly disreputable activity. It is no wonder that the number of students interested in entering the business field has had a noticeable falling off.

The strength and force of the campaign against businessmen has caught some still unawares. Others have taken the self-defeating course of public relation campaigns emphasizing the social consciousness of their corporate activity, or of trying to hide the fact that businesses should be profitmaking enterprises. Pretty soon they find themselves going hand-in-hand with those members of the self-declared intelligentsia who seem to believe that economic freedom can be safely divorced from political and intellectual liberty. Some are so eager for Government contracts—and Government regulation—that they become corporately inefficient at competing in the marketplace and musclebound with quasi-bureaucratic organization.

It is refreshing, therefore, to come across the pamphlet in question. Written by Mr. W. L. Wearley, chairman of the Ingersoll-Rand Co., and delivered as a commencement address at Wilkes College, Wilkes-Barre, Pa., it is not afraid to confront today's student with some of the facts of economic life. Mr. Wearly points out simply that business is the facet of our society concerned with production. This is where the productive element in our economic life is concentrated. Business is in fact the source of our productivity, and has generated the relatively tremendous economic freedom that the average American enjoys. He recalls that the consumer marketplace is one of the truly democratic areas in which the citizen can operate. He explains graphically the calculations of profit—and loss—that go into business decisions, and the importance of profit in sustaining the worker's welfare.

Mr. President, I shall not refrain from quoting one brief paragraph where Mr. Wearly makes his point:

> As for businessmen, I think we are far from blameless. We haven't told it like it is. We have tried to debate a moral issue with material arguments. We have answered the Marxist attack on profit by whimpering about how little our profits are—how inadequate they are to preserve the capital of industry and the nation's productivity . . . Since 1965, total wage and salary income has jumped more than sixty per cent and fringe benefits have increased by ninety-four per cent. Compared to that, corporate profits after taxes have increased—can you guess?—only two per cent. And when profits fail to go up, employment remains static and so do tax collections to support the government.

In such language, Mr. Wearly conducts his economic lessons with clarity and insight. He is not afraid to kick aside the current cant about corporate exploitation and irresponsibility, and to show in specific terms the social benefits that a businessman confers upon a community simply by being a good businessman. It is most refreshing to find the arguments presented head-on without attempt to minimize, evade, or cover up the real role of the businessman. I have always believed in preserving the

viability of a dynamic free enterprise system, and I am pleased to see that Mr. Wearly is of the same opinion.

Mr. President, I ask unanimous consent that the address by Mr. W. L. Wearly, chairman, Ingersoll-Rand Co., be printed in the RECORD.

COMMENCEMENT ADDRESS

(By W. L. Wearly, chairman, Ingersoll-Rand Co.)

When Dr. Mechelini asked me to address this memorable gathering, he requested that I speak on the subject of "Business."

I suspect he was playing it smart. He wanted the speaker to know what he was talking about, and the way to be sure—in the case of a businessman—was to ask him to stick to his business!

However, Dr. Michelini's guide line doesn't limit me at all. When you say "Business" to me—you say the *world*. I cannot conceive of a world that wouldn't have what we call "Business."

Even philosophers and poets have to eat—and business fills their needs. Business produces our food, and builds our houses and automobiles. Business supplies the teacher's textbooks and classrooms, the doctor's medicine, the surgeon's knife, the scientist's laboratory, the musician's instrument, the actor's stage, the clergyman's pulpit, and last, but not least, business pays a very large share of the nation's taxes.

Business is an all-embracing word. It includes both commerce and industry, and trade and production. It is *production* that I am proud to represent. The company I work for serves the world's industries, and we like to see ourselves as the producer's producer. That is to say, we make the machinery that mines the earth's riches, lays the roads and rails, builds dams for power and irrigation, produces fuel and converts it to energy—the equipment that enables producers to *produce* and provide food, clothing, and shelter for mankind. That is the essence of our business.

YOUR STAKE IN BUSINESS

Production is a national necessity, and whether or not you ladies and gentlemen of the Class of 1972 plan to enter business—or whether you are aiming for a career in the arts, professions, or government—you will benefit by a business condition that is healthy, vigorous, and dynamic—able to fill your present requirements and able to anticipate your needs for the future.

This means you have a stake in the condition of business in this country and the world. I will try to tell you, as honestly as I can, what our "business condition" is—what is good about the state of business, what is bad about it, and, most important, *what this means to you and your future.*

Let me assure you, this will be no sales talk. I am going to "tell it like it is." This is something we businessmen sometimes fail to do.

Some businessmen seek favors from the government; then they wonder why the government wants to control them. Some of us can't tell it like it is because we don't *see* it like it is. We businessmen are so busy engineering, manufacturing, and distributing goods, as well as developing new products, that we don't have as much time as we'd like to study ideas. I might add, we may not be the only ones who need more time to study ideas. Very few people take time to reflect and see things as they really are. For example, consider these ideas—all of them admirable, all of them desirable—yet none of them living up to their label.

FREE ENTERPRISE?

Do we *really* have it? Business today has to operate with one eye on its own work and the other eye on the SEC, ICC, FPC, CAA, IRS, and many more political policemen in Washington. Business struggles to operate under price controls and profit controls—only the latest in a long succession of increasing government interventions into our whole economy. We do not have free enterprise. As the eminent economist, F. A. Hayek, said: "The world of today is just interventionist chaos."

FREE COLLECTIVE BARGAINING?

What is *really* free about it? Once a group of employees has been certified as a bargaining unit, bargaining is compulsory by law for the employer and the employees, even those who voted against union representation in the first place. And is it really bargaining? A bargain implies a give-and-take between two parties, to arrive at a mutually beneficial agreement. But under collective bargaining today, our unions exercise unrestrained monopoly powers and bargaining too often becomes bludgeoning. And the consumer pays.

SOCIAL SECURITY

We are all for it, but how secure is it? How many Americans realize that the Social Security trust fund has only one year of reserves to meet the obligations it must pay out to our senior citizens.

If there were no further social security taxes withheld from pay envelopes, social security benefit payments would cease in about a year. Thus, the continuance of benefits for retired workers is entirely dependent on the continuing payment of social security taxes by all Americans working today. Therefore, the *real* security for our retired people is a strong and vibrant American economy.

UNITED NATIONS

All of us would like to see the nations of the world living in peace. But how is it possible to unite that which cannot be united? I mean Communism and Capitalism. They are opposites. They are mutually exclusive ideas. We might say "Co-existent Nations." We might say "Tolerant Nations." We might say "Getting To-Know-Nations"—but can we say *United Nations*?

I only cite these examples to illustrate how our vocabulary, our way of thought and speech, our worldview—the ideas that rule us—are full of catchwords that are far from the facts. We tend to delude ourselves, like the people in Hans Christian Andersen's famous fable.

Do you remember the tale of *The Emperor's New Clothes?* There was a royal court, whose members believed their Emperor was dressed in priceless garments woven on a magic loom, the thread so fine the human eye could not even see it. But when the Emperor paraded unclothed in the public street, a little urchin babbled the truth that the Emperor was really naked. Then everyone could see that the Emperor's magic garments had no existence except in their own imaginations.

THE UNREAL IMAGE OF BUSINESS

Well, I am afraid we have been watching a parade of ideas about business in this country—ideas we thought were clothed in brilliance, but ideas which are, like the Emperor's clothes, simply unreal.

Consider this description of *Crime in America,* an article written by a college student in his fraternity magazine:

"Crime in America is many things. It is a slum child snatching a woman's purse. It is a businessman conspiring to fix prices. It is a madman suddenly and inexplicably murdering his family. It is a professional gambler bribing a government official. It is murder and theft, mugging and rape, breaking and entering, smuggling, counterfeiting, drug-pushing, shoplifting."

This student certainly has the businessman in nice company, doesn't he? The author of *Crime in America* should know who *really* controls production and thus regulates prices by monopolistic cartels—wheat fixed by the international wheat agreement—sugar fixed by international sugar agreement—coffee fixed by an international coffee agreement.

And these are government-to-government agreements, such as international air transport rates, or flight schedules rigidly fixed by the Civil Aeronautics Board, and so on. Nowhere do you have less competition and more price fixing than in government-controlled operation. And the price-fixing is usually ever upward—witness the Post Office.

Students are not alone in misunderstanding how business operates. Consider the government's concept of productivity.

The government defines productivity as "output-per-man hour." While it is true that productivity depends upon workers *working,* and loafing—and that real improvements in productivity can be achieved when workers truly apply their skills and energy—the *major* source of productivity is capital investment in tools and machinery. Let me give you an example.

THE REAL SOURCE OF PRODUCTIVITY

When I was a small boy, my father died and mother and I lived with my grandparents on a farm in Indiana. It was a general farm—we raised corn, wheat, oats, hay, and chickens, pigs, and dairy cows. Grandfather and grandmother were up each morning at 4:30 to milk the cows. We had eight cows and it took about two hours to milk them, feed them hay and ground grain, and separate the milk.

Perhaps some of you don't know what "separate the milk," means. It means to run milk through a cream separator, a machine which took about 15 minutes to crank up to speed—usually the children's job. The whole milk would be poured into the tank at the top—out of one spout would come cream, and out of the other skimmed milk. From the cream, grandmother would work several hours to churn butter. All this was very hard work. It took many hours.

Today, I know a farm which is no larger than my grandparents' farm. But it has a large investment in machinery, specialized buildings, silos, automatic feeders, and milking machinery. The farmer milks 75 Holstein cattle, raises all the feed for them, processes the milk—has a nice family—buys most of his food at the supermarket, including his butter. He does this by producing and selling $50,000 worth of milk and grain a year. Incidentally, this farm doesn't get a single penny of subsidy from the government.

This illustrates productivity—productivity resulting from the investment of more than $150,000 in farm machinery and equipment.

Now, if my farmer friend had said: "I will milk only the same number of cows—eight—which your grandfather did by hand 50 years ago" . . . imagine what would happen to his productivity and his capital. Instead, this farmer thinks he can milk 90 cows, if he makes additional improvements and adds $30,000 more capital investment.

But suppose he miscalculates? Suppose he invests to heavily in relation to what he can sell? Or suppose he produces what the market does not want and will not take? Will his increased productivity bring him profit or loss?

CONSUMERS CONTROL BUSINESS

After all, ours is a profit and loss system. Even some businessmen do not understand this. They talk of profit as a "reward." Not so. There is no "reward" for a businessman who miscalculates. Profit and loss are really the throttle by which consumers control a market economy.

It is consumers who determine—by their decision to buy or not buy—not only what shall be produced, but also the price they will pay. Prices, in the final analysis, are determined by consumers. Thus, consumers control the profits or losses of producers, and the level of wages that can be paid.

Wages are ultimately paid by the consumer. It is the consumer who determines

that the opera singer earns a fabulous salary, while, comparatively, the cloak room girl earns a pittance. It is the consumer who determines that the great quarterback on a professional football team earns far more than the locker room attendant. And it is the consumer who determines which companies earn profits and which suffer losses.

Basically, there are only two ways to supply man's material needs. The profit and loss system—where the consumer determines what shall be produced, for whom and by whom—or the dictatorial system, where the government rules everything: production; pricing; and, consumption. In other words, our economy has to have one boss or the other—the customer or the commissar.

THE FUNCTION OF PROFIT

In business life, profit and loss serve as the traffic lights of our economy. The light shows "green" when profits appear. It flashes "red" when losses occur. The green light tells producers to go ahead and supply what the consumer wants. And the greener it gets, the more they produce. The red light tells them the public does not want their product or service—or is unwilling to pay the price being asked for it. No more "democratic" method of assuring production could be devised.

There is one more area of misunderstanding which affects the condition of business—and all of us—and that is the problem of inflation. Almost everyone thinks of inflation as "rising prices." But rising prices are the consequence of inflation, not the cause. Blaming inflation on high prices is like blaming your thermometer for a fever.

By trying to stop inflation by controlling prices, one might as well try to cure a sick man's fever by putting the thermometer in ice water. You'll get a deceptively "healthy" reading on your thermometer, but you won't cure the patient's illness.

So the foremost fact about American business today is this: there exists an understanding gap—an ignorance of the economic law under which our producers have to operate. And what will be the price of this understanding gap? It will be a price that you—in your generation—will have to pay.

Continued inflation, continued government intervention into the economy, will bring lower capital investment, lower productivity, a wasting of savings, and a constantly lower level of living. And if this happens, how are we going to acquire tne needed capital to improve our quality of life?

Unquestionably, *we* must improve the quality of our air, our water, our entire environment. We must be concerned about our ecology. And that is a task in which you young men and women can, and will, I hope, play a significant role.

ECOLOGY NEEDS ECONOMY

But we must realize that "wishing will not make it so." Everything has its cost—and part of your responsibility, as well as ours, the older generation—will be to weigh the gain against the cost. To clean up our rivers, to clean up our cities, to safeguard air and prevent pollution will cost—and is already costing—billions. Our problem is priorities. How far can we go, how fast?

Beautifying our environment can, in some cases, be achieved with relative simplicity and low cost. Removal of ugly billboards on highways is one example. But emission control for our 80 million automobiles is a massively complex and costly problem. Its solution may be expected to cost each motorist—each of you—hundreds of dollars—a total of tens of billions of dollars.

I am sure you young people here today are concerned about ecology—and rightly so. I hope you will soon become equally concerned about *economy*—because if we are going to prevent damage to our ecology, we are going to have to stop the damage that is being done to our economy. We will have to close the understanding gap.

Why does this understanding gap exist? I can suggest two reasons: first, the retreat of the intellectuals; and second, the failure of business to "tell it like it is."

In the early days of this nation, the intellectuals believed in freedom in *every* sense. They understood the direct relation between religious, political and *economic* freedom. They realized that all freedoms are integral—that you infringe upon one at the risk of all others.

Among the intellectuals of those days were the Colonial clergy—and their sermons were as filled with remonstrances against the *economic* restrictions of King George III as they were with pleas for religious and political freedom. In fact, one of the most discerning and devastating attacks upon the fraud of inflation was delivered by a clergyman, John Witherspoon, an early President of the College of New Jersey, which later became Princeton University.

"HALFWAY WITH INTELLECT"

Today, many of the intellectuals—*thank heaven, not all*—have embraced an interventionist theory of economics. They actually believe it is possible to effectively "manage" an economy by push-buttons from Washington. They do not realize that the stop and go lights of profit and loss are far more reliable than push-buttons on the Potomac. Unfortunately—at least as far as economics is concerned—most of the intellectuals have, as Jacques Barzun put it—created "the catastrophe of intellectualism" by going "halfway with their intellect."

It isn't that they don't have the brains to understand the economics of a free market. They most certainly do. And they understand and jealously guard *their* freedom of speech and political and religious freedom. Can they not see that all of these are related to economic freedom as well as to each other? If they believe in a controlled economy, why not be consistent and believe in controlled thought, a controlled press, pulpit and classroom?

All one need to do to see the relation of academic freedom to economic freedom is to look at Stalinist Russia or Nazi Germany, where thought control and repression of academic freedom were part and parcel of control over the economy.

I will not attempt, today, to analyze why these intellectuals hold the views they do. I shall merely assume that if and when they use their intellect to the full, they will arrive at a full appreciation of freedom—just as the Russian intellectuals are now beginning to shake off the repression of free thought, and a few Russian economists, I am told, are beginning to realize the shortcomings of a government-managed economy.

BUSINESS NOT BLAMELESS

As for businessmen, I think we are far from blameless. We haven't told it like it is. We have tried to debate a moral issue with material arguments. We have answered the Marxist attack on profit by whimpering about how little our profits are—how inadequate they are to preserve the capital of industry and the nation's productivity. We have failed to arouse the enthusiasm for the profit and loss system we know it deserves.

Because it is true—our profits are too low for the nation's good. Since 1965, total wage and salary income has jumped more than 60% and fringe benefits have increased by 94%. Compared to that, corporate profits after taxes have increased—can you guess—only 2%. And when profits fail to go up, employment remains static and so do tax collections to support the government.

But this is not the basic point. By arguing how little his profit is, the businessman is accepting the moral condemnation of profit by the Marxist. He is admitting that there is such a thing as "too much profit." The businessman should be arguing the truth—that there is no limit to what his profit can be as long as that profit has been earned without force or fraud.

The businessman should not equivocate on the principle of profit. One man's profit is not another man's loss. As Samuel Gompers, the great early leader of American union labor, said: "The greatest crime against the working-man is the company that fails to make a profit."

Nor should the businessman allow himself to be deceived by the management-labor concept. All who work in business and industry do labor. Management is simply another form of labor. All who work for a company are members of a team created to serve the market. They serve the market best—and incidentally their own interests—when they cooperate and work together. There is no natural law making management and labor antagonists. The truth is they cannot survive without each other.

I believe this was demonstrated dramatically recently, when George Meany, leader of the AFL–CIO, renounced the strike as being too costly for society to bear.

In short, we producers should stand for principle. If we ask the intellectual to be consistent in his search for freedom—we should be consistent ourselves.

FREE MARKET IS AN IDEAL

The intellectual is always urging his listeners toward an ideal goal which he frankly admits may never be reached. He can always talk about "what ought to be" and thus he assumes the shining armor of reform and the purity of an ideal.

We businessmen should face the fact that the free market in an ideal. As long as we businessmen *fail* to tell it like it is, we will be painted as "reactionary," as protectors of a *status quo we really do not approve.*

Now here is an area where you young men and women, coming into business or professional careers, can make a great contribution. We need your idealism—we need your radical thinking, and by "radical" I mean searching for the root of things—the basic principles.

If you choose to come into industry, we welcome you. *Industry is where the action is.* We are the producers—and we are proud of what we produce, because we know how it has advanced the welfare of mankind.

If you join industry, your horizons will be widened—for the products of industry are made and sold across the world. Today, enterprise is multinational and we see progress, too, as multinational. We take pride in extending the principles of economic freedom and human betterment around the world.

Permit me for one moment a personal reference to our company, Ingersoll-Rand. As a multinational corporation, we manufacture and sell products all over the world. Today, approximately 4,000 men and women here in the United States owe their jobs to our international sales. If we were not a worldwide company, those 4,000 jobs would quickly disappear.

We are convinced that American industry is a force for peace on the earth, and for progress beyond the earth. Remember, it was American science, technology, and industry that took mankind to the moon.

We are convinced that you can do more to satisfy your urge to serve society by working in industry or commerce than you can anywhere else—*if you understand the problem*—if you see it as it is.

Available to you is a body of knowledge, developed by the natural sciences, so rich in potential for human welfare that one can easily imagine a doubling of the life span in another century. And this knowledge, used by business in research and development, can, as it already *has* done, produce marvels to

serve more people in more ways than ever before.

And there is the further potential of enrichment of cultural and intellectual life made possible by the shortened hours and lessened load of work upon men and women—as machines and technology provide greater leisure and greater accessibility to the world's artistic and cultural riches. This progress benefits every member of society.

And for those of you who are going into business, let me assure you, despite the problems that face business and our nation, today, I remain an optimist. I think a great future awaits all of you, if you face up to reality, if you see things as they are and—as you go through life—tell it like it is.

Good luck to all of you.

THE HEROIN TRAFFICKING PROBLEM

Mr. RIBICOFF. Mr. President, Newsday, the Long Island daily newspaper, has just concluded a 32-day, 100,000-word series on the international heroin traffic. The series, which used a team of investigative reporters to trace the shipment of heroin from the ultimate source of a poppy field in Turkey to the ultimate destination of an addict's vein in Long Island, represents an outstanding and courageous example of public-service journalism. The lessons to be learned from this series—the blatancy of international heroin traffickers and the ineffectiveness of Federal law enforcement in bringing the vast majority of these major traffickers to justice—should not be lost on the Congress.

The picture that emerges from this series—a picture that is reinforced by studies conducted by such authorities as the Government Accounting Office and a task force of the American Bar Association and the Drug Abuse Council—is one of major traffickers being identified by the hundreds, but being apprehended only by the dozens; of heroin being smuggled into this Nation by the tens of thousands of pounds, but being seized only by the hundreds of pounds.

The gap between the magnitude of the drug crisis and the limited success of our drug law enforcement efforts should not be viewed as a reflection on the bravery and dedication of our Federal narcotics agents. If singleness of purpose alone were the determinant of success in our efforts to stem the traffic in heroin and other dangerous drugs, there would no longer be a drug crisis.

But, bravery and dedication are not enough in the war against drugs. There must be a battle plan that maximizes coordination of all Federal enforcement and related efforts against drug trafficking, thereby eliminating the overlapping jurisdictions, duplication, rivalry and feuding that presently undermine these efforts. At present, Federal enforcement is plagued by a proliferation of agencies and programs with no effective coordination. At the heart of the problem is an intense rivalry between the two primary enforcement agencies—the Bureau of Narcotics and Dangerous Drugs—BNDD—in the Justice Department and the Bureau of Customs in the Treasury Department—which has undermined and in some instances, aborted major trafficking cases.

Various articles in the Newsday series pointed up the problems between BNDD and Customs in their operations in this country and overseas. On February 11, the Newsday investigative team quoted Gilbert Raguideau, a high French police official responsible for coordinating French and U.S. anti-narcotics efforts, as saying:

> There is one thing about the American anti-durg effort that we of the French police cannot understand," Raguideau declared. "Why is it that the two American agencies fighting drugs here (BNDD and Customs) are always fighting each other? We can't understand this. Here in France, we work smoothly with our people in Customs. But the U.S. Customs and the U.S. BNDD here are just about not speaking to each other. We don't think that this helps the battle against drugs.

On February 23, the Newsday investigative team made the following observation about the BNDD-Customs relationship:

> There is a very real rivalry that exists between BNDD and Customs, and despite a presidential order to stop feuding and work together on cases, and despite numerous inter-agency memos stressing the need to cooperate, the two agencies remain like a bareback rider and a trapeze artist working for the same circus: both want the show to succeed, but neither likes the other getting into its act.

The final article of the series, "It Takes More Than Policing To Control the Heroin Epidemic," explores the rivalry in some detail, along with other enforcement problems in combatting heroin traffic. I ask unanimous consent that the article be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. RIBICOFF. In this final article, the Newsday team, citing two cases in which BNDD and Customs sought to undermine the other's investigation, found:

> The problem boils down to a simple jurisdictional dispute. BNDD is charged with control of narcotics, but Customs is charged with control of smuggling activities, and the only way to get heroin into the country is to smuggle it in.
>
> The two agencies often have refused to share information, and often have argued over which should make the seizure in a case that involved both smuggling and drugs.

I have introduced a bill, S. 942, which seeks to put an end to this unnecessary and dangerous rivalry by reorganizing all Federal law enforcement efforts related to trafficking in narcotics and dangerous drugs within a new division of the Federal Bureau of Investigation. The FBI presently exercises no drug jurisdiction. The bill also would deal with the present disorganized, bureaucratic response to the Nation's No. 1 law enforcement problem by providing for coordination by the President—after consultation with the Attorney General—of all other efforts related to drug enforcement wherever they may be found in the Federal Government.

Only through effective law enforcement can we ever hope to stem the supply of heroin and narcotic and dangerous drugs. Without such a coordinated law enforcement effort, there is scant hope that we can make real progress on the other side of the drug crisis—the demand side—by challenging large numbers of addicts and abusers into treatment programs. The time to deal with our Federal drug enforcement problems is now, and I submit that the best means to deal with them is through our preeminent law enforcement agency—the FBI.

EXHIBIT 1

[From Newsday, March 4, 1973]

IT TAKES MORE THAN POLICING TO CONTROL THE HEROIN EPIDEMIC

(NOTE.—In this article, Washington Correspondent Anthony Marro and reporters David Behrens, Joe Demma and James W. Sullivan, who spent four months investigating the heroin business in the U.S., summarize the effectiveness of efforts to control the flow of the drug into the country. This is the final installment in the series, The Heroin Trail. The investigation began more than nine months ago under the direction of Senior Editor Robert W. Greene who reported the overseas story—from Turkey to France—with reporters Les Payne and Knut Royce.)

WASHINGTON.—Every time a Long Island addict jabs the needle of a heroin-filled syringe into his arm, it means that the narcotics enforcement effort has suffered another failure.

It means that the State Department hasn't been able to prevent the opium poppy from being grown. It means that the Bureau of Customs hasn't been able to prevent smugglers from bringing the heroin into the country. It means that the Bureau of Narcotics and Dangerous Drugs (BNDD) hasn't been able to intercept the heroin as it moved along the distribution chain. And it means that the state and local police haven't been able to prevent the street-level pusher from passing it on to the junkie.

Despite massive injections of federal money in recent years, the enforcement effort still has many holes—lack of manpower, lack of experience, inter-agency friction—and heroin continues to flow through it like water through a sieve. BNDD estimates that there are 559,000 addicts in the country and that they consume 20,000 to 24,000 pounds of pure heroin a year. In 1972, BNDD seized 820 pounds of heroin and Customs seized 215.6 pounds.

Narcotics agents are no more expected to seize every ounce of heroin that comes into the country than traffic cops are expected to catch every speeder. In both cases, the job is to pose enough of a deterrent to keep the problem a nuisance instead of a menace.

But the drug problem has become so massive during the past decade that many, if not most, law enforcement officials now agree with New York City Police Commissioner Patrick V. Murphy, who says repeatedly: "You can't solve the damn drug problem by law enforcement alone."

Murphy is close to the problem: Roughly half the nation's addicts are thought to live in New York, and the heroin traffic in the city is believed to be a $1-billion-a-year business. During the 1960s, there were more New York City residents who died of heroin-related causes (4,254) than there were New York State residents who died in Vietnam (3,191).

Murphy argues that the demand is so great, and the profit so enormous, that law enforcement agencies will continue to be overwhelmed until something is done—through the treatment and rehabilitation of addicts—to reduce the demand and thus remove some of the profits. "Five years ago, it was all a 'get tough' approach," he said in an interview. "We were practically ignoring the other side of the coin—and that can't work. We can't meet the problem unless we cut

it off at the source [Europe, Asia and Latin America], and we can't do that unless we reduce the demand through treatment and rehabilitation of addicts."

A look at the scope of the problem seems to bear Murphy out. To begin with, there are the opium poppies, the source of the gum that is the raw material of heroin. Only a small fraction of the world's opium supply—perhaps five per cent of the annual production—is needed to supply the 10 to 12 tons of heroin that BNDD estimates are consumed by America's addicts each year.

In the past, about 80 per cent of the heroin that came into this country was the product of Turkish opium poppies. The Nixon administration has managed to persuade the Turks to ban the production of opium, but—as reported earlier in this series—there are strong indications that the ban will not succeed. It is believed that enough opium gum is hidden away to maintain the flow of heroin for at least two more years, and it is likely that many Turkish farmers will continue to grow poppies in spite of the ban.

Even if the Turkish ban should succeed, the problem would not be solved. India, Iran, Pakistan, Afghanistan, and the so-called "Golden Triangle" region of Burma, Thailand and Laos all produce more opium than Turkey. Already, there are indications that increased amounts of heroin are coming into the country from Southeast Asia. And a secret report prepared for Congress last year by the General Accounting Office (GAO) cautioned that Afghanistan could fast replace Turkey as "a major source of opium" for the U.S. market.

The heroin that is marked for the U.S. market is likely to get here, primarily because of the problems of open borders and the great volume of traffic coming into the country. About 250,000,000 persons, 65,000,000 cars and trucks, 306,000 planes, and 160,000 ships enter the country each year, and there are only about 4,300 Customs inspectors and 1,800 patrol officers and agents to cope with this workload.

Last year, Customs seized only one per cent of the amount of heroin that BNDD estimates is consumed annually by the nation's half-million addicts. "You can hide four or five kilos of heroin [a kilo is 2.2 pounds] behind the headlights of an automobile," said David Martin, a staff member who studied the heroin problem for the Senate Judiciary Committee last year. "You can hide 10 kilos in a hollow crankshaft. What are you going to do, tear apart every car that crosses the border? The job is so difficult that I'm surprised they find as much as they do."

There have been hurried, almost frantic, attempts to beef up the enforcement agencies. BNDD, which had only 600 agents and a budget of $14,000,000 in 1968, now has nearly 1,600 agents and a budget of $74,000,000. But the problem has grown faster than the agency, and there are few narcotics agents today who will argue—as many did a decade ago—that the problem can be solved simply by attempts to shut off the supply.

In a closed-door session April 25, John Ingersoll, the director of BNDD, told a U.S. House committee: "I think it is unrealistic to think that the law enforcement and the Customs agencies of this country are going to be able to exclude drugs as long as there is an overwhelming demand for them."

Later, during that same session, he added: "Maybe our efforts [to reduce the supply] can reduce the drug problem to some kind of tolerable irritant. But, again, I repeat that we are not going to remove . . . drug addiction from our society if we rely solely on the work of law enforcement here or elsewhere in the world."

There are many who argue that heroin addiction should be considered a medical problem rather than a criminal one, and that simple legalization of the drug would eliminate the high cost that drives addicts into criminal activities to support their habits.

In a report made last year, a special American Bar Association Committee on Crime Prevention and Control concluded that "the nation's policy for dealing with narcotics addicts has resulted in an inversion of priorities which substitutes harsh criminal sanctions for rational medical measures."

The options now being debated by government agencies and private groups range from complete legalization of the drug to a proposal by Gov. Rockefeller that heroin dealers—including addict-pushers—be sentenced to prison for life.

THE ROCKEFELLER PLAN

The plan outlined by the governor in his State of the State message calls for life imprisonment for all convicted dealers of hard drugs, with no plea bargaining or parole; life imprisonment for all addicts convicted of committing a violent crime while under the influence of drugs; and a $1,000 reward for information leading to the arrest and conviction of a drug pusher.

A Gallup Poll showed overwhelming public support for the plan (67 per cent were in favor of it), but opposition has surfaced among a number of groups. These include:

Prosecutors who fear that the plan would place further strain on an already-clogged court system. "No attorney is going to subject his client to life imprisonment without a court fight," Nassau District Attorney Cahn said. Last year, about 98 per cent of the 900 to 1,000 Nassau County cases involving narcotics felonies were settled by plea bargaining.

Prison guards who fear the proposal would fill prisons to the rafters with men who, having no hope of release, would be difficult prisoners. A spokesman for the union that represents the state's prison guards said the plan combined "political brilliance with an appalling lack of knowledge about prisons and the society that requires them."

Narcotics agents who fear that the risk to undercover agents and informants would increase sharply. (A dealer would be more likely to try to shoot his way out of a situation that could send him to prison for life.)

Experts in the narcotics field who fear the law could result in an immediate and sharp increase in the use of barbiturates (which are potentially more harmful than heroin in many ways), and the development of synthesized, opiate-like substances.

Policemen who argue that the need is not for stiffer sentences, but for the courts to impose the sentences already permitted. "It's not the length of the sentence, it's the certainty of punishment that's the deterrent," said Chief Deputy Inspector James Henderson, of the Nassau County Police Department.

This last point is one that is made often by federal, state and local law enforcement officials, who complain loudly that courts free heroin dealers almost as fast as their men can arrest them.

THE COURTS

Recently, Deputy Chief Inspector William Bonacum, who heads the narcotics division of the New York City Police Department, charged that only about two per cent of those arrested on felony narcotics charges are sentenced to more than one year in prison. In 1971, he said, 20,762 persons were arrested in New York City on felony narcotics charges, and only 418 of them went to state prisons.

Frank Rogers, a special prosecutor for the city's special new Narcotics Courts, said that this is somewhat unfair because a great many felony narcotics arrests are bad arrests which never even reach a grand jury. Rogers said it would be fairer to base the percentage on the number of persons actually indicted. On that basis, he said, the proportion sentenced to a year or more in jail would be about 25 per cent.

However, Rogers and other prosecutors are not happy even with that figure. None of the prosecutors Newsday interviewed would say directly that they believed judges to have been corrupt, but all freely accused judges of being too sympathetic to defendants.

Paul Curran, the State Investigations Commissioner who investigated narcotics enforcement in New York City last year, said in an interview that more judges should realize that the sale of narcotics is not a crime of passion. "It is a business crime—and it should be punished as such," he said. "The . . . sentences have not been in the range that the legislature has decreed."

And Myles Ambrose, a special assistant attorney general and the head of the Drug Abuse Law Enforcement (DALE) program, recently criticized sentencing patterns because they "do not reflect any attempt to achieve any special national, social or policy objectives." Among the cases he cited as "outrageous examples of non-sentences" were those of a Colombian woman who was arrested at an airport with three kilos of heroin and who received a prison sentence of only three months; and a defendant convicted of possession of 10 grams of pure heroin who received a suspended sentence and served no time at all.

In New York's new Narcotics Courts last year, 25.5 per cent of those convicted of felonies were sent to state prisons to serve sentences of one year or more, 23.2 per cent went to city prisoners for shorter terms, and 51.3 per cent were given probation or given conditional discharges.

While Rockefeller calls for stiffer sentences, and law enforcement officials call for more sentences, others call for better, more extensive treatment programs to help curb the demand.

ALTERNATIVES

Last year BNDD commissioned a research team at the University of California at Los Angeles to develop a report entitled "Alternative Approaches to Opiate Addiction." The bureau released the study last fall, stressing that it was not necessarily endorsing any or all of the findings. Among the various programs studied were these:

Methadone Maintenance—Two types of methadone maintenance programs were studied by the team. The first type was a strictly monitored program in which only patients who were willing to seek employment and abstain from other drugs were allowed to participate. The second type—aimed more at cutting the crime rate than at rehabilitating addicts—provided for free distribution of methadone, even where there was evidence that the patient was using other drugs. The team concluded that the first type of program had a high degree of success, but attracted fewer volunteers than the second. The second type, it concluded, attracted more addicts, but there was less social rehabilitation, and participation was often sporadic.

Heroin Maintenance—The team concluded that a program to provide free heroin would attract many if not all addicts, and probably would result in a sharp drop in the demand for illicit heroin. Implied in this was the argument that it also would result in a drop in the sort of crimes committed by addicts to finance their habit. Among the potential problems, it concluded, are a heavy administrative cost (if dispensed through clinics) and a possible increase in the addict population. Furthermore, since many persons on heroin maintenance might not be able to hold jobs, they might have to be provided with welfare money. Said the report: "In the extreme, it amounts to announcing that the choice to use heroin will result in society providing the drug of choice, plus spending money, i.e., welfare."

Therapeutic Communities—The study group concluded that these communities—such as Synanon and Phoenix House—can provide good results at low cost, but attract only a fraction of the addict population.

Detoxification—This is the simplest and most frequently provided sort of treatment. Through inpatient treatment, addicts are detoxified over a period of one to two weeks by being given decreasing doses of methadone. The problem with this program, the group said, is that it works only for persons who are motivated and capable of remaining abstinent, and results in a long-term solution for only a small fraction of those treated.

Civil Commitment—These programs, which involve a period of incarceration followed by a period of probation are said by the team to offer a higher probability of post-treatment abstinence than simple release from prisons or hospitals without such a program. The problems, the team concluded, include high cost, a high rate of absconding, and the fact that many judges are unwilling to commit addicts for long periods (three to five years in New York; up to seven years in California) in a program that has not demonstrated a high rate of permanent cures.

While the debates continue, the Nixon administration's heavy commitment to what the President calls a "war on drugs" also continues. In fiscal 1969, the federal government spent $69,700,000 on its various drug programs. In fiscal 1974, it is expected to spend about $719,000,000 ($256,900,000 of it for law enforcement activities and the rest for treatment, education, rehabilitation and research.)

"We have a President who is very uptight about this problem—*very* uptight," said one federal agent. "He's almost puritanical about it, and he's not going to let go of it." This attitude comes through in the President's speeches. Last September, for example, he had this to say about the heroin traffic and his plan to fight it:

"We are going to keep the heat on until the despicable profiteers in human misery are driven out of their hiding places and are put in prisons where they belong. . . .

"These people are literally the slave traders of our time. They are traffickers in living death. They must be hunted to the end of the earth. They must be left no base in any nation for their operation. They must not be permitted a single hiding place or refuge from justice anywhere in the world. . . ."

This attitude, however, goes back no further than the Nixon Administration, and recent pressures brought against the Turks and the French tend to obscure the fact that, as recently as 1968, the U.S. fight against drugs was itself very limited. Customs in that year was operating with the same number of men that it had when Calvin Coolidge was President; according to BNDD Director Ingersoll, narcotics enforcement efforts at most levels were "not simply inadequate, they were nonexistent."

One reason for this, according to one federal official, was that during the 1960s "it was considered a black problem, and a ghetto problem . . . [and] most big city administrations didn't care what happened in the ghettos."

Said another official: "We had them [addicts] for a long time and most people didn't get upset about them because they weren't a threat. It was only when they started appearing in the suburbs, and started stealing in the suburbs, that we became concerned. They're a little bit like drunks: You don't mind them so long as they don't throw their bottles on your lawn and beat up your kids."

The change began in 1968, when the old Federal Bureau of Narcotics was disbanded and moved from the Treasury Department to the Justice Department. The man put in charge of the new operation was John Ingersoll, who was the 38-year-old police chief of Charlotte, N.C., when he was given the job.

"He took over a bureau that was filled with inbred hatreds and corrupt as hell, and he turned it around," one admirer said. "There is still a lot of bureaucratic infighting, but it's shaping up."

The bureau has expanded rapidly under Ingersoll, but in some ways it is like an expansion-league ball team. It has money and energy, but lacks experience. Nearly half its agents have gone through the bureau's training academy in the past two years, and there are few agents on the streets who have more than five years of experience. Said one city narcotics detective: "They're too young, too inexperienced, and they don't know New York."

The bureau also has a shortage of Spanish-speaking agents and blacks. Since much of the traffic is now controlled by blacks and Cubans and other Latin Americans, this is a serious problem; the adjectives used to describe the shortage range from "critical" to "desperate."

BNDD is trying to recruit and train minority agents (blacks and Spanish-speaking trainees have made up a third of the last two classes at the training academy), but it still has a long way to go. There reportedly are only five Cuban agents in the bureau, despite the fact that Cubans operating along the Miami to Hudson County, N.J., to New York route now control much of the heroin traffic. And, BNDD sources said, there are only three blacks among the 41 agents in the Philadelphia office, despite the fact that blacks control much of the drug traffic there. Overall, blacks make up about 10 per cent of the BNDD agent force, and Spanish-speaking agents make up another five per cent.

In time, the problem of inexperience may take care of itself; the pool of experienced agents is growing each year. And Ingersoll already has committed the agency to the active recruitment of blacks and Spanish-speaking gents. Another problem, however, is the rivalry that exists between Customs and BNDD.

The problem boils down to a simple jurisdictional dispute. BNDD is charged with control of narcotics, but Customs is charged with control of smuggling activities, and the only way to get heroin into the country is to smuggle it in.

The two agencies often have refused to share information, and often have argued over which should make the seizure in a case that involved both smuggling and drugs. On one occasion when BNDD was shepherding a boatload of marijuana into Miami (intending to make arrests after the boat docked), Customs stumbled onto the operation and not only seized the marijuana and made the arrests, but also impounded the BNDD boat.

A classic example of this sort of feuding arose in September, 1971, when Customs and BNDD both were working on a case that eventually led to the arrest of Louis Cirillo, one of the biggest heroin dealers jailed in the past decade. What happened, in short, was this: BNDD told Customs that a man named Richard Berdin was coming from France to receive a shipment of heroin; it asked Customs to help watch him, but not to arrest him. Customs learned that Berdin was involved in a separate case that BNDD knew nothing about, and arrested him on that charge. Customs then persuaded Berdin to set up a meeting with another French heroin smuggler, Roger Preiss, and lure him into a trap. BNDD found out that Preiss was coming to New York, staked out the Waldorf, and—after first grabbing several look-alikes—arrested Preiss and rushed him away without telling Customs.

Then, sources said, BNDD notified a U.S. Attorney in New York that it had arrested Preiss, but refused to tell him where it was keeping him until the attorney promised not to tell Customs. But, the sources said, Customs discovered where Preiss was being questioned and tried to get into the room only to be blocked by BNDD agents.

Agents at both Customs and BNDD say the feuding is no longer as bad as it was three or four years ago. But after examining the operation last year for the Senate Judiciary Committee, Gen. Lewis Walt (USMC, Ret.) concluded that what Customs and BNDD needed was a kind of Joint Chiefs of Staff to coordinate their efforts and reduce the friction.

The Nixon administration itself is now considering several plans to reorganize its narcotics enforcement effort, and a series of "option papers" is said to be on the President's desk. The options, sources said, include proposals to impose tighter administrative controls over the present structure, to remove the Customs function and turn it over to BNDD, and to simply turn all enforcement of hard drugs over to the FBI.

Whatever the outcome, the President apparently is determined to keep a federal presence at the street level, a decision that was made during 1972 over the objections of Ingersoll and some of his chief assistants at BNDD. Ingersoll's argument was that the main federal effort should be aimed at middle-level and top-level dealers, and that the chasing of small-time dealers and pushers should be left to local police.

The administration, however, created the Drug Abuse Law Enforcement (DALE) program to put federal agents—not just federal money and equipment—on city streets, a move that was hailed by some, and decried by others as an election year gimmick that would do nothing to disrupt the traffic.

"How much of the decision was political? Damn little," said one administration source. "But we were spending $1 billion and nobody knew about it. Nobody cared about the overseas effort when they could see people pushing drugs in their neighborhoods. The President wanted to be sure some of it was being spent down there where the people could see the results."

A second reason, that same source said, was that Dr. Jerome Jaffe, who heads the Special Action Office for Drug Abuse Prevention, argued persuasively that the government would never be able to cut the rate of addiction unles it began harassing addicts and small-time pushers.

"You may not like the term, but that's what DALE does—it harasses addicts and street pushers," he said. He said that Jaffe's argument was twofold: (1) a federal enforcement effort at the street level could help pressure addicts into treatment centers or onto softer drugs, and (2) it could scare non-addicts away from hard drugs.

A spokesman for Jaffe later said: "That's basically right, but Jaffe's concern is more with the experimenter than with the guy who's already addicted. If we can keep the pressure on at the street level, if we can make it harder to get heroin and harder to stay out of jail, we may be able to discourage people who otherwise might experiment with the drug."

The debate over how much of the federal effort should be aimed at law enforcement and how much should be aimed at treatment is likely to continue, but there are two points that officials at both ends of the spectrum seem to agree on. One is that the drug problem will be with us forever, at least in small doses, and the real question is what constitutes a *tolerable* level, and what are we willing to spend to get there. The second is that there are no simple solutions.

Said Thomas E. Bryant, head of the foundation-sponsored Drug Abuse Council in Washington: "There is no simple solution—legal, medical, or social—to drug abuse in our society. To in any way pretend that there is, is to ignore known facts, to deny

history, and to mislead further a frightened, baffled, and confused public."

THE SCHOOL LUNCH PROGRAM

Mr. CASE. Mr. President, the school lunch and school breakfast programs are major Federal efforts to provide good, nutritional meals to schoolchildren.

Unfortunately, not all schools now participate but there is a strong effort underway in my own State to initiate these programs in schools that need them.

An article by John O. Davies, of the New Jersey Courier Post news staff describes what New Jersey's State officials are doing. I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

A significant expansion of the school lunch and school breakfast programs took place under the leadership of Mr. Lewis Straus. His work is being continued by Mr. Wallace Collender, the new State director for these programs.

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

SCHOOL LUNCH PROGRAM PLAGUED BY MISUNDERSTANDING

(By John O. Davies)

TRENTON.—A campaign is underway for a cause you'd hardly think would need promoting—to require school boards everywhere to adopt lunch programs that would benefit tens of thousands of needy children at no cost to local taxpayers.

It's actually an $8.2 million deal the federal and state governments are offering to scores of school boards which offer no mid-day meals to an estimated 523,000 children.

Of this group, State Education Department officials estimate almost 114,000 would be eligible for free or reduced-price lunches.

To surmount the complacency and misunderstanding that has plagued the lunch program—New Jersey ranks 49th in the nation, topping only California, in its distribution of school lunches—the department is pressing for a law to make offering of school lunches mandatory by all boards within a two-year period beginning July 1.

The bill that would make this come true cleared the Assembly Education Committee recently and is ready for what is expected to be a favorable floor vote in the House March 19, according to Committee Chairman John H. Ewing, R–Somerset.

Miss Denise Rath of Skillman, the department's school lunch program specialist, says the largest concentration of children attending no-lunch schools is in Hudson and Bergen Counties for varying reasons.

Ironically, an estimated 75 per cent of the excluded children in Hudson would be eligible for free and reduced-price meals—but only 5 per cent in Bergen are in the needy category.

Other children excluded from school lunches are spread throughout the remaining counties, Miss Rath reports, although the problem is much more acute in North Jersey than in South Jersey.

Miss Rath says the fact there are more "neighborhood-type" schools in crowded North Jersey within walking distance of pupils' homes is one reason for the failure of local boards to adopt lunch plans.

Miss Rath gives Union County a low mark for its school lunch activity, and she considers her home county of Somerset "only fair" in its programming.

In South Jersey, Camden County gets the worst rating by Miss Rath.

Miss Rath, who is only 26, says Scott Plains, where she once attended school, and Westfield were among Union County districts which serve lunches only in their high schools.

In Camden County, Miss Rath reports, the program is active completely in all but 14 of the county's 38 school districts.

While Camden City, where there is a high percentage of needy children, enjoys 100 per cent participation, Miss Rath says there are communities where no lunches are served but are needed.

This list includes Audubon, where more than 100 out of 600 students are eligible for free or reduced-price meals, Bellmawr, where 240 out of 600 are needy and Lower Camden Regional High, where 1,200 out of 3,800 are in the needy area.

Miss Rath says reasons for not participating in the program include a baseless fear cafeteria and food service would be costly to the board, that children living close to schools and needing a nutritious mid-day meal can get it at home, which she stresses "is absolutely untrue in thousands of cases," that administrative personnel and paperwork would be burdensome—and the fact that many parents are not aware the program is available.

Conceding the last reason "seems hard to believe," Miss Rath notes a $15,000 film has been made to help bring the lunch program to wider public attention.

What are the specifics of this program from which more than a third of New Jersey's 1.5 million school population is being excluded?

Of the statewide enrollment, experience has shown that only 45 per cent of children for whom lunches are available take advantage of the system.

That means only 430,000—remarkable as this may sound—out of 1 million take advantage of the mid-day meals served at school.

Of this number, 280,000 children pay full price of up to 45 cents for their meals and 150,000 are eligible for free or reduced-price meals.

Oddly, according to Miss Rath, 25 per cent of the needy children fail to take advantage of the meals available to them at no cost.

All but 5 per cent of this disappointed group get free lunches.

The federal government gives 8 cents toward paid lunches and the state 4 cents, with up to 45 cents being paid by students.

Washington gives 48 cents and the state from 4 to 14 cents for free lunches.

A child is eligible for a free lunch if his family's income and family size range from $3,700 earnings for a family of two to $8,500 earnings for a family of 10.

Reduced-price lunches are available for children from families of two earning $4,300 to families of 10 earning $9,100.

In round figures the Feds are contributing now about $16 million to New Jersey's national school lunch program and the state about $4 million.

The proposed law requiring the lunches to be offered everywhere would boost the aid funds by $2.991 million for the Feds, $896,000 for the state and with a maximum pupil payout of $4.324 million, a new money total of $8.211 million.

Subtracting from this the cost of providing and serving the meals, which was estimated at a little over $8 million, there would be a balance of almost $200,000 that Miss Rath says would be available to the boards for lunch improvements, such as an occasional dessert or a different type of meal that might have more costly items in it.

One reason Miss Rath can't understand the reluctance of many school boards to sign up for the lunch plan is that all of the work can be leased out to food management companies, which generally charge 10 per cent, the cost of which is paid out of the federal and state aid grants.

These food vendors, Miss Rath says, "are doing very well." She says they also are checked on performance and the lunches themselves are under quality inspection by consultants from Miss Rath's office.

The food comes from federal surplus storage at Jersey City and Vineland.

When and if the lunch bill becomes law, Miss Rath's boss, Walter Calender, director of the Office of Food Program Administration, will launch another crusade—to encourage more boards to serve a breakfast "pick-me-up" now available in only 104 schools.

As a former teacher, Miss Rath recalls:

"Half the children came to school without breakfast, no matter whether they came from poor, middle or wealthy families.

"Just the fact they were hungry sharply reduced their attention span in classrooms."

CONGRESS AND AGING

Mr. CHURCH. Mr. President, the American Association of Homes for the Aged is a national organization which has over the years exerted a considerable degree of leadership in efforts to improve care for chronically ill elderly persons and for those whose needs are residential, as well as medical.

On March 1–2 the Legislative Council for AAHA met in Washington to discuss—with representatives of the executive branch and with Members of Congress—the many public issues which have direct impact upon their efforts. The range of these issues bears testimony to the broad interests and concerns of AAHA.

It was my pleasure to appear before the Legislative Council, and it was indeed an honor for me to receive the AAHA Distinguished Service Award. At that same meeting, I delivered an address which outlined the challenges I see, not only in long-term care, but in other areas of immediate and long-range concern in terms of aging and in terms of the relationships between Congress and the executive branch.

I ask unanimous consent to have that address printed in the RECORD.

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

CONGRESS AND AGING

(An address by the Honorable FRANK CHURCH, chairman, U.S. Senate Special Committee on Aging)

I am glad to have this opportunity to acknowledge the longstanding help AAHA has provided to the Senate Special Committee on Aging.

Your Washington representatives have been on hand when the chips were down, not only with regard to legislation on long-term care, or housing, but on other issues that might, at first glance, seem unrelated to the immediate interests of your membership.

But your members take a larger view of what their interests really are.

In your publication, dealing with the social components of care for the elderly some years back, you made the point that you regard your mission as far more than mere management of units in which the elderly receive varying levels of care.

You made it clear that you have a deep interest in the entire environment of the elderly. Units alone won't do the trick. You want to improve the quality of life for the elderly, and I salute you for keeping your standards high.

As administrators in long-term care institutions, you are on the firing line every day

in what may be the most controversial—and important—front in this nation's health industry.

At a conference last July in Idaho—a conference sponsored by the Idaho Health Facilities, Inc. in conjunction with the State Office on Aging—a dear and respected friend of mine, Mrs. Hannah Sessions, summed it all up from her vantage point of advanced years.

"Health care of the aging" she said, "is one of the deepseated worries of the old. To many of the old, the image of the nursing home is like going through a dark door which swings only inward into a life of quiet desperation. The aging mourn the loss of the dear familiar things; often they become panic-stricken, wracked by anxiety, confused, disoriented by the changes taking place within their own minds.

" 'Give us life,' they say, 'not just a postponement of death.' "

Everyone in this room, I am sure, has heard similar sentiments and everyone here is working to change the image to which Mrs. Sessions referred.

But images are powerful forces, and the very positive actions that are being taken in Idaho and elsewhere to improve long-term care are often over-shadowed by scandal, by problems related to root inadequacies or contradictions in our health care system, and by public reluctance to face up to long-standing needs.

As a resident of Idaho, which has only 55 licensed nursing homes with 3,600 beds for the entire State—all 82,769 square miles of it—I'm a little awed when I look at the national statistics:

One million nursing home beds—more than tripled between 1960 and 1970.

Public expenditures for nursing homes reaching the $2.9 billion mark in 1970, or four percent of the health dollar. They will reach $4 billion by 1974.

And about 945,000 patients in nursing homes—almost one out of every 20 of our population of age 65 or over.

All this adds up to very big business, for those who regard it solely as a business.

But to you and to many others, the nursing home can be and often is a kind of ministry.

To Mrs. Sessions, an important function of that ministry is to assure a return to home whenever that is possible—rehabilitation has as important a place in the workings of a nursing home as it does in a pediatrics ward.

And for those for whom no return is possible—those very ill and elderly persons who will need institutionalization to the end of their days—every day in a long-term facility should yield a dividend of kindness, of concern, and of competent care.

You will hear tomorrow from Senator Frank Moss, Chairman of the Subcommittee on Long-Term Care for the Senate Special Committee on Aging. He will deal in some detail, I am sure, with legislative proposals he and other members of the Committee have proposed.

His package of bills is the result of years of hearings and recommendations from many persons including some, probably, who are in this room.

I believe that you will agree that this legislative package is based on a few fundamental concepts:

That service to the *patient* should be the fundamental premise upon which governmental policy related to long-term care be based. We have to keep reminding ourselves—and government—that institutions exist to serve people, and not the other way around.

That we must seek quality care for all rather than fracturing care into artificial, cumbersome segments, with standards that lower as levels of care are lowered.

That fair, but strict, standards of accountability be imposed to assure that government funds are being used wisely.

And that the long-term care segment of the health industry become a more integral part of a rational system in which due support is given to preventive medicine, outpatient medicine, and restorative medicine.

Since you will hear from Senator Moss tomorrow, I will talk no longer about his work, except to say that I am looking forward with keen interest to a report soon to be issued through his Subcommittee.

Now let me turn to an estimate of where I think we stand in terms of our national commitment to aging.

The most dramatic action last year was overwhelming Congressional approval of a 20 percent across-the-board increase in Social Security benefits. As the sponsor of the Amendment in the Senate which secured these increased benefits, I was guided by new actuarial concepts which reduce the Trust Fund's dependency upon long-range reserves and place the system upon a yearly, current cost basis. This approach had been heartily recommended by the Social Security study group as far back as 1934 and 1935.

It has taken us a long time to arrive at this stage, but here—finally—we are. One direct result of the new approach is that the 20 percent increase caused no significant adjustment in employer-employee contributions.

Even though Congress was acting under pressure—the 20 percent increase, opposed by the Administration, had to be attached to a debt ceiling bill—we were able to add one other historic provision. We specified that benefits will rise automatically with any future cost-of-living upswings. That mechanism, sought by Congress and the Administration alike, is intended, at last, to make Social Security benefits inflation-proof.

Later on in the year, Congress acted upon H.R. 1, now Public Law 92-603. Here again, historic changes were made in terms of protection for older Americans. To list just a few of the reforms:

Increased benefits for widows.

More equitable computation of benefits for men.

A modest but precedent making increase in benefits for those who work past age 65.

Some liberalization—but not enough—of the so-called retirement test, which specifies how much a Social Security recipient can earn before losing part or all of his benefits.

Important improvements in Medicare and Medicaid.

And, finally a legislative breakthrough that would have received far more attention if it had been passed in any other year: a Federalized old age assistance program with a minimum floor was finally established, and it will begin operation a year from now. This new Supplemental Security Income program for the needy aged, blind, and disabled takes us closer to two of my personal goals—elimination of poverty among the elderly and abolition of a demeaning welfare payments system for those in great need—but here again we still have work to do.

One measure of that work is the number of older Americans who still live in poverty: more than three million of them.

That 3.1 million total, however, is misleading because there is also a substantial amount of hidden poverty among the elderly. Nearly 2 million aged persons are not classified as poor, simply because they live in families with incomes above the poverty threshold. If these persons were counted, the number of older people with sub-poverty incomes of their own would be somewhere around 5.1 million, or almost one out of every four persons 65 or older.

Another way to measure deprivation among the elderly is to compare actual income with living standards as described in the Bureau of Labor Statistics Intermediate budget for a retired couple. B.L.S. arrived at a figure of $5,000 a year as a modest standard, but this total is well beyond the means of about two out of every five elderly couples.

Yes, great challenges remain despite the significant progress made last year. I have, therefore, begun Committee hearings on what I call "Future Directions in Social Security."

One of the most pressing issues before us is the forthcoming implementation—just 10 months away—of the Supplemental Security Income Program I mentioned earlier. For years, we have been talking about a Federal floor to replace old age assistance with a standard level of minimum payment throughout the nation. Now we are about to have such a system, and we want to make certain that it works right.

Our hearings will turn to many other subjects, including: suggestions for making the Social Security payroll tax less regressive; fairer treatment of minorities and women; what level of "adequacy" should be sought in retirement income with the help of our social insurance system; employment opportunities and the consequences of today's so-called "retirement test;" and the meshing of old age insurance with private pensions and other forms of retirement income.

We will also invite testimony on gaps in Medicare coverage, as well as other health-related issues, because I believe that genuine security in old age is impossible without real protection against medical crises that even yet wipe out family savings. Older Americans are now paying almost as much in out-of-pocket health care costs as they were before Medicare was enacted. And they will pay still more if the Administration succeeds in raising the coinsurance and deductibles to the high levels described in the President's budget message.

Let me assure you, however, that any such action would require Congressional consent, and I cannot see how Congress could allow itself to undo so much of what we thought we were achieving when we enacted Medicare in 1965.

I personally will do everything in my power to fight these Medicare regressions, and I know that many other members of Congress—on both sides of the aisle—feel as I do. We simply cannot allow the budget-makers to economize at the expense of those elderly, ill persons whom Medicare was meant to serve.

If I sound angry, it is because I sense a certain cynicism in the pronouncements of an Administration which opposed a 20 percent Social Security increase last year and now seeks to offset that increase with higher Medicare costs.

And they say they're doing it in the name of economy.

They don't care that many people will be deterred from seeking medical help until they become even more ill and require far more costly treatment.

They apparently don't give a damn, and I say they should be fought every inch of the way.

That fight—the fight for adequate programs for the elderly—must be waged on other Congressional fronts as well.

Many of you know that both Houses of Congress passed a new and far more powerful version of the Older Americans Act in 1972. Our goal was to provide the resources and administrative clout needed to make the Administration on Aging far more capable of performing the job that Congress expected it to do. In 1972, Congress wanted to put the AoA high enough on the H.E.W. table of organization to have some impact. We voted it more money for its community programs, for new area-wide projects, for special demonstration programs and for training and

research. There was much give and take between Congress and the Executive Branch, and our final bill was a good one.

But it was pocket vetoed just a few days after Congress adjourned.

Worse, yet the new budget offered by the President last month would keep the Administration on Aging at last year's level and *it would cut out entirely all funds for training.*

We have not, however, given up. Just nine days ago, the Senate re-enacted the Older American Act Amendments much in the form that they had last year. The House is about to take similar action. I think we can count on strong Congressional interest and support for the rest of this effort, no matter how long it takes.

There is reason to believe, therefore, that we will soon have an end to the stalemate on the Older Americans Act. I wish I could say the same about housing for the elderly, but it is painfully apparent that the situation in this area is—to say the least—murkily uncertain.

Committee staff tells me that the so-called H.U.D. freeze, or moratorium, has already caused great confusion. After weeks of trying, the staff is not able even yet to say how many projects have been frozen or how long they will be held in abeyance.

Caught in the middle of all this are people like you, many of whom struggled to make the 202 direct loan housing program work on behalf of the elderly. And many of you succeeded, because 202 was specially designed for the elderly and worked well before it was sent into limbo.

When I go home to Idaho, I see examples of good, federally-assisted housing. I go to groundbreakings and dedications, and visit the elderly tenants. But every time I go, I am painfully aware that I am seeing the happy, fortunate few—those who have found a decent place to live, within their means. I know that many more, some on waiting lists and some without knowledge that lists exist, live in squalor. They live in fear of higher rents or higher property taxes and they wonder where on earth they will find the money to pay the medical and food bills that always seem to go up and up.

How can we ignore their needs and the needs of so many other Americans?

Many of you know that the Senate last year passed legislation that would restore and broaden the 202 program and that would establish an assistant secretaryship on housing for the elderly in H.U.D. That effort will be renewed this year, with prospects improved for favorable action in the House of Representatives, as well.

Time won't permit, a detailed review of the many other issues now under consideration by the Senate Committee on Aging and its subcommittees. I will say, however, that we are generally concerned with what might be called the high cost of cutbacks. Many of the Administration actions—killing off a program here, impounding funds there—are based upon the doctrine that wholesale curtailment is the way to save money.

Well, there are some programs that should be trimmed to the bone and even into the marrow. There are other programs which still do much good, even though they may need improvement. There are some programs which require expansion if they are to do any good at all.

One classic example—an example which I am sure all here are thoroughly familiar with—is the decline of home health and home care agencies at the very time that the Administration talks so often about the need to develop "alternatives to institutionalization."

You know, as I do, that for a very ill person there is often no substitute for hospitalization or long-term care.

But, for those many others who can remain at home with modest assistance from a visiting nurse or someone simply to help with a few chores, placement in an institution can be the worst—and costliest—thing to do.

Despite all this, the Administration offers no real encouragement to realistic growth of home care and home help agencies. Right now, because of the new restrictions on services offered under Social Security titles, some home health care projects are already out of business or reducing patient loads considerably. And the new regulations announced on February 16 would provide the finishing touch: they are harsh to the point of being punitive, and they, too, should be fought.

You have until March 18, by the way, to register your complaints to those regulations. A report which should be published by the Committee on Aging in just a few days will provide more details.

Let me conclude with just a few comments about the much-publicized *battle* of the budget, struggle over impoundment, and the tug of war developing between the President and Congress.

As for the budget, Mr. Nixon has already been largely successful in persuading the media and the bulk of the public that he has presented an "economy" budget to a spend-thrift Congress, in a determined drive against inflation.

I suppose it is useless to point out that an anti-inflationary budget is a balanced budget, or, better still, a budget in surplus. Since he became President over four years ago, Mr. Nixon has yet to send Congress a balanced budget. Indeed, his new budget embraces a deficit of between twelve and fifteen billion dollars. It is an inflationary budget.

By the same token, I suppose it is equally useless to remind the people that Congress has reduced—yes, I said reduced—the Nixon budget requests over the last four years by a grand total of $20.2 billion dollars! Why, then, should Congress have to wear the hair-shirt for fiscal irresponsibility? It belongs just as much, if not more, on the President's back, as on ours.

The truth is that neither the President nor the Congress has kept the Federal Government's financial house in order. Blaming the "other guy" is the oldest political trick in the books. In the past four years, the national debt has leaped up an astonishing $104.3 billion dollars. Both the Nixon Administration and the Congress are to blame.

In view of this, there is no doubt in my mind that a ceiling must be set on Federal spending, and the over-all budget must be cut to fit within the ceiling. The argument between the Democratic Congress and the Republican Administration has nothing to do with setting a ceiling, but rather with where the spending cuts shall be made.

The President wants to cut back on civilian spending and increase military spending.

I am against that.

The President wants to cut back on domestic spending and increase foreign spending.

I am against that.

The President wants to curtail spending by executive decision. I believe that spending priorities should be determined by *all* the elected representatives of the people. Under the Constitution, the power over the purse belongs to Congress, and that's where it should remain!

I believe it to be the duty of Congress to establish its own spending ceiling and stick with it. Then the President will have no excuse to disregard the priorities established by Congress. If he still wants to impound certain appropriated funds, let him submit his case to Congres for its approval. In this way, Congress can again regain true control over the purse strings, as our Founding Fathers intended.

Important as the Congressionally-established ceiling may be, I think that it should be accompanied by something more.

I think that the time has come for dealing more effectively with what might be called a "boom or bust" pattern in the social legislation of this nation.

The New Deal and the Fair Deal were followed by eight tread-water years during the 50s.

After the New Frontier and the Great Society, we are now faced with an Adminstration which proclaims most previous efforts as failures while offering no real alternative program of its own.

It seems to me that this nation must practice discipline during the periods favorable for "boom" action, just as it must apply perspective and reason during the periods when "bust" could become the rule.

We need a social budget in this nation.

We need not only clearcut goals, but a timetable for reaching them.

In short, we have to keep our heads and still find the way to satisfy our hearts.

To this group, I can give the assurance that the Committee on Aging will do its part in preserving the best of what we have done while seeking better ways to do what remains to be done.

I thank you for inviting me here today, and to those who were dismayed last year by that political slogan, "Four More Years" let me give you a reassuring comment.

It's no longer four more years. It's now three years, 10 months.

A RESOLUTION PASSED BY THE SOUTH CAROLINA APPALACHIAN COUNCIL OF GOVERNMENTS

Mr. THURMOND. Mr. President, on February 23, 1973, the South Carolina Appalachian Council of Governments passed a resolution approving in concept the development of an expressway running from the Midwestern United States to Florida, which would pass through the Appalachian Region of South Carolina. This resolution clearly sets forth the position of the South Carolina Appalachian Council of Governments on this important matter.

Mr. President, on behalf of the junior Senator from South Carolina (Mr. HOLLINGS) and myself, I ask unanimous consent that this resolution passed by the South Carolina Appalachian Council of Governments be printed in the RECORD.

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

RESOLUTION

Whereas, The interstate highway system has proved of great value to the Nation, and

Whereas, The Federal statute creating the Appalachian Commission provided for the planning and building of expressways called "Appalachian Corridors," and

Whereas, South Carolina is one of the few participating states in the Appalachian Commission in which no highways have been approved or constructed under this program althougn in recent months a request has been made for the construction of such a corridor between Greenville, South Carolina and Hendersonville, North Carolina which if approved would provide for about twenty-five miles of highway in South Carolina in comparison to hundreds of miles in many other states, and

Whereas, The South Carolina Appalachian Council of Governments have been requested to approve in concept the development of an expressway from the midwest to Florida which would pass through the Appalachian Region of South Carolina, and

Whereas, The proposed route is described as follows in the resolution submitted.

Whereas, It would be of great value to the Appalachian Region and particularly the

States of Tennessee, Virginia, North Carolina and South Carolina, if an "Appalachian Corridor" of expressway were constructed generally running parallel to U.S. # 221 the proposed northern route running to the east of the City of Spartanburg and thence to the east of Chesnee, South Carolina; thence by way of Forest City, North Carolina; Morganton, North Carolina; Lenoir, North Carolina; Boone, North Carolina; and connecting with Interstate Highway # 81 between Bristol, Tennessee and Abington, Virginia and thence across Kentucky to the midwest and the proposed southern route being to the east of the City of Spartanburg between Spartanburg and Cowpens and going by way of Woodruff, South Carolina; Fountain Inn in Greenville County and Honea Path in Anderson County and at this point as it leaves the Appalachian Region it is hoped that an expressway, a federal program could be developed which would ultimately connect the Appalachian expressway with an expressway leading to Central Florida by way of Greenwood, South Carolina; Augusta, Georgia; Statesboro, Georgia; Waycross, Georgia and thence to Jacksonville, Florida.

Whereas, The proposed route would pass through four of the six Appalachian counties of South Carolina: Cherokee, Spartanburg, Greenville, and Anderson, and would be of benefit to Pickens and Oconee, and

Whereas, Such a route would be of major benefit to the Piedmont Crescent, those counties stretching from Cherokee to Greenwood and would provide a financial boost to Abbeville, McCormick, and Edgefield, and

Whereas, The proposed route has been formally approved by the Spartanburg County Delegation and by nearby all of the other individual legislators from the counties most affected, it being understood that formal endorsement from the respective legislative delegations or others can later be made a part of the record, and

Whereas, Such an expressway which it is hoped would ultimately extend from Columbus, Ohio, in the heart of industrial America to Jacksonville, Florida in our fastest growing state would be of great service to the eastern part of our nation, and

Whereas, in Kentucky its development would help bring prosperity in the mountains of Tennessee and North Carolina it would help the ski and recreational areas, at Lenoir and Morganton, North Carolina it would be of help to the furniture industry, in South Carolina it would serve over three quarters of a million citizens if one counts those people living within thirty miles of the route, it would also reduce the traffic pressure between Spartanburg and Greenville on I–85, it would also assist in easy access for industrial facilities and recreational areas, in Georgia it would materially help in the industrial development of South Georgia, and as to Florida it would assist in the control of its flow of traffic from the rest of the nation going to Disney World etc. and

Whereas, the development of such an expressway would supplement our other programs and would help in the development of the Appalachian Region of South Carolina, of the Piedmont area, and would be beneficial to the entire state, now therefore,

Be it resolved, by the Appalachian Council of Governments that it goes on record as approving in concept the development of such an expressway and it does respectfully request the considerations and study of such an expressway, and asks that this matter be brought to the attention of Governor John C. West, Colonel James Whitmire, his representative on the Appalachian Commission and such other Regional Councils, individuals, and groups that might be interested in it.

THE NEW UNITED FRUIT CO.

Mr. RIBICOFF. Mr. President, the constructive activities of major corporations in this country often go unnoticed even though numerous companies make positive contributions to their workers and the communities in which they are located. An intriguing example is the case of the United Fruit Co., now owned and operated as part of United Brands, whose chairman and chief executive officer, Eli Black, is a constituent of mine.

For years United Fruit was criticized, particularly in Latin America. In the last few years, however, the company's activities have focused on the welfare of its employees and the stable development of the countries in which it operates. Two news articles from the Boston Globe and the New York Times detail the change in image of United Fruit that has resulted from these efforts and I ask unanimous consent that they be printed in the RECORD.

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

[From the Boston Evening Globe, May 10, 1972]

UNITED FRUIT—A MALEFACTOR TURNED BENEFACTOR

(By Georgie Anna Geyer)

LA LIMA, HONDURAS—It was the "ITT" of its time, overthrowing governments when it pleased, bribing officials who were too happy to be bribed, and turning its own name into a common noun that read "Yanqui Imperialismo."

Anyone who doubts that old dogs can't learn new tricks should look at United Fruit's $100 million investment in Honduras today.

It may well be the most socially conscious American company in the hemisphere. Its workers are the highest paid in Honduras ($4.50 a day) and their housing, health care and education are free and excellent.

It is the company union now, not the company, which is fighting government intrusion, into their social paradise, such as attempts to take over the fine company hospital.

It is the 14,000-employee union which is against the company's "progressive" plan to buy from local farmers so as to free itself from the political onus of owning too much land in a foreign country. The Honduras farmers do not treat their employees as well as United Fruit, the workers insist vehemently.

Moreover, the company, now known as United Brands Co., is under a US antitrust order to divest itself of one of its holdings in Honduras, Guatemala, Panama, or Costa Rica, but none of the countries will allow it to leave.

There should be a moral to the story, but where? For in the last 10 years, the company's share of the banana market has dropped from 60 percent to 40. Earnings have not been high, largely because their costs are higher than those of new native producers in Ecuador.

"We are paying $2 in social benefits for every dollar earned," manager Houston H. Lacombe, a pleasant, serious man, commented recently, sitting in his simple frame office in LaLima. His grin was half a grimace. "That's our problem."

It may be their financial problem, but it is also their social pride, for as American companies go today, that old "devil" United Fruit, blasphemed from a hundred election platforms, bitterly rhymed about by Latin poets, the "shark" or the "green prison" or the "octopus" of Latin leftists, has become a veritable example for other companies.

Lacombe said: "We're completely out of politics. We realize we have to work with whatever party is in power. We get along very well with the government, as long as we keep our nose clean." He smiled, "We have no political opinions."

Oscar Gale, the 52-year-old director of the company union, wandered in. A husky, curly-haired man wearing a green guayabera shirt, he obviously felt completely at home with Lacombe.

He should feel at home. His big two-story brick union building is by far the fanciest building in La Lima, and he travels abroad (to labor conferences) more than most company executives do. George Meaney calls him "Brother Oscar."

"In 1923," the union man said, "Gen. Carrilas (Gen. Tiburcio Carilias) told the company that if they gave him 6 million lempiras, he'd resolve the strike that year."

Lacombe and company official Robert Turnbull looked for just a moment vaguely uncomfortable. "Not only that, but he promised to eliminate all the attempts at organizing a union.

"It was just after the Russian revolution, remember, and, sure enough, when he became president he took Honduras out of the international labor organizations."

Things began to change in 1954 when a new union, formed in response to the social measures agreed to by the hemispheric countries in the 1948 Act of Bogota, staged a monumental strike of 60 days. The workers got a raise of 35 percent.

"But the real change came in 1959," Gale went on. "One day the director of the company called me and said, 'This time, don't call the journalists. Let's go to the negotiating table.' Before, we had always had an intense campaign in the press. Before going to the company, I'd go to the press." Everybody laughed.

"Now we have very good relations with the company," he summed up. "We resolve our problems directly on the negotiating table. This year we got the 7th-day wage, which doesn't even exist under Honduran law."

"We offered it before they asked for it," Turnbull said, smiling."

To see the United Fruit "town" at Le Lima and the surrounding area is to see half a picture of the past and half a picture of the future. In the midst of hot, wild, semi-tropical country, La Lima is a yanqui-with-lawnmower oasis of large wooden houses, huge overhanging trees, two clubs with swimming pools (one for workers), a nursery, 41 Latin schools and two English schools.

When workers' or employees' children finish the seven grades available here, they can get money from the company to study in the United States. Many do.

Next to new La Lima stands old La Lima, a collection of Wild West bars, pastel-colored wood storefronts and narrow winding streets. About seven miles away is booming San Pedro Sula, Hondura's main industrial city which has boomed largely because of the company's policy of buying locally.

In contrast to the other half-awake towns in Central America, San Pedro goes every hour of the day and night and probably has more Latinos with big bellies, low-slung belts and Texas-style hats than any other few square miles south of Texas.

Out in the hot green countryside, among the sea of green banana trees, are the attractive little clusters of wooden houses and soccer courts where many of the workers live.

What was it that "reformed" United Fruit?

Largely, it was the change in the times. When the company started in the early years of the century, it operated the easiest way to

operate. In the late '40s and early '50s, Latin Americans awakened to social change. Unions were formed and social legislation began in most countries.

Many of United Fruit's people realized, though not before they had done irreparable harm in maintaining power dictators, that it was the end of an era.

Eventually it not only ceased most political intrigue, it began to diversify. In Honduras it embarked upon a little era of reform.

In 1952, it decided to help its long-time Honduran administrative employees own their own land and buy the bananas from them.

"We thought it would be better politics to let the nationals own their own land," Lacombe said. So they helped employees called the Associated Producers buy 7000 acres by lending them the money and then deducting 10 cents a box of bananas until the loans were paid off.

The union and the workers heartily disagreed with this. "What happens," Gale said, "is that the individuals don't work their own farms. They spend the money earned in other businesses. Many left them to their wives and the workers were lower paid and had none of the social benefits of the company."

"It's funny," another official of the company said. "These men worked with the company and they knew the business, but when they got their own land, they kept cutting back—not enough fertilizer, planting too much. We wanted to do something for the people."

Today the banana business is not exactly booming. United Fruit shipped 31 million boxes of bananas from its 21,000 acres last year, but the price was down so much that the profit margin was slight.

The company is still suffering from a disastrous hurricane which destroyed thousands of acres of trees a few years ago and it is suffering from the new Ecuadorean producers who entered the market at that time and pay subsistence wages with no social benefits at all.

[From the New York Times, Apr. 24, 1972]

UNITED FRUIT LIVES DOWN A "COLONIALIST" PAST

(By Richard Severo)

LA LIMA, HONDURAS, April 9.—The United Fruit Company was born in 1899, when the United States walked softly and carried a big stick; it reached adolescence when American troops were being sent to Latin America with disquieting regularity, and by the time it was 30 it had become the corporate personification of the Ugly American abroad.

In 1972 United Fruit remains a major American business venture south of the border. It is quite clear that the company has changed—decidedly for the better—but in the history books and newspaper files of any library it remains the symbol of the mendacious, aggressive Yankee trader at his ruthless worst.

History has chronicled United Fruit as the exploiter of hapless workers and the corrupting manipulator of weak Latin-American governments that gave it control over hundreds of thousands of acres of productive land.

Years after the company began to change, the Nobel laureate Pablo Neruda would express the lingering bitterness with a poem entitled: "The United Fruit Company":

> It rechristened its territories
> As the "banana republic"
> And over the sleeping dead,
> Over the restless heroes
> Who brought about the greatness,
> The liberty and the flags,
> It established a comic opera:
> Abolished the independencies,
> Presented crown of Caesar,
> Unsheathed envy, attracted
> The dictatorship of the flies.

Whatever the myth and the reality of its turbulent past, United Fruit appears to have learned from history. Now, in a region filled with the incipient change of rising nationalism, where American businessmen talk nervously of expropriation and where Latins accuse Americans of meddling in governmental affairs, United Fruit has won considerable acceptance and even a measure of goodwill from the more than 12,500 Hondurans on its payrolls.

THE LARGEST LANDOWNER

That is no mean task for a company that is still probably the largest landowner in the nation, controlling or leasing more than 200,000 acres in a small country—the size of Tennessee—whose economy seems irrevocably tied to the fortunes of the banana business.

The company still has numerous critics, not alone in Honduras but in Costa Rica, Guatemala and Panama, where it also has vast holdings of land. Many reformers in the four countries consider a company like United Fruit to be incompatible with their ultimate aim of providing the rural poor with an equitable share of the land.

Perhaps even more compelling than land reform is the growing insistence of the underdeveloped countries that they control their destinies—essentially a prideful sense of identity that is powerful enough to discount the possible benefits of vast foreign investment in favor of taking on the unknown, with the human and other resources at hand.

Even amid feelings such as those, United Fruit is no object of hate in Honduras, and the reasons go beyond the $22-million a year in salaries and $4.7-million in taxes that it pays.

Its modern phase is epitomized at the plantation at La Lima consisting of thousands of acres of banana trees stretching eastward from the city of San Pedro Sula, in northwestern Honduras.

In the company-built settlement that is La Pima proper, the ordered rows of housing and offices would have an almost military aspect were it not for the huge eucalyptus trees. Pride of India trees bursting with pink flowers and mango trees that grow along-side many of the workers' houses.

It is hot, but around La Lima, a picturesque, perhaps even quaint town, there is a refreshing breeze off the sea nearby. The groves of banana trees stand where once there was rain forest.

What emerges from talks with labor, management and government is a picture of a company that anticipated the changes that have swept Latin America and has quietly set about adjusting to them.

Perhaps most important, the company maintains wage rates for banana pickers and other low-level workers that exceeds not only those for agricultural work elsewhere in Honduras but also those for jobs in the city, where secretaries and clerks average $30 a month. Company pickers average around $95 a month on the basis of a 44-hour week while the average agricultural worker not employed by United Fruit gets around $12.

Comparisons are misleading, furthermore, because of certain fringe benefits, including housing and health care.

Leónidas Piñera, a grass cutter, can save $10 of his weekly $30 as a result of concessions granted by the company. "I also have 40 shares of bank stocks worth $200," he said recently as he sat in his small but neat company-built ranch house. "It is for my retirement."

United Fruit supplies free housing and electricity for all its laborers. The housing has been upgraded in the last 15 years to a point where it is substantially better in basic construction and in amenities than the norm here. In its most frequently encountered form, the housing offers indoor plumbing, tile baths and a plot of land large enough for a garden and a modest recreation area. The company reports that it spends about $1.5-million a year to maintain the houses.

HOUSES SOLD AT A LOSS

For workers who do not wish to live in company houses, United Fruit has a program in which it builds small—by American standards—ranch houses for roughly $3,600, sells them to workers for $1,800 and uses the proceeds to build more. The program has sold 544 homes to workers, and the company estimates it spends about $300,000 a year on the project.

Another aspect of the labor policy is that company policy favors the hiring of Hondurans in Honduras and permits them considerable upward mobility. Although the residential manager is a North American, most of his principal aides are Hondurans. Of 325 employes at a supervisory level 300 are Honduran and only five are North American.

Company records indicate that 99 per cent of the work force is Honduran, with about half of the rest American or British.

Alberto Reyes, a worker who rose through the ranks and is an assistant superintendent at La Lima, remembers that things were quite different 25 years ago.

"I worked from 6 A.M. to 6 P.M.," he related. "We never dared complain. They would bring in Guatamalans and others to pick the bananas. The Americans had all the good jobs then. All that is past."

ABOUT 8,000 PUPILS, 210 TEACHERS

As part of the effort to improve the Hondurans' lot, the company pays the entire cost—$500,000 a year—of a school system with 210 teachers that, at present, is educating 8,000 pupils to at least the sixth grade. The company also offers more than $50,000 in scholarships for those who show the motivation and ability to finish high school or college, with no stipulation that the winners return to work for United Fruit.

Health care is also emphasized, with a company-financed system of hospitals and clinics that serve the workers and their families. At La Lima there is a 235-bed hospital, built in 1952, with 11 fulltime physicians and the capacity for major surgery and treatment. Workers pay 25 cents a day when they need care.

Although United Fruit is still a giant landowner in Honduras, it has turned about 135,000 acres back to the Government over 20 years. Moreover, it has made outright gifts of 50-acre banana groves to 86 of its responsible pickers to set them up as independent planters. Some who made $1,200 a year as pickers now earn as much as $7,000 as growers.

In a region where the labor movement is weak and sometimes harassed, the union that deals with United Fruit is especially proud of its strength and the fact that it has been able to engage in the kind of collective bargaining unionists north of the border understand.

"The company respects us and we respect the company," said Oscal Gale Varela, head of the more than 9,000 members of the Tela Railroad Workers Union (in Honduras United Fruit is known by the name of its railroad, and the union took its name from that):

IMPROVEMENTS SUGGESTED

"In reality we are better off than other Honduran workers," he continued. "Certainly it isn't perfect. I would like the company to be more Honduran and have more Honduran investors. I would also like the company to emphasize educational opportunities for the children more than it has already."

Mr. Gale was asked if he thought the workers' lot would improve if the Government expropriated United Fruit and ran it for "the good of the people."

"No, absolutely not," he replied. "Governments generally tend to make bad administors. You know, the banana business is a good business if you have economic recourse—the production techniques, the transportation facilities, the store outlets, the experience. The Honduran Government doesn't have these things; United Fruit does."

Rubén Mondragón, Minister of Economy and Commerce, when asked his opinion of the company, said that he felt it was an asset to Honduras and that he could envision neither the need nor the possibility of expropriation.

Any company the size of United Fruit is bound to have complex relations with government. The subtleties of that relationship were not perceptible at the plantation. But the condition of the workers was visible, and conversations with them made it obvious that they felt fortunate.

HEALTH GAINS STRESSED

Not only did they appreciate the material benefits but many of them felt that Hondurans had a great deal to say about the way the company was run, and they took some pride in it.

They also recognized that their health situation had changed. "I remember the various fevers we used to get—the malaria," said Enrique Quesada, a parking supervisor for 25 years. "Now it is difficult to get malaria."

Dr. Julio C. Rivera, who is in charge of the hospital, has records that bear Mr. Quesada out. "And we haven't had a case of polio here for three years," Dr. Rivera added. He also talked at length about the company's program of inoculations.

All the workers interviewed spoke fondly of their paid vacations, starting at 10 days off after the first year, which were nonexistent in the United Fruit of old.

United Fruit's unannounced "Honduranization" of the company has not been without its problems, but what started as a bad boy has become a paternal 73-year-old. The arch-capitalist of yore has granted social-welfare programs that would gratify an activist reformer. In Honduras, at least, the scars of the old scuffles have gone a long way toward healing.

Despite the successes in Honduras, the company's planners do not delude themselves the expropriation is out of the question or that the goodwill built up over 20 years cannot be discounted by a new regime in Honduras, where political instability has reoccurred.

Among themselves company executives have talked of the day when the vast plantations might be in other hands and United Fruit just a transporter of bananas.

"It might happen," a Honduran remarked, "and if it does, it will be interesting to see just how the newcomers deal with the workers."

THE "NEWS MEDIA SOURCE PROTECTION ACT"

Mr. WEICKER. Mr. President, last week I testified before the Subcommittee on Constitutional Rights with respect to S. 318, the News Media Source Protection Act.

Along with the cosponsors of that bill, Senator BIBLE, Senator BROCK, Senator BROOKE, Senator CANNON, Senator CASE, Senator COOK, Senator FANNIN, Senator JAVITS, Senator Moss, Senator PELL, Senator TAFT, and Senator YOUNG, I am concerned that the issues S. 318 addresses are treated responsibly. For that reason, I attempted to do more, in my testimony, than simply reiterate or republicize the drama of newsmen struggling to protect their news sources from the Government.

Quite simply, the rhetoric already abounds.

I am more than willing to leave it to others—who have testified or who will testify—to dramatize the impact of this struggle.

Instead, I indicated in my testimony that I wished to serve the committee in its legislative task, by setting forth informative testimony on the specific legislative problems the Congress now faces.

The complicated responsibility we are undertaking, will, in the end, yield only to thoughtful, well-informed consideration of fundamental legal questions. I felt a direct responsibility, therefore, to assist in that most serious and difficult task.

FOUR BASIC QUESTIONS

Judging from numerous deliberations that I have experienced and witnessed in recent months, four basic questions must be intelligently handled, if the Congress is to produce sound and wise legislation. My testimony focused on these four questions:

First, do we need legislation at all—or alternatively, could a legislative solution be counterproductive?

Second, is the public's right to news "absolute," or should it be balanced with other fundamental needs and rights of society?

Third, what is the extent of Federal legislative authority; or put another way, should Congress preempt State legislative authority in this matter?

And fourth, should Congress enact carefully drawn and unambiguous standards, as opposed to broad and sweeping legislative provisions?

THE NEED FOR LEGISLATION

In addressing the first question—whether we need legislation at all—it is important to set out a framework for viewing this whole issue of Government intrusion on news sources.

To begin with, the recently publicized plight of newsmen is not our first experience with dramatic jailings of newsmen. Even the young Benjamin Franklin, while serving as an apprentice, was brought before a government body and questioned about a news source. In that very case, Franklin's editor was imprisoned for a month when he refused to reveal his news source.

If threats to hold newsmen in contempt are not new, it cannot be said with equal fervor that the overall effect of recent attacks on news gathering is old hat. On the contrary, the dramatic increase in scope and intent of subpenas and other events over the past 4 years has generated consternation and apprehension throughout this Nation.

Simply stated, then, the problem is this: Widespread activities, such as subpenas, speeches by Government officials, or "guidelines" from the Justice Department—all of which may have little "empirical" significance in and of themselves—have undoubtedly combined to create a highly visible and distinct awareness that news sources had better be careful—or better yet, be quiet.

If we put the problem in proper perspective, it is really a question of a rather frightening "message" that has been telegraphed throughout our society. We must now restore the proper sense of confidence to those who are potential sources of our news.

Reason and responsibility will fight the fear we are dealing with. Extremes are not needed.

My analysis, to this point, indicates only the nature of the problem we face. To answer whether a legislative solution is appropriate we must look at other facts.

Judging from the nature of the problem, it would have seemed far preferable for the Supreme Court to have dealt with it when they faced the issue last June. Unfortunately—and in contrast to popular myths—there was no binding legal basis for the Court to act upon. The first amendment does not address itself to the right of newsmen to protect sources. It says simply:

> Congress shall make no law . . . abridging the freedom of speech or of the press.

It is a "prohibitory" statement, and asserts no positive obligation on judicial creativity—except perhaps when interpreting a specific legislative enactment. At best, there is a "spirit" or "intent" in that amendment that the Court could have used as a springboard for innovative judicial leadership. The Court did not take that path, and their decision is clear on its face.

Nor can we look elsewhere in the statutes for some codification that pertains to rights of a news source or newsman to some confidential relationship.

In essence, then, there is no affirmative "law" to protect what we all talk about as a "free press."

We might have hoped for some action from the executive branch. And although we did see the Justice Department issue a set of "Guidelines for the Attorney General on Press Subpenas" in 1970, this is not an appropriate or adequate solution. To begin with, it is the wrong message—because it spells out "how to" get at news sources, not "how not to" abridge a free flow of news. Even more important, administrative regulations have a fundamental flaw. They depend on the whims of administrative fancy—they can be rescinded in an instant, without debate or public participation.

So the answer to my first question is that legislation is needed. It is needed because there is a specific problem to be dealt with. It is needed because, contrary to popular myth, there is no other legally enforceable basis for protecting the public's right to news. It is needed because there are those who would cheapen the spirit and intent of a free press.

Now, let me add one word of caution. Although legislation may be needed, this does not mean just any piece of legislation. Harsh or extreme measures that leave us with unwanted side effects, or widely disruptive statutory precedents, would be ill advised.

Legislation springing from hysteria

is not needed. Legislation to deal with the practical aspects of the problem is needed—it is all that is needed. There is an old adage in the law that "hard facts make bad law." Let us not allow hard facts in this case sway us into bad law that will in the end be unconstitutional law—and therefore no law at all.

THE NEED FOR BALANCED PROTECTION

The second issue I would like to comment on this morning is whether the public's right to news is absolute, or whether it should be "balanced" with other fundamental needs and rights of society.

I would like to mention at this point, Mr. President, a statement I have heard over the past few weeks and days. The statement was made that an absolute and preemptive bill is a political impossibility. May I point out that an absolute bill is a constitutionally impossible bill. That is the point. Not that it is a political impossibility.

We have a first amendment to the Constitution, but we also have a sixth amendment. Unless we are willing to dispose of the sixth amendment, then an absolute bill is a constitutional impossibility, and I think that ought to be said clearly at this point in time.

This is at best a complicated question, and I will try to reason it through by approaching the issues step by step.

First, I feel it is important to understand what type of legal concept we are attempting to employ. One technique that is often put forward is that we are embarking on something akin to evidentiary privileges, such as those granted to a husband and wife.

Not surprisingly, those court cases which have considered the relationship of a newsman's privilege to a common law privilege—such as *Brewster* v. *Boston Herald-Traveler Corp.*, 20 F.R.D. 416 (1957)—have concluded that policy reasons for the newsman's evidentiary privilege are lacking. To illustrate this, we must look at the four basic criteria cited by Professor Wigmore, the leading scholar in the law of evidence as necessary to establish a common law privilege.

First, the communications must originate in a "confidence" that they will not be disclosed. What this means is that when a wife talks privately to her husband she does not expect any part of that conversation to be repeated anywhere, at any time. On the other hand, when a news source tells something to a newsman, his whole purpose is to see that the story be told—in public.

Wigmore's second criteria requires that confidentiality be an essential part of a "relationship" between the parties. To the best of my knowledge, there are few ongoing "relationships" between newsmen and their source, at least not the type of relationships that are held together—like a marriage or religious alliance—by private talks and interchanges which stimulate, benefit, or foster an interdependence between each other.

Wigmore's third criteria—that the community have an interest in fostering this relationship—is again off the mark. The community has no interest in the personal, private relationship between newsmen and their sources, but only in the information which is disclosed from their dealings.

Finally, Wigmore's fourth criteria—that injury from disclosing the content of the communications must be greater than the benefit gained by the correct outcome of litigation—is not necessarily met by the news relationship. There is often no injury from disclosure of the content of communications—after all, that is the whole point of the relationship.

An additional point that must be made with respect to privileges is that, as opposed to all existing concepts of evidentiary privilege, the newsman would be the person asserting the privilege. In contrast, for example, a lawyer-client privilege belongs to the client, and the client may waive it regardless of his lawyer's wishes. Furthermore, for the first time we would be asked to contemplate a privileged communication in which someone invoking the privilege could pick and choose as to what parts of the relationship or communication they would reveal.

Finally, the other professional relationships protected by common law privileges are fundamentally different from the relationships newsmen would protect. Those professionals to whom a common law privilege is now extended provide a real and needed service to the persons who seek their aid.

It is clear that an evidentiary privilege is not appropriate.

Where, then does this lead us?

Perhaps the best analogy to what we are dealing with is the "informer's privilege"—a relationship which permits law enforcement officers to refuse to disclose an informer's identity. Resemblance between the two situations lies in the underlying legal justification that, in its absence, valuable information would be lost.

Now we come to the crucial point. When a witness who refuses to answer a question on first amendment grounds is confronted with the accused's sixth amendment right to compel testimony, it has been held—in the landmark case of *Roviaro* v. *United States*, 353 U.S. 53 (1957), that sixth amendment rights are of sufficient importance to override the Government's interest in maintaining the confidentiality of its informant relationships. The Court, in another landmark case, *Barenblatt* v. *United States*, 360 U.S. 109 (1959), stated that—

> When an abridgement of the First Amendment flows from an otherwise lawful government action, the resolution involves a balancing of the particular interests.

Mr. President, because we have certainly heard a great deal about the first amendment, I think it is important to read the sixth amendment:

> In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor.

This is also a right we all have. How frightening to live in a nation which does not have a free press, but how frightening to live in a nation where we cannot face our accusers. And that is why I said this is a job that is going to require tremendous legislative skill, not demagoguery. Demagoguery is the one thing that can rip apart the one thing we all have that is valuable—that is the Constitution of the United States, and that stands ahead of everything.

I would suggest that the Congress follow this well-considered path already staked out by the Court. We have established that we are dealing with absolute rights to a strict evidentiary privilege.

We are not even concerned with any person's privileged status—but rather with the public's right to know. At best, we have a legal analogy to the protection granted informers. The Court, as well as numerous legal scholars, have seen fit to "balance" our own Government's first amendment "interests" in the confidentiality of informers. I would encourage a continuation of this concept of balancing in our present legislative task.

This, however, leads us to the issue of whether balancing is either proper or wise.

We need not search far—no further than the citation of 21 separate landmark cases in the recent Branzburg opinion, also referred to as the Caldwell case—for authority that—and I quote:

> Laws serving substantial public interests may be enforced against the press as against others, despite the possible burden that may be imposed.

Again I quote:

> It is clear that the First Amendment does not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability.

Beyond these specific statements, there is ample authority for balancing first amendment rights.

I submit, therefore, rights "specifically" granted under the sixth amendment—rights to every man's testimony—can, with all due propriety, be balanced with rights that are at best "derived" from the spirit of the first amendment. Would this be a wise course of action? You will recall that when I earlier outlined the "problem" we are facing, I took pains to point out that the real problem is not found in the extreme cases, such as dramatic jailings, which have been with us for centuries. The problem is found instead in the scope and depth of public fears—which has a primary impact on drying up sources of news. There is no need then to jump to legislative extremes—we can cover the scope of normal experiences by assuring a balance in favor of news sources in those cases. Only when we reach the unusual and compelling case—the murder, the rape, and so forth—would the balance shift. It is a sensible form of protection. It does the job. It sends a clear message because it does not sacrifice predictability, so long as careful standards are employed; and it does not set unwieldy, unnecessary, or haunting precedents.

THE EXTENT OF FEDERAL LEGISLATIVE AUTHORITY

The third basic issue this committee must resolve is whether Congress should preempt State legislative authority.

One theory that is often put forth in favor of preemption is that first amendment rights are among the rights that are protected under the words of the 14th amendment—which mandated "equal protection of the laws." As we all know, in recent years the 14th amendment, including all rights incorporated into it, has been interpreted as applying to the States.

This is all true. The States cannot undertake an activity today which violates the first amendment, because it will be declared unconstitutional by means of the 14th amendment.

But there is one important flaw. The first amendment only prohibits Congress from "making" a law which violates a free press. Similarly, under recent interpretation a State cannot make such a law. There is absolutely no language whatsoever in the first amendment that confers upon the Congress an affirmative legislative authority or power. In fact, it says the opposite. Nor is there any precedent for Congress using legislative powers springing from that amendment for enacting legislation. The clauses of the Constitution that grant legislative powers have been well established—and this is not one of them. If no positive legislative powers are granted Congress under this amendment, then there are no such powers to be incorporated into the 14th amendment and thereby applied to the States. This route is closed.

Alternatively, it is said that the interstate commerce clause gives Congress the power to preempt States in regulating a newsman's testimony. This possibility requires us to take note of a very important point. What the Congress is considering today is, in fact, a set of rules as to who shall, and who shall not, testify before courts, agencies, commissions, and legislative bodies. These are procedural rules, no matter how we may try to dress them up.

Now, we all know that rulemaking powers, the very powers that we have used to promulgate the Federal rules of evidence, the Federal rules of civil procedures, the Federal rules of criminal procedure, and the Administrative Procedure Act have all flowed from the "necessary and proper clause" of the Constitution. Congress has the power to enact whatever laws may be "necessary and proper" for the functioning of its own body and the specific bodies it has the power to establish—such as the Federal court system and the Federal agencies, departments, and commissions. None of these sets of rules was ever enacted under powers found in the interstate commerce clause. Not only would that be an absurdity, but it would be a complete irrationality, and nullification of an immense body of law and experience.

Faced with complete sets of State rules, for every State in this Nation, we are now asked to contemplate Federal preemption hanging over each and every one of them. Imagine the chaos which would spring from the resultant uncertainty as to when and where the Congress would strike next. There is in fact no substantive distinction which could recommend against our imposing all Federal procedural acts on the States, since these acts often promulgate equally fundamental rights as those we are considering today.

All this under the guise of regulating interstate commerce?

We have no business in the State courts, or other State bodies.

If they indulge in unconstitutional procedures, the courts are there to strike them down. But so long as they enact constitutional procedures, we cannot impose our separate choice of procedures. We cannot even do it under the "necessary and proper" clause, because that authority extends only so far as the Federal bodies Congress creates or controls.

Once again, I cannot recommend the extremes of disruption and irrationality. I suggest for your consideration, a Federal law for Federal bodies.

THE NEED FOR CAREFULLY DELINEATED AND UNAMBIGUOUS DEFINITIONS, STANDARDS, AND PROCEDURES

The final issue I will address this morning is the need for careful and unambiguous legislative provisions. This question actually goes to the "format" of the legislative product—specifically, the use of comprehensive and carefully delineated definitions, standards and procedures.

I would begin with an observation from the recent Branzburg decision. The majority in that case pointed up the difficulty in setting up a rule, for protecting news, that would lend itself to "uniform enforcement." It was noted, in addition, that such uniform enforcement is absolutely essential to a meaningful resolution of existing difficulties.

I concur in these observations. If the legislation we turn out is to mean anything, it must not be subject to the vagaries of ad hoc interpretations. Let us not be naive and say that this is cured by a sweeping "absolute" sets of provisions. We must still answer "who" and "what" are protected, and "when" and "how" they invoke protection. Use of sweeping words, like "any person," is no solution. Almost every person in my Senate office processes information for dissemination to the public through a news medium. How, without specificity, does a court determine whether these persons can invoke a news shield bill to refuse testimony?

This is not even considering that failure to draft comprehensive and well-delineated provisions may send our legislative product off to the junk heap of "unconstitutionally vague" legislation. We must not only avoid a law that is incapable of uniform enforcement, we must also avoid a law that is incapable of enforcement at all—for "vagueness."

The favorite obstacle to resolving such difficulties is the cry that this type of legislation cannot accommodate confining definitions. This argument—that, for example, we cannot legislate a definition unless it covers every "pamphleteer"—demonstrates a basic misunderstanding of what the Congress is doing. As I have explained earlier, we are not enacting a law pursuant to some first amendment grant of legislative authority. Rather, we are implementing the spirit of the first amendment by means of powers granted under the "necessary and proper" clause. These rulemaking powers do not in and of themselves restrict us—at least in the sense that courts are restricted in their very different role of having to interpret the first amendment, which they, of course, interpret as applying to everyone.

The only way that the mandates of the first amendment could come into play would be if and when the Court reviews the law we may pass. We may irrefutably enact rules applying to anyone we please, so long as this is not unconstitutional.

Would our action here be unconstitutional? The answer is clearly "No."

We will not violate the first amendment by passing a set of procedural rules which enlarge newsmen's existing rights. Rather than passing a law abridging a free press, which would be unconstitutional, we are expanding the existing legal protections with respect to the flow of news.

Finally, there are practical aspects of the legislative format to be considered. We will have provided the newsman with nothing if we fail to provide "predictability." It is essential to be able to tell with certainty whether a specific "newsman" is able to assure confidentiality, whether he has a bona fide "source," or whether specific activity is covered by a shield law. Sweeping terms will "wait" for court interpretation.

On the other side of this issue, the public wants equal assurances that their right to their neighbor's testimony is not disturbed by a sham. They want, and have a right to, assurances of legitimacy—specific statutory assurances. Indeed this is nothing short of the stake we all have in maximum confidence as to the integrity of our judicial processes.

The format presented in S. 318, News Media Source Protection Act, assures against these abuses and pitfalls. The committee may wish to examine the specific internal content of this format, and reshape it accordingly. But I strongly endorse the concept as a path of good judgment, and responsible government—and I gratefully acknowledge the same endorsement by 12 of our distinguished colleagues in the U.S. Senate.

In conclusion, what faces the Nation today are issues as to our individual rights, as they are embodied both in the first and sixth amendments.

Several years ago we all read in the newspapers of an incident where persons looking out of their windows actually saw someone being knifed in the street below, and they pulled their windows down and they drew the blinds.

I suggest that in many ways this Nation has preferred to pull the window down and close the blind, and we are in real trouble if that situation is allowed to exist. As long as we have a free press, and one that brings to us the facts and sounds of what is going on around us, we will be able to make the proper decisions. That is why the first amendment is so important. But it is also true, that if

in fact there have been excesses in harassing the press of this country, then certainly I do not want to see the press use excesses to harass the other rights we are granted under the Constitution.

The easy course for me, for the Government, and for the press, is to demagog this issue. On the other hand, if we are to leave to this Nation a legacy that is worthy of what is written in our Constitution, then I suggest we throw the demagoguery away and get to the business of having an informed nation, a sensitive nation, a nation sensitive to the needs and rights of us all.

A CHILLING EXPERIENCE

Mr. ERVIN. Mr. President, Daniel Schorr, one of the most highly respected and objective commentators and newsmen on the national scene, had a chilling experience which he recounts in graphic fashion in an article that was carried in Harper's magazine for March 1973.

As chairman of the Judiciary Subcommittee on Constitutional Rights, I attempted to investigate this episode involving Mr. Schorr, and in that connection invited White House aides to appear before the subcommittee and give their version of the matter. They refused to do so, and in consequence, created a credibility gap between themselves and those of us who have difficulty in believing that White House aides undertake to have the FBI investigate the qualifications of any person for a Federal office or position without first consulting such person and ascertaining from him that he would accept such position if it should be tendered to him.

I ask unanimous consent that the article relating to a most unusual episode be printed at this point in the RECORD.

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

A CHILLING EXPERIENCE—THE WHITE HOUSE, THE FBI, AND ME

(By Daniel Schorr)

Tom Wicker, in a New York Times column dealing with the Nixon Administration's attacks on the press, cited, along with the injunction against publication of the Pentagon Papers and the Supreme Court's decision on subpoenas for reporters, the "full-scale investigation of a reporter—Daniel Schorr of C.B.S.—considered unfriendly by some of Mr. Nixon's men." The investigation of me in August 1971 appears to have won a place in the history of the war between the government and the press—despite the Nixon Administration's avowals that no intimidation was intended and that the investigation came about because I was briefly considered for a government position.

Few in the press believe the government's claims, and because the effect of intimidation is there as long as intimidation is perceived, it is the continuing suspicion that counts. Seeking to discover whether the suspicion is warranted, I decided to make my own inquiry into the "Schorr-FBI affair."

The investigation started, without warning, on August 20, 1971. As J. Edgar Hoover dryly recounted it five months later in a letter to a Senate subcommittee, it was a simple matter, a "routine" investigation for "possible Federal employment," ordered by him the day after he had received a request from a White House staff member.

"Routine" for Mr. Hoover, but for me it was a day of disruption and puzzlement, the FBI at the door and the telephone incessantly jingling with breathless bulletins from superiors, associates, family, and friends touched by the widening web of interviews. Each one told of being advised that the reason for the questioning was that I was in line for a government "position of trust and confidence." To all I protested that I had not sought or in any manner been offered such a position. Most doubted me. The few who believed me proceeded to volunteer the darkest theories about possible motives for an investigation—harassment, intimidation, or a concealed effort to "get something" on me.

This seemed improbable to me, if only because the investigation was so overt. Later I learned that job investigations without jobs are not unprecedented. Lipman Bers, professor of mathematics at Columbia University, experienced a deja vu sensation when he read of my case. Only two months earlier, he wrote me, the FBI had visited him, his colleagues, and neighbors, saying that he was being considered for "an important position" in the executive branch. He told the FBI that it must all be a mistake, and the investigation ceased. "At that time," wrote Dr. Bers, "I considered the whole thing the result of a clerical error somewhere. But now I'm not so sure."

Jim D. Whittenburg, president of the National Council on Youth and Drugs, incurred the hostility of the Secret Service in October 1970 when he publicly criticized the Nixon Administration's policy on narcotics and marijuana. Several days later a Secret Service agent requested his medical file from his physician. The doctor was then asked to sign a Treasury Department release form referring to "a full field investigation being conducted relative to application for employment with the United States Secret Service."

Vincent Gillen, private investigator and former FBI agent, professed to be carrying out a preemployment check when he dug into the life of Ralph Nader on behalf of his client, General Motors. Testifying before the Senate Subcommittee on Executive Reorganization in March 1966, Mr. Gillen displayed impatience when Senator Robert Kennedy pressed him about a preemployment investigation made on a pretext and without the subject's consent.

"Oh, Senator, come on, come on!" chided Mr. Gillen. "For goodness sake, where did I learn this? In the FBI!"

Whether, in my case, the FBI was consciously using a technique or unwittingly acting as an instrument for the White House, it did the job with almost flattering formality. The agent waiting at the Washington Bureau of CBS News when I arrived for work on August 20, 1971, acted respectful, as one might toward a candidate for high office. He said that he did not know what position I was being considered for, and was surprised that I didn't know either. When I cut short the interview, saying that I objected to being investigated on such baffling grounds, he promised to report my views to his superiors. Somewhat more heatedly, William Small, CBS News bureau chief, declined to show the agent my personnel file, but did offer to show the door.

Then my telephone started ringing. First, from New York, Richard S. Salant, president of CBS News. The FBI had called him at home early in the morning, saying it had little time to complete the investigation, with the implication that the announcement of my appointment was imminent. To me, Mr. Salant was chagrined. Why, after nineteen years, would I leave CBS so abruptly? And what was my new job anyway? I didn't know of any job? *Really* not?

Then the calls came in a steadily accelerating pattern—other CBS executives, colleagues, friends, neighbors ("The FBI man is still out there on the street watching your house!"), and former employers (back to the first one, the Jewish Telegraphic Agency, where I worked three decades ago). Each caller eager to be the first to tell me, and each agog with questions. Is it all right to talk to the FBI? Wouldn't want to delay your appointment, hah, hah! Say, uh, what is the job anyway? *No* job? Probably can't talk about it or the President will change his mind, hah, hah? *No* job, really? Maybe the FBI jumped the gun on the offer? Or what, do you think?

Each day thereafter, CBS executives called me to ask whether a job offer had surfaced, and, when none had a week later, a more serious concern than losing a correspondent evidenced itself. There are raw nerves in broadcasting about the Nixon Administration, abraded by the speeches of Vice-President Agnew, the controveries over "instant analysis," the battle over the *Selling of the Pentagon*, and—still to come—the antitrust suit over entertainment programs and the hint of possible antitrust action for news "monopoly." Was this investigation, then, exemplary harassment, a new wrinkle in the war on the media?

If so, why me? I was, after all, a relatively small reportorial planet in a galaxy of anchormen and commentators. Some in CBS theorized that some specific piece of reporting had created some specific antagonist. They suggested that investigative reporting, undermining studied public relations postures, could have raised more hidden hackles than critical commentary, which could be refuted or simply dismissed.

The FBI investigation had started at the moment of my latest brush with the Administration. Only the day before I had visited the White House, on request, to receive complaints from Presidential Assistant Patrick J. Buchanan and other officials about my most recent report on the *CBS Evening News*. President Nixon, addressing the Knights of Columbus in New York, had made an emotional promise to aid the foundering parochial schools. My report, coming directly after the Nixon film, quoted Administration and Catholic educational sources as saying that there was no plan to deliver on that commitment. The White House officials told me that various plans were under consideration. And on the very day the FBI showed up I was working on a follow-up report analyzing the comments of the White House staff. One CBS executive felt sure that the investigation had been triggered by resentment because I had blunted the President's message to the Catholics. That on top of all my previous trouble with the Nixon Administration.

Not that I had been free of trouble with Democratic administrations. President Kennedy had taken umbrage at my reports from Germany about his quarrels with Chancellor Konrad Adenauer. Since returning to Washington in 1966, I had heard, second- and sometimes firsthand, of President Johnson's explosions over my accounts of backroom compromises on welfare and taxes. But these had been brief eruptions, and the Republicans' disaffection with me had been a steady, bitter growth.

In June 1970 I reported that two West Point instructors, commissioned by President Nixon's Urban Affairs Council to survey food distribution, had found many counties operating only "paper programs" and that an Administration that had promised to eliminate hunger was sitting on the report. Sen. Robert Dole, then chairman of the Republican National Committee made a speech in the Senate, charging bias and saying that my first interest was "in discrediting the Nixon Administration while he promotes those who share his liberal views." Senator Dole also complained to my boss, Mr. Salant, and was something less than mollified by

Salant's reply that "if Mr. Schorr has any bias, it is against hunger."

President Nixon himself became involved in a dispute with me in March 1971. Dr. James C. Fletcher, a science adviser to the White House, has told me of expressing misgivings to the President about the Safeguard ABM system, and of hearing Mr. Nixon confess to doubts of his own. When Dr. Fletcher was named director of the National Aeronautics and Space Administration, I decided to broadcast the story. The day after my March 9 report, Press Secretary Ronald Ziegler devoted the better part of his daily briefing to a categoric repudiation. Meeting next day with women reporters, the President volunteered that he was not concerned about opinion or criticism, with one exception.

"The only thing, however, where I have a very hard line about is inaccuracy, where something is inaccurate like Dan Schorr yesterday said, or made a statement, with regard to ABM that was totally without foundation and fact. . . . If they say that 'Nixon expressed doubts about ABM' when no meeting ever took place, that has to be corrected. That is what I mean. You can't allow a little lie. Incidentally," the President added, "when I call it a lie, that is unfair because, after all, the man just probably had the wrong information. I am always very charitable towards my friends."

A sense of charity toward "friends" did not appear, however, to pervade the Presidential staff. White House aides have an insiders' code for designating their pet hates. When referring to their names, they insert the initial "P)) (for an obscenity). Around the White House I was thereafter "Daniel P. Schorr."

Despite all this, I kept an open mind, at first, about the FBI investigation. Perhaps somewhere in the bowels of bureaucracy there was someone, not cued in politically, who had raised my name and accidentally triggered a premature FBI investigation.

As days stretched into weeks with no sign of the chimerical job, I made discreet inquiries but turned up nothing. On Otcober 8, however, I got an unexpected opportunity for a direct inquiry when I found myself at a dinner party with Frederic V. Malek, the White House talent scout. Six weeks had now passed without a peep from the government. I asked Mr. Malek if he knew for what job the FBI had investigated me. He expressed complete surprise and ignorance, even to inquiring when the investigation had occurred. He promised to check on it first thing next morning and call me. Mr. Malek never called. He might have if it had occurred to him that, a month later, an unexplained investigation would be a public issue.

It was, oddly enough, some friction within the President's official family that apparently helped the story about me come to light. There are stories, and half-stories, lying all over Washington, launched only when some interesting party assembles and circulates them. At CBS we had agreed to let this story languish. I had concluded that to broadcast it myself would only cast me in the role of an antagonist of the Administration—the role it had conceived for me.

Then the Administration's feud with me erupted on another front. On November 4, Charles Colson, Special Counsel to the President telephoned Dr. Frank Stanton, vice-chairman of CBS, Inc., with a bitter complaint about my reports on unpublicized conflicts in the Pay Board. My reporting, he said, threatened to incite a labor boycott and undermine the stabilization program. He also mentioned that I had previously been in such gross error that I had been obliged to broadcast a retraction. Mr. Colson was misinformed. The error he was alluding to—involving attribution to the then Budget Director George Shultz of a statement actually made by Dr. Herbert Stein, chairman of the Council of Economic Advisers—had not been made publicly but in private conversation with labor officials. And I had clarified it in private at the request of Dr. Shultz. Dr. Shultz, learning of Mr. Colson's distortion of what was supposed to be a courtesy to him, expressed irritation at the intervention, remarking, "Maybe Chuck Colson should be straightened out."

A few days later a Washington Post reporter, Ken Clawson (who—purely coincidentally, he insists—joined the White House staff a few months later), called me to say that he had heard about the Colson complaint and was writing a story on it. He had also been told, as an added fillip, about the FBI investigation, which, though an older story, he considered a better one. So, on November 11, on the front page of the Post, an unpublicized mystery became a public issue.

I must admit that I could not have anticipated becoming a front-page sensation, with the inevitable train of news agency follow-ups, requests for interviews (all of which I refused), and a barrage of questions to the White House. Ronald Ziegler, apparently hastily prepared, denied any motive of intimidation and said that I had, in fact, been considered for employment. The idea, Ziegler said, had arisen in the office of Frederic Malek, and Mr. Malek loyally supported that statement, although such an idea had astounded him six weeks earlier.

Mr. Ziegler, questioned about the nature of the position, said that it was "in the environmental area" and would be disclosed "in due time." That whetted the curiosity of many reporters, and requests for amplification produced a variety of off-the-record whispers. William Anderson of the Chicago Tribune wrote that he was told the job was "in the $40,000-a-year range" and that my sponsor was "a person of rank within the Administration." John Osborne of the New Republic wrote that a White House official finally named a job to him—"a job that only a fool would have expected Dan Schorr to consider taking."

The suggestion that an incumbent faced replacement created some tension in "the environmental area." A somewhat dissident member of the President's Council on Environmental Quality told the White House that if they wanted his immediate resignation, they could have it. The head of the Environmental Protection Agency, William Ruckelshaus, told questioners at cocktail parties, smilingly: "Maybe it's my job they want Schorr for."

There were other contradictions. In the first hasty reaction, Mr. Malek told reporters that the investigation, accidentally escalating from an intended in-house "name check," had been quickly canceled without any report ever being received from the FBI. But FBI Director Hoover reported officially: "The incomplete investigation of Mr. Schorr was entirely favorable to him, and the results were furnished to the White House."

Senator Sam J. Ervin, guardian of the First Amendment, announced that his constitutional rights subcommittee would look into the matter on February 1, 1972. And, as his public hearing approached, the White House suddenly shifted to a new position about the phantom job. A Presidential counselor wrote to Senator Ervin on January 27 stating, in line with the old position: "Mr. Schorr was being considered for a job that is presently filled." That changed abruptly four days later, on the eve of the hearing. Now the White House told reporters that what was involved was a new position that "has not been filled." What was being sought, said the officials, was an assistant to Russell Train, chairman of the Council on Environmental Quality; the assistant would prepare television programs on environmental subjects. And, though no one had yet been chosen, "other well-known newsmen" had been interviewed for the position.

I have since ascertained that several newsmen were, in fact, interviewed by Mr. Malek—apparently to help make the new stance credible. One of them, Ron Nessen of NBC, said he found the offer "peculiar" because he had been previously vetoed for another government position on political grounds. Mr. Nessen told me: "I got the impression that Malek was not so much offering me a job as trying to get me to spread word that there *was* a Schorr job."

At the February 1 hearing, Senator Ervin read from the Presidential aide's letter of January 27 about the post "that is presently filled" and from the Washington Post of that morning about the unfilled job. The Senator commented, "If I had been White House counsel, I would have told the witnesses to try to reconcile their testimony instead of making a contradictory statement of that kind."

In the following months the issue, and the questions, refused to die. When Richard Kleindienst came up before the Senate Judiciary Committee for confirmation as Attorney General, Senator John Tunney asked him about "the Dan Schorr case." ("I am not familiar with the specifics of the situation.") When White House Communications Director Herbert Klein appeared on the CBS Face the Nation broadcast, David Schoumacher asked, "Did you bring along with you the job offer for Dan Schorr?" ("No, I didn't, and I think that the handling of that wasn't probably the best thing.") When Senator Henry Jackson announced his candidacy for President, he said, "I think what was done in the case of Daniel Schorr is an outrage." (That did not result in a Jackson sweep of the primaries.)

Only the White House could solve the mystery, if it wanted to. The Administration had issued a spate of comments but had volunteered not the slightest explanation to me. At length, I wrote to Mr. Ziegler, asking if he could clarify the matter. Three months later, on August 14, 1972—almost the anniversary of the beginning of the whole business—Mr. Ziegler replied:

"I am told the job you were being considered for was Assistant to the Chairman of the Council on Environmental Quality. As I understand it, the Council was considering reorganizing its public affairs division to launch a program of public awareness about environmental problems . . .

"Fred Malek tells me you were suggested to him for the position by one of several people he uses often for recruitment ideas, and remained under consideration for about ten days. Fred subsequently concluded that you and the job were not really matched, and your name was dropped from consideration. Other people were being considered at the time, and have since been considered; but for a variety of personnel and planning reasons, a general hold has remained on the position.

"I am further told that because your FBI investigation was terminated in the very early stages, no comprehensive report was ever prepared. The preliminary report, which was entirely favorable and which was forwarded to the White House, has subsequently been destroyed."

Two weeks later, on September 1, Chairman Russell Train of the CEQ finally did get a Special Assistant—Mrs. Shirley Temple Black. Her assignment is "active citizen involvement in important international environmental activities."

It would be flattering to think that the slot once intended for me was refashioned for Mrs. Black, but I can't, somehow, believe it.

Even if the investigation had been set off by a tentative job offer, the effect, under the circumstances, had to be chilling to my work as a reporter. An FBI investigation is not a "routine formality." It has an impact on one's life, on relations with employers, neighbors, and friends. To this day, I must

manage a strained smile when asked, on social occasions, whether my "FBI shadow" is with me. It has become standard humor to inquire whether I am still "in trouble with the FBI," whether it is safe to talk to me on the telephone.

President Nixon, the White House says, has issued orders that there will be no future "job investigations" without advance consent. But in the prevailing climate between Administration and press, most of my colleagues believe that I was subjected to some kind of harassment. More reluctantly than the Administration may understand, I have become finally convinced that the weight of the evidence is in that direction. I should like to think that it has not affected me. But the insidious thing is that I can never be sure.

I am left now to ponder, when a producer rejects a controversial story I have offered, whether it is because of the normal winnowing process or because of my troublemaking potential. Even more am I left to wonder, when I myself discard a line of investigation, whether I am applying professional criteria or whether I am subconsciously affected by a reluctance to embroil my superiors in new troubles with the Nixon Administration. I should like to think that the government cannot directly intimidate me. But my employer, with millions at stake in an industry subject to regulation and pressure, is sensitive to the government, and I am sensitive to my employer's problems. So, one never quite gets over an FBI investigation—not, at least, for four more years.

A CONCURRENT RESOLUTION PASSED IN THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND CONCURRED IN BY THE SOUTH CAROLINA SENATE

Mr. THURMOND. Mr. President, on February 28, 1973, the South Carolina General Assembly passed a concurrent resolution memorializing the Congress of the United States to maintain, at least at present level, the Federal-Aid program for highway construction in the State of South Carolina to insure continued progress and improve safety on these vital arteries of commerce and public and private transportation.

Mr. President, on behalf of the junior Senator from South Carolina (Mr. HOLLINGS) and myself, I ask unanimous consent that this concurrent resolution, passed by the South Carolina General Assembly, be printed in the RECORD.

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

A concurrent resolution to memorialize the Congress of the United States to continue Federal Aid to State Highway Construction at present levels to prevent serious deterioration of our highway system

Whereas, federal aid to highway construction has for many years been a basic support to the construction and maintenance of highways throughout the nation; and

Whereas, state programs have been planned assuming federal assistance would be available; and

Whereas, federal revenue from gasoline taxes should properly be used for highway purposes; and

Whereas, there are present indications in the news media and elsewhere that federal assistance to state highway building programs will be substantially curtailed which, if true, would severely damage existing and planned state highway programs. Now, therefore, be it

Resolved, by the House of Representatives, the Senate concurring:

That the Congress of the United States be and hereby is, memorialized to maintain, at least at present levels, the federal aid programs for highway construction in the state to insure continued progress and improved safety on these vital arteries of commerce and public and private transportation. Be it further

Resolved, that copies of this resolution be forwarded to each member of the South Carolina Congressional Delegation, the President of the Senate and the Speaker of the House of Representatives in Washington, D.C.

A CEILING ON FEDERAL SPENDING

Mr. CHURCH. Mr. President, in a recent speech to the American Association of Homes for the Elderly, I called for the Congress to enact a ceiling on Federal spending and pointed out that both Congress and the President must share the responsibility for putting a lid on deficit spending.

I was, therefore, pleased to read a recent editorial from the Times-News in Twin Falls, Idaho, suggesting the same approach.

"Congress could perform a real service to the people of the country, and dampen down its enlarging feud with the Nixon administration, by adopting its own budget ceiling," the newspaper states.

This is commonsense thinking, and I wholeheartedly agree. As the editorial concludes:

By putting its own lid on spending at the start of a session, the Congress could greatly improve its lawmaking effectiveness, reduce the need for the President to impound funds, and restore some of the confidence of a disillusioned public.

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

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

IMPOUNDMENTS

Congress could perform a real service to the people of the country, and dampen down its enlarging feud with the Nixon administration, by adopting its own budget ceiling before embarking on its customary spending spree.

The Congress could do well to emulate Idaho's example, in which the legislature and governor attempt to project revenue, and then appropriate to stay within that limit. Congress has no established system to govern overall appropriations, and the result is that the lawmakers appropriate in a helter-skelter fashion without regard for the size of the total package.

That is one reason President Nixon has impounded some appropriated funds, refusing to sign the check that would spend them. That is a high-handed act, and one which Congress has a right to challenge—if there were any spending responsibility to start with. The President, whether Nixon or any of his predecessors or successors, should not have the power to junk or extend existing programs by whim—even for the noble purpose of restoring some semblance of fiscal sanity. The Congress may force a showdown by passing a bill giving veto power over impoundments. But it would not have the support of most taxpayers and would only further exacerbate relations with the administrative branch.

By putting its own lid on spending at the start of a session, the Congress could greatly improve its lawmaking effectiveness, reduce the need for the President to impound funds, and restore some of the confidence of a disillusioned public.

THE DEATH OF LEWIS DAVID HOLMES, SR.

Mr. THURMOND. Mr. President, Lewis David Holmes, Sr., of Johnston, S.C., who died recently was one of this Nation's outstanding leaders in agriculture. His innovative accomplishments in the field of farming have been well known for years throughout my State and around the Nation.

Yet his contributions to the well-being of those around him were not confined to farming. He was also a distinguished leader in his community, as well as in business and higher education, having served as a bank director and trustee at Clemson University.

Foremost in his life work, however, was the soil. He owned and operated the L. D. Holmes & Sons Farm for more than 60 years. In that capacity he was a leader in the development of many modern techniques, such as irrigation, advanced peach production, and the use of various crops and products. His implementation of new methods in farming led to progressive agricultural developments on a wide scale.

The extent of his value to the agricultural community of this Nation was recognized many years ago. He was selected Master Farmer of 1939 by Progressive Farmer magazine and he continued that high standard of performance for the rest of his life.

His leadership often put him in positions of responsibility. For example, he was an organizer of the South Carolina Farm Bureau which recently honored him for his dedicated service. While the awards he received were numerous, they represented only a small portion of the benefit he was to his family, community, State, and Nation. The rewards of his vision and endeavor will be evident for many years to come.

Mr. President, at the time of his death several newspaper tributes were published about his life and career. I ask unanimous consent that four such articles be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks. They are as follows: "L. D. Holmes, Pioneer Peach Farmer, Dies," Augusta Chronicle, Augusta, Ga., February 27, 1973; "Award-Winning Johnston Farmer Holmes Dies," the State, Columbia, S.C., February 27, 1973; "Rites Held for L. D. Holmes," the Ridge Citizen, Johnston, S.C., March 1, 1973; and "L. D. Holmes," the Ridge Citizen, Johnston, S.C., March 1, 1973.

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

[From the Augusta, (Ga.) Chronicle, Feb. 27, 1973]

L. D. HOLMES, PIONEER PEACH FARMER, DIES

JOHNSTON, S.C.—Lewis David Holmes Sr., a leading farmer, died Monday morning at his residence near Johnston.

Funeral services will be held today at 3:30 p.m. in the First Baptist Church, Johnston,

with the Rev. Lon B. Knight officiating. Entombment will be in the Mt. of Olive Mausoleum.

He was a lifelong resident of the Johnston area, and owner and operator of L. D. Holmes and Sons for more than 60 years. He was a trustee of Clemson University, a director of Bankers Trust of South Carolina, a member of the Johnston Lions Club, and a deacon of the Johnston First Baptist Church.

He was a pioneer in the peach industry and was selected Master Farmer in 1939. He was the recipient of the Pioneer Service Award, given by the National Peach Council. He was on the organizational committee and was a supervisor of the Soil Conservation Service. He served on the organizational committee of the South Carolina Farm Bureau and was a member of the First State Board. He was the recipient of an award for Distinguished Service and was recently awarded a plaque for his lifetime service to the Farm Bureau. He also received an award for Distinguished Service in the Field of Agriculture from Clemson University. He served on the South Carolina Marketing Committee.

Survivors include his widow, Mrs. Inis Whitten Holmes, Johnston; three daughters, Mrs. M. T. (Louise) Motes, Laurens, S.C., Mrs. A. W. (Marian) Minchew, Saluda, S.C., and Mrs. John (Lillian) Hughes, Johnston; two sons, L. D. Holmes, Jr., Johnston, and Charles P. Holmes, Trenton, S.C.; and one sister, Mrs. Matilda Lunger, Johnston.

The family suggests that memorials be made to the Clemson Scholarship Fund for L. D. Holmes Sr.

Clark-Bland Funeral Home, Johnston, is in charge.

[From the Columbia (S.C.) State, Feb. 27, 1973]

AWARD-WINNING JOHNSTON FARMER HOLMES DIES

JOHNSTON.—Lewis David Holmes Sr., died Monday at his home.

Born in Edgefield County, he was a son of the late Lewis and Annie Richardson Holmes. He was owner and operator of L. D. Holmes and Sons Farm for more than 60 years. He was a trustee of Clemson University, a director of Bankers Trust of South Carolina and a member of the Johnston Lions Club.

He was selected Master Farmer of 1939 by Progressive Farmer Magazine. He received the Pioneer Services Award given by the National Peach Council and was supervisor of the Soil Conservation Service.

He also served on the organizational committee of the S.C. Farm Bureau and was a member of its first state board. He was recently awarded a plaque for his service to the Farm Bureau.

He received awards for his services in the field of agriculture from Clemson University and was a member of the S.C. Marketing Commission.

He was first married to the late Mrs. Annabell Morgan Holmes, next to the late Mrs. Maude Nickerson Holmes.

Surviving are his widow, Mrs. Inis Whitten Holmes; three daughters, Mrs. Marian Minchew of Saluda, Mrs. Louise Motes of Laurens and Mrs. Lillian Hughes of Johnston; two sons, L. D. Holmes Jr. of Johnston and Charles F. Holmes of Trenton; and a sister, Mrs. Mathilda Lunger of Johnston.

Services will be at 3:30 p.m. in the First Baptist Church with entombment in Mount of Olives Mausoleum.

The family suggests that those who wish may make memorials to the Clemson University Scholarship Fund for L. D. Holmes.

Clark-Bland Funeral Home is in charge.

[From the Johnston (S.C.) Ridge Citizen, March 1, 1973]

RITES HELD FOR L. D. HOLMES

Lewis David Holmes, Sr., a leading farmer, died Monday morning, February 26, at his residence near Johnston.

Funeral services were held Tuesday afternoon, February 27, in the First Baptist Church, Johnston, with the Rev. Lon B. Knight officiating. Entombment was in the Mt. of Olives Mausoleum.

A son of the late Lewis and Annie Richardson Holmes, he was a lifelong resident of the Johnston area. He was owner and operator of L. D. Holmes and Sons for more than 60 years. He was a trustee of Clemson University, a director of Bankers Trust of South Carolina, a member of the Johnston Lions Club, and a deacon of the Johnston First Baptist Church.

He was a pioneer in the peach industry and was selected Master Farmer of 1939 by Progressive Farmer Magazine. He was the recipient of the Pioneer Service Award, given by the National Peach Council. He was on the organizational committee and was a supervisor of the Soil Conservation Service.

He served on the organizational committee of the South Carolina Farm Bureau and was a member of the First State Board. He was the recipient of an award for Distinguished Service and was recently awarded a plaque for his lifetime service to the Farm Bureau.

He also received an award for Distinguished Service in the Field of Agriculture from Clemson University. He served on the South Carolina Marketing Committee.

He was first married to the late Mrs. Annabell Morgan Holmes, next to the late Mrs. Maude Nickerson Holmes.

Survivors include his widow, Mrs. Inis Whitten Holmes, Johnston; three daughters, Mrs. M. T. (Louise) Motes, Laurens, Mrs. A. W. Marian) Minchew, Saluda, and Mrs. John (Lillian) Hughes, Johnston; two sons, L. D. Holmes, Jr., Johnston, and Charles P. Holmes, Trenton; and one sister, Mrs. Matilda Lunger, Johnston.

The family suggests that memorials be made to the Clemson Scholarship Fund for L. D. Holmes, Sr.

Clark-Bland Funeral Home in Charge.

L. D. HOLMES

The passing this week of L. D. Holmes has claimed one of the outstanding farmers, not only of this county and community, but of the state and this section of the nation.

He was a pioneer in many fields of farming activities, being among the first to enter peach production on a commercial and large volume scale. In more recent memory, he was one of the leaders several years ago in the substitution of fall tomatoes when an unexpected freeze destroyed the peach crop. He was one of the pioneers in the use of irrigation in this Southeastern section of the nation, and indeed in the adaptation of modern methods of farming in all of its phases, from mechanization of the process to the experimentation with other crops and products.

But more than that he was a man who loved his community and took an active interest in its welfare. He was generous of his means to projects that were for the benefit or development of the community. On the other hand, he was equally outspoken in opposition to what he was convinced was not for the best.

He served in a number of positions and places of honor and trust. We mention here two that we think meant the most to him. They were the Farm Bureau which he helped to get organized and served on the state level of that organization for many years. The other is as a Trustee of Clemson University. In these positions as in all positions in which he served, he served well and with distinction.

His leadership and wise counsel will be missed by this community.

THE IMPOUNDMENT CONTROVERSY: THE AMERICAN PEOPLE BACK THE CONSTITUTIONAL DUTY OF THE CONGRESS

Mr. ERVIN. Mr. President, the beginning of this session of Congress has seen marked congressional efforts to restore the proper constitutional balance between Congress and the executive branch. This imbalance has been bolstered by the use of so-called executive privilege to withhold information from the Congress and the public, by the use of executive agreements to circumvent the treaty-making provisions of the Constitution, by abuse of the pocket veto power during short recesses of the Congress, and by executive impoundment of funds appropriated by Congress.

The impoundment issue goes to the heart of the problem for the power of the purse is the most important constitutional power given to the Congress. If the executive branch is permitted to usurp the power of the purse, and to thwart the will of Congress by canceling and curtailing programs through impoundment of funds appropriated for their implementation, then the Congress will cease to exist as a viable legislative body. The President's action in impounding these funds flies in the face of the Constitution. Indeed, I must agree with Mr. Justice Rehnquist who, as Assistant Attorney General, advised the counsel to President Nixon in 1969, that:

> The argument that the President has a broad constitutional authority to impound has no basis in reason or precedent.

Yet, the President has announced on several occasions that he has taken these drastic actions because he has received a mandate from the people who elected him to do so. The Members of Congress also have a mandate from the people, and both the President and the Congress have a mandate to uphold the Constitution.

The President has also stated on several occasions that he has overwhelming public support for his impounding practices. Mr. President, the latest Harris poll shows that the American people support the Congress in its efforts to put an end to this practice and do not favor the impounding practices of the President.

As reported by the Washington Post, March 4, 1973, Mr. Harris noted that:

> There appears to be growing concern in the country that too much of the power of the federal establishment is centered in the White House. By 55–33 percent, a majority of the public agrees with the statement that "President Nixon is trying to control most of the powers of the government from the White House, instead of sharing decisions with Congress, and this is wrong."

I might add that according to the Washington Star News of March 6, 1973,

Congressman GERALD FORD emerged from a 90-minute meeting at the White House and stated that the Republicans look forward to doing battle with the Democrats over the issue of impounding, and that they will win because the public supports the President. I would suggest that Mr. FORD might find the latest Harris survey somewhat enlightening in this regard. It saddens me to note that Mr. FORD apparently conceives the impoundment controversy to be partisan in nature while in fact it merely represents an effort by the Congress to prevent Presidential usurpation of its power of the purse. Surely all Members of Congress realize that the issue is not, as Mr. FORD says, the Democrats' "lust for spending," but whether the Congress will be able to discharge its constitutional duty to set spending priorities.

Mr. President, I ask unanimous consent that the Washington Post article of March 4, 1973, containing the Harris survey be printed in the RECORD.

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

CONGRESS BACKED IN SPENDING FIGHT

(By Louis Harris)

The American public tends to sympathize more with Congress than the President in the battle shaping up over federal spending, though by only a narrow 44–41 per cent margin.

A cross-section of 1,505 households was asked between Feb. 14 and 17:

"President Nixon has said that if Congress votes him money to spend on programs he disagrees with, he will refuse to spend the money if it goes above his ceiling on federal spending. Congress says it will pass new laws to force the President to spend federal money as it tells him to do. Who do you think is more right in this argument—the President or Congress?"

[In percent]

	Nixon	Congress	Not sure
Nationwide	41	44	15
By region:			
East	36	44	20
Midwest	42	45	13
South	47	38	15
West	39	49	12
By age:			
18 to 29	36	50	14
30 to 49	40	42	18
50 and over	46	40	14
By education:			
8th grade or less	39	43	18
High school	42	41	17
College	40	48	12
Union members	37	47	16

The forthcoming spending battle is likely to split the country along interesting lines, with the South backing the President against the rest of the country; older people behind Mr. Nixon as opposed to younger people; and those with a high school education supporting the White House, but the college-educated on the side of Congress.

By a number of measures, the President is better regarded by the public than Congress. For example, Mr. Nixon is given 59–40 per cent positive marks on his record for his first four years in office. Congress, on the other hand, receives a 45–38 per cent negative rating for the job it has been doing.

On taking his case to the country, Mr. Nixon would appear at first glance to be in a stronger position than Congress. For example, by 51–37 per cent, a majority of the public agrees with the statement that "Congress is wrong in opposing the President's spending program and should cooperate more with him."

But the Harris Survey turns up two key factors which, at the outset of the spending battle between the executive and legislative branches, tip the balance toward the side of Congress, albeit by a razor-thin margin.

There appears to be growing concern in the country that too much of the power of the federal establishment is centered in the White House. By 55–33 per cent, a majority of the public agrees with the statement that "President Nixon is trying to control most of the powers of government from the White House, instead of sharing decisions with Congress, and this is wrong."

The other key fact is that when it comes to specific cuts in programs, the public has a tendency to rally to the defense of its own favorite program and to ignore the presidential plea to keep within a tight ceiling on spending.

For example, urban residents generally back Mr. Nixon in his request to cut farm price supports. But two of his most loyal segments in the population, the South and rural areas, indicate majorities for keeping the price-support program intact. In opposing the cuts in REA loans, the rural population is joined by substantial urban majorities.

On eliminating the Office of Economic Opportunity, the plurality of 46–39 per cent opposing this move is drawn heavily from union members (opposed 51–37 per cent), Catholics (opposed 46–38 per cent), persons with incomes of $5,000–$10,000 (opposed 50–37 per cent), and the Midwest, (opposed 45–40 per cent). The significance of this ad hoc coalition is that it goes straight to the heart of "the new majority" the administration talks about putting together in the country.

Basically, the problem for Mr. Nixon is that he can be thwarted on specific measures to cut spending on a variety of sacred cows, any one of which he might endure, but which in the aggregate could spell out a federal spending program far in excess of the $269 billion limit he has urged.

USE FLOODS—DO NOT FIGHT THEM

Mr. DOMINICK. Mr. President, I would like to bring to the attention of my colleagues an article which appears in the current issue of Reader's Digest regarding the authorization by the Corps of Engineers of a flood control project which lies below the Chatfield Dam near Littleton, Colo. The article, entitled "A Plan To Use Our Floods, Not Fight Them," discusses the proposed use of Corps of Engineers funds to acquire approximately 475 acres along the South Platte River, as it flows through Littleton and turn the land into a park. The park would preserve much-needed open space for residents of Littleton and even the Denver metropolitan area.

In order to expend the funds for something other than channelization, authorization has to be provided through the legislative process. During the 92d Congress, Senator ALLOTT and I introduced legislation to authorize such expenditure. The provisions of our bill were included in the omnibus rivers and harbors bill last year, which passed Congress, but was vetoed by the President. The project thus remained in limbo until the Senate's recent passage of S. 606, this year's omnibus bill, which includes the Chatfield Dam project. The House has not acted on S. 606, and at this point, it is difficult to say what the President will do at such time as it is once again handed to him for signature. Because of the possibility of another veto, I have once again introduced my own bill, S. 773, as I feel the project is very important to the city of Littleton, is certainly justified, and turns what otherwise could be a dam-and-dredge method of handling floods—as the article points out—into a rather innovative plan to "use our floods, not fight them."

Mr. President, Littleton is the county seat of my home county Arapahoe, and I know personally many of the fine people who spearheaded this imaginative and productive approach to an age-old problem. I congratulate them and ask unanimous consent that the Reader's Digest article be printed at this point in my remarks, so that more of my colleagues can have a chance to read of this remarkable effort.

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

A PLAN TO USE OUR FLOODS, NOT FIGHT THEM

(By James Nathan Miller)

It's just a patch of green in a Denver suburb—some trees and thickets, a farm, a gravel quarry, a meandering stream. But in a battle to preserve this patch and prevent the stream from being turned into a boulder-lined ditch, the people of Littleton, Colo., have won what may be one of the conservation movement's most far-reaching victories. It may save thousands of additional miles of this nation's rivers from destruction.

The stream is the South Platte River, which splits Denver in half. To understand its significance, you have to start a century ago with the classic error that Denver's founders committed when they settled on the Platte, Like the settlers of hundreds of other communities, they built their cabins *in* the river.

For, like most rivers, the South Platte consists of a visible part and a part that few people are capable of discerning. The settlers saw just the obvious part, the channel, and they built their houses on the broad, sloping valley that spread out from its banks. This was the river's floodplain and, while almost always dry, it was actually as much a part of the river as the channel itself. Indeed, floodplains are among the most vital of a river's natural mechanisms. Most people become aware of them only when exceptionally heavy rain or melting snow dumps more water in the channel than it can hold. Yet these plains operate year in and year out, even when dry.

First, when a flood comes, the plain spreads the water out over a wide area, thus slowing the flow, preventing erosion and acting as a giant settling basin for the valuable topsoil that has washed down from the mountains. Second, the plain acts as a massive storage tank, feeding the flood into the groundwater supply. Finally, in dry years, the plain evaporates this groundwater back to the sky and, in the process, irrigates the rich topsoil it has collected.

HOUSES IN THE RIVER

It is this sequence that renders river bottomlands among our richest and most productive regions for agriculture—and for the fields and marshes that fish, waterfowl, songbirds and small game need for their homes. Indeed, floods are one of nature's most benign and creative acts. It is only when man builds in them that they become disaster areas.

Which is precisely what happened to Denver—over and over again. A major flood hit the city in 1864, only six years after it was settled, causing $1 million in damage and

killing 12 people. By 1935, nine more major floods had occurred. Each time, Denver reacted by taking what is called the "structural approach" to flood control: it diked up the riverbanks and constructed upstream dams to prevent another disaster.

What the Denverites couldn't understand was the fundamental fallacy in this approach: it can protect against the kind of flood that comes every 15 or 20 years. but it provides no guarantee against the inevitable day when exceptionally heavy rain or snow is going to produce a so-called hundred-year flood.* When that happens, the dams are worse than useless: not only will they be unable to contain the water, but downstream damage will be all the worse because of the development that the dams' mere presence has encouraged on the floodplain. Which is what happened to Denver in 1965.

In seven hours starting in the late afternoon of June 16, more than 14 inches of rain fell on a tributary of the South Platte. That night, down through Denver came roaring a hundred-year flood, a battering ram of mud and debris that devastated roughly ten square miles of houses, shopping centers, factories and luxury hotels. Damage totaled $325 million.

But, despite warnings by a few citizens that no flood-control system is foolproof, the city once again rebuilt the floodplain and called in the biggest dam builders of all, the Army Corps of Engineers, for more structures. The Corps recommended two—first, a $55-million dam a few miles upstream to protect against all but the biggest floods; second, a "channelization" project below the dam to straighten out major bends of the river, and to line that portion of its banks with rocks.

This way, said the Corps, when a really big flood causes release of water from the dam, the channelized river—now a super-efficient sluiceway—will be rushed harmlessly through Denver like an express train. This has been the Corps' usual flood-proofing formula, and hundreds of American communities have accepted it. Denver was no exception—which brings us to the green patch in Littleton, a community of 30,000 that sits on the Platte between the proposed dam and Denver.

CRUCIAL MEANDERINGS

Littleton flatly didn't want its stretch of river to be channelized. The reason was simple. In looking into flood control, Littleton discovered that, when you channelize an undeveloped floodplain, far from preventing floods, you actually make them worse. For most streams possess a natural, built-in flood control device. They meander, in great loops and oxbows, down their floodplains. Like the zigzags of a switch road going down a mountainside, these meanders reduce the steepness of the river's gradient, thus slowing the water's flow. They also minimize erosion of the banks by distributing the flood's water and topsoil over the widest possible area.

Channelizing a river replaces these meanders with a straight ditch down the plain's middle, and the results can be calamitous. For instance, in 1910, farmers channelized Missouri's Blackwater River, in order to drain its floodplain swamps. Today they do have more land. But now all the water that this land used to absorb is dumped downstream and, on a 46-mile stretch below the 18-mile channelized section, heavy flooding has become common. Not only that, but the greater amount of water now rushes downstream so much faster that it erodes away farmland below.

Channelization's second flood-magnifying effect is that, as soon as a river's floodplain is dried out and "protected" by levees, developers put factories, roads and houses on it—thus wiping out the water-absorptive qualities of the plain's fields and trees. It's as if they put a roof over the plain with its drain spout emptying into the river. Again, it's downstream communities that take the beating. All this, Littleton found, is well known among flood-control experts. In the words of Nathaniel P. Reed, Assistant Secretary for Fish, Wildlife and Parks of the Department of the Interior, "The vast majority of stream channelizations have had a devastating effect on our nation's waterways."

Then why do we keep damming and channelizing our rivers? The answer too often is that owners of floodplain land stand to make large windfall profits when the government converts their swamps into developable acreage. It is usually these people who band together into "flood control" or "soil conservation" districts and apply for federal aid. Indeed, the Corps of Engineers uses these windfall profits to justify its projects, listing them as benefits under the category, "Land Enhancement."

PROS VERSUS AMATEURS

Littleton wanted none of this. Aside from any environmental problems, says Larry Borger, who was city manager in 1970, "there was a square mile of good, green, undeveloped land right next to the city, which, if the river was channelized, would soon be covered with houses and shopping centers. I figured there must be *some* alternative." Out of the city's search for an alternative emerged what became known as the Littleton Plan.

The basic idea was simple: Instead of channelizing, Littleton would buy the green patch and turn it into a park. Then, a flood would destroy no buildings, endanger no lives, create no "multiplier effect" downstream. It would merely necessitate cleaning up the debris from the park.

In itself, this was nothing new. Other communities have bought up floodplains and turned them into parks. What *was* new was one suggested source of the $1.4 million needed to buy the land. Some money would come from conventional sources—state aid, a local bond issue, federal urban-park grants. But the biggest single chunk—$564,000—would come from the Corps of Engineers. This was the amount that the Corps would save by not having to channelize the river. Put it into buying the land, suggested the Littleton planners.

At first the plan's chances looked to be zero, for the idea struck at the very root assumptions of the enormously powerful dredge-and-dam establishment that sets national river-development policy. Never had construction funds been diverted to an alternative non-construction purpose. And the establishment's reaction, when it learned that Littleton was studying other ways of proceeding, was not surprising: "It is our opinion that there are no alternatives worth studying," said the director of Colorado's Water Conservation Board.

So the burden of proof was dumped on the citizens of Littleton, and the battle became one between the amateurs and the pros: on the one hand, a group of protesting local citizens; on the other, the establishment's army of hydrologists, economists and engineers. The reasons why the amateurs won out in the end are extremely significant.

Until two or three years ago, the Corps' standard response to the Littleton kind of protest was to ignore it and go ahead with the bulldozers, claiming that Corps experts knew best, that the protesters were a minority, and that the community as a whole wanted to be saved. But in the last couple of years this tactic has involved the Corps in 24 stop-construction lawsuits around the country, and the agency has been getting increasingly nervous about the steamroller image this conveys. In addition, in November 1971, the people of Littleton made it plain that they *didn't* want to be saved; by a two-to-one margin they voted to borrow the $400,000 needed for their share of the land purchase.

Two months after the vote, under continuing pressure from Littleton and its entire Congressional delegation, the Corps gave in. It conceded that the plan made eminent sense, both economically and hydrologically, and agreed to testify in its favor. And last October, as part of the half-billion dollar Flood Control Act, Congress approved the unprecedented transfer of funds from construction to non-construction. Although President Nixon later vetoed the overall bill as being inflationary, everyone is confident that, whatever revised form it takes in the new Congress, the Littleton Plan will survive and, back in Colorado, plans are proceeding to buy up the mile-square green patch.

2000 Miles a Year. Each year our state and federal flood-control agencies—including the Corps, the Soil Conservation Service, the Tennessee Valley Authority and the Bureau of Reclamation—spend about a billion dollars building structures to control floods. In a large percentage of these projects, it would cost no more—in many cases, far less—to buy the land instead, or to protect it by local zoning ordinances forbidding flood-susceptible developments on the plains. Indeed, the government could buy a half-mile-wide stretch of floodplain about 2000 miles long *every year* with just half the money now slated for these projects, in the process saving thousands of acres for parks, wildlife refuges, underground-water storage, farms, golf courses, and fishing areas. All at the cost of not an extra cent in taxes.

If you live in a community that's threatened with an unnecessary dam or channelization project, remember that the government is legally required (by the 1969 National Environmental Policy Act) to examine all possible alternatives. So demand that the agency in charge study the possibility of buying instead of destroying the floodplain. The results could be a true revolution in our river-development policies. Thanks to Littleton, the decade of the 1970s could mark the end of the lunatic practice of building our houses in our rivers.

*"Hundred-year" refers to statistical *probability*, not to a law of nature. For instance, last year Pottstown, Pa., on the Schuylkill River, was hit by its third "once-in-a-century" flood in 30 years, and there is no guarantee that it won't be hit again this year.

A DOMESTIC RETREAT: THE NIXON BUDGET FOR HEALTH CARE

Mr. HUMPHREY. Mr. President, enough time has passed, since President Nixon presented his fiscal 1974 budget, for the public to begin to realize that this administration would cripple or kill a great many domestic programs that the American people want to have and need to have.

I am sure that every Senator has been hearing this message from the people back home: That the widespread withdrawal of Federal support proposed by the President would do serious harm to domestic programs that are necessary for our people to achieve and maintain the quality of life that every American deserves to have.

Our people are learning, and we are learning from them, that America simply cannot afford the cutbacks the President wants in education, in health care, in opportunities for the poor, in environmental programs, in parks, in social services, in agricultural programs, and in a broad range of domestic activities through which the Federal Government has been helping the average citizen.

Many of these programs were passed in some of the finest hours of the Con-

gress, and with the full and active support of past Presidents. But now we are confronted with a President who would turn away from the good we have done, who would withdraw the gains we have made, and who would say to the American people: "You'll get no more help from your Federal Government. From now on, you can just work things out for yourselves."

I am one Senator who does not say any such thing to the American people. And I know I am joined by most of my colleagues in promising that our people will not be neglected here at home, where direct action by the Federal Government can do the most good.

I would like to describe what the Nixon administration has in mind for the health programs of this country.

It should be apparent to one and all—perhaps even to the adding machines at the Office of Management and Budget—that no activity of the Federal Government is more critical to the well-being of the American people than the Federal involvement in health programs. Concern for the health of the public is one of the first concerns of any government of any nation.

Here in the United States the Federal Government's role in health is long and honorable and filled with success. Especially during the past 30 years, timely Federal action and support has helped to conquer disease, to improve medical technology, to build hospitals and facilities, to conduct essential research, to train professional health personnel, to bring the benefits of health care to more citizens, and to assist our citizens—especially the elderly—in meeting the high costs of poor health.

But now this health budget of President Nixon's would reverse so much of that progress.

The President's budget ranks health low among the various national priorities, despite the fact that good health is essential if the Nation is to achieve any of its other priorities.

The President's budget reveals a basic lack of understanding of the inescapable ties between advancing biomedical research and maintaining the health of our people.

The President's budget, in sum, demonstrates a harsh insensitivity to the way in which health care is provided to the American people.

Perhaps because the President and his budget-cutters at OMB knew that reductions in health programs would be unpopular, they seem to have taken extra care to disguise what they have done. For example, budget documents show that the grand total of Federal health spending—this includes everything—rises from $26.4 billion in fiscal 1973 to $30.3 billion in fiscal 1974.

Now that sounds wonderful, does it not? But do not be misled. That increase is for programs over which the Federal Government has no control. What is rising is the mandatory Federal reimbursement for medical services to Federal beneficiaries—requirements written into law, such as last year's Social Security Amendments—which the President could not avoid paying even if he wanted to.

What is not rising in fiscal 1974 is the innovative portion of the health budget. There are no dramatic increases for those programs whose objectives are to change and improve the health services available to the Nation as a whole. In these areas, where the Federal Government could do so much to make the Nation's health-care system more efficient and more responsive to human needs, President Nixon would either reduce programs severely or maintain the inadequate status quo.

Let us look at what the President's budget would do to the principal health agencies of the Government, the National Institutes of Health and the Health Services and Mental Health Administration. For fiscal 1974, that the NIH budget is about $220 million lower than the request of a year ago. The HSMHA budget appears to be about $535 million higher, but that total includes gimmicks, forward funding, and money that is not really there.

The facts are, when we look at what the President's budget does to individual health programs, that virtually no program escapes the budget-cutters' ax—not biomedical research; not health manpower education; not preventive health services; not health services planning and development, or research and development; not hospital and outpatient facility construction, modernization and rehabilitation; not disease control.

How can the President profess to be advancing the cause of the Nation's health when he is reducing or eliminating programs in these areas? How can the American people hope to achieve better health in years to come if crucial Federal support is withdrawn now? And how can the Senate, and the Congress as a whole, stand back and allow these programs to die from neglect?

Let us turn to some of the specific harm that would be done if the President's fiscal 1974 budget for health programs should take effect.

Biomedical research, by any measure, is the foundation for the health care that eventually becomes available to our citizens. Most of this research is conducted through the many National Institutes of Health programs. But instead of giving additional support to biomedical research, the President's budget would terminate training grants and would cut in half the aid for investigator-initiated research.

New and competing research grants would be cut severely, by as much as 80 percent below the fiscal 1972 level in the National Institute of General Medical Sciences. All NIH training and fellowship programs, including Research Career Development programs, would be phased out; their budget would be reduced by more than $60 million below last year's request. General Research Support—GRS—Grants would be reduced by almost two-thirds.

The President seems determined to dull the leading edge of medical research into disease and disability, and to forego the training of young minds and the shaping of new ideas for biomedical research. The termination or reduction of support in a variety of categories will be felt immediately in medical laboratories throughout the nation, especially in the academic health centers where so much valuable research is underway.

This brings us to another health program that would be badly damaged by the President's budget: health personnel education. Our health needs cannot possibly be met without adequate numbers of trained personnel.

On November 18, 1971, only 14 months before his fiscal 1974 budget was presented, President Nixon signed into law the Comprehensive Health Manpower Training Act of 1971 and the Nurse Training Act of 1971 with these words:

> They constitute the most comprehensive health manpower legislation in the Nation's history. But legislation is only a first step. These new programs must be adequately funded and effectively carried out.

But the President's new budget appears to go out of its way to see to it that this legislation is not "adequately funded and effectively carried out." Quite the contrary, the budget would dismantle the legislation.

Capitation support for schools of nursing would be dropped, and institutional support would be limited to special project grants. For schools of allied health and schools of public health, Federal programs of institutional support and student assistance would be abandoned completely—and that is from a support level of $50 million in fiscal 1972. There would be no capitation grant institutional support for schools of pharmacy, or for schools of optometry, or for schools of podiatry, or for schools of veterinary medicine.

Capitation support for schools of medicine, osteopathy and dentistry would be continued in fiscal 1974. But it appears that the level of support may not be high enough to accommodate increased enrollments in these schools, increases that were encouraged by the promise of adequate Federal support, and increases which the schools have met and even surpassed.

The medical schools would be hurt also by the President's reductions for start-up assistance and conversion, for special project grants and contracts, and for construction.

Just a few months ago, I spoke in the Senate about a critical situation in my own State, relating to the University of Minnesota Medical School and the new Mayo Medical School in Rochester. They were unable to obtain Federal support they had reason to expect, and thus were unable to expand their medical training programs as originally planned. Evidently, more and more of the Nation's medical schools will face similar crises.

There are no construction grants in the President's budget for any schools of the health professions. As a matter of fact, construction funds for all Federal health programs are virtually eliminated. This administration acts as if there is no need to build, rebuild, modernize or renovate the Nation's hospitals, professional schools, laboratories or outpatient facilities.

The Hill-Burton program, which has built and remodeled so many of our hospitals in the years since World War II,

would be phased out completely. President Nixon told the Nation in a radio address January 28 that Hill-Burton is among the "old programs that have outlived their time." His judgment that the Nation has met its need for hospital beds fails to take into account the drastic need to modernize and rebuild many urban hospitals, to make them capable of providing the advanced health care we now know how to provide.

In the area of health services the President makes still more of his dangerous budget cuts. And it is in this area that some of the bookkeeping gimmicks devised by OMB are most blatant.

A decade ago, the Congress passed the Community Mental Health Centers Act, which was designed to establish 2,000 centers throughout the Nation. The goal of these centers has been to make high quality care available to all citizens who suffer from the many mental illnesses. In addition, they provide special programs for the mental health of children, for drug abuse, and for alcoholism.

Today, 515 community mental health centers have been established. That is scarcely one-fourth of the total required to reach all Americans in the local community setting. Already the centers have been proven successful, and have relieved the overcrowding and stress that exist in too many State mental hospitals.

Does President Nixon want to expand this humane legislation? He does not. His budget proposes that the legislation be allowed to expire this June 30—with nearly 1,500 centers remaining to be built and staffed.

The Office of Management and Budget has come up with an ingenious device for obscuring the administration's real intentions. At first glance, the fiscal 1974 request for mental health programs appears to be doubled.

But the total includes $636 million that would not be spent in 1974 at all. That amount, already authorized for the centers, would be portioned out annually through 1980. President Nixon would end Federal support in 1980, and the centers would have to rely entirely on State and local governments, private contributors, and third-party payment systems.

And not only Federal taxes are supporting these centers today. Federal funds currently amount to only about 30 percent of the centers' total budget. State and local governments already provide 40 percent of the funds needed to keep the centers at their important work. The Federal contribution is needed, and will be needed beyond 1980, to establish new centers and to assist those already in operation.

It seems incredible that so worthy a program would be dropped. But most incredible of all is the administration's twisted reasoning for phasing out support of community mental health centers. According to the Washington Post, administration officials feel that the current program is "inequitable because people served by the federally funded centers receive better care than the rest of the Nation."

People receive better care at these centers. That is why they were established. That is why they should be strengthened, not weakened, and that is why more centers are needed.

That example alone should let us all know what the President has in store for the American people in the way of health care delivery. However, there are other examples—just in case there is any doubt.

Through the years the Public Health Service hospital system has been pared down to eight hospitals. The administration is now withdrawing Federal support from these hospitals and urging immediate efforts to negotiate community use and control. If no acceptable proposals are received by June 30, inpatient admissions to these eight hospitals will cease. Outpatient services would continue, at least for a while.

Within the HSMHA budget are line items for comprehensive health services, and here another OMB gimmick dwells. The budget appears to rise by about $103 million in fiscal 1974, but nearly all of the increase results from the transfer of project grants from the Office of Economic Opportunity. The President has decided unilaterally to dispose of the OEO, and its remains are to be scattered about the health services landscape.

Some other OEO project grants are to be transferred to HSMHA's family planning services. The transfer is listed at $15 million, but here is the rub. The shift involves not funds but programs. So if the project grants are to be made, the $15 million will have to come from elsewhere in the Department of HEW and not from the departed OEO.

At a later date, I will take time to provide more information about specific health programs. For now, allow me to list just several items that have surfaced in the President's health budget:

Funds for mental health research and training programs are to be cut by nearly $40 million from the President's request of a year ago.

There would be no new training grants for health services research and development.

The administration provides $60 million in the fiscal 1974 budget for health maintenance organizations, but it has not yet suggested the legislation to establish them.

Regional medical programs would be dropped completely.

Research grants for infectious disease control would be terminated in fiscal 1973, and would not be refunded in fiscal 1974.

The Community Environmental Management program would lose all its funds for health education, hygiene, community development and housing, and its staff would be reduced from 244 to 43 positions.

The President's budget requests no funds to implement to the Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972.

All of these examples that I have listed today illustrate the President's lack of concern, his carelessness, for the programs that mean so much to the health and well-being of the American people.

The list might well be headed by the President's intentions toward the medicare and medicaid programs. In what the administration calls a cost-saving move, the budget trims almost $900 million from the Federal cost of medicare in fiscal 1974. It does this by increasing the patients' share of hospital and medical costs.

I cannot suppress my shock and dismay that President Nixon—at a time when medical and hospital costs are rising alarmingly, and when many of our sick and elderly must live on fixed incomes—that President Nixon now seriously proposes to the Congress and the Nation that the Federal share of patients' medical and hospital costs should actually be reduced

I hardly need to tell other Senators that the people back in our States are as shocked and dismayed about this proposed change as I am. I am certain that we all are going to hear more and more from our people about all the other cutbacks in health programs that the President's budget proposes. The people have reason to be angry and they are.

I am certain also that President Nixon is going to hear a lot more from the U.S. Senate about his health budget. And he is not going to like what we have to say, because we do not like what he has proposed.

NEW YORK STATE LEGISLATURE RESOLUTION MEMORIALIZING CONGRESS TO CONSIDER THE PLIGHT OF SOVIET JEWS PRIOR TO GRANTING MOST FAVORED NATION STATUS TO THE U.S.S.R.

Mr. JAVITS. Mr. President, I present to the Senate the joint resolution recently adopted by the legislature of the State of New York memorializing the President and the Congress to consider the plight of Soviet Jews prior to granting favored nation status to the Soviet Union. New York State has much to gain financially from increased U.S. trade with the U.S.S.R.; however, the State legislature, in adopting the resolution which I ask unanimous consent to include in my remarks, has given first priority to what it terms "the interest of justice and humanity" in the consideration of any negotiation for most favored nation status for the Soviets.

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

JOINT RESOLUTION OF THE LEGISLATURE OF THE STATE OF NEW YORK

Whereas, In the Soviet Union men and women are denied freedoms recognized as basic by all civilized countries of the world and indeed by the Soviet Constitution; and

Whereas, Jews and other religious minorities in the Soviet Union are being denied the means to exercise their religion and sustain their identity; and

Whereas, The government of the Soviet Union is persecuting Jewish citizens by denying them the same rights and privileges accorded other recognized religions in the Soviet Union and by discrimination against Jews in cultural activities and access to higher education; and

Whereas, The right freely to emigrate, which is denied Soviet Jews who seek to maintain their identity by moving elsewhere, is a right affirmed by the United Nations Declaration of Human Rights, adopted unani-

mously by the General Assembly of the United Nations; and

Whereas, These infringements of human rights are an obstacle to the development of better understanding and better relations between the people of the United States and the people of the Soviet Union; now, therefore, be it

Resolved, That the Legislature of the State of New York memorialize the President and the Congress of the United States to consider the plight of Soviet Jews when granting most favored nation status to the Soviet Union, and to call upon the Soviet government to end its persecution of the Jews and other minorities and to permit the free exercise of religion by all its citizens in accordance with the Soviet Constitution; and be it further

Resolved, That the Legislature of the State of New York, in the interest of justice and humanity, memorialize the President and the Congress of the United States to call upon the Soviet government to permit its citizens to emigrate from the Soviet Union to the countries of their choice as affirmed by the United Nations Declaration of Human Rights; and be it further

Resolved, That the Legislature of the State of New York petition the United States government to use all appropriate diplomatic means to engender the fullest support possible among other nations for such a request to the Soviet Union; and be it further

Resolved, That in order to effectuate the purposes of this resolution, copies of this resolution be transmitted to the President, Vice President and Secretary of State of the United States, to the Secretary of the Senate and the Clerk of the House of Representatives of the United States, and to each member of the Congress of the United States from the State of New York.

POLITICAL SCIENTIST REFUTES CLAIM OF IMPOUNDMENT BY THOMAS JEFFERSON

Mr. ERVIN. Mr. President, recently various spokesmen for the present administration have invoked the ghost of Thomas Jefferson in an attempt to prove that every President since 1803 has impounded appropriated funds.

Prof. Joseph Cooper, of the Department of Political Science, Rice University, has examined the so-called precedent, in which, it is said, Thomas Jefferson impounded $50,000 intended for the purchase of gunboats. I ask unanimous consent to place in the RECORD Professor Cooper's analysis of this historical tidbit.

I also ask unanimous consent to insert in the RECORD an editorial from the Greensboro Daily News of February 9, 1973, entitled "The Impoundment Flap," which also helps to dispose of this celebrated piece of "instant history."

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

ANALYSIS OF ALLEGED 1803 PRECEDENT FOR IMPOUNDMENT PRACTICE IN NIXON ADMINISTRATION

In the past several months Administrative spokesmen have cited President Jefferson's action in 1803 regarding an appropriation for gunboats as a precedent for recent executive practice regarding impoundment. Their claim is that impoundment as practiced by President Nixon goes all the way back to Jefferson.

This claim, however, has no more historical justification than other Administration attempts to use history simply as a weapon to legitimize its impoundment practices. Nonetheless, since the precedent claimed here is such a hallowed one, it merits detailed analysis.

What, then, did happen in 1803? Administrative spokesmen simply report that Jefferson did not spend $50,000 appropriated for fifteen gunboats and argue that this is a precedent that legitimizes current impoundment practice. This claim is refutable on two grounds.

First, Jefferson's decision in 1803 not to spend the funds in the period following their appropriation is distinguishable from impoundment as practiced by the Nixon Administration. The $50,000 appropriated for gunboats was contained in an Act approved Feb. 28, 1803. This was in the midst of the crisis precipitated by the cession of Louisiana by Spain to France. By May, however, Jefferson had resolved the crisis by purchasing Louisiana from France. On October 17, 1803, in his Third Annual Message to Congress he wrote as follows:

"The sum of $50,000 appropriated by Congress for providing gunboats remains unexpended. The favorable and peaceful turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary, and time was desirable in order that the institution of that branch of our force might begin on models the most approved by experience."

Thus, what was involved here was simply a case in which money was not spent in order to avoid waste due to a change of conditions with reference to the specific program goals involved. This type of action is one for which other 19th century precedents can probably be found and it is the type that Congress, at the bequest of the Budget Bureau, clothed with statutory authorization in Section 1211 of the General Appropriation Act for 1951. As such, this type of action is readily and clearly distinguishable from impoundment practice under the Nixon Administration wherein funds are denied to execute laws or portions of laws because the President does not personally approve of the programs involved and/or thinks their execution is less important than the attainment of some overall fiscal policy objective he has.

Second, and even more important, what occurred in 1803 was in reality merely a case of deferred spending which did not destroy or impair the program goals of Congress, rather than an impoundment as now practiced by the Nixon Administration. Note that in his October Message Jefferson did not assert a right to impound; he merely stated that he was not going to spend the money until the gunboats in question could be built "on models the most approved by experience." In short, he did not, as the Nixon Administration now does, claim a right to impose his own policy judgments on the execution of law, to kill or trim programs in accord with his own policy desires, to determine personally what laws deserve or do not deserve to be executed.

A question thus occurs whose answer Administrative spokesmen seem simply to have assumed is negative. Did Jefferson, in fact, spend the money? The answer is yes! He meant just what he said in his October Message and indeed must have begun to build the gunboats within a relatively short period after this Message. In his Fourth Annual Message, delivered on November 8, 1804, he wrote, "The Act of Congress of February 28, 1803, for building and employing a number of gun-boats, is now in a course of execution to the extent there provided for." Further evidence is provided by Richard Hildreth in the fifth volume of his *History of the United States.* In discussing the November Message he notes that:

"Under the appropriation already made, ten gun-boats had been commenced, after a diligent study of Spanish and Neapolitan models, those being the only nations which placed much dependence on this species of force." [p. 539].

Moreover, in a letter to Joseph H. Nicholson on January 29, 1805, Jefferson wrote that "We now possess ten [gunboats], built and building."

We may conclude, then, that Jefferson's action furnishes no precedent for impoundment as now practiced by the Nixon Administration. Indeed, if anything, it supports the opposite contention that impoundments for the policy purposes of the President are a novel and illegitimate imposition on the constitutional prerogatives of Congress as understood from the earliest days of the Republic. To be sure, the origins of such impoundments date from the Presidency of Franklin Roosevelt. What the Nixon Administration has added is not simply expansion in scope so that the funds involved now amount to many billions, but also virtually unrestrained audacity in claiming as a right something that represents simply an arrogation of power. The purpose of this memorandum is to assist in keeping the historical record clear, to prevent history from being rewritten by those who do not care to understand it but want only to mold it to their own purposes.

[From the Greensboro Daily News, Feb. 9, 1973]

THE "IMPOUNDMENT" FLAP

Our friend Vermont Royster of Chapel Hill, writing in the Wall Street *Journal* about the "impoundment" flap, finds it difficult to think of it as anything so dramatic as a "constitutional crisis"—and so, we guess, do many others.

The whole issue is far easier to understand if you ignore the constitutional aspect and accept the raw and simple political terms in which President Nixon tried to couch it last week: A valiant, thrifty President striving to curb an "irresponsible" and spendthrift Congress by selectively refusing to pay out what Congress, in its profligacy, appropriates for programs determined by Mr. Nixon to be of dubious value and to threaten inflation and higher taxes. If the American public chooses to look no further into the matter, the President will win the battle easily, for as Mr. Royster says, "if there's one thing the American public is weary of its government spending."

But we have learned that when Sen. Sam Ervin gets his dander up it is rash to guess the outcome of a fight; and "impoundment" has stirred the senator's indignation, although he largely sides with Mr. Nixon on the secondary issue of spending. Senator Ervin is bent on seeing that if the purse is to be pinched, it is pinched by the right fingers—that is, by Congress. He has introduced a bill, now under consideration by his Senate Judiciary subcommittee on separation of powers, that would require congressional assent to any presidential impoundmen of appropriated funds of longer than 60 days' duration.

Implicit in the Ervin bill, we suppose, is a concession of sorts that President Nixon is operating in one of those "twilight areas" where the powers of the President and Congress are ill-defined.

But Mr. Nixon does not see it that way. Last week he said he would answer critics of impoundment "the same way Jefferson did and Jackson did and Truman did," continuing:

. . . the constitutional right for the President of the United States to impound funds . . . when the spending of money would mean either increasing prices or increasing taxes for all the people . . . is absolutely clear.

In fact, Mr. Nixon is badly off base. He sees absolute clarity where there is none. In further fact, while there seems to be no

controlling legal precedent, it is doubtful that Jefferson or Jackson ever asserted, or even requested, the presidential power to second-guess Congress on appropriations as Mr. Nixon is doing.

Let us take, for example, the celebrated matter of the Mississippi gunboats. It has been cited as a clear-cut precedent for Mr. Nixon's recent actions that Thomas Jefferson, during the 1802 crisis with France, declined to spend $50,000 that Congress had appropriated for gunboat purchases. This "precedent" has been mentioned by the New York Times and Joseph Alsop as if Congress had been crying for gunboats and Jefferson stubbornly refused to buy them and it has assumed the standing of instant history.

Instant history is indeed what it is and as usual somewhat closer investigation casts great doubt on its relevance. In his recent authoritative biography of Jefferson, Merrill D. Peterson tells the tale of the gunboat flap and reminds us that Jefferson was an enthusiast about gunboats because they seemed to him a cheaper defense of American waterways than fixed port fortifications or bigger battleships favored by the "big navy" advocates of the day.

The use of a . . . "mosquito fleet" in harbor defense (writes Peterson) had been first suggested in the crisis of the closure of New Orleans in 1802. The crisis passed before the law of Congress authorizing the construction of 15 gunboats could be implemented and the administration deferred the project until various models of these small vessels could be studied.

Jefferson, that is, did not defy the will of Congress outright; indeed, in the face of Federalist jeers and skepticism he went right on with the gunboat project. "When he left office," Peterson writes, "approximately 180 gunboats were stationed in American ports; if he had had his way there would have been at least 300."

It is true, as Mr. Nixon implied last week, that Presidents and Congress quarreled throughout the Jefferson and Jackson eras over the control of the purse-strings. But Leonard White's great administrative histories of those years make it "absolutely clear," in Mr. Nixon's phrase, that no President asserted, and no Congress conceded, a full presidential right to impound funds. The real fuss was over related but different questions: the degree of itemized appropriation by Congress; the transfer of surpluses from one account to another; reversions; the incurment of "deficiencies" (or deficits) which Congress would later have to make up. According to Professor White:

Congress was thus engaged . . . in a long battle to realize its full control of federal expenditures. Its principle of action was prescribed in the Constitution and was stated forcefully by Representative John Sherman . . . 'that a specific sum shall be appropriated by law originating in this House, for a specific purpose, and within a given fiscal year. It is the duty of the executive to use that sum, and no more, especially for that purpose, and no other, and within the time fixed.' Congress never succeeded in making such a rigid interpretation of the Constitution a reality. It did not appropriate specific funds for the armed services; it regularly held appropriations open for two years; it did not punish executives for using more money than had been appropriated nor for requiring more time than had been planned.

What is novel about the current impoundment flap is that it exactly reverses the old pattern. Ever since the Stuart kings ran into trouble with parliament by taxing England without its consent, the usual source of legislative jealousy has been executives trying to spend *more* than they were given to spend or to spend it in ways not specifically stated. Senator Ervin and other critics of impoundment argue that since the President clearly cannot spend money not appropriated, the converse is true: What Congress directs him to spend must be spent because a President is obliged by his oath to "take care that the laws be faithfully executed."

But President Nixon defies this logic. He is, as we have previously noted, seeking a virtual counter-revolution in American governing habits; he seeks to decentralize spending and power to local government. And since the Democratic Congress has resisted this aim, he asserts for tactical reasons a power to reduce and divert congressional appropriations for his own reasons; cutting and starving many existing programs so that they will vanish or wither, while funneling unearmarked funds by "revenue sharing" to the states and localities. This practice raises all kinds of critical questions, apart from the right to impound. It is a direct challenge to the authority of Congress and its traditional power of the pursestrings. Even if the right to impound were as "absolutely clear" as Mr. Nixon claims, Mr. Nixon could not be conceded easy victory. Congressional acceptance of the Nixon doctrine would make the President a super-legislator, warmed with an assumed but not granted item veto, superior in authority to the 535 elected representatives of the people. And our brief look at the history of the matter suggests that the power Mr. Nixon claims is far from "clear," and in any case certainly not "absolutely clear."

ANNIVERSARY OF LITHUANIAN INDEPENDENCE

Mr. MATHIAS. Mr. President, in February, Americans of Lithuanian and Estonian origin and their friends throughout the country celebrated the short-lived independence of their Baltic homelands. February 16 and 24, respectively, marked the anniversary of the establishment of the Republics of Lithuania and Estonia in 1918.

Many will remember the halcyon days from 1918 to 1940 when these proud nations enjoyed an interval of independence which saw long-needed social and economic reforms. Many, too, will recall that in 1940 this hard won progress was cruelly halted when the Soviet Union, violating all treaty obligations, invaded, occupied, and illegally annexed the territories of Estonia and Lithuania.

We in the United States enjoy many historical, cultural, and family ties with the people of Eastern Europe. I am proud to add my voice to their appeal for the right to sovereignty for their homeland and join them in their hope that one day their countrymen will once again know freedom.

ONE WAY TO HELP SOLVE THE ENERGY PROBLEM

Mr. SYMINGTON. Mr. President, for years it has been assumed that the problem involving adequate energy sources has been at odds with those who emphasize the importance of preserving our environment. Strip coal mining has damaged our terrain, and emissions from various type powerplants have contaminated our air.

These two aspects of current life have become serious. Neither can be longer overlooked. But progress is being made, and I am proud to see part of that progress originating in Missouri.

Since last May, the refuse commission in St. Louis has been working with the Environmental Protection Agency and the city's public utility on an experimental facility which utilizes solid wastes as a substitute fuel for the generation of electric energy.

Attention in the press was given the project last month, and now the Environmental Protection Agency has announced an additional grant so as to install an air classification system at the facility, the latter designed to solve one of the technical problems arising during the first months of operation.

This facility is still experimental in nature and limited in scope, but it is a step in the right direction.

I ask unanimous consent that an article from the Washington Post of February 11, "St. Louis Uses Trash To Make Electricity," be printed in the RECORD.

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

ST. LOUIS USES TRASH TO MAKE ELECTRICITY

(By Dale Singer)

ST. LOUIS.—Part of the answer to America's power shortage may be found at the St. Louis city dump.

Wayne Sutterfield, St. Louis refuse commissioner for the past six years, is overseeing a new facility which converts trash into fuel for a power generating plant.

The process, the only one of its kind in the nation, went into operation last May. While all of the bugs aren't worked out yet. Sutterfield thinks it is a key to at least part of the fuel shortage threatening to curtail power in the future.

The process works like this: the trash is brought by trucks to the plant, where it is pushed in raw form onto a conveyor belt. It is carried to a hammermill where 200-pound hammers shred the material.

From there it is moved by conveyor to a magnetic metal-detecting device which removes ferrous metals. The shredded remains, called confetti, are loaded into 25-ton trucks and taken to the Union Electric Co. plant outside the city.

MAJOR PROBLEM

Sutterfield said the modified boilers at the power plant normally operate on 60 tons of coal. Under this project 10 per cent of the coal is replaced by the converted trash. Since the confetti has only half the heat value of coal it takes 12 tons of the shredded material to replace six tons of coal.

During the first full year of operation the project is expected to cost $2.8 million, including construction. The federal government and the city are sharing the costs on a two-thirds, one-third basis. In addition, Union Electric says it spent $550,000 to modify its boilers to receive the shredded trash.

Sutterfield said that after the first year operating costs are expected to be $600,000 yearly.

The system is designed to process 30 per cent of the city's trash, but during its first months in operation it has not always run at full capacity. Only one major problem has cropped up, Sutterfield said.

SEPARATE PLASTIC

"Our greatest problem so far is that we're only removing ferrous metal with our magnetic detector," he explained. "Some nonferrous metals and glass are getting into the mix and creating problems in the pneumatic system at the boiler."

To solve these problems, he said, an air classifier is to be installed this year. This phase of the process also will separate any plastic from other items in the trash by means of their weights to allow a more finely sifted confetti to be burned in the suspension boiler system at the electrical plant.

"We think that with the proper preparation we can burn more than 10 per cent confetti in the boilers. We really don't know what we can burn eventually. That's one of the things we'll try to determine," Sutterfield said.

He said trash may be the fuel of the future and St. Louis trash could lead the way. Such a project has never before been tried on such a large scale, he said.

NATIONAL ASSOCIATION OF REGIONAL COUNCILS POLICY POSITIONS

Mr. HUMPHREY. Mr. President, the National Association of Regional Councils held its annual conference recently in Minneapolis, Minn.

This association was established in 1967 to assist the rapidly growing number of regional councils in setting up and improving their programs and activities. The association's membership is made up of both nonmetropolitan and metropolitan councils. There are about 600 such councils operating today in the country.

Since its inception, this association has been developing and expanding its service program directed to and for its regional council members. The goals of this program are:

To promote the development and understanding of regional councils,

To provide up-to-date information and technical service,

To assist in the expansion of regional council program opportunities,

To develop and communicate national policy proposals on issues of regional impact, and

To act as liaison with Federal and State agencies in order to promote the use of regional councils and present their needs and views.

Regional planning and development is here to stay, both as it relates to metropolitan and nonmetropolitan areas. As the old saying goes, "its an idea whose time has come." While much more needs to be done in further perfecting these organizational structures in terms of improving the coordinating of both Federal and State grant-in-aid programs, particularly as it relates to planning, they nonetheless are well on the road toward achieving that goal.

Mr. President, I am a strong supporter of such regional efforts. When I addressed a Rural Development Conference that Governor Anderson and I sponsored in Moorhead, Minn., last December 13, 1972, I made the following comments about the importance of such efforts as it relates to rural or nonmetropolitan areas:

If we are to insure that the future growth and development of our rural communities is to take place on a "planned" and "balanced" basis, then the usual emphasis on the production of local planning documents must be changed to strengthening the planning process itself. Furthermore, that planning process must be more directly tied into the political decision-making process and not be kept aloof from it. And federal and state planning—and the implementing decisions that flow from such planning—must also be more carefully coordinated with local community plans.

In that every small rural community or county will continue to find it difficult, if not impossible, to provide their citizens with a full range of community service and job opportunities, including the planning process which is an essential prerequisite in meeting such needs, a more viable and workable approach to planning and development in rural areas will be required.

The multi-county planning and development commission approach which has now been adopted in over 40 states, offers rural or nonmetropolitan areas the opportunity to deal more realistically with their planning and development needs on a comprehensive basis.

In addition to the federal funds that are made available under the 1968 amendments to Section 701 of the Housing and Urban Development Act to help finance these new non-metro, multi-county commissions, we also authorized an additional $10 million under the new Rural Development Act for such planning bodies. This action by our Committee is a recognition of not only the importance of "planning" in rural areas, but also the importance of approaching planning and development in rural areas on a broader geographical basis.

Planning requirements, whether they be in connection with individual projects, or the broader functional requirements of a particular community need, or in connection with coordinating all of these functional requirements, is becoming more and more an integral part or requirement of all federal and many state programs.

If rural communities wish to get their fair share under these programs, as well as get their best "bang for each buck," then they are going to have to face up to meeting these planning requirements.

It is for these reasons that I wish to add my personal endorsement to what Governor Anderson indicated this morning about encouraging the establishment of more rural multi-county planning and development commissions here in Minnesota.

It is a rational and sound approach to planning and development in rural Minnesota, and it will afford us, in particular, an opportunity to achieve the kind of coordination of local, state, and federal rural development programs that we must have, if we are going to translate rural development in Minnesota from a mere goal to an accomplished fact.

Over 400 regional council members and leaders, representing both city and rural areas, came to Washington last week from their Minneapolis meeting, to express their views and concerns about the host of administration program cuts and terminations which directly affects the governments and people they represent.

Many of these council leaders met with me and later with Senator CLARK, chairman of our Senate Rural Development Subcommittee. They presented to us their views and policy positions.

Mr. President, I request unanimous consent that their testimony presented to the Rural Development Subcommittee and their policy position statements be printed at this point in the RECORD.

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

TESTIMONY BY MAURICE GALLOWAY

We are very pleased to be here today representing over 400 regional council leaders which have come to Washington from our Annual Conference in Minneapolis to present their views and concerns on rural development in the United States. We have prepared presentations from several speakers, but in this official testimony we are providing a summary of our views, concerns and conclusions. Our testimony before you will certainly emphasize our concerns on the Rural Development Act of 1972 which you adopted last year.

We will also comment on our concerns about the Economic Development Administration and its future in providing funding and program assistance to non-metropolitan areas. In summary, we would like to comment on three key points and have attached information providing the basis for these conclusions.

(1) We are very disappointed that many of the innovative features of the Rural Development Act of 1972 have not been funded or implemented by the Administration and the U.S. Department of Agriculture. We are particularly concerned that Sections 106 and 111 have not been funded. These two Sections are the heart of assisting Rural America in developing these rural development goals and plans and assembling resources to implement those plans. Section 111 on rural development planning would assure the greatest cost benefit from federal, state and local programs.

(2) We are extremely concerned as to the future of the Public Works and Economic Development Act of 1965. We do support a reforming of the grant-in-aid system to assure that our critical national goals are met. But on the other hand, we do urge the President to release available funds including those which have been impounded and provided acceptable for FY 74 funding levels. It is particularly important to the Economic Development Administration and its programs to release funding still available in this fiscal year.

(3) As to the future of the Public Works and Economic Development Act of 1965, we do feel Congress should extend this legislation for one more year to cover the transition period for the full implementation of the Rural Development Act of 1972 and the integrating of other federal programs to accomplish the critical needs met by the Economic Development Administration in Rural America.

Attached are three resolutions which have been adopted by the National Association of Regional Councils Membership in Minneapolis on February 26, 1973. Also attached are Policy Guidelines which have been developed for presentation to you and other Congressional and Administration leaders on areas of crucial concern to us, including a special section on rural and economic development. We are also submitting a roster of our newly elected Board of Directors, and our basic Goals for Action Statement.

NARC POLICY GUIDELINES PAPER

ENVIRONMENT

I. Current situation

Water Quality

Two significant environmental issues confronting regional councils in 1973 will involve federal policy on water quality and solid waste programs. In the former, the Environmental Protection Administration is now developing rules and regulations to implement the Federal Water Pollution Control Act Amendments of 1972.

Section 208 of the Act is of particular importance to regional councils. It provides 100% funding for the first two years for the development of an areawide planning and management process for water pollution abatement within certain areas where there are significant water quality control problems. Twenty-five million dollars out of the $100 million authorized has been allocated for the implementation of this program for FY 74. These designations are important to local governments in that they can participate actively in the planning process and ensure it is responsive to their needs and priorities.

To initiate the designation process of 208 agencies, EPA must issue regulations within

the next several weeks, establishing procedures upon which the governors will determine whether there is a substantial water quality problem in any area of their state. Waste management planning agencies can then be designated to undertake the planning within these areas. The content of the EPA guidelines will determine the degree of involvement of regional councils in the program.

Solid Waste

The federal solid waste grant program expires at the end of June, 1973. Several proposals have been introduced in Congress to provide a new thrust to this legislation.

The Administration proposes to terminate the planning and demonstration aspects of the current law, and only provides for limited grant assistance to solve problems pertaining to toxic wastes. Other legislative proposals would establish a more adequately funded planning and action program. Most of the proposals would invoke a tax on user charges to encourage the production of goods which can be readily disposed of or recycled.

The Administration's FY 74 budget proposal also would affect the environmental concerns in rural areas. It calls for the termination of the Economic Development Administration and the Department of Agriculture's water and sewer programs. Both programs provided substantial funding for water and sewer facilities in rural areas. Future funding for these facilities would be provided from the monies allocated for the implementation of the Federal Water Pollution Control Act.

II. NARC policy guidelines

1. EPA should give liberal definition to establish the term "substantial water quality control problem," thereby encouraging the establishment of the 208 planning processes in both urban and rural areas that are experiencing rapid growth and/or substantial water quality problems. The restrictive definition being proposed will limit the number of areas that can be designated.

2. In urban areas, the 208 planning process should encompass at least the entire Standard Metropolitan Statistical Area, and the umbrella regional council should be the designated water quality management planning agency. The council's governing body should be composed of at least a majority of elected officials of general purpose local governments.

3. Subsequent to the first year of 208 funding, general purpose local governments participating in the process should be required to enter into a memorandum of agreement to ensure that the plans and programs developed will be implemented. If the local governments representing the majority of the population fail to enter into such an agreement, it is contemplated that all further planning assistance under 208 will cease, and the state will assume the responsibility for such planning and project selection in the area.

4. Funding for the various water and sewer programs should continue until an adequate bloc or special revenue sharing grant program is enacted and funds made available. All such funds and programs should require a regional planning process, including an adopted regional program of implementation.

5. Any new solid waste legislation should provide adequate funding for regional solid waste planning and action grants, and all action grants should be made only for projects which are consistent with regional solid waste planning and the program of implementation.

NATIONAL LAND USE POLICY

I. Current situation

Although the Senate passed a bill in the last few weeks of the session, the 92nd Session of Congress did not produce national land use legislation. Senator Jackson has reintroduced his bill (S-268) and public hearings are underway. The Jackson bill is similar to the version passed by the Senate in 1972. It would require states to develop standards and criteria on local land use decisions affecting critical environmental areas, public and private development of regional significance, and certain large-scale projects, such as airports, interstate highway interchanges, etc. Grant funds would be provided to states for the purpose of developing and administering such land use control programs.

The National Administration has indicated it will resubmit its bill to Congress. Apparently this proposal will be similar to the Jackson bill. However, it has been indicated that there would be at least one important difference which would impel states to develop land use standards and guidelines. It would reduce by 7% per year for three years the funds available to the states from the airport and airway, highway and land and water conservation trust funds, if they did not develop and enforce land use standards and criteria consistent with the proposed federal act. The Jackson bill does not provide for this type of sanction.

It is likely that the land use bill will be enacted in 1973.

II. NARC policy guidelines

(1) National and state land use legislation should be based on national policies and on an intergovernmental strategy for balanced national growth, encompassing urban, suburban and rural areas, which provide a context for local and regional planning and programming.

(2) The national balanced growth policy should be formulated and implemented through an intergovernmental policy planning-coordinative management system.

(3) State land use policies and controls should be limited strictly to land uses having obvious statewide and regional significance.

(4) Local governments and their regional councils should have mandated involvement in establishing state standards and criteria for all land use policies which deal with those public and private developments of regional significance and their regional land use plans should be integrated into the state land use plan when such plans are compatible with state standards and criteria.

(5) Local conformance to, and implementation of, state land use standards and criteria should be the function of local governments and/or their regional councils.

(6) The national land use programs should be placed somewhere in the federal government other than a functional department or agency.

LAW ENFORCEMENT AND CRIMINAL JUSTICE

I. Current situation

The Omnibus Crime and Control and Safe Streets Act expires at the end of June 1973; Congress and the Administration are currently proposing an extension. The Administration proposes to convert the LEAA programs into a special revenue sharing program. The various priorities in the current LEAA program would be lost from view. The money would be provided to the state on a bloc grant basis with the state deciding upon program allocations and priorities.

II. NARC policy guidelines

(1) New legislation extending the law enforcement and criminal justice program should require state, regional and local planning as a condition to the expenditure of the action monies, and the required regional planning should be conducted by umbrella regional councils.

(2) Any new legislation should provide separate funds for planning. The state should be required to pass through to the local and regional units doing law enforcement and criminal justice planning at least 60% of such planning funds.

(3) At least 75% of law enforcement funds should be passed through by the states to local governments based on programs determined by the regional planning process.

(4) Separate planning and action funds should be established for interstate metropolitan areas to ensure that the umbrella regional council will receive adequate planning funds and that local governments receive adequate action monies for interstate problems.

HUMAN RESOURCES

(Allied Services, Manpower, Health, Older Americans)

I. Current situation

Certain manpower programs currently being administered by the Department of Labor will be administratively converted into a Manpower Special Revenue Sharing Program in FY 74.

HEW will continue to fund the Comprehensive Health Planning under Section 314 (a) and (b) of the Partnership for Health legislation, and appropriations for such planning will be increased by $3 million to a total of $38 million in FY 74.

The Administration will again submit the Allied Services Act. This legislation will permit program resource transfers among such HEW categorical programs as child care, vocational rehabilitation, comprehensive health planning, etc. To transfer funds among such programs, the state and local governments must develop an annual plan and program. Once the plan has been approved, funds can be transferred among the programs to meet local priorities. Such fund transfers can be made up to an amount equal to 25% of the monies available within each program category covered by the Act.

The Older Americans Act enacted by Congress and vetoed by the President last year has been reintroduced this year. The Senate has passed a new bill at a reduced authorization. House action is pending. The bill provides for regional planning and service delivery.

II. NARC policy guidelines

(1) Congress and the Administration should establish a policy for prime sponsors of manpower programs to utilize regional councils where regional planning is necessary.

(2) The 314(b) Comprehensive Health Planning Program of HEW should be changed, by legislation and/or administrative policy, to require the utilization of umbrella regional councils rather than functional health planning agencies as the agency under which such health planning will be conducted.

(3) Federal legislation concerning human resource programs, such as the proposed Allied Services Act, which require state and sub-state planning should prefer umbrella regional councils for such planning.

RURAL DEVELOPMENT AND ECONOMIC DEVELOPMENT

I. Current situation

Under the President's 1974 budget proposals, significant reductions are proposed in many of the programs that had previously been available to rural communities.

The budget proposal terminates the programs under the Public Works and Economic Development Act which expires at the end of June, 1973. While these programs have an impact in some metropolitan areas, such as Seattle and Chicago, their main thrust involved multi-county rural areas having severe economic problems. The Administration's budget proposal also terminates the water and sewer program of the Farmers Home Administration. The rural development aspect of both of these programs are to be replaced by proposed funding of the Rural Development Act of 1972, and through an increase of 30% for business loan programs provided by the Small Business Administration.

In addition to these hardware programs

which are proposed to be terminated, the budget would also cause a loss of the general development planning funds from the EDA program. This decision has an impact on regional councils by reducing the planning funds available to over one hundred regional councils, primarily in nonmetropolitan areas, by over $4 million. The Congress, under Section III Act, authorized $10 million for rural development, but the FY 74 Administration budget does not propose any funding for Section III of the Rural Development Act. This Section is to provide general planning funds to regional councils for the implementation of the Act.

The priority attached to rural development projects has also been diminished under the budget proposal—for example, the termination of water and sewer funds under the EDA and Farmers Home programs are to be replaced by requiring rural local governments to obtain such funding from the Federal Water Pollution Control Act. But the main emphasis of that legislation is to fund waste water treatment facilities, not water and sewer systems.

II. NARC Policy Guidelines

The policy guidelines for implementation of the Rural Development Act are contained in the attached memorandum developed by the Rural Development Advisory Committee of NARC. The material below relates to rural development issues raised by the consideration of the future of the Public Works and Economic Development Act of 1965.

1. EDA and its programs should be extended for the fiscal year ending June, 1974, to enable Congress to reassess the programs and to modify the legislation to make it mutually consistent and supportive of the recently enacted Rural Development Act. In implementing both the EDA and rural development programs, Congress should emphasize the need to develop the consistent growth policy which was called for in the Agriculture Act of 1970.

2. In reassessing the Public Works and Economic Development legislation, Congress should incorporate the umbrella regional council concept in such legislation.

3. Special incentives, such as contained in the revenue sharing proposal in the Senate version of the Rural Development Act of 1972, should be considered again by Congress as a way of implementing rural development policies on a less-cost basis.

4. In considering the future economic development legislation, if Congress decides to create multi-state wall to wall commissions, such as Title V Commissions, they should play only a policy planning role and not became conduits for state and local planning and action grants.

TRANSPORTATION

I. Current situation

There is early consideration being given to transportation issues in the 93rd Congress. Neither highway nor mass transit legislation passed in 1972. This presents an especially urgent need for a highway bill. Without further authorization, monies from the highway trust fund cannot be appropriated to the states subsequent to July 1, 1973. And many officials from urban areas believe it is also essential to provide adequate capital funding and operating revenues to meet mass transit deficits.

Hearings have begun on legislation in both areas. The Public Works Committee of the Senate is scheduled to report a highway bill by March.

II. NARC policy guidelines

(1) The DOT unified transportation work program requirement in urbanized areas is supported as a feasible way of achieving necessary multi-modal transportation planning which should be conducted by the umbrella regional councils.

(2) Urban system funds should be allocated according to regional planning and the program of implementation developed by the umbrella regional council. The "urbanized areas" should be subject to expansion by the Secretary of the Department of Transportation after requests from local governments through their regional councils.

(3) Those portions of the interstate system program in urban areas that have been blocked by local action should be reprogrammed in accordance with local needs on a dollar-for-dollar basis if alternate methods of completing the interstate system are available.

(4) NARC supports a major demonstration program funded from the rural highway funds for determining how to provide public transit in rural areas.

(5) Rural primary and secondary road funds should be expended for a project only after consultation and involvement of local governments through their regional councils.

(6) Small urban areas from 5,000 to 50,000 population should have access to urban system monies for their critical transportation needs, which are denied and included within a multi-modal transportation planning process conducted by the umbrella regional councils.

URBAN COMMUNITY DEVELOPMENT AND HOUSING

I. Current situation

In 1972 the Administration proposed a fundamental change in the manner in which grant assistance would be made to urban governments for community development purposes. Under the concept, categorical programs such as urban renewal, water and sewage, open space, neighborhood rehabilitation and neighborhood public facilities would be terminated. Thereafter, funding for these types of activities would be merged into a single special revenue sharing program. The advantages of this approach would be to give urban governments more freedom in deciding how to use federal aid funds for community development purposes.

This legislation was modified to some degree and passed by the Senate in 1972. However, the House did not take action.

The Administration's FY 74 budget and proposed legislative program again provides for an urban community development program. Because of fiscal considerations, much of the funds for the existing categorical programs which are scheduled for consolidation within the CD revenue sharing proposal have been impounded by the Administration. Consequently, Congress is scheduling re-examination of this proposal early in its 93rd Session.

In addition to the revenue sharing proposal, the Administration has proposed a significant change in the "701" comprehensive planning assistance program. Under its current proposal, this program would be changed to require all of the funds to be channeled through the states and allocated in accordance with state developed priorities. This is a significant deviation from the existing legislation which provides direct access to the program by local governments and regional agencies.

Finally, major revisions in the federally assisted low and moderate income housing programs will be proposed by the Administration and in Congress. Pending the outcome of these deliberations, all federal-aid housing program funding has been suspended.

II. NARC policy guidelines

(1) To ensure that regional plans and policies are adequately reflected in community development revenue sharing or bloc grant proposals, those expenditures of CD grant funds for water and sewer, open space, public transportation and housing, should be consistent with a regional community development program developed by the umbrella regional council.

This approach has been shown to be feasible in a demonstration project conducted by NARC with five diverse regional councils. (It should be emphasized that a regional community development program would not erode the flexibility given to a local government in spending its community development funds. Rather, it would provide that if community development funds were allocated in any of the above listed functional areas, they would have to be expended in accordance with the regional program.)

(2) The 701 program should continue to flow to the grant recipients now authorized under the Act. Further, a specific part of the annual appropriation for "701" should be earmarked for regional councils.

(3) Changes in the federal assistance program for low and moderate income housing should provide for a fair share or other allocation formula to be developed on a regional basis by the umbrella regional council.

Once the regional plan is adopted and agreed upon by the participating local governments in the regional council, all further federal funding should be allocated in accordance with the regional councils housing plan and program.

The determination of the feasibility of this approach might be undertaken by HUD on the basis of several demonstration projects prior to its application on a nation-wide basis.

NARC Resolution Concerning Current Federal Grant-in-Aid Programs

Whereas, the product of the efforts of local units of general purpose governments working together on regional problems is the improvement in the quality of life of the people we serve; and

Whereas, to a very substantial degree that quality of life is determined by the availability and the manner of application of federal resources; and

Whereas, the National Association of Regional Councils (NARC) fully supports the objectives of the Administration to design the more efficient and effective delivery and utilization of federal funds; and

Whereas, we agreed with proposals that locally elected officials must be given more discretion in the formulation of plans and priorities for the use of grants-in-aid funds and therefore, favor moves in the direction of bloc grants or special revenue sharing; and

Whereas, NARC expresses deep concern, however, that unless specific attention is assigned to the necessity of comprehensive areawide planning and plan execution, many of the gains made by regional councils in fostering cooperation and coordination among local government will be lost and the instruments of cooperation will fail, resources will be poorly used and the public interest will not be best served; and

Whereas, NARC expresses deep concern at the Administration's actions and plans to restrict or eliminate the flow of federal support funds for established programs pending Congressional approval of new funding systems; and

Whereas, it is our deep belief, however, that the needs of people for jobs, housing, health care, education, community and economic development, and similar needs are vital, and these needs cannot completely be ignored until new bloc grants or special revenue sharing legislation is enacted.

Now, therefore, be it resolved by the National Association of Regional Councils: That the President is urged to release available funds including those which have been impounded and provide acceptable FY 74 funding levels which will permit essential needs to be met, and further that the Con-

gress be called upon to expedite the reforming of the grant-in-aid system to assure that our critical national goals will be met while utilizing to the maximum degree the total capability of the federal system.

RESOLUTION URGING THAT REGIONAL COUNCILS BE EXEMPTED FROM PROPOSAL TO CHANNEL ALL "701" FUNDS THROUGH STATE GOVERNMENTS

Whereas, Section 701(g) of the Housing Act of 1965 made regional organizations of local public officials eligible for funding assistance from the Department of Housing and Urban Development to support their ongoing activities, and

Whereas, the said section provided that such regional organizations would be eligible for direct grants from the Department, whereas it was provided that various other eligible entities were to receive funds under Section 701 through their respective state governments, and

Whereas, these regional councils have provided greatly increased inter-governmental coordination and substantially improved planning for area development and the delivering of governmental services in these areas, thereby reducing duplication of effort and waste and identifying deficiencies in governmental services and facilities, and

Whereas, the National Administration's proposed budget for FY 74 provides that beginning with that fiscal year all funds disbursed under Section 701, including those disbursed to interstate regional councils, would be channeled through state governments, and

Whereas, such a change in policy would not only be inconsistent with the provisions of Section 701(g), but would also cause excessive and undue hardship to regional councils currently receiving "701" funds directly and especially interstate regional councils that would be required to enter multiple negotiations with various state governments, thus resulting in divergent program priorities, probable conflicts in the conditions for program execution laid down by the respective state governments.

Now, therefore, be it resolved by the National Association of Regional Councils: That the Administration is urged in the strongest terms possible not to change the operation of the "701" program to require either intrastate and interstate regional councils presently receiving "701" funds directly from the Department of Housing and Urban Development to go through or to the state(s) for such funds, and that it give special consideration to the unique problems which the proposed change would cause for interstate regional councils.

A RESOLUTION BY THE NATIONAL ASSOCIATION OF REGIONAL COUNCILS SUPPORTING THE CONTINUATION AND FUNDING OF ECONOMIC PLANNING AND DEVELOPMENT FUNCTIONS

Whereas, the National Administration has recommended the termination of the Economic Development Administration on the grounds that its functions are being adequately replaced by increased Small Business Administration activities and the implementation of the new Rural Development Act, and

Whereas, the Administration has not provided for the funding of the planning and grant sections of the Rural Development Act, and the Small Business Administration does not further orderly economic growth through planning and interagency coordination and cooperation, and

Whereas, the Congress, recognizing the need for economic planning and incentives to guide the allocation of economic activities, have introduced bills extending the Public Works and Economic Development Act of 1965 as amended and have requested a complete evaluation to determine appropriate action in support of a national economic development effort.

Now, therefore, the National Association of Regional Councils resolves to support the continuation and funding of economic planning and development functions until adequate consideration has been given to a more comprehensive national economic planning and development program, or sufficient time has been given for the transition of present efforts.

THE OVERSEAS PRIVATE INVESTMENT CORPORATION CONCEPT

Mr. JAVITS. Mr. President, various committees of the Congress are interested in the question of American private foreign investment overseas and one aspect of this concerns the U.S. Government programs, primarily those of the Overseas Private Investment Corporation—OPIC—which support, through insurance programs, private investment in the developing world.

I would like to bring to the attention of my colleagues a fine article by William (Gil) Carter, now a private lawyer in Washington, who was helpful in drafting the OPIC legislation which passed the Congress in 1969.

Mr. Carter makes the point that—

A network of investment support institutions has been established, during the last six years, in most of the capital-exporting countries.

I think as the OPIC debates goes forward that we should keep this fact very much in mind. As Mr. Carter makes clear, OPIC-type programs have either been instituted or legislation is pending in some 14 DAC member countries. Clearly, the investment guarantee concept is an idea whose time has come and support for this concept continues to grow in many countries of the world which also happen to be our major competitors. I ask unanimous consent that Gil Carter's fine article "National Support of Multinational Ventures" which appeared in the Columbia Journal of World Business be printed in the CONGRESSIONAL RECORD at this point.

I would also like to draw the attention of my colleagues to information provided by the Yugoslav Information Agency on the importance of the OPIC legislation to promoting U.S. investment in Yugoslavia and in turn closer United States-Yugoslav relations. The Congress has also authorized OPIC to operate in Romania and I have heard similar reports from Romanian officials. I ask unanimous consent the excerpts from the February 8 publication of Yugoslav Facts and Views be printed in the RECORD at this point.

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

[From Columbia Journal of World Business, September–October 1972]

NATIONAL SUPPORT OF MULTINATIONAL VENTURES

(By William Gilbert Carter)

Today the existence of a global market is taken as the starting point of international economic analysis and prescription. Yet it is a market which has developed in spite of a myriad of laws, regulations, decrees and administrative attitudes reflecting a still deeply-rooted mercantilist view of economics.

Similarly, the multinational corporation, the chief moving current factor in creating the global market, has evolved not in response to theoretical analysis but as the product of a series of specific and wholly pragmatic responses to real-life, real-time problems and opportunities.

Although the global market is a reality, we live in a halfway house—many of our governmental institutions and politico-economic attitudes are still founded in the mercantilist world view. It is not surprising, then, that the multinational corporation and the multinational joint venture have no coherent framework of governmental institutions within which they can operate with satisfactory levels of predictability and responsiveness to their needs.

Under these circumstances, it is good news, indeed, to discern the emergence of a new pattern of governmental institutions in the capital-exporting countries offering the potential of providing such a coherent institutional framework for at least one important aspect of the activities of the multinational corporation—official support of private joint-venture investments in the developing countries. The new investment insurance and financing agencies created in the past few years can be used to achieve effective multilateralization of government protection and financial support of multinationally-owned investment projects. By so doing, these agencies can make an effective contribution towards stabilizing the international investment climate.

A major tenet of the conventional wisdom about international economic relations, reflecting the mercantilist view, is that exports are "good" and direct investments outside of the home territory are "bad" or, at best, a mixed blessing. That this attitude is still widespread is well demonstrated by the real strength behind the AFL–CIO-sponsored Burke-Hartke bill (H.R. 10914, S. 2592). This is also perhaps the chief explanation of the widespread growth and universal acceptance of government-sponsored export financing institutions, such as the Export-Import Bank of the United States. For many years, every industrialized country has been committed to providing financing facilities to stimulate exports. Indeed, the relative terms of government-backed export financing have become a major competitive factor in international commerce.

In proposals made by international consortia or joint ventures both multinational companies and financing institutions have become highly sophisticated in their ability to "package" suppliers' credits. The basic formula is simple: Each company belonging to the consortium is expected to generate from its national export financing agency a commitment to finance that company's proportionate share of the procurement involved in the project. Although not without difficulties and conflicts, this system is well-known, reasonably effective and largely meets the needs of the member companies in international joint ventures of suppliers.

When we turn from export financing to direct investment projects in less-developed countries (LDCs), the relatively firm foundation of governmental support from well-known institutions becomes much less visible. As noted, the wide use and acceptance of government support programs to exports is founded on the universally accepted precept that it is the business of each nation to export as much as possible. From this premise, it follows that facilitating and supporting such exports is widely recognized to be a legitimate governmental function. The corresponding attitudes towards direct investments in foreign countries are very different. Such investments have been viewed largely as a deviation from the acceptable norm of exporting. Accordingly, until very recently, they have received far less government support. Moreover, analysis of the LDC

investment-support programs of capital-exporting countries shows that the justification for such programs is founded primarily on foreign-policy-oriented economic assistance goals rather than on commercial objectives.

One of the oldest programs and by far the largest is the U.S. government's program offering, against payment of a premium, insurance to U.S. investors against certain specific risks, usually characterized as "political." The first contracts, written in 1949, insured U.S. investors against currency blockages on remittances from Europe of royalties, license fees and dividends. This effort to fill the "dollar gap" through the encouragement of U.S. investment in Europe was viewed primarily as a national politico-economic objective rather than as a commercial service to U.S. business.

Although it is easy to see in retrospect that immediate, hardheaded commercial interests were advanced by the original U.S. program, its primary motivation as an integral part of foreign economic assistance helped to shape public and governmental attitudes in this country and elsewhere towards programs of this type.

The governments of most other capital-exporting countries regarded the U.S. government's support to its investors in developing countries as simply another manifestation of misguided idealism. They saw no particular relationship between foreign aid objectives and private investment. At the commercial level they were so bound up with promoting exports that the very real advantages of market penetration through direct investments largely escaped them. In addition, the major ex-colonial powers, the United Kingdom and France, showed extreme sensitivity to any suggestion that there was a credible linkage between profit-oriented private investment and overall development objectives.

The network of export financing institutions which were being used effectively by international joint ventures of suppliers had no counterpart for use by multinationally-owned investment projects. This lack was felt particularly by international joint investment ventures in natural-resource projects, such as oil, bauxite, iron ore, copper and nickel.

Over the past decade, a rapidly developing trend towards multinational ownership of large natural-resource projects has emerged. Major users of natural resources from the industrial nations are joining together to make the huge capital investments needed and to strive for assurance of predictable availability of raw materials. Moreover, there is a growing perception that joint investment by companies from several industrialized nations reduces the opportunities for source countries to play off one user country against the other with respect to price, access and terms of concession agreements. There is a parallel movement towards cooperative action by source countries, seen most obviously in the OPEC organization of oil-producing nations, but also evident in bauxite and copper. The two movements are self-reinforcing.

Almost unnoticed in public discussion, a network of investment support institutions has been established, during the last six years, in most of the major capital-exporting countries. If known and used, this structure can, in tandem with conventional sources of financing, substantially meet the needs of the multinational investment project in a way comparable to the uses served by the export financing agencies.

Realization by businessmen and bureaucrats of the importance of the developing countries as an integral part of the global market has grown rapidly in recent years. The asserted developmental value of private investment, discounted by officials of most capital-exporting countries during the time that LDC markets were viewed as peripheral, has now been seized upon to generate public acceptance of new programs of official support to investment projects. Paradoxically, public approval of foreign aid programs in other industrial countries has increased in inverse ratio to the growing negativism in the United States.

Thus, investment-support institutions, like the global market, the multinational corporation and the export financing agencies, have come into existence in response to specific pressures to meet specific problems and opportunities, not in implementation of a "grand design." The primary motivation has probably been commercial self-interest, to which has been added a gloss of foreign economic assistance rhetoric. Whatever the motivational mix may be, the multinationally-owned investment project can benefit substantially from the new institutional structure.

The institutions involved can be discussed under separate headings: (1) political risk investment insurance agencies and (2) development finance corporations. (The U.S. Overseas Private Investment Corporation is atypical in that both functions are performed by the same agency.)

Although the protection offered by many programs against specified political risks to investments are called "guarantees," it is more appropriate to call the protection *political risk insurance*, reserving the term "guarantee" for financing facilities, notably the guarantee by a government institution, running to a private lender, that a loan will be repaid in accordance with its terms. An insurance company does not guarantee to pay a specified portion of the loss if the specified event occurs. Political risk coverage of investments, typically covering expropriations, inconvertibility and damage to physical assets due to war, riot or civil insurrection, is best characterized as an exotic variety of casualty insurance.

POLITICAL RISK INVESTMENT INSURANCE PROGRAMS

The Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD) is the major coordinating group of aid capital exporters. It first began to identify the relationship between official aid and private investment in 1965, after two years of lobbying by the United States and German delegations to include private investment matters on DAC's agenda. At that time, only three members of the DAC offered any form of political risk insurance covering long-term investment by their nationals in the LDCs—Japan, the Federal Republic of Germany and the United States. Of these, only the U.S. program, with its origins in the Marshall Plan, had issued substantial coverages to a variety of investments in Latin America, Africa and Asia.

Today, just seven years later, fourteen DAC member countries have either instituted programs or have authorizing legislation pending: Austria, Australia, Canada, Denmark, France, Germany, Japan, the Netherlands, Norway, Portugal, Sweden, Switzerland, the United Kingdom and the United States. In addition, Belgium has a program under consideration.

Italy is the most significant omission from the list. It seems unlikely that Italy will overcome the inhibiting domestic political factor which has prevented her from adopting a program—the continuing pressures to focus all governmental investment incentive programs on the Mezzogiorno (Southern Italy). It is worth noting, however, that the French were able to generate political acceptance of a program in spite of a strong body of opinion which asserted that failing payment by the French Government of full compensation to French nationals for their properties nationalized by Morocco, Algeria and Tunisia, expropriation coverage on new overseas investment should not be offered.

The primary factors contributing to the rapid growth and the number of investment insurance agencies were these: the growing appreciation of LDC markets as a major factor in the emerging global economy; the increasing awareness that protection against political risks on direct investments in the LDCs could provide a competitive advantage; growing acceptance in Europe and Japan of foreign aid policy objectives; and, institutionally, effective interaction between the Development Assistance Committee and the Business and Industry Advisory Committee (BIAC) of the OECD. The latter is an association of national trade associations of OECD member countries, composed of representatives of organizations such as the Confederation of British Industries and the Centre National du Patronat Francais. U.S. participation is through an interorganizational committee consisting of representatives of the Chamber of Commerce of the United States, the National Association of Manufacturers, the U.S. Council of the International Chamber of Commerce and, at the time in question, the National Foreign Trade Council. The NFTC is no longer a member of the U.S.-BIAC Committee.

Until DAC first began discussing private investment in its relationship to official aid, BIAC had played no role in DAC—indeed had never attended a meeting. Fortunately, the growing focus of DAC on private investment questions, dating from 1965, was paralleled by growing involvement of BIAC. The various plenary meetings of DAC on investment incentives and the now-institutionalized annual meeting of experts to exchange experience and views on investment insurance set up reinforcing pressures at both the governmental and private levels—as the competitive aspects of investment insurance became more evident, growing interest and knowledge at the governmental level created greater receptivity to increasing pressures from business on their national authorities to adopt similar schemes. Each fed on the other, and the bandwagon started to roll.

The mutuality of interest between major users of a primary raw material, operating more and more frequently to draw them together into a joint-venture approach to developing new sources, is paralleled at senior levels of their governments. Here there is mutuality of interest in increasing the stability of the international investment climate to reduce the incidence of politically disruptive confrontation over the status of foreign investments (e.g., the copper nationalization by the government of Chile).

For officials directly in charge of administering investment insurance schemes, an overriding objective is to reduce the risk of major losses resulting from uncompensated expropriations or other political events. Here, as elsewhere, the "safety in numbers" adage operates very powerfully—the inhibitions against a host government adopting confiscatory measures with respect to a given investment are far stronger if that investment is owned by nationals of more than one country. The strength of the inhibiting factor grows exponentially with the involvement of each additional company of different national origin.

As recognition of this principle grows, we can see a concomitant effort to harmonize the technical aspects of the various investment insurance schemes. The interests of both insurers and insured are best served by substantial consistency of coverage, terms and most importantly, definitions of those events and actions, notably expropriation, which trigger loss payment. The managers of the various national schemes generally recognize that it is to their mutual advantage to cooperate with each other in a pragmatic, case-by-case way. The annual meeting of DAC experts, modeled on a yearly session between the German and U.S. authorities which started in 1965, is providing to be an effective forum within which to work towards increasing compatibility.

THE U.S. INVESTMENT INSURANCE PROGRAM

A major problem which has hampered use of the U.S. investment insurance program by the multinational joint venture has been the statutory eligibility test. The basic definition of "eligible investor" is a U.S. citizen, or a corporation or partnership created under the laws of the United States or any state or territory thereof and substantially beneficially owned by United States citizens. Foreign corporations, to be eligible, must be wholly owned (except for qualifying shares not exceeding 5% of total share capital) by U.S. citizens or entities. "Substantially beneficially owned" is interpreted to mean more than 50% U.S. ownership.

Assuming that, as is the case with many companies, obtaining political risk investment commitment, this eligibility test has sharply limited the options of many U.S. firms in discussing multinational joint ventures, unless, of course, their partners were prepared to accept more than 50% U.S. participation. Furthermore, these provisions have also meant that the investing enterprise was required, in practice, to be a U.S.-based corporation. While, in many cases—for example, the Boké bauxite project in Guinea—the business interests of the partners and these eligibility constraints have been accommodated, it seems clear that the constraints have deterred the formation of other consortia. Typically, the respective interests of the partners in such a multinational joint venture are reflected in the ownership of an investing entity which, in turn, holds the total ownership interest of the partners in the operating company. The latter is usually incorporated under the laws of the host country.

Against this background, a little-known provision of the legislation setting up the U.S. Overseas Private Investment Corporation takes on major importance. A major exception to the rigid eligibility requirements has been provided with respect to multinational projects. Section 234 (a) and (2) of the Foreign Assistance Act of 1969 provides:

"(2) Recognizing that major private investments in less developed friendly countries or areas are often made by enterprises in which there is multinational participation, including significant United States private participation, the Corporation may make such arrangements with foreign governments (including agencies, instrumentalities, or political subdivisions thereof) or with multilateral organizations for sharing liabilities assumed under investment insurance for such investments and may in connection therewith issue insurance to investors not otherwise eligible hereunder: *Provided, however,* that liabilities assumed by the Corporation under the authority of this subsection shall be consistent with the purposes of this title and that the maximum shares of liabilities so assumed shall not exceed the proportionate participation by eligible investors in the total project financing."

The significance of the statutory language in business terms is this: The partners in a multinational enterprise with U.S. participation can now arrange the business structure of the project to reflect their best judgments as to form and place of organization without thereby jeopardizing the American partner's ability to obtain investment insurance on its pro rata share of the investment. Secondly, it represents express authority—sought by OPIC—for it to enter into loss-sharing agreements with investment insurance agencies of the countries of citizenship of the other partners in the enterprise.

As a corollary, this section provides the basis for issuance of a single insurance contract to the investing entity. At present a separate contract must be issued to each of the participants, by its national authority. Authority to enter into loss-sharing arrangements comparable to this OPIC authority is contained in the charters of a number of the other national agencies.

NATIONAL DEVELOPMENT FINANCE CORPORATIONS

At the present time, seven members of the Development Assistance Committee have established financing institutions to support private investments in the developing countries. They are Denmark (The Industrial Investment Fund for Developing Countries—IFU); France (Caisse Centrale de Cooperation Economique); Germany (Deutsche Entwicklungsgeschelshaft—The German Development Company); Japan (Overseas Economic Cooperation Fund—OECF); The Netherlands (Finance Company for Developing Countries—FMO); the United Kingdom (Commonwealth Development Corporation—CDC); and the United States (Overseas Private Investment Corporation—OPIC). These institutions have authority to make direct loans, to guarantee loans from private entities and, in some cases, to take direct equity positions. Although OPIC is prohibited from making equity investments, it can accept convertible debentures. This provision was expressly designed to give OPIC equity leverage, the assumption being that the convertible debentures OPIC holds in successful, matured projects will be sold to private investors at a premium. Legislation is now pending that would authorize OPIC to buy and sell warrants, options and other equity rights but would not permit OPIC to convert them into shares.

The Development Assistance Committee has been both a catalytic agent in the development of national investment insurance programs and a forum for coordination between the national agencies. It promises to play a parallel role with respect to development finance institutions. In December 1971, DAC sponsored its first ad hoc meeting on public development finance corporations and it seems safe to predict, as in the case of investment insurance, that this will evolve into an annual exchange of views, information and expertise.

Moreover, there is evidence that the managers of the development finance corporations are actively seeking opportunities for joint financing of multi-nationally-owned projects. The reasons for such collaboration that have emerged from informal discussions among several of the participants are roughly analogous to those which have led to the evolving pattern of coordination between the investment insurance agencies spreading financial risk, reducing the risk of one-to-one political confrontation with host governments, and the potential for an effective extension of staff, skills and experience through exchange of information and comparison of methods of project analysis.

The intergovernmentally-owned International Finance Corporation (IFC), the private investment arm of the World Bank, is the model which the national corporations have been based. In existence since 1956, its level of commitments was very low in its first 10 years. Recently, however, it has sharply stepped up its activities. At the end of fiscal 1966 cumulative commitments of the IFC since 1956 totaled $172.5 million. New commitments during the last two fiscal years amounted to $213.3 million.

The IFC and the privately-owned multinational investment companies, such as ADELA (Atlantic Community Development Group for Latin America), and PICA (Private Investment Corporation for Asia), are important sources of finance for multinationally-owned investment projects. Their managers are also seeking out opportunities for joint action with the national corporations.

A number of conclusions, some quite clear and others more speculative, can be drawn from a review of the rapid growth of national agencies offering political risk insurance and financial support to investment projects in the LDCs.

All the elements are now in place in the major industralized nations to provide a full spectrum of official support—political insurance, loans, loan guarantees and equity participations—to multinationally-owned private investment projects in the developing countries.

There is substantial evidence that the managers of these institutions are prepared to cooperate with each other and the corporate participants in the international joint venture. Indeed, they are actively seeking opportunities for collaboration.

An important consequence of the opportunities thus opened is that the participants can more easily structure the joint venture to reflect their best business judgments with some assurance that an appropriate package of official support to the project can be obtained. The temptation towards organizational gerrymandering to take advantage of the eligibility requirements of a limited number of support programs, characteristic of some existing international joint ventures, can be avoided.

The structure of support institutions now in place has grown up in response to specific pressures and opportunities, largely nationalistic in origin, paralleling the development of the multinational corporation. And yet, paradoxically, the "logic of things," as opposed to the logic of men, is such that the transnational objective of improved stability of investment climate is likely to be better and more rapidly served by collaboration between these national governmental structures and the multinational joint ventures than by theoretically derived international structures such as the various proposals for international investment codes, prescribed "formula" norms of gradual disinvestment, and expressly multinational institutional solutions.

The experience with the World Bank-sponsored International Center for the Settlement of Investment Disputes is instructive. The agreements setting up the Center came into effect in October 1966. The first investment dispute was brought to it just a few months ago. Similarly, the directors of the World Bank have been discussing a proposed International Investment Insurance Agency since 1964. Although there now seems to be a bit of light at the end of the tunnel, apparently none of the Latin American countries intend to participate and a number of issues have yet to be resolved between the proponents of the scheme.

An enormous number of variables are involved in identifying sufficient parallelism of interest between host governments and the owners of multinational investment projects, so that all parties both receive and perceive mutual and continuing benefits from the transactions. Progress is made by scanning back and forth between theoretical, Cartesian approaches and wholly pragmatic concentration on specific projects, in specific places, at specific times. Taken in the aggregate, however the structure of investment-support institutions now in place can make a major contribution to the objective of increased investment stability and continued economic development. The opportunities for collaborative action which they open up are available for imaginative and aggressive use by both the public and private sectors of the developing and the industrialized nations.

FOREIGN INVESTMENT IN YUGOSLAVIA

The interest of foreign businessmen in investing capital in the Yugoslav economy has been growing from year to year. According to official figures for the last five years, 70 contracts, totaling 100 million dollars, have been signed by Yugoslav and foreign businessmen since the passing of the Yugoslav Law on Investment of Foreign Capital in the Yugoslav Economy.

Italy, with 18 signed contracts, heads the

list of countries that have made joint investment agreements with Yugoslav firms, followed by the Federal Republic of Germany with 17 and Switzerland with 8. United States and French firms have so far shown some hesitation about this kind of investment. Three American firms have invested about $3 million while four French joint investment contracts have been signed. The United States and Yugoslav Government, in January 1973, signed an agreement under which the United States Government will guarantee American private investment in Yugoslavia against all non-commercial risks, which, it is felt, will provide a strong incentive for such investment.

Foreign investors have shown the greatest interest in the iron and steel, chemical and electrical engineering industries. Basically, foreign capital is invested in joint ventures between Yugoslav and foreign firms for the purpose of modernizing or expanding existing production capacity or constructing new ones. Priority is given to investment which will promote increased exports and thus larger profit, the influx of foreign exchange and the improvement of Yugoslavia's balance of payments.

YUGOSLAVIA SIGNS PACT WITH UNITED STATES ON PRIVATE INVESTMENT GUARANTEES

A bilateral agreement authorizing the Overseas Private Investment Corporation (OPIC) to provide insurance and finance service to U.S. private investors in Yugoslavia was signed in Belgrade on January 8, 1973.

Mr. Bradford Mills, OPIC president, said at the signing:

"With this . . . which will encourage people of both nations to exchange ideas and skills, as well as goods, we are opening the door to future opportunity and, inevitably, we will develop closer ties and better understanding". He added that, "while interest in Yugoslavia is running high, and we are confident that it will continue to grow, we do not look for a sudden flood of investors to appear all at once. The process involved in completing a contract takes some months, and we must educate our people as to the laws under which they will operate. The best way to insure success in a joint venture is to make certain that everyone understands the other man's position."

Mr. Mills said that the agency had received some two dozen tentative applications for insurance from U.S. companies interested in projects ranging from industrial chemicals and metals mining to hotel construction.

The Yugoslav economic daily *Privredni Pregled* (Economic Review) wrote on the same occasion: "The agreement on guaranteeing U.S. private investments in Yugoslavia against non-commercial risks is bound to give a strong impetus to the influx of U.S. private money through joint investments in the Yugoslav economy and will also enable U.S. technology and techniques to be applied in Yugoslav industry . . . The agreement will pave the way for a great increase in the United States share in joint projects from the present $3 million to between $15 and $20 million in the next few years."

THE EROSION OF CONGRESSIONAL POWERS

Mr. SYMINGTON. Mr. President, as the relative position of the Congress in this Government becomes steadily a matter of more interest; and in the belief that they would be of interest to those of my colleagues who have not read them, I ask unanimous consent for two articles published in the St. Louis Globe Democrat, "The Erosion of Congressional Powers" by John Averill, and the "Power of the Presidency" by Steve Harvey, to be printed at this point in the RECORD.

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

THE EROSION OF CONGRESSIONAL POWERS

(By John H. Averill)

WASHINGTON.—Seldom if ever in the 183-year history of Congress have so many of its members manifested more fury and concern than now over the erosion of congressional powers.

Indeed, some members have expressed fear that the consitutional doctrine of separation of powers has broken down to the point that the nation is facing a constitutional crisis.

There is nothing new about congressional protests against presidential encroachments on the powers of Congress. There have been such lamentations for years, particularly since the United States became involved in the Vietnam war.

What is different now is an increasingly evident determination by many in Congress not only to check the power erosion but to try to reverse it.

Potential confrontations between Congress and the White House are developing on a wide array of separation of powers controversies.

Among those being challenged are the right of the President to involve the nation in military hostilities without congressional consent; the right of presidential appointees to assert executive privilege as justification for withholding information from Congress; the right of the President to circumvent the Senate's role in treaty-making by negotiating executive agreements with foreign powers, and the right of the President to impound appropriated funds without congressional approval.

Of all these, none has caused a greater congressional uproar than impoundment—President Nixon's refusal to spend billions of dollars appropriated by Congress for various federal functions.

The President defends impoundment on grounds that unless federal spending is curbed the country will face either a big tax increase or a rapid acceleration in the rate of inflation.

Even the President's most outspoken critics of impoundment accept his prognosis. What they object to is his method of treatment.

By freezing such vast sums of appropriated money, Mr. Nixon's critics contend, he has challenged the most basic and sacred of the rights the constitution has vested with Congress—the power of the purse.

Furthermore, Mr. Nixon has compounded congressional wrath by using the impoundment practice to cripple or kill some of the favorite social and farm programs enacted under Democratic administrations.

Critics insist that such actions amount to the President's making legislative policy, another power reserved exclusively to Congress.

Mr. Nixon, at his Jan. 31 press conference, said he has a constitutional right to impound that "is absolutely clear." Some of his top advisers, in subsequent Senate testimony, defended this right but admitted they couldn't cite a specific constitutional authority for it.

Instead, they contended the President has an inherent or implied constitutional right, based largely on precedent.

In seizing on precedent, in the view of legal scholars, the administration challenged Congress where it is most vulnerable. By failing to mount effective challenges to past impoundments and other presidential encroachments on congressional prerogatives, Congress itself has contributed to the erosion of its powers.

Sen. Sam J. Ervin Jr. (Dem.), North Carolina, leader of the Senate opposition to impoundment, acknowledged this in presiding over recent Senate hearings on presidential fund freezes. Said Ervin:

"The executive branch has been able to seize power so brazenly only because Congress has lacked the courage and foresight to maintain its constitutional position."

It is because of this history of acquiescence and apathy that many both in and out of Congress strongly question how far it will get in trying to recover its powers.

Right now, within Congress there is the greatest clamor in years for sweeping procedural and mechanical reforms to strengthen the hand of Congress in the increasingly bitter power struggle with the White House.

Seldom has there been such broad agreement that Congress, as it now functions, is not equipped to do a responsible job in dealing with the President's budget and fixing spending priorities.

Seldom has there been such broad agreement that Congress must finally enter the computer age and equip itself with the technology and expert staff needed if it is to overcome being at the mercy of the executive branch on money problems.

Yet despite the broad agreement on what should be done, there remains much skepticism that it will be done.

For one thing, Congress has repeatedly demonstrated that collectively it was a very brief attention span. With 435 House members and 100 senators going in 535 different directions, Congress has shown a marked inability to concentrate for long on one issue unless it is an issue that has inflamed public opinion.

When it comes to separation of powers, it is doubtful the public generally is aware of the concerns besetting Congress or particularly cares.

Indeed, in the case of impoundment even many of its congressional critics concede that their political soundings suggest far more people support the position of the President than that of Congress.

While attacking the President's impoundment program as illegal and unconstitutional, Senate majority whip Robert C. Byrd (Dem.), West Virginia told the Ervin hearings:

"The President's actions have political appeal and I think they are what the people want, especially in the present context of growing deficits, burgeoning national debt and continuing inflation."

Another witness, Sen. Frank Church (Dem.), Idaho, described the battle as "one of the crucial tests" that will determine whether "Congress constitutional government are to survive."

However there is little evidence that Congress has made headway in influencing public opinion.

The President, with his instant access to all of the nation's communications media, has an immense advantage over Congress in that respect. Nor is that his only advantage.

With his veto power, which he has used liberally, Mr. Nixon has a potent weapon to fend off congressional power plays. Thus unless Mr. Nixon's critics can repeatedly succeed in the difficult task of mustering the two-thirds majorities in both houses needed to override a veto, he will win the power struggle.

Still another not insignificant weapon in the presidential arsenal is the mystique and majesty of the White House itself. Recent history is replete with instances of presidents defusing furious congressional critics by inviting them to the White House for an exclusive and intimate breakfast, lunch or dinner or a stroll in the Rose Garden.

Sen. Ervin and several of his witnesses took note of the danger of White House social events when he opened his impoundment hearings on Jan. 30.

"Too often, I fear," Ervin said, "There

have been those among our ranks in the legislature who would rather receive a social invitation to the White House than display loyalty to the governmental institution to which they were elected."

Yet with all the President's advantages, there is a widespread feeling in Congress that he may have damaged his cause badly by overstepping himself.

Mr. Nixon, both in the abrupt and secretive way he undertook the impoundments and the manner in which he justified them, has created the impression, accurately or not, that he regards Congress with contempt.

The President defended his impoundments on grounds that Congress "has not been responsible" on federal spending and that "Congress represents special interests."

His remarks were not well taken on Capitol Hill, even though some members acknowledged there was truth in what Mr. Nixon said.

Ervin called the President's remarks a case of "the pot calling the kettle black." Ervin, a fiscal conservative, added that "the President told the truth but only a half truth; both the President and Congress have been irresponsible. I'm glad to say I haven't aided and abetted in it."

Nor have administration officials who testified at the Ervin hearings in defense of impoundment helped any in smoothing ruffled congressional feathers.

There was little of the deference administration witnesses normally accord Senate interrogators during the testimony of Roy L. Ash, the new director of the White House Office of Management and Budget; or of Joseph T. Sneed, the new deputy attorney general, or of Secretary of Agriculture Earl L. Butz.

Tones of acerbity and abrasiveness emerged from both the prepared statements and responses of the administration witnesses.

For instance, Sen. Edmund S. Muskie (Dem.), Maine, was outraged by Sneed's questioning whether Congress or even the Supreme Court had the constitutional right to interfere with presidential impoundments.

Sen. Lee Metcalf (Dem.), Montana, after lengthy clashes with Ash over impoundments of funds for the Federal Trade Commission and Rural Electrification, told Ash he was "ignorant and uninformed."

Despite the harshness of the exchanges, many in Congress expressed delight in what they termed the cavalier fashion in which the administration is treating the legislators on the impoundment controversy.

"Very frankly, I'm elated," said Rufus L. Edmisten, chief counsel of Ervin's Senate Judiciary Subcommittee on Separation of Powers. "Every time the White House kicks Congress in the teeth our people up here become more determined and unified. I just hope the administration keeps it up."

Yet, it is generally acknowledged, it will take a great deal of sustained unity and determination if Congress is to gain the upper hand.

Congress can pass bill after bill seeking to curb presidential impoundments, the Ervin hearings were told repeatedly, but it won't accomplish anything until it gets its own house in order on handling of the budget.

"Congress can't win on this except by doing its own duty," Senate Minority leader Hugh Scott (Rep.), Pennsylvania, said.

Prescriptions for what Congress should do to get its house in order vary widely. But there is a common theme.

It is that Congress should establish a mechanism, such as a joint Senate-House committee on the budget, to determine a proper level of expenditures and to fix a ceiling on appropriations.

In addition, it is wisely proposed that the appropriations committees must greatly increase the size of their staffs and apply computer technology if they are ever to get a handle on the budget.

In both the Senate and the House, the President's budget is sliced like a pie and allocated among 12 different subcommittees. Each subcommittee considers its slice as if it were in an isolation chamber without regard to the total budget or of revenues available to finance what the subcommittee recommends. And it is rare that a subcommittee bill is overturned by the full committee. If there are changes in the parent chamber more often than not it is to boost expenditures.

A comprehensive reform has been advanced by the Special Joint Study Committee on Budget Control which Congress created last fall to explore means of improving processing of the budget.

POWER OF THE PRESIDENCY

(By Steve Harvey)

—Vietnam.

—The refusal of a Pentagon official to testify on Capitol Hill about the firing of a subordinate.

—The military-base agreement with Spain.

Each represents, in varying ways, a recent frustration of congressional authority by the White House.

The American system of government was structured on the separation-of-powers principle, which the founding fathers hoped would prevent one of the branches from dominating the other two.

Yet today, it is the suspicion of many legislators that Congress is being separated from some of its own powers by the White House.

Administration supporters like Gerald Ford (Rep.), Michigan, say that if Congress' influence has waned, it has only itself to blame.

Nevertheless, several of the chief executive's devices for circumventing Congress have drawn criticism. These include the doctrine of executive privilege, executive agreements, the pocket veto and the impounding of appropriated funds.

Nowhere has the debate been more bitter in recent years than in the area of the President's war powers.

"We have already given . . . one effective check to the good of war by transferring the power of declaring war from the executive to the legislative," wrote Thomas Jefferson in 1789.

But the constitutional prohibition was more bark than bite. Presidents found that in their capacity as commander-in-chief they could dispatch troops and carry on wars without having to ask for a declaration from Congress.

When the nation was young President Jefferson sent the Navy to the Mediterranean to chase pirates.

In 1950, President Truman neglected to declare a state of emergency until six months after he had sent troops into Korea.

Now wonder he could say in an earlier speech, "I am the foreign policy."

American soldiers were already in Vietnam in August, 1964, when Congress approved the Tonkin Gulf resolution authorizing the President "to take all necessary measures" to stop aggression in Southeast Asia.

Congress, as it turned out, didn't know what it was getting into. The White House termed the resolution the "functional equivalent" of a declaration of war.

"I did not vote for the resolution with any understanding that it was tantamount to a declaration of war," said former Sen. Albert Gore (Dem.), Tennessee.

Others agreed. Now, 60 senators are cosponsoring a bill that would allow the President to send U.S. armed forces into hostilities only in emergencies, and then only for 30 days without the specific approval of Congress.

In addition to his war-making powers, the President may also invoke the doctrine of executive privilege to withhold information. He may also shield officials in the executive branch from testifying before Congress when he believes it is in the national interest.

That is why Henry Kissinger, who is seen practically everywhere else in Washington's social whirl, has yet to accept an invitation to appear as a guest before the Senate Foreign Relations Committee. His "shyness" is not unique.

Air Force Secretary Robert C. Seamans Jr. recently asserted the right of executive privilege in refusing to disclose the role of the White House in the firing of former Pentagon executive A. Ernst Fitzgerald, who had informed Congress of large cost overruns on the C–5A Air Force transport.

The constitution states that the Senate must ratify all treaties by a two-thirds majority. But President Nixon did not consult Capitol Hill in 1970 when he signed a five-year accord to extend U.S. use of military bases in Spain.

The White House termed the transaction an "executive agreement."

Senate critics protested that the agreement was a "de facto treaty" and should have been voted upon. But the administration maintained that it contained no U.S. security commitment requiring treaty handling. End of argument.

ADDRESS BY SENATOR HATFIELD TO 10TH ANNIVERSARY DINNER OF RIPON SOCIETY

Mr. MATHIAS. Mr. President, on December 9, 1972, the distinguished Senator from Oregon (Mr. HATFIELD) addressed the 10th anniversary dinner of the Ripon Society. In his remarks, he asks, "In what shape is our democracy?" Senator HATFIELD's answer to this question and his recommendations for the future course of democracy in our country are indeed revealing. I highly recommend this address to the Senate and ask unanimous consent that it be printed in the RECORD.

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

ADDRESS BY SENATOR MARK O. HATFIELD

Thomas Jefferson was convinced that governments tended to automatically become estranged from the desires and needs of the people. The remedy he foresaw was simple: a revolution was needed every twenty years or so.

We are now approaching our two-hundredth year without a revolution—at least without a successful one. Or to be more accurate, we are ending the second century that our democracy has responded to the persistent revolutionary impulses in our land, and accommodated them by continual, often radical political change.

We never had any guarantee that this system would be perpetually responsive, resilient and vibrant, adjusting to inevitable change, while preserving its original ideals. The process of American democracy has continued only because enough citizens have believed they had the right, the privilege, and the potential access to political power. They believed that they could make a difference in their society. In a real way, that has described those of you who formed and who have given life to the Ripon Society over the past decade.

Today, however, we have to return to the fundamentals.

In what shape is our democracy?

It tends to balk, rather than respond to the escalating pressures of change; and in the process many sense the erosion, rather than the preservation of its original ideals.

This is not a new occurence in the history of our Republic. Jefferson saw the same trend when the Federalists, and admirers of constitutional monarchy, gained power in the late 1700's, and passed the Alien and Sedition Acts of 1798. He organized political forces to "save Republicanism" and overthrew those in power in the elections 1800–1801.

Fifty years later, democracy was threatened again by the timidity of the political establishment. Both the Whigs and Democrats were willing to acquiese to slavery, and ignore other longings of many citizens. But the discontented banded together—Abolitionists, Free Soilers, Radical Whigs, Union Democrats and others. In 1854 they formed the Republican Party. This populist band, including those who proudly called themselves "Radical Republicans" had replaced the political establishment by 1860.

The organized Populist Movement of the 1890's emerged out of the widespread popular discontent and democratic unresponsiveness of that era. It lost its power only as the organized parties echoed many Populist demands for such "extreme" notions as direct election of Senators, the referendum, a graduated federal income tax, Federal purchase of surplus grain, and a parcel post system.

So in many ways, it is very natural, very Republican, and very American to suggest that our democratic system faces deep and serious challenges in its struggle to endure.

A few salient observations from the past election clarify these challenges, and the current political climate:

In a manner without recent historical precedent, in 12 States, more votes were cast for Senatorial or Congressional races than for President, because of a significant number of voters who went to the polls but withheld their votes for the nation's highest office;

The total percentage of eligible voters who went to the polls last November was 55%, lower than any year since 1948;

The over-whelming landslide for President Nixon, unlike other classic landslides, had little effect on Congressional elections;

More specifically, ticket splitting was not only rampant, but an overwhelming majority of the voters, when interviewed, thought that the country would be better off if the presidency is controlled by one party and the Congress by another;

A recent study of voters active in politics showed that only 47% believe it makes a substantive difference which party controls the government;

A post-election Gallup survey revealed that 70% of Americans feel the elections were too long, cost far too much money, and involved too much "mud-slinging."

These realities give further evidence of the mood of discontent and estrangement felt by the American people toward their political establishment.

There is no doubt that voters are becoming more discerning and better informed about the political system. But in that process, it seems that they are losing, rather than gaining, confidence in that system. Voters show little trust in politicians, want their power to be checked, and don't believe politicians are likely or able to solve basic problems.

I'm sure most of you realize that when ranked with 20 other occupations in terms of having the trust of the people, politicians come in 19th—ahead of only used car salesmen.

This lack of trust is deteriorating to an outright presumption of corruption. People have almost come to assume that all politicians lack any righteousness; and that is the uncomfortable reason why the Watergate incident never became a viable issue for the Democrats.

So what do we say, and do, to avert a long winter of political discontent?

And what can we as Republicans advocate to provide the political initiative which will restore resiliency and relevance to our democracy?

There are three major areas which are destined to become concerns of far-reaching consequence in the next few years.

First, there is the imperative to decentralize political and economic power in a fundamental, even radical, way to give local neighborhoods and communities the opportunity of genuine political, economic and ecological self-determination.

Second, our nation must deal with the problems, and not just the blessings, of the ever-expanding economic abundance and affluence we have achieved.

Third, our Republic must be saved from the growing dominance of "presidential government," which was heralded by the Democratic Administrations of the 1960's but has yet to be abated, and which threatens in the most fundamental way the Constitutional mandate of three separate but equal branches of government.

These three critical concerns can and should be addressed from a philosophical perspective that is suited to Republicanism. Let us explore how this is true in each case.

First, decentralization.

Our government presently operates on the assumption that the needs of its citizens, such as welfare for the disadvantaged, adequate housing, economic opportunities for the unemployed, and a fair distribution of wealth, can best be insured through the intervention of a centralized, federal bureaucracy.

That assumption, for the most part, is wrong. Centralized government as the vehicle for social change, which is a tenet of faith for the commonplace liberal, is proving to be a fallacy.

The evidence is all around us.

You find it by simply asking people if they feel the federal government can solve their problems. Most all think not.

They believe the federal government has grown too big; that it spends far too much money; that what it does spend it frequently wastes; that it has lost touch with the citizens; that it employs too many presumptuous bureaucrats; and that it blunders on, not in control of itself, nor controlled by others. And they are right.

The loss of trust most Americans feel toward their federal government is well founded.

It is rooted in the same frustration that causes most Americans to be alienated from our big cities. People feel disenfranchised. They sense there are few ways they can be relevant to government, be involved in its decisions, and affect conditions that disturb them.

A primary distinction between a Democratic and a Republican philosophical view is that the democrat feels the popular will can be expressed generally, in mass, and made sovereign. But the republican view has stressed the need for the popular will to be crystallized in small, self-governing communities, and that they, rather than big government, are the best custodians for the sovereignty of the people.

Let us apply this principle.

To do so, we must return to neighborhoods, and local communities, meaningful responsibilities and adequate resources now preempted by the central government. This means a fundamental decentralization of political power.

"Community control:" "Home Rule:" "Participatory democracy;" whatever the nomenclature used, it refers to restoring the sovereignty of the people through powerful, community based self-government. It is what I prefer to call "neighborhood government."

There is nothing more American. The town meeting, the voluntary organizations, the P.T.A., the neighborhood associations—such have been the historic, tangible expressions of self-determination for the American. Such groups must become options for genuine political power once again.

Neighborhoods should have some right and power to decide whether and where a city's freeways are built. Local communities in the midst of urban sprawl must assume the powers to determine how their land should be utilized, and how their ecology should be protected.

Towns should give their citizens the option of choosing whether industries that would cause pollution, or manufacture unwanted products, should be allowed to reside there.

Also, localized, decentralized government must assume responsibilities of caring for the dispossessed, and meeting the social needs in their midst.

All this requires that far more of the money which is paid to government remain at the local level.

This must not be confused with revenue sharing, which I regard, quite candidly, as a hoax which will probably increase, rather than diminish the power of the federal government.

Let me give you a challenge. Take some unit of local government—a small county, a town, a neighborhood—and analyze its taxes. Discover how much its citizens and corporations are paying to the Federal (and even the State) government. Then calculate how much they are getting in return from that government in services. Then do an inventory of the needs of the community—the number of hospital beds, of schools, or better houses, of tutorial programs, etc. And finally, decide whether that community would better meet its needs if it could retain a high portion of those tax revenues, utilizing them directly and locally as they see fit.

The United States is becoming a badly planned, centralized society.

We must act to take the only other realistic option—a decentralized society with planning and self-government empowered at the local level.

Next, our party, and our nation must concern itself with the consequences of an economy that has nearly fulfilled its goals of affluence.

Economic theorists have written about the "five steps of economic growth," the fifth being "mass consumption." America must now consider what comes sixth.

The strength of our economy has been built on assumptions which have held true in the past:

(1) Jobs will be found for all, and affluence will be achieved, by relying on man's acquisitive instincts;

(2) Allow man the opportunity to dream up and sell needed goods and services, and they will be consumed;

(3) Man's appetite is inexhaustable, so as the economy grows, new needs will create new products, insuring infinite expansion while bestowing affluence, eventually, to all.

We must not diminish the achievements that our economic system has bestowed to our society. For the first time in history, we are on the verge of freeing man from daily toil to insure his existence and comfort. The dream of immigrants, who came with the vision that their work would eventually yield permanent abundance, is being realized.

Because of this success, we must now question whether the past assumptions and goals of our economic system are adequate to guide us in the future.

Let me add that the Keynesian, and neo-Keynesian economic theorists fail to speak to these questions. They only propose novel sorts of political manipulation in their attempts to vindicate the same basic economic assumptions.

These are some of the contemporary economic realities that we must face:

First, we have assumed that economic

growth would tend to distribute the benefits to affluence to all assisted by our tax structure. But that has not occurred. We have evidence, in fact, in a study prepared by economists at M.I.T. for the Joint Economic Committee, that since 1947, the poorest ⅕ of America's families consistently have received only 5% of the country's total family income, while the wealthiest fifth have received 42%. That fact has not changed in the past two decades. The overall income of both the rich and the poor has risen, of course. But the gaps between them have not changed; in fact, in absolute dollars, the gap has increased.

Second, uncharted economic and technological growth, governed only by our consumptive compulsions, is beginning to put serious strains on our resources, on the quality of our life, and even, according to many, on our entire planet' ability to sustain our present levels of growth and consumption into the future. For instance, many products developed or widely used since World War II—such as aluminum, detergents, and plastics, have severe ecological costs, while adding few, if any, advantages over the products they are replacing. That, in my judgment, is at the core of our ecological crisis.

Third, we have no assurance that continued economic growth in and of itself will provide for all our employment needs. We still have to come to grips with the potential effects of the scientific revolution, and how it may decrease traditional job opportunities.

Fourth, our economy has reached the point where it must induce consumer appetites to continue its growth. This has resulted in the growing perfection of techniques designed to manipulate the consumer's tastes, rather than enhance the quality of goods and services.

Fifth, our economic patterns have fostered massive economic centralization. Today, 1.1% of all the nation's corporations control 81.5% of all corporate assets. Such centralization is eroding the values and contributions of small business, and also tends, in my judgment, to increase the problems of worker alienation and consumer distrust.

In short, we are regarding "consumerism" as the end and goal of our economic system, instead of regarding that system as the means to provide citizens with productive, creative, and fulfilling opportunities for work. Thus, we end up with enormous waste, planned obsolescence, make-believe work, feather-bedding, mindless gadgetry, and meaningless labor, all in order to fuel our increasing rates of consumption.

All this requires, in my judgment, that we now should re-define the meaning of work, and the goals of our economic system. Enhancing opportunities for the individual to be creative, productive, and self-expressive through his work should become the aim of our economy. We must come to see work, not as a dehumanizing monotonous activity, but as the right to express one's gifts and abilities as he participates in society's economic abundance.

You may say that sounds utopian. But let me suggest that changing values in our society are already prodding us to such a view. The values of rampant materialism no longer hold unquestioned priority throughout our culture. Increasingly, we find that many people seem more satisfied with their present level of abundance; and many younger people have tamed their consumptive appetites and prefer less, rather than more abundance. A prime challenge facing our economy is to understand and adjust itself to this revolution of values in our land.

More concretely, the political decentralization advocated by so many must be accompanied, in my judgment, by economic decentralization. Small business must be enhanced; the patterns of continued centralization and conglomoration must be reversed.

We must then encourage a revival of the crafts, of the artisan, of "cottage industries", of the shopkeeper, and the small entrepeneur. With this, initiatives in worker-management relations that move beyond the typical adversary role, and toward more participatory management, should be fostered.

All these possibilities are clearly within our grasp. Of course, in the short term, they may not appear as the best means of enhancing corporate efficiency. But in the long run, there will be no other way to overcome the growing problem of poor productivity, which is caused largely by the lack of meaning and the loss of personal relevance in work. Organized labor's failure to speak to this issue, concentrating instead solely on wages and benefits, is just as regretable as management's general reluctance to courageously face such ideas.

Republicans have every reason to pursue initiatives for *economic* as well as political decentralization. Ultimately, the task of preserving human liberty and enhancing human fulfillment in the 20th century involves both dimensions.

The third and last concern we face in the future is, in many respects, the most fundamental.

We must save our Republic from Executive rule; we must revitalize the Constitutional ideals that give our democracy its meaning and its life.

That is the cry that was heralded by Republicans through the years of Franklin Roosevelt and beyond. In my political growth, I was nurtured on those views.

Today, all Republicans must not hesitate to herald those views again—especially when we are in a unique position to demonstrate those principles in actual practice.

The genius of the American experiment was that the power of the Executive was to be checked by the people, through the Congress.

In the words of James Madison: "The truth is that all men having power ought to be mistrusted." Jefferson echoed this sentiment regarding the power of those who rule saying—"Let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

A wise distrust of centralized, uncontrolled power dominated the thinking of those who framed our Constitution. Further, they knew that in government, power was money and money was power. If despotic power, such as that under George III, was to be prevented, then the branch of government directly elected by the people—the Congress—had to be given the power for raising the revenues and authorizing the funds for the programs of government.

The Executive Branch was to implement—or execute—these Congressional mandates.

But the reality today is nearly the complete reverse of those ideals.

For years, and through successive Administrations, the Executive Branch has come to regard Congress as a potentially meddlesome obstacle to the implementation of an Administration's programs. By sheer virtue of its size and momentum, the Executive Branch is the dominant influence in determining the budget, policy, priority, and goals of all the government's activity.

In recent years, the greatest usurpation of Congressional power by the Executive came under the Kennedy and Johnson Administrations. The problem became more severe because large portions of the academic community, as well as members of Congress, extolled the virtues and wisdom of a "strong Executive." During that time, the presidency was often enshrined as a nearly all powerful, all-knowing position, whose actions deserved uncritical trust rather than responsible judgment.

In our nation's military and foreign affairs, the greatest toll of unchecked Executive power has been exacted. It dragged us into Indochina and has kept us there until now. Moreover, Executive Orders, Executive Agreements, Executive secrecy and Executive privilege have been used to further institutionalize the impotence of Congress.

Thus, in foreign and military matters, the Executive can establish commitments, expend funds, and shroud itself in secrecy, divorcing the Congress from its Constitutional responsibilities of oversight and decision-making, and divorcing the people from the knowledge of what their government is doing.

The truth is that for years, these crucial matters have been handled by a national security bureaucracy that has demonstrated its distrust of the American people, and its disregard for basic Constitutional principles.

We can remedy this deterioration of Constitutional checks and balances. The President, and the Administration, acting in concert with a Congress conscious of its abdication of power, can restore the Constitutional relationship between the branches of government that our forefathers saw as so crucial to preserving democracy. And for us as Republicans, Constitutional government should be our first priority.

The issue of Congressional versus Executive power, however, extends into domestic affairs, and has become focused on the controversy over who has the real power in the appropriation of funds. The Executive branch, through the Office of Management and Budget, has assumed the prerogative of refusing to spend funds that are duly authorized and appropriated by the Congress. The constitutionality of such action, which I believe is a devastating infringement on the rights and powers of the Congress, will ultimately have to be decided by the Supreme Court.

Unfortunately, the actions taken by the Administration to date make any Republican criticism of FDR's Executive powers sound uncomfortably hypocritical. The request for the $250 billion spending ceiling with broad ranging veto authority, and the Administration's recent declaration that it will spend less than half of the funds authorized by the Congress for water pollution, even after Congress over-rode the President's veto, only solidify fears of continued "Presidential government" in domestic affairs. The local official with sewer projects to fund cannot help but wonder if our ideals about three separate but equal branches of government have any contemporary relevance.

A Constitutional imbalance allowed a Democratic Administration to lead us blindly into the jungles and swamps of Southeast Asia. It would be tragic, and inexcusable, if that same Constitutional imbalance, still uncorrected, allows a Republican President to neglect the severity of water pollution here at home.

The pollution crisis troubles me. But the Constitutional crisis troubles me even more. And it should trouble every Republican.

If we are serious about the decentralization of power, then we must begin by showing all Americans that the Republican Party, and a Republican Administration, has fundamental respect for the framework of our Constitution. We can, and should begin these next few years with all Republicans uniting behind that banner.

I have purposely avoided commending the Ripon Society on its very major accomplishments during its first decade. You know how highly I, and countless other Republicans, value the contributions you have made to the thinking and the structures of our party. But this is the occasion, I believe, for you to chart the issues and concerns that will mark your future contributions to Republicanism. I have suggested areas where I believe we

need your intellectual talents and skills. In many other ways, we need your political and organizational abilities. I know that in all these endeavors, you will offer your best to Republicanism, and I, for one, will welcome all you give.

In closing, though, I want to offer some counsel.

Garry Wills, in a provocative article, expressed these thoughts:

"Change comes from people who are intransigently principled. It is not something that can be scheduled, or even predicted. There is no machinery for change. It comes about unexpectedly. It comes about through an individual, through a small group, through prophets, and you can't program prophets, or recruit them. You can't send people to school to make prophets out of them. These people just turn up and invent their own way. That is the way change happens. In any large and meaningful, sense, I think that is probably the only way that change comes about."

There is an important sense in which this is true.

The most fundamental change occurring in America today is not occurring within our political system, as traditionally defined. It is, rather, the revolution in values and attitudes which we see reflected primarily in cultural, and social ways.

This is a search that questions many of the dominant values of the past, and quests for deeper moral, and spiritual reality.

I am encouraged by such movement, and I think that one of the tasks of those of us in the political arena will be to open our structures and mold them to reflect these deeper changes.

We must make our prophets feel welcomed, for "without vision, the people perish."

Fundamental political change comes not merely from the top down, but also from the bottom up.

In the end, governments discover that change is better instigated by the people than imposed by a bureaucracy.

So let us work for the change that begins within us, that expresses itself in local communities, and that then infiltrates the fabric of the nation.

Then we shall know what it is we are celebrating on our democracy's 200th anniversary.

BUDGETS AND RHETORIC

Mr. HUMPHREY. Mr. President, in recent weeks I have found a number of newspaper articles and opinions very helpful in providing an overview on the various spending and budget issues. These articles have helped to isolate the real issues from the presidential rhetoric.

Joseph R. Slevin, in the Philadelphia Inquirer and other newspapers, pointed out the real meaning of the President's methods for holding down spending:

The President's distaste for the Great Society is a question of ideology rather than of economics or of budget philosophy, however much of his rhetoric may mix them together.

The New York Times raised the issue of the President's over-all plan to slow down the economy:

There is a paradox in the response that is coming from Congress—and from the public for that matter—to President Nixon's economic and budgetary plans. The cutbacks in specific programs have generated a hurricane of criticism. But the broad underlying economic assumptions of the budget and the President's economic report have gone essentially unchallenged . . . It is in this area of broad economic policy that there has been a surprising absence of criticism since the premises involved are by no means universally accepted.

The Washington Star says that:

This year will be a bruising one; 1973 and the other years of Nixon's second term may well settle whether this country will in fact be ruled by "presidential government" or whether the time-honored constitutional separation of powers will be followed.

The Minneapolis Tribune has found good reason to dispute Adminstration claims:

This confusion of program and rhetoric is nowhere more evident than in the largest single budget item, national defense. Mr. Nixon said his administration had found a way to "save $2.7 billion in the projected defense budget for (fiscal) 1974." Projected by whom? The administration's defense budget for fiscal 1974 is $4 billion higher than that of 1973. Whether the largest budget proposed for defense expenditure since the end of World War II is, as Mr. Nixon says, "a true peace-time budget in every sense of the word" seems to us open to challenge.

I ask unanimous consent that the articles and editorials from the Philadelphia Inquirer, New York Times, Washington Post and Minneapolis Tribune be printed at this point in the RECORD:

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

[From the Philadelphia Inquirer]

NIXON'S NEXT MAJOR TARGET IS JOHNSON'S GREAT SOCIETY

(By Joseph R. Slevin)

President Nixon finished winding down the Vietnam war Tuesday and tomorrow he will try his hand at winding down Lyndon Baines Johnson's Great Society.

He is not likely to be as successful at the one as he was at the other for this nation's need for the Great Society homefront programs is as profound as its dislike of the Southeast Asia war was acute.

The history of the last four years is instructive. President Johnson's Great society grew by leaps and bounds under President Nixon and cost tens of billions of dollars a year more at the end of Nixon's first term than at the beginning.

The startling and little known truth is that homefront spending soared $63 billion during Nixon's first four years in the White House. The increase in domestic outlays will be pushing the $80 billion mark by the end of next year.

Nixon has the notion that the country is "fed up," as he calls it, with the federal government and with its expanding social programs but that remains to be proved.

Congress has been voting even bigger programs than Nixon has requested and the Democratic-controlled legislature got as overwhelming a vote of support in its way last November as Nixon did in his.

Nixon will send the legislators tomorrow a record-smashing $269 billion spending budget. The total will be $19 billion bigger than this years budget and $85 billion above the outlay volume when Nixon entered office, but it will be smaller than it would have been if Nixon were not attempting to dismantle important parts of Mr. Johnson's Great Society.

The President will warn that a tax boost will be necessary if his new, higher spending line is not held and that is the nub of the problem.

The American economy is booming. The danger of a renewed round of inflation is mounting.

Nixon will predict that there will be a budget deficit of almost $13 billion next year despite his determined efforts to curb federal spending increases. He will claim that his budget will be balanced and non-inflationary under the theoretical full employment concept but will contend that further spending increases would yield an unacceptably stimulative full employment deficit.

The President has been struggling to curb the devastating inflation spiral that began during the late 1960s, after Lyndon Johnson boosted Vietnam spending without obtaining a tax increase.

LBJ rejected his advisers' recommendation that he seek higher taxes in early 1966. He belatedly announced he would request a tax boost in January, 1967 but didn't propose the increase until the following August. It was 11 costly, inflationary months later before House Ways and Means Committee Chairman Wilbur Mills and his foot-dragging Congressional associates enacted the Vietnam surtax.

History will record that the destructive Vietnam inflation was the one big blotch on a Johnson domestic record that was marked by vast civil rights advances and the deep humanitarianism of the Great Society's medicare, poverty, education, and housing measures.

Nixon is moving to dismantle the Great Society but its social programs cannot be blamed for the threat of renewed inflation any more than federal spending, civilian and military, could be said to have inevitably brought on the inflationary surge of the 1960s.

The President's distaste for the Great Society is a question of ideology rather than of economics or of budget philosophy, however much of his rhetoric may mix them together.

The American people could have paid for Vietnam and the Great Society during the Johnson administration if the surtax had been voted sooner.

[From the New York Times, Feb. 4, 1973]

A PLAN TO DAMP DOWN THE BOOM

(By Eileen Shanahan)

WASHINGTON.—There is a paradox in the response that is coming from Congress—and from the public for that matter—to President Nixon's economic and budgetary plans.

The cutbacks in specific programs have generated a hurricane of criticism. But the broad underlying economic assumptions of the budget and the President's economic report have gone essentially unchallenged.

Mr. Nixon's budget involves much more than mere decisions on how much money is to be spent on which Governmental programs—though that is where the controversy centers this year. It also reflects and implements the Administration's view of the direction the national economy should be taking. It is in this area of broad economic policy that there has been what some consider to be a surprising absence of criticism since the premises involved are by no means universally accepted.

Mr. Nixon's budget for the fiscal year that starts next July 1 contemplates total spending of $268.7-billion, receipts of $256-billion and a deficit of $12.7-billion—a deficit scarcely half the size of the one this year.

Such a budgetary plan, according to accepted economic theory, is likely to cause the present business recovery to slow down. Even though Federal expenditures are continuing to rise somewhat, the deficit spending is less. What has been a strong stimulus for economic expansion thus will virtually evaporate.

And rightly so, say the Administration experts. The way things are going in the economy now, the unemployment rate will drop to 4.5 per cent by the end of the year, and it would be unwise to have a rate of expansion that would bring it any lower

by that date, they say. Maybe an unemployment rate of less than 4.5 per cent would be all right in 1974, the Administrations argument goes on, but to continue to reduce unemployment very rapidly this year would threaten a resurgence of inflationary pressures that would have a number of undesirable results. Chief among them: Price and wage controls might have to be continued for an indefinitely longer period (and might not work well even though continued); too much expansion now might only lead to a contraction later on—in other words, boom and bust.

One reason this argument—which normally would arouse controversy—has evoked so little dissent is apparently because an unemployment level of 4.5 percent is in sight, particularly with the further decline to a flat 5 percent in December that was reported on Friday.

Not very long ago, Administration policy makers appeared to be ready to argue that little or no attempt should be made to further reduce unemployment once it hit the 5 percent mark. Such a policy would probably have caused a serious political battle. But the economic expansion has, in a sense, got away from the Administration. It is now planning to apply the brakes to the economy, but at a spot further along the road toward full employment than it had originally contemplated—simply because that's the spot where the economy is now. The difference between 4.5 percent and the 4 percent full employment goal of liberal Democrats is not enough to cause major controversy—particularly given the proved difficulties of "tuning" the economy to such fine tolerances.

What remains to be seen is whether collisions will develop over the basic components of the budget—the spending total and the receipts total—given the widespread agreement even among Democratic leaders in Congress that "the bottom line," the size of the deficit, is about right. Senator Mike Mansfield of Montana, the Democratic leader, is talking of a spending ceiling of just about the size that President Nixon has proposed.

There is, however, an alternative, and the unanswered question is whether any significant group in Congress will adopt it. The plan would be to accept the deficit figure but to achieve it in another way—which would be to permit a higher level of spending but also to attain a higher level of tax collections, almost certainly by tax reforms.

Reform cannot be made to produce tens of billions of dollars in new revenue in the first year or so. Fairness dictates that some transitional period be allowed to those who made certain investment decisions on the assumption that they would be treated advantageously under the tax laws. But reforms that would raise at least $2 billion to $4 billion in the first year are possible within such rules of fairness. That much additional revenue, plus perhaps the transfer of a few billion dollars from the military budget to domestic programs, would be more than enough to pay for the restoration of some of the more popular domestic programs cut by the Nixon budget.

[From the Washington Post]

THE BUDGET CUTS

Mr. Nixon's domestic budget reflects the view from the White House with a pure and drastic severity that is very rare in American politics. A budget is always a President's most accurate and explicit definition of federal responsibility. This year Mr. Nixon has written that definition chiefly in terms of the things that we shall no longer attempt together, in common, as a government. (We are not talking here of what his budget says of his approach to national security issues, which we will get back to tomorrow.)

The cuts and deletions in non-military programs encompass an enormously varied mixture of the justified and the unjustified. But the single characteristic common to all of them is the reduction, in each case, of the nation's demands on the private citizen and of the force that the national government will exert on the nation's life. Mr. Nixon put it very succinctly in the budget message when he said: "I believe that a larger share of our national resources must be retained by private citizens and state and local governments to enable them to meet their individual and community needs."

In practice, this rule means a substantial reduction in the social and environmental programs of the past decade. Some of them have been failures, true enough, and no doubt it is time to do some attic-cleaning. Some urgently need fundamental reform. But the question, repeatedly throughout this budget, is whether the administration means to cure some particular faults in programs or, instead, to shed whole areas of traditional federal responsibility.

For example, reducing federal aid to hospital construction is long overdue, for the country has obviously overbuilt. But whether the right response is to end all hospital construction aid, for a growing and shifting population, is very much open to doubt. Similarly, the housing programs for low-income families certainly need to be reconsidered, and it is doubtless true that, as the administration argues, they currently benefit developers and speculators more than the poor. But the administration intends to end the whole program now, and reconsider the subject later. The budget asserts that federal aid for urban renewal, sewer construction and so forth has "tended to undermine the capacity of local governments to respond to the needs of their citizens . . ." Mr. Nixon proposes to put a moratorium on all new projects under these programs until the summer of 1974. That moratorium, one may argue, will also limit the capacity of local governments to respond to their citizens' needs.

The strongest and most interesting trend in Mr. Nixon's successive budgets is the extremely rapid rise in those programs that send cash, in the form of monthly checks, to citizens. The chief beneficiaries have been the elderly and certain categories of the poor. The monthly checks to the retired and the poor, along with their associated medical benefits, were running about $47 billion a year, or one-fourth of the budget, when Mr. Nixon took office. They are now in the range of $91 billion, or 36 per cent of the budget, and both figures exclude the rapidly increasing figures for military pensions.

Mr. Nixon's approach to other public responsibilities is similar. He prefers to send cash, and to let the recipient decide how to spend it. Once again he now proposes to replace dozens of existing social programs with four broad, relatively unrestricted grants called special revenue sharing. In education, for example, he would cut the present numerous categories of aid to school districts by $1.7 billion, replacing it with an education revenue sharing grant of the same amount. The effect would be the removal of most of the restrictions attached to the money under laws like the Elementary and Secondary Education Act. There would be a more diffuse distribution of the money, spreading it across more children but losing the present focus on deprived and handicapped children. Focus is a matter that Mr. Nixon would leave up to states and local school districts. But these children got the short end of the stick under the states and the local districts until the federal laws were passed. Perhaps the present laws are not perfect, but Mr. Nixon does not offer any solution to the troubles to which Congress originally directed those laws.

This budget is a direct and abrasive challenge to Congress. It contains notably few of the customary concessions to congressional traditions and sensitivities. It is already evident that Congress will react with wrath and denunciation. It is not yet clear whether Congress is capable of anything more than that.

Congress has its great constitutional role to defend in the setting of taxation and expenditure. But the President has accused it of dodging the hard questions, voting always for higher spending and lower taxes. He has a point. Congress, and its Democratic leaders, cannot swing a majority of the country behind the principle of subcommittee chairmen's personal prerogatives and lobbyists' habitual benefits.

A modest rise in the income tax would now be the wisest response to the harsh arithmetic of the budget. If Congress does not want to support that unpopular choice, it will have to draw up its own order of priorities to meet the President's. Otherwise the decisions will all lie with Mr. Nixon and the country will, for want of any clear alternative, support him. There is more at stake in this year's budget than money.

[From the Minneapolis Tribune]

THE BUDGET: PROGRAM AND RHETORIC

Every American is affected by the federal budget, particularly when changes as sweeping as those proposed by President Nixon are at stake. Because of the budget's inherent complexity, and because of the extent of proposed change, we limit ourselves here to comments in three areas.

In fiscal terms, the budget message deserves good marks. On substantive changes, we think the merits of a number of positive proposals are outweighed by the premature move to end domestic programs that have been nowhere near the disaster the President said they were.

A third area, interlocked with the second, is Mr. Nixon's tendency to obscure important issues with misleading rhetoric.

The budget deficit, modest by standards of recent years, is an appropriate signal of federal intent to keep the surging economy from becoming an inflationary boom. A host of other factors, many of them unpredictable, influence the nation's economic health, too. But present indicators suggest that the administration is wise to urge a middle-of-the-road fiscal policy for the next year and a half. That will require congressional cooperation, which is certain to be difficult in view of the fundamental changes Mr. Nixon proposes.

A key to understanding those changes is the President's disdain for certain kinds of Washington bureaucrats. In his anti-busing speech last spring, for example, he referred antagonistically to federal "social planners." In his radio address on the budget Saturday, he had disparaging words for urban renewal decisions made by "a committee of federal bureaucrats hundreds or thousands of miles away."

Consistent with that attitude is Mr. Nixon's move to eliminate education and for, say, disadvantaged children through categorical grants made for that specific purpose. Similarly, he would stop urban renewal and federal housing programs in anything like their present form. The cuts would be offset in part by "special revenue sharing," under which federal funds would be returned to state and local governments with only broad guidelines for their use. Dozens of other programs would be eliminated or sharply reduced in the same way.

Our reservations about this approach are twofold. First, in many instances federal agencies are better equipped than local agencies to do the research and set the policies on national problems. Students with reading disabilities in Minneapolis, for example, are likely to have something in common with those in Detroit.

Second, the President's arguments too

often overlook the main point. For example, his complaint about the remote, urban-renewal "committee of federal bureaucrats" omits the important role in both administration and planning played by local housing authorities under federal guidelines. Or there is the matter of austerity in the White House. "We are cutting the number of people who work in the President's own executive office from 4,200 to 1,700," Mr. Nixon said. Most of that reduction is to come about by dismantling the Office of Economic Opportunity, the leading edge of the Great Society anti-poverty program.

This confusion of program and rhetoric is nowhere more evident than in the largest single budget item, national defense. Mr. Nixon said his administration had found a way to "save $2.7 billion in the projected defense budget for (fiscal) 1974." Projected by whom? The administration's defense budget for fiscal 1974 is $4 billion higher than that of 1973. Whether the largest budget proposed for defense expenditure since the end of World War II is, as Mr. Nixon says, "a true peacetime budget in every sense of the word" seems to us open to challenge.

Challenge it Congress surely will. There will be challenges not only to defense spending, but to domestic cutbacks. And, although we think the budget is unnecessarily severe in many respects, no federal program should be immune to tough reappraisal. That, at least, is something President Nixon has made sure will happen.

PERSONAL INCOME AND THE FOOD DOLLAR

Mr. SYMINGTON. Mr. President, John O'Riley, in the March 5 Wall Street Journal "Outlook" section, identifies the primary reason for rising food prices as "simply the huge growth in the number of dollars American families have to spend on food and everything else."

Since 1965, Mr. O'Riley points out, the per capita disposable income in the United States has increased some 62 percent. During that same time, however, retail food prices have increased 33 percent, or only about one-half as much.

Combined with rising incomes has been the additional number of women and teenagers employed, thereby adding more incomes to the family budget.

O'Riley points out that the great productive genius of the American farmer to provide us with more food has prevented food prices from climbing any faster than they have.

This great productive capacity is presently being strained by the combined pressure of rising domestic demand and the rapid increases in foreign demand for U.S. grains and soybeans. Since 1959, as example, soybean exports have risen 337 percent and corn exports have grown some 238 percent.

I ask unanimous consent that Mr. O'Riley's informative column be printed in the RECORD.

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

APPRAISAL OF CURRENT TRENDS IN BUSINESS AND FINANCE

Food prices. Not even sex or taxes is getting more attention in conversation and commentary these days. They are "going through the roof" it is said. And indeed their upward march is sharp. They have jumped at retail some 33% since the middle of the last decade. But beyond the fact of the steep climb, the confusion and befuddlement is unlimited. The farmer is blamed. The "middle man" is blamed. The supermarket is blamed. And all wrongly. The basic forces behind the trend it would seem actually should be pretty obvious.

The prime pusher is something seldom mentioned in relation to food costs. It is simply the huge growth in the number of dollars American families have to spend on food and everything else. If food prices have indeed gone through the roof, the level of personal income is some twenty feet above the roof.

The table below traces the story in the social yardsticks used to measure both food prices and income. The retail food price index (1967 equals 100) is that prepared by the Bureau of Labor Statistics. The per capita disposable personal income (after taxes) figures come from the Commerce Department. The 1965 starting point is used because that is about the time the current brisk inflation began. The 1972 figures are December for food and the final quarter for income.

FOOD PRICES VERSUS INCOME

Year	Food prices	Per capita disp. income
1965	94.4	$2,436
1966	99.1	2,604
1967	100.0	2,749
1968	103.6	2,945
1969	108.9	3,130
1970	114.9	3,366
1971	118.4	3,595
1972	126.0	3,954

What the official record since 1965 adds up to is:

Retail Food Prices: Up 33%.

Per Capita Income: Up 62%.

There is more to the big rise in income than individual wage increases—as sharp as these have been. Important, too, is the unprecedented gain in multiple paychecks within individual families. The leap in the number of women and teenagers on payrolls makes this clear. The paychecks of adult women are especially important.

Tabled below are Labor Department figures on employed women (20 years old or older) and teenagers of both sexes. The country's population growth is included for comparison.

WOMEN AND TEENAGE EMPLOYMENT

[In millions]

	1965	1972	Up (percent)
Women	22.6	28.1	24
Teenagers	5.0	6.6	32
Population	194.3	208.8	7

With personal income dollars up nearly twice as much as food prices since the mid-1960s, is it surprising that the cost of eating is up as much as it is? Isn't it, rather, surprising that such a flood of buying power hasn't pushed it even higher? Only the gigantic food production capacity of the U.S. has kept this from happening.

The pace at which the well-heeled American public has swung to "better eating" (more meat) in recent years is amazing. From about 88 pounds in 1962, per capita consumption of beef has bounded upward to an estimated 118 pounds this year. That is a jump of some 34%. And the leap is not measured in dollar prices. It is pounds of beef on the plate.

This brings us to another and probably more potent pressure on food costs in the immediate past. People in Europe and Japan have grown more prosperous too. They, too, are "eating better." And they are reaching across the seas to the American garden for more nourishment.

The U.S. exports relatively little meat as such. But the foreigners are growing more animals of their own. And this is where the U.S. enters the picture.

Steers don't get fat on fresh air. Cows don't produce more milk and cheese on psychological contentment alone. Broiler chickens don't grow plump from eating grasshoppers. They need grain—all of them. Grain is really meat-by-the-bushel. And the feed grain flow overseas from the U.S. rises sharply.

Here are some corn export figures spanning the last decade. Not all destination countries are included, of course. So the ones given don't add up to the export total.

U.S. EXPORTS OF CORN

[Millions of bushels]

Destination	1959	1971
Belgium-Luxembourg	12.3	24.3
France	.2	2.0
West Germany	17.7	45.5
Italy	.4	47.3
Japan	7.3	116.1
Netherlands	34.1	89.5
All countries	210.1	500.9

Foreign crop conditions cause yearly figures to fluctuate. But the trend is steeply up. The total was some 670 million bushels in one recent year. And the current year is the real whopper. It is projected at a billion bushels or more.

Or take soybeans. Soybean cake and meal is widely used in feed for dairy cattle and chickens. And the rise in exports of U.S. soybeans has been spectacular. Such exports came to 141 million bushels in 1959. This year they are expected to hit 475 million bushels, aided by a Latin American slump in production of fish meal (soybean meal substitutes for it).

Prices on feed grains, pressured by huge home-and-foreign demand, have naturally soared. Corn that brought $1.20 bushel just a year ago is now around $1.60. Runaway soybeans have jumped from some $3.30 a bushel a year ago to the $6.65-a-bushel neighborhood today. And when feed grain prices rise, it follows as the night the day that prices on beef, pork, chickens, and eggs must do likewise.

The mighty U.S. farm factory can produce more of both grain and meat. The problem heretofore has been to keep it from overproducing. Many unplanted acres are now due to go back into planting. But if the U.S. meat eating binge keeps up, and if foreign demand for U.S. meat-by-the-bushel keeps soaring, the U.S. farmer may have a run for his money to keep the cost-of-eating from going even higher.

JOHN O'RILEY

THOMAS JEFFERSON: FATHER OF THE GOP

Mr. MATHIAS. Mr. President, a most interesting and provocative article appears in the January 10 issue of the College Republican, the newsletter of the College Republican National Committee. John McClaughry, a former assistant to President Nixon in his 1968 campaign, describes the Jeffersonian origins of today's Republican Party and makes a strong plea for a rededication to Jeffersonian precepts by the Republicans of today.

In his concluding paragraph, the author quotes one of the great men in the history of the State of Maryland, the Honorable Francis P. Blair, who after a long career of public service as a Jack-

sonian Democrat, became the chairman of the first Republican National Convention in 1865. Mr. Blair's advice from 1859 bears thoughtful consideration again today.

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:

THOMAS JEFFERSON: FATHER OF THE GOP

(By John McClaughry)

"Barefaced humbuggery" was the response of angry Massachusetts Democrats that April morning in 1859 when the Boston *Advertiser* carried the account of the great Jefferson Day Dinner sponsored by the Bay State's Republican Party. The Democracy of the Nation's Capital probably uttered a similar retort, for on the same evening some 600 members and guests of the Republican Association held a similar gathering.

A Republican Jefferson Day dinner? Yes, and with good reason. For in the 33 years since Jefferson's death the party he originated, the Democratic Republican Party, quietly abandoned Jefferson's faith. Where Jefferson had believed in the ability of the common man to take part capably in the affairs of government, the Democrats of the 1850s had become an aristocracy—in the words of the first Republican Party platform of 1854, "the most revolting and oppressive with which the earth was ever cursed or man debased."

Where Jefferson had worked for the extinction of slavery, the new Democrats, led by the Slavocrats of the Cotton South, had discovered that slavery was not only not an evil, but a superior form of life to which the nation should pay tribute!

Where Jefferson had favored opening up the vast public domain to freehold farmers, the most virtuous defenders of his yeoman republic, the Democratic President of 1859 had shamelessly vetoed the Republican backed Homestead Act—three years later to be signed into law by Abraham Lincoln.

The terrible pressures of the Civil War subdued the early Jeffersonian idealism of the new party which, in its first national platform, had earnestly pledged to "restore the action of the Federal government to the principles of Washington and Jefferson." From that day until this, only twice has a political party seized on the magic name of Jefferson as a rallying cry: the Democratic Party of William Jennings Bryan and the early Franklin D. Roosevelt. Since FDR discovered that his program of centralizing power in the Federal government could hardly be squared with Jeffersonian ideals, and thus quietly abandoned the Jeffersonian press agentry, neither of the two great parties has made a conscientious effort to examine and resurrect its Jeffersonian heritage.

The present-day Democratic party seems clearly unlikely to provide any Jeffersonian leadership. These are the people who gave us an unwinnable foreign war, the annual budget deficit, the overpowering of state and local government, new highs in peacetime taxation, and the undermining of individual liberty in a thousand ways. The Republican Party now has a magnificent opportunity to take up the Jeffersonian standard.

First, we must pledge and act to restore the central government to its proper role. "A wise and frugal government," said Jefferson in his first inaugural address, "shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. The way to have good and sage government is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to." President Nixon's efforts to reverse the pernicious trend to centralization of power in Washington deserve the support of all Republicans.

Second, Republicans must devote their best efforts to securing and preserving the institution of genuine private property, and extending access to it to the millions of Americans who own little or nothing. Jefferson's dream was a nation of freeholders, owning a tangible stake in America. Instead of pursuing ways to soak the rich to distribute largess among everyone else, Republicans must come forward with strong support for President Nixon's "new opportunities for expanded ownership", enunciated in his 1970 state of the Union address but as yet only feebly implemented.

Third, Republicans must respond to the nation's yearning for liberty. Republicans have a special duty to protect and secure the liberties for which Jefferson so earnestly fought: not just of economic liberty, but also the liberty of thought, of speech, of press, of assembly, of dissent. Let these be eroded away, and the erosion of every other sort of liberty will soon follow.

Fourth, Republicans must champion the idea of the family and the community as the building blocks of society, just as Jefferson spent hours illustrating moral precepts for his daughters and nephew, and built his theory of government around the "ward republic." The decentralization of political power to the community level and resistance to schemes like forced busing which undermine the local community are policies that must rank high in any Republican platform.

Finally, Republicans in high office must rigorously adhere to Jefferson's high standard of honesty, decency and integrity. "Nothing is so mistaken as is the supposition," Jefferson wrote, "that a person is to extricate himself from a difficulty by intrigue, by chicanery, by dissimulation, by trimming, by an untruth, by an injustice." Any officeholders who fail to meet that high standard should be promptly retired to private life.

These and other Jeffersonian principles should now be incorporated into the platform and actions of the Republican Party. It is not enough merely to undo some of the worst transgressions of eight years of Democratic rule, or to ridicule the recent Democratic standard bearer. The American people need a creed to live by. The Republican Party must offer them one which transcends the fugitive circumstances of the times.

"There was never a more propitious moment than the present to revive the recollection of the principles and Administration of Jefferson," said Francis P. Blair at the Republican Jefferson Day celebration 114 years ago. Those words ring equally true today.

THE REAL PURPOSES OF REVENUE SHARING

Mr. HUMPHREY. Mr. President, President Nixon has proposed, under the name of special revenue sharing, a series of consolidations and reductions in categorical Federal grants to State and local governments. In reality this represents a cutback in shared revenue.

Under the Nixon proposals, for example, Federal aid to States and communities in the area of education would be reduced by over $450 million—nearly 15 percent—if so-called special revenue sharing were used as a substitute for present programs.

A recent report on revenue sharing written by Prof. Joseph A. Pechman, director of economic studies of the Brookings Institution, clearly places the purposes and limitations of general and special revenue sharing in perspective:

Conditional and general purpose grants have very different objectives and these could not be satisfied if the federal system were limited to one or the other type of grant. Conditional grants are intended to help *people* either directly through cash assistance or indirectly through support of government programs that will benefit them. General purpose grants are intended to help *governments* that do not have adequate fiscal capacity.

He says that—

The basic test of the success or failure of revenue sharing will be whether it does in fact improve the ability of poor states and poor local governments to pay for public services.

Clearly, to cut back funds as the administration proposes to do such as under special revenue sharing for education, does not serve that purpose.

Professor Pechman argues that we must recognize the special problems of the cities:

A special block grant to the large cities—over and above the grants provided in the revenue sharing bill is needed to recognize the special role and unique problems of the largest cities. Since the cities provide national as well as regional benefits, the federal and state governments should share the cost of the new grant.

This recalls to mind what was really the byword when Congress passed general revenue sharing with my strong endorsement a year ago. That byword was partnership—partnership between the Federal, State, and local governments.

We cannot put an end to Federal initiative. We must not simply leave a sack of money on the States' doorsteps and try to sneak away, knowing that the sum does not match what we were providing before.

Congress must see to it that the laudable objectives of revenue sharing and the urgent needs of our cities, as outlined so well by Professor Pechman, are truly served.

I ask unanimous consent that Dr. Pechman's article, "State-Local Finance Beyond Revenue Sharing" be printed in the RECORD.

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

STATE-LOCAL FINANCE BEYOND REVENUE SHARING

(By Joseph A. Pechman)[1]

When I was invited to give this paper earlier this year, few people were predicting that the revenue sharing bill would be passed by the 92nd Congress. I shall leave it to the political scientists to explain why the bill did get through this year—eight years after the idea was launched by Walter Heller and worked out in detail by a Task Force which I chaired. But it *is* an important piece of legislation, and a significant departure from past federal grant-in-aid policies. Furthermore, it was enacted for an initial period of five years, so it cannot yet be regarded as a permanent feature of the federal grant structure. It is not too soon, therefore, to begin evaluating the legislation as it was finally enacted so that Congress will be able to judge the program when the time comes to renew or abandon it five years from now.

[1] The views expressed in this paper are those of the author and are not intended to represent the views of the Brookings Institution, its officers, staff, or Trustees.

Revenue sharing has been the subject of heated debate ever since it was proposed. It has been hailed by some as a revolutionary step in fiscal federalism, while others have warned that it would ruin state and local government in this country. I have personally never been both praised and maligned as much for any idea I have supported as I have been for this one—even though this idea has never seemed as earth-shaking to me as it has seemed to many of its zealous supporters and opponents.

In view of this rather unusual history, I thought it would be appropriate to use this opportunity—so soon after the legislation was passed—to review the rationale and original design of revenue sharing, compare the final legislation with the original proposal, and suggest criteria by which the program should eventually be judged. Since I don't believe that revenue sharing is the solution to all the nation's intergovernmental financial problems, I should also like to suggest what additional steps need to be taken to strengthen our fiscal federalism. In particular, I feel strongly that there is an urban problem in this country which revenue sharing in its present form cannot solve and that federal and state governments will have to take strong action to prevent a national crisis.

RATIONALE OF REVENUE SHARING

While the states and local governments have always had their fiscal problems, their predicament reached a crisis stage during the 1960s. In the ten years ending June 30, 1970, state-local revenues from their own state-local revenues from their own sources rose at an annual rate of 9.6 percent, while the gross national product rose at an annual rate of 6.8 percent. This feat was accomplished with a tax system that is much less responsive to economic growth than the federal system. To fill the gap between revenue needs—which rose faster than the gross national product—and revenue growth, the states and local governments adopted new taxes and increased the rates on old taxes. Since state and local governments rely heavily on sales and property taxes, unnecessarily harsh burdens were imposed on the lowest income groups. The continued increases in tax rates met with increasing resistance from the voters, with unfortunate consequences for public services and facilities that were urgently needed almost everywhere.

The mismatch between state-local revenue needs and revenue sources was partially abbreviated by unilateral action on the part of the federal government. As federal revenues continued to respond to economic growth, federal grants-in-aid increased dramatically—from $7 billion in 1959–60 to almost $33 billion in 1971–72. In addition, as the decade of the 1960s wore on, more and more attention was given to the possibility of sharing by the federal government of its growth-elastic tax receipts with the states and local governments on a more or less automatic basis and without restriction as to the use of the funds.

As soon as it was launched, the idea of revenue sharing immediately created a sharp controversy over the merits of conditional federal grants. Both sides agreed that the federal government had to increase its assistance to state and local governments. The disagreement concerned the form in which the assistance should be given. Walter Heller and I took the view that unrestricted as well as conditional grants are needed to achieve the objectives of federalism and that the system would be deficient without both types of grants.

Conditional grants are intended to encourage the states and local governments to do certain things which Congress deems to be in the national interest. They are justified on the ground that the benefits of many public services "spill over" from the community in which they are performed to other communities. Each state or community would tend to pay only for the benefits likely to accrue to its own citizens and, as a result, expenditures for such services would be too low if financed entirely by state-local sources. Assistance by the federal government is needed to raise the level of expenditures for such programs closer to the optimum from the national standpoint. To achieve this optimum, a conditional grant should have enough restrictions—minimum standards and matching requirements—to assure Congress that the funds will be used for assigned purposes and that states and local governments will pay for benefits that accrue to their own citizens.

Unconditional or general purpose grants are justified on substantially different grounds. First, the basic need for unconditional grants arises from the obvious fact that all states and local governments do not have equal capacity to pay for public services. Poorer states and communities are simply unable to match the revenue raising ability of richer ones, and cannot afford to support public services at a level that approaches adequacy. Second, federal use of the best tax sources and the fear that tax rate increases will drive citizens and businesses to neighboring states operate to restrain needed tax increases at the state level. This justifies federal assistance to all states, but the poorer states should receive relatively more help because of their low fiscal capacities.

Thus, conditional and general purpose grants have very different objectives and these could not be satisfied if the federal system were limited to one or the other type of grant. Conditional grants are intended to help *people* either directly through cash assistance or indirectly through the support of government programs that will benefit them. General purpose grants are intended to help *governments* that do not have adequate fiscal capacity because too many low-income people reside within their borders. Revenue sharing cannot provide the stimulus to particular programs obtained by the conditional grant approach. Conversely, the existence of a conditional grant program will not provide the fiscal support needed to finance the portion of other state-local services that people at the lower end of the income scale cannot support out of their meager incomes.

The equalization objective is achieved in most revenue sharing plans by allocating the funds among the states and local governments mainly on the basis of population. Suppose a poor state collects $400 per capita from its residents, while another state making the same tax effort collects $800 per capita. A $50 per capita grant would increase the fiscal resources of the poor state by 12.5 percent and the rich state by 6.25 percent. An additional equalizing effect could be obtained by weighing the population figures by the inverse of state per capita incomes or by distributing part of the funds exclusively among the bottom third of half of the states when ranked by per capita income.

It is important to stress that equalization is the major objective of revenue sharing. While others differ with me on this point, in my view, revenue sharing would not be needed if the distribution of income and wealth was the same throughout the country. If all communities had the same average income and wealth, the same tax structure could yield the same revenues everywhere. The federal government would presumably finance programs that provided national benefits. Each community would decide the level of expenditures and, therefore, of tax rates, to provide public services (that is, those with local or regional benefits) for the people that live within its boundaries. With the same fiscal capacity, expenditures might differ, but no community would be thwarted because of the lack of fiscal resources.

But this ideal arrangement is not possible in a national system in which the distribution of income and wealth is unequal. A single example may help to explain the point. The average per capita income in the poorest five states is roughly $2,800; it is not quite $5,000 in the five richest states. Suppose one of the poor states levied a 10-percent income tax, that is, an income tax that collected 10 percent of the total personal income in that state, and suppose one of the richer states also levied a 10 percent income tax. (In order to collect that much revenue, the poorer state would have to have substantially higher rates simply because the people wouldn't be in as high brackets.) The 10 percent income tax in the poor states would yield $280 per capita. The 10 percent income tax in the rich states would yield $500 per capita. In other words, with the same average tax rate on personal income (which would require higher nominal rates in the poor state), the rich state could afford almost twice the public services that the poor state could afford. Alternatively, to receive the same quantity of public services, a resident of the rich state would have to pay much lower taxes than a person with the same income who resides in the poor state.

But why not equalize fiscal capacity by simply giving money to people rather than to governments? The answer is that there are poor governments as well as poor people. Suppose that the federal government adopted a negative income tax that provided an adequate minimum income for all citizens in the United States. By definition, since the minimum allowance is at the poverty level, the family which receives it has no ability to pay for public services. In addition, those immediately above the minimum income level have very little capacity to pay taxes. Thus, the state and local governments with a high concentration of low income people must receive outside funds to be able to support needed public services. Some have argued that this objective could be satisfied by a set of categorical grants for the major local public services. But it is inconceivable that any such set could be devised to approximate the equalization effect of one general grant based on per capita income or the incidence of low incomes.

THE ORIGINAL REVENUE SHARING PROPOSAL

The core of the original revenue sharing plan, with which Walter Heller and I have been identified, was the regular distribution of a specified portion of the federal individual income tax to the states primarily on the basis of population. The essential features of the plan were as follows:

1. The federal government each year would set aside and distribute to the states an eventual 2 percent of the federal individual income tax base (the amount reported as net taxable income by all individuals). This would mean that, under the present rate schedule which begins at 14 percent and rises to a maximum of 70 percent, the federal government would collect 2 percentage points in each bracket for the states and 12 to 68 percentage points for itself.

2. The states would share the funds on the basis of population, weighted by relative tax effort. In addition, a portion of the funds could be set aside for supplements to states with low per capita income or with a high incidence of poverty. The purpose of the tax effort factor was to encourage states to maintain or increase their own tax effort. The supplement to low-income states was designed to augment the automatic equalization effect of the basic per capita distribution.

3. Whether to leave the fiscal claims of the localities to the mercies of the political process and the institutional realities of each state or to require a pass-through to them was not an easy question. Originally, we left this question open, but soon concluded that the legitimate—and pressing—claims of local

government required explicit recognition in the basic formula of revenue sharing. However, the allocation among units of government cannot be determined on any scientific basis, so we did not venture to suggest any particular formula for the pass-through. In fact, this turned out to be the most difficult practical issue throughout the legislative history of the bill.

4. Constraints on the use of the funds were to be much less detailed than those applying to conditional grants. However, the funds were not to be available for highway construction, since there is a special federal trust fund with its own earmarked revenue sources for this purpose. An audit of the actual use of the funds was to be required, as well as certification by the appropriate state and local officials that all applicable federal laws, such as the Civil Rights Acts, have been complied with in the activities financed by the grants.

THE FINAL LEGISLATION

Although Congress tinkered with every part of the proposal, I believe it is fair to say that the final legislation bears a marked resemblance to the original.

1. I suppose it was too much to expect that Congress would allocate funds to revenue sharing on the basis of a formula tied to the individual income tax base. Instead, it allocated a total of $30.2 billion over the five-year period, 1972 through 1976, with the amounts rising from $5.3 billion in 1972 to $6.5 billion in 1976. These amounts will start out at somewhat more than 1 percent of taxable income at the beginning of the period and decline to somewhat less than 1 percent at the end. So, the Congress cut our suggested figure about in half on the average, but provided for some growth each year—which was, of course, the major objective of the formula based on taxable income.

2. The share of the revenue sharing funds going to each state includes the population, tax effort, and income factors we suggested, but it also includes much more. The House bill contained a five-factor formula under which two-thirds of the funds were to be divided among the states on the basis of total population, urbanized population, and population inversely weighted by per capita income, and one-third on the basis of state individual income tax collections and relative tax effort. The Senate preferred a formula based on population, tax effort. The Senate preferred a formula based on population, tax effort, and per capita income.

It will come as a surprise to no one that the Conference Committee decided to make the allocation on the basis of the larger amount obtained by each state from the two formulas. Since the sum of these amounts exceeded the totals allocated to the program, they were all scaled down proportionately to yield the proper total.

The final formula gives weight to five factors: total population, urbanized population, per capita income, tax effort and individual income tax collections. Three of these factors—population, tax effort, and per capita income—were included in the original revenue sharing proposal. The inclusion of an incentive for the states to collect more revenue from the individual income tax is all to the good. The urbanization factor will help the more densely populated states, but it may also act to neutralize the effect of the other factors.

My colleague, Robert Reischauer, has calculated that the final compromise will have a considerable equalizing effect at the state level (Table 1). When the states are ranked on the basis of 1971 per capita incomes, the 1972 revenue sharing grants will add 3.6 percent to the revenues raised by the richest 10 states from their own sources in fiscal year 1970–71 and 7.1 percent to the revenues raised by the richest 10 states from their own sources in fiscal year 1970–1971 and 7.1 percent to the revenues raised by the poorest ten. The equalizing effect is equally pronounced on the basis of personal income: the richest ten states will receive $5.30 per $1,000 of 1971 personal income, and the poorest ten will receive $9.60 per $1,000. Unfortunately, it is impossible to make these calculations at this time for the local units of government.

TABLE 1.—RELATIONSHIP OF REVENUE SHARING GRANTS TO STATE-LOCAL REVENUES FROM OWN SOURCES AND TO STATE PERSONAL INCOME, BY STATES RANKED BY PER CAPITA PERSONAL INCOME

States ranked by 1971 per capita personal income	Revenue Sharing Grants in 1972 as Percent of: State-local revenues from own sources, 1970–71	Revenue Sharing Grants in 1972 as Percent of: $1,000 of personal income, 1971
Top 10	3.6	5.3
2d 10	4.2	5.8
3d 10	4.4	6.1
4th 10	5.5	7.8
Lowest 10	7.1	9.6

Sources: Revenue sharing grants: "State and Local Fiscal Assistance Act of 1972," Joint Committee on Internal Revenue Taxation, Sept. 27, 1972, p. VI; State-local revenues and state personal incomes: "Governmental Finances in 1970–71," Bureau of the Census, GF 71 No. 5, pp. 31–32 and 52.

3. One-third of the revenue sharing funds going to each state was allocated to the state governments, and the remaining two-thirds to the local governments. The allocation among local governments is to be made on the basis of population, tax effort, and per capita income, which were the three factors included in the original proposal. In making this decision, Congress carried through the equalization objective down to the local government level.

4. The states will be permitted to spend the revenue sharing funds for any purpose, except that the funds cannot be used to match any other federal grant. Local governments will be permitted to spend the revenue sharing funds on a long list of items that account for perhaps a third of total state-local spending. Since money is fungible, this should give local governments much of the flexibility in spending that was sought in the original proposal. Although Congress could not bring itself to endorse the nomenclature, it gave the states and local governments virtually the same degree of latitude that was envisaged by those of us who proposed that no strings be attached.

The legislation also requires that each state and local government will report to the Secretary of the Treasury on the use of the funds and to publish a copy of the reports in a newspaper published in the geographic area of the government making the report. A nondiscrimination provision is also included in the bill, as originally contemplated.

5. As an extra bonus, the bill also gives the Internal Revenue Service the authority to collect state individual income taxes along with the federal income tax at no cost to the states. To quality for this new "piggyback" program, states will be required to base their taxes on federal taxable income or collect a flat percentage of the federal tax liability. By putting the better federal collection and enforcement procedures at the disposal of the states, this provision will increase the yield of state income taxes. Together with the bonus provided to income tax states by the basic distribution formula, the piggyback arrangement may encourage the few remaining non-income tax states to add the income tax to their tax structures.

JUDGING THE EFFECTIVENESS OF REVENUE SHARING

It would be difficult to make a complete listing of all the beneficent effects expected of revenue sharing by its proponents. The objective I have stressed most is equalization; others have suggested that revenue sharing would promote efficiency in government, make government programs "more responsive to the people," and even "revolutionize" the federal system of government in this country. I propose to list a few criteria which, while less grandiose, have the virtue that they can be applied in a meaningful way to the experience of fifty states and myriads of local governments.

First, the basic test of the success or failure of revenue sharing will be whether it does in fact improve the ability of poor states and poor local governments to pay for public services. It is fortunate that the next Census of Governments will be for the fiscal year ending June 30, 1972, the last fiscal year prior to revenue sharing. This record should provide the basic data needed to determine whether differentials in fiscal capacity have in fact been narrowed by revenue sharing and whether the tremendous service disparities that exist among different localities have been reduced. On the basis of the figures I have just cited for 1970–71, it seems clear that the equalization effect among states will be substantial. How the legislation will affect local governments is not clear.

Second, greater revenue effort on the part of the states and local governments was an objective of virtually every proponent of revenue sharing, since practically all the competing plans gave some weight to revenue effort in allocating the funds. Yet many have argued that revenue sharing would in fact reduce state-local revenue effort. This issue will be difficult to resolve, since we will never know what expenditures might have been without revenue sharing. A number of models of state-local expenditures have already been developed, and others will doubtless appear. A crash program may well be needed to develop an adequate model for this purpose. Five years from now, Congress will want to know whether state-local revenue effort has increased, decreased, or remained unchanged as a result of revenue sharing, and economists and political scientists should be ready to answer this question.

Third, the existence of revenue sharing will give Congress an opportunity at last to decide between the categorical and noncategorical approach whenever intergovernmental financial decisions are being made. Most experts agree that the narrow categorical grants have been overworked; some revisions and even pruning of these programs are doubtless in order. (The Nixon Administration has recommended consolidation of most of the grants into six major "special revenue sharing" programs, an approach which, I believe, goes too far in relinquishing federal control over the grant programs.) Revenue sharing will have contributed to the rationalization of the grant system if, after five years, there is at least a good beginning toward confining categorical grants to areas of major national interest, with enough restraints in the program to insure conformity of the state-local governments with the national objectives. This will be a much more difficult criterion to apply than the previous two, but qualitative judgments should not be impossible.

Fourth, just as the national government is responsible for financing public programs that have a national interest, so the states have a responsibility to finance programs that have a regional interest. In addition, states also have a responsibility to help equalize fiscal capacities of their own units of government. It will be necessary, therefore, to monitor the response of the state governments carefully to see that revenue sharing does not give them an opportunity to shirk their intrastate responsibilities.

Fifth, revenue sharing sailed through Con-

gress so easily this year in part because it was seen by many of the urban representatives in the House as a device to do something quickly about the acute financial problems of the nation's major cities. The House bill attempted to recognize this problem by giving weight to urbanization in the distribution formula for local governments. But, in the end, the bill omitted urbanization from the formula. Since the total amount of money going to local governments is small relative to their total expenditures, the urbanization factor would have had only a marginal effect in improving the financial conditions of the cities and would have also greatly benefitted the rich urban suburbs. In any case, an obvious test of the success of revenue sharing is whether it will provide real financial help to the cities, but, as I shall indicate below, I doubt that general revenue sharing—in any form—can pass this test.

THE PLIGHT OF THE CITIES

During the last few years, city finances have emerged as the major fiscal problem in the nation. Many, if not most, of the largest cities have found themselves with inadequate fiscal resources to pay for their rapidly growing expenditures. The states have been of little help in most instances. New York City, Newark, Detroit, Philadelphia, are in desperate straits, yet they are located in states that have better than average fiscal capacity by any standard. In these and other cases, the states make it a practice to keep the cities on very short financial rations, instead of adopting a rational procedure for estimating the cities' expenditure needs and for helping them raise the revenues to meet these needs in a fair and equitable manner.

The fiscal plight of the cities results from two basic facts of life:

1. Throughout the entire country, the tax base is moving from the cities to the suburbs, while the expenses of operating public services for residents and commuters are rising sharply. The poor—who have no ability to pay taxes—are concentrated in the cities, while the middle and high-income recipients are in surrounding suburbs. Few cities in the country have been able to cope with this phenomenon.

2. The state legislatures are often controlled by representatives of the suburbs who believe that it is in their interest to prevent the city from levying taxes on suburbanities to pay for the costs they impose on the city. Hence, many cities are shortchanged in state grant-in-aid programs and others are prohibited from levying taxes on the earnings of commuters. This selfish attitude of suburbanites toward city finances helps to impoverish the city even more, and leads to further deterioration in the very places where they earn their livelihoods and satisfy most of their cultural and recreational needs.

It should be obvious to everyone that the cities of this country are a vital part of its economic and social life. They are centers of industry and commerce, education, arts and letters, theatre and sports, and other economic, cultural, and recreational activities. These benefits accrue to people throughout the country, as well as to the residents of the metropolitan areas in which the cities are located. Thus the costs should not be borne by the residents of the cities alone; part of the costs should be shared by residents of the surrounding communities, and some of the costs should be borne by residents of other parts of the country. This explains why both the state and national governments should be concerned with the financing of city services.

In the absence of metropolitan government, it is the responsibility of the state government to see to it that suburbanites help pay for the cities which they use as centers of employment, intellectual activtiy, and recreation. Where a metropolitan area is entirely within one state, the state could solve the problem in a simple way by allocating a special general or block grant to the cities out of state funds. Where the metropolitan area covers two or more states, the central city could be given the authority to levy a special income tax (piggybacked to the state tax) which would apply to the full income of its residents and to the earnings of commuters in the city. In normal practice, commuters who are residents of other states are allowed to credit such taxes on their earnings against the income tax of their state of residence, so that this arrangement should not create any serious cases of double taxation.

The federal government can discharge its responsibility by making two revisions in its grant programs:

First, it is time that the federal government recognized that poverty is a national and not a state-local problem and that it should bear the entire cost of the welfare system. Release of state and local fiscal resources now used to pay welfare benefits would provide no-strings-attached funds, with the distribution based on the number of welfare recipients and the benefits currently paid rather than on the basis of total population and the other factors included in the revenue sharing bill. The urban states and some of the large cities have been carrying the fiscal burden because the federal government has so far refused to recognize its full responsibility in this area. Correction of this inequity (as well as reform of the welfare system) is an essential step for the modernization of the system of intergovernmental fiscal relations in this country.

Second, a special block grant to the large cities—over and above the grants provided in the revenue sharing bill—is needed to recognize the special role and unique problems of the largest cities. Since the cities provide national as well as regional benefits, the federal and state governments should share the cost of this new grant. The federal government could insure the cooperation on the part of the states by matching the funds allocated by the state for block grants to the largest cities. I realize that it will be difficult to persuade the Congress to enact a program which will benefit the constituents of only a part of its membership. But unless statesmanship overcomes provincialism, the cities will continue to lose middle- and high-income families who will neither tolerate the inadequate public services that their poor neighbors must accept, nor pay higher taxes to carry the burden for their neighbors. The result will be further decay in our largest cities and continued deterioration of city services and benefits which are so vital to the health and welfare of the nation.

In conclusion, revenue sharing is not a panacea for all the fiscal problems of the state and local governments. It is a constructive piece of legislation which will provide needed revenues for public services in some places and moderate the growth of undesirable state-local taxes in others. The basic purpose of revenue sharing is equalization of state-local resources; unless it promotes this objective to a significant degree, I will regard the revenue sharing experiment as a failure.

I do not accept the proposition that revenue sharing will revolutionize the relationship between the federal government and the states and local governments. It may well be that, upon examination, some of the present categorical grants should be eliminated and others consolidated into broader groups; but the purpose of categorical grants is to stimulate specific governmental activities, and this cannot be done effectively without direction in some detail by the federal government. Consequently, another major test of the wisdom of this legislation is whether the Congress uses revenue sharing and categorical grants for the purposes for which they were designed. If revenue sharing is used to gut the categorical grant system, it will have been a bad bargain.

Finally, revenue sharing cannot solve the fiscal problems of the cities. The viability of the nation's largest cities is of concern to everyone—to those who live in other parts of the country as well as to those who live in close proximity to them. Those outside the cities reap substantial benefits from them, and they should be prepared to pay for the costs of running the cities. The states must give the cities enough taxing powers—including the power to tax the earnings of commuters—to pay for the extra costs imposed on them by outsiders, or provide the cities with general funds as a substitute. The federal government should, in turn, provide special grant funds—on a matching basis with the states—for use exclusively by the largest cities. It is still possible to save the cities, but unfortunately there seems to be little impetus anywhere to take the steps needed to prevent further decay and even bankruptcy in some places.

THE EMERGENCY EMPLOYMENT ACT IS NEEDED

Mr. CANNON. Mr. President, the President's January budget message has touched off a great deal of discussion about the need for Federal spending limits, the relationship between Federal and local governments, the New Federalism, special revenue sharing, and so forth. This is admirable, and the President is to be congratulated for breaking new ground in several areas and for taking bold steps to implement his fiscal policies.

Since that budget message was released, my staff and I have spent considerable time trying to determine exactly how specfic programs were treated. And, although we found much that is commendable, we also found several seemingly inexplicable decisions. I would like to point out a few of those so my colleagues can get an idea of how high-sounding fiscal policy affects Nevada.

The President has informed us that the unemployment situation has so improved that the Emergency Employment Act is no longer needed. I am not so sanguine about an employment picture showing 4.4 million workers out of work that I could terminate a program now providing about 180,000 jobs. When I look at the impact of the EEA on Nevada, I am even less able to understand its termination. Since its inception in August 1971, a total of 648 persons have been given employment. In the current fiscal year, about 400 persons are on the job, supported by some $3.5 million in Federal dollars that simply will not be there after June 30.

Four hundred persons do not make a large dent in the country's overall unemployment, but Nevada's total labor force is only about 275,000. Furthermore, the State has been struggling with an unemployment rate of greater than 7 percent until recent months, and it is still well over 6 percent.

Now, if the EEA had been marked by scandal or bureaucratic bungling—if jobs had been given to construct those country clubs we heard about concerning the REA loans—I could understand its elimination. But apparently the administration does not even contend the EEA has been anything but a success. Paul J. Fasser, Jr., Deputy Assistant Secretary of

Labor for Manpower and Manpower Administration, recently had the following to say about it in the Washington Post:

One of the most important lessons learned through this program is the critical need for full local involvement in solving local problems. For the Emergency Employment Act, perhaps more than any other federal activity in history, involved the maximum participation of state and local governments in administering and disbursing federal funds. Despite misgivings voiced by some, the hiring of eligible persons proceeded rapidly, with fairness, and with few misinterpretations of the guidelines. Discrimination, forbidden by the guidelines, did not occur.

Now that sounds like a pretty good review to me and, indeed, Mr. Fasser seemed pressed for an explanation of the EEA's demise. He finally concluded that all the money contained in its original authorization would run out at the end of the next fiscal year, so that was a good time to terminate it.

Nevada State officials have hailed the program as an unqualified success. The director of the State employment security department recently wrote:

I am firmly convinced that PEP, as it is called in the state, has shown much greater effectiveness, works with more efficiency and produces greater results for money and services expended than the other Manpower programs with which the Employment Security Department has been involved.

Are the jobs perhaps of the dreaded "WPA-type" that Mr. Nixon finds so unpalatable? Not according to the same State official. I quote again:

It has provided great assistance to the cities, counties and the state in that it has augmented existing services to the public in areas such as law enforcement, fire protection, conservation, the health and hospital services, education and public works. It has also helped local jurisdictions to staff badly needed new programs such as consumer affairs, drug education and community relations.

The state employment director is not the only official in Nevada to praise this program. The personnel director of the city of Sparks was recently quoted as being fully in favor of EEA, which pays about $72,000 per year for eight employees in his city. He said:

When it was first started it was kind of a Godsend that those positions could be subsidized. If they pull the cork, we're going to have to come up with 100 per cent funding for those positions.

The smaller areas of Nevada will be the hardest hit by termination of EEA. The city clerk of Ely was asked if the city budget could include $16,504 it receives for three positions.

No way. We're on a very short budget as it is, he said. To pick them up would be impossible.

The recipients of these jobs are also appreciative, as the following comments, supplied by the State employment security department, demonstrate.

A real estate field representatve said:

The EEA has changed me from nonproductive status on state unemployment compensation to a productive employee.

Said a building custodian:

If I hadn't been hired through EEA, I probably would have still been out there looking for work and coming up with blanks.

And a clerk-typist commented:

It has given me a chance to work at a full-time job and at the same time learn a new skill, and to support my three children without help from welfare.

Perhaps it is old fashioned of me to view these massive Federal programs as they affect individual people. But I do not get the obvious joy Mr. Nixon does in announcing the end of programs that have meant jobs for people who cannot get them anywhere else.

I have the same feeling of disbelief regarding the administration's announced termination of the Neighborhood Youth Corps summer job program. I cannot say what the justification is for suddenly depriving 2,000 underprivileged Nevada youths of employment this summer. I look at the 43,478 Nevadans listed in the 1970 census as below the poverty level and wonder how the loss of these jobs will affect them. I read comments like the following from a former counselor in the summer jobs program and wonder how to justify it to him:

This program has been a great boon to the underprivileged youth of all races in our Southern Nevada area. It has provided them with gainful employment, valuable on the job training and skilled vocational and personal counseling.

The same thing goes for Mr. Nixon's veto last year of a 1-year extension of the Economic Development Administration and the announcement in his budget that there would be no funds for it in the upcoming fiscal year.

EDA has provided more than $1.5 million in public works and technical assistance grants for Nevada's 23 Indian reservations and colonies and, more importantly, some 240 new jobs. Needless to say, its termination would cause a great hardship for these economically strapped Indians.

In this brief review of the impact of Mr. Nixon's budget on Nevada, I have listed 2,640 jobs that are jeopardized by it. I have not even touched on the possible job losses caused by eliminating the Library Services and Construction Act, freezing Federal housing subsidies, destroying community action programs, ending the regional medical program, impounding highway trust funds, cutting back on impacted school aid and a host of other administration moves.

I am aware that Mr. Nixon does not think much of Congress these days and that that is why he has taken these steps without consulting us. I would ask, however, that he think of the people he will harm, if he will not think of Congress. I would ask that he consider if continuing some programs, or at least providing for their extinction in a more thoughtful way, might not be more important than having the Office of Management and Budget present a neat financial statement. These people who will be deprived of services are the ones he was reelected to serve. I do not think he was given a mandate to ignore them.

I ask unanimous consent that a Wall Street Journal article on this subject, published today, be printed in the RECORD.

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

SHOULD U.S. BE "EMPLOYER OF LAST RESORT"? NO, SAYS NIXON SIDE; YES, ASSERT OTHERS

(By James C. Hyatt)

FAIRFAX, VA.—Earl Iverson had an emergency public-service job but no longer needs it.

Stanley Miller has an emergency public-service job and figures he'll always need it.

Thus, do two workers view in conflicting terms the federal government's largest job-creation effort since the Depression; the Public Employment Program subsidizing hiring of the unemployed by state and local governments. It's one of the larger spending ventures that President Nixon now proposes to end.

Mr. Iverson, a 33-year-old operator of heavy equipment, who held sporadic jobs in private industry, held a PEP job for more than a year. He drew $4.18 an hour to bulldoze earth over mountains of garbage and trash at a Fairfax County sanitary landfill. But last month he quit the dump and waved goodbye to the thousands of seagulls wheeling constantly overhead. ("You learn never to look up," he confides.) His new private job with a company working on the new Washington subway pays $7.29 an hour, and he feels confident of the job market. "If a man wants to work," he asserts, "there's work out there." And that's the way the Nixon administration feels, too.

Mr. Miller, on the other hand, isn't about to give up his county PEP job. He still bitterly recalls four months of unemployment in 1971 after he was laid off by his aerospace employer of 13 years, Atlantic Research Corp. "I couldn't find a thing until this county job came along," he says. Now he is an "engineering technician" monitoring maintenance programs at a county waste-water facility. "I'm staying put right where I am," he says, though his pay of $9,126 a year is about $3,500 less than his previous job yielded. And backers of the PEP program believe he should be able to stay where he is.

"EMPLOYER OF LAST RESORT"

The PEP program, in its 18-month history, has earned the endorsement of once-jobless workers such as Mr. Miller and the support of mayors and governors as well. By the time present funds run out, $2.25 billion will have been distributed and almost 300,000 jobless workers will have been hired by state and local governments. Nonetheless, Mr. Nixon has earmarked PEP for extinction, and a battle over its life or death promises to rage in Congress.

The battle will be fought partly on practical grounds. Would-be rescuers insist that this federal hiring help has shrunk the unemployment rolls, has provided essential public services ranging from schoolteaching to toll-taking, and has eased a financial squeeze for state and local governments. They say unemployment is still high in some cities and PEP's demise might swell it.

In rebuttal, Mr. Nixon, and his supporters assert that unemployment has eased and the emergency that PEP was meant to meet has ended. They add that the program has failed to help the hard-core unemployed much. Other critics complain that it has failed to move many workers into permanent private or public jobs, which is the basic aim of the program. Moreover, opponents of this federal subsidy declare that state and local governments now are in better shape to meet their payrolls without Washington's help.

Deeper down, there's a basic philosophical cleavage. PEP's champions argue that a permanent refuge is needed for workers who can't find jobs, that Uncle Sam should always be "the employer of last resort." Not at all, says the Nixon side; there are better ways to help the disadvantaged than by federal job-creation efforts.

"MAKE-WORK" PROGRAMS

Public employment in times of high joblessnesses isn't new to the nation. Billions were pumped into the economy by this route during the Depression. But the federal government has seldom felt comfortable as "employer of last resort." Indeed, President Nixon resurrected the specter of "make-work" programs in late 1970 when he vetoed a bill that would have generated $2 billion over four years for public-service jobs. "W.P.A.-type jobs aren't the answer for the men and women who have them, for government which is less efficient as a result or for the taxpayers who must foot the bill," his veto message intoned.

But six months later, with unemployment nearly 6% nationwide, Congress wrote a new and different "Emergency Employment Act," sprinkling it with language requiring transition from temporary to permanent jobs in order to overcome presidential reservations. To stress its "emergency" nature, the bill included a "trigger" of 4.5% unemployment; funds could be spent only when the jobless rate reached or exceeded that level.

President Nixon signed the bill in July 1971, and the first subsidy checks went forth by mid-August. "The bureaucrats hand little black bags of money out to the communities within a few weeks," recalls Sar Levitan, a long-time manpower consultant in Washington. "The program showed what could be done and how fast."

There have been weaknesses, as even some PEP backers concede. Poor, uneducated, hard-to-place workers have received only a third of the PEP jobs. In some cities. Civil Service regulations have blocked the chance for enrollees to get certain desirable jobs. One study last year found some localities "frankly admit that they will operate the programs as long as federal dollars continue, but they will make no effort to permanently employ PEP hirees."

In any case, unemployment now has declined to 5%, and the administration predicts the 4.5% "trigger" may be achieved by December. Workers such as Mr. Iverson are finding private jobs easier to secure. And if localities want to keep the PEP workers on, they can rely on their federal revenue-sharing funds or their own resources—or so the administration argument goes.

"Since the program began, unemployment has declined, the number of private sector jobs has increased substantially and the financial ability of state and local governments to meet the demand for public services has improved," says Paul J. Fasser, Jr., the Labor Department's deputy assistant secretary for manpower. "The conditions which initiated the Emergency Employment Act in the first place no longer exist."

Experienced and relatively well-educated workers can find private jobs, he argues. And for "the disadvantaged who lack the necessary skills and other prerequisites for stable employment, subsidized public-service employment is the wrong prescription under generally favorable economic conditions."

PINK SLIPS

To PEP backers, however, the Nixon cutoff proposal threatens a pink slip for thousands of workers who badly need their jobs. Unless transition rates to permanent public jobs "can be dramatically increased, the cutback in funds would require the layoff of many of the 150,000 workers hired" or sharply increased local spending, Mr. Levitan asserts. "Any time you have 5% unemployment and 10% in the inner cities, people are going to have a hard time finding work," a Senate manpower expert insists.

Indeed, despite the national decline to 5% unemployment, 41 major labor areas still have a jobless rate in excess of 6%. The "emergency" clearly isn't over for Stockton, Calif., where unemployment in December was 8.3%; for Lowell, Mass., 9.2%; Atlantic City, 9.7% or Seattle, 8.1%. (These preliminary Labor Department figures aren't seasonally adjusted.)

Finally, the critics say, revenue sharing will stretch about as far as one ice cube at a bar. Even the Nixon budget concedes that total federal funds available for manpower programs will drop 10%, to $4.8 billion, for the fiscal year starting July 1. The cut is "mainly due to the phaseout of the Emergency Employment Assistance program," the budget says.

NO BIG HEADLINES

One little portent of the local effects of PEP's demise can be found in San Patricio County, Texas. There Sheriff Wayne Hitt has lately lost two PEP-based deputies, who quit to take other jobs. He'd like to fill the vacancies, but he is hesitant. With the federal subsidy due to halt, the county government alone would have to bear the load of the two $631-a-month salaries. And San Patricio County "isn't likely to pick up the tab on something like that," the sheriff figures.

Even if the act expires on schedule June 30, there won't be embarrasing headlines telling of quick or massive layoffs. Instead, the program is due to phase out gradually. While most new hiring would halt, over $580 million in subsidy money would still be available next fiscal year for PEP hirees still on public payrolls.

At this point, most PEP backers are naturally more concerned with saving the existing program than with boosting spending levels. "I was sort of hoping this year to try to change the program to one providing permanent jobs," says one union strategist." But the fight this time is for survival of the present program."

Labor, state and local governments, and Congressmen from districts with pressing unemployment are all backing extension of the program. "America's most pressing need is still jobs—more jobs and better jobs at decent levels of pay," says Andrew J. Biemiller, the AFL–CIO's legislative director. "Unwise cutbacks in existing job-creation measures could touch off a new round of spiraling unemployment, endangering the already precarious economic health of the nation."

LEGISLATIVE PROPOSALS

But even the supporters of public employment would like to tinker with the program to make it serve actual needs better. In allocating funds, "the Labor Department fiddled and diddled around until they got a formula to serve their political purposes," asserts Keith Prouty, research director of the American Federation of State, County and Municipal Employes. At one point an analysis by the National Urban Coalition showed that California with 601,000 jobless workers, had received $100 million in PEP funds while New York State, with 460,000 unemployed, had received only $47 million.

Others say the disadvantaged worker should receive more attention. A recent tally showed that three-fourths of the PEP hirees have completed high school and 31% have had further education.

City and union officials are supporting proposals offered in the House by New Jersey Democrat Dominick Daniels to extend the Emergency Employment Act for two years. He proposes to boost spending from $1 billion for fiscal 1973 to $1.3 billion in fiscal 1974 and $1.5 billion in fiscal 1975.

For areas of substantial unemployment, meaning 6% or more for at least three months, the bill would provide $1.7 billion over two years, compared with $250 million a year in the present law. The emphasis would switch more to creating public jobs in pockets of persistent joblessness.

In the Senate, a PEP extension likely will be lumped into broader legislation combining manpower revenue sharing and other programs. Even if this strategy succeeds in averting a veto, it could still have drawbacks, however; "the President might sign but not spend the money," one Senate staff member says.

Certainly the administration seems determined to make its PEP death-sentence stick. Mr. Fasser of the Labor Department recently warned a House subcommittee that "the longer the program is continued, the greater the temptation will be for governments to build future budgets around EEA funds and, in effect, the program may merely replace local funds with federal funds."

But PEP won't be easy to bury. Certainly, as Colorado Republican Sen. Peter Dominick said in opposing its birth in 1971, "It is hard to imagine a federally financed program dying a natural death."

MARYLAND'S PARTICIPATION IN MEDICARE PROGRAM

Mr. MATHIAS. Mr. President, Secretary of Health, Education, and Welfare Weinberger has recently supplied me with very useful information that gives a county-by-county breakdown of statistics which reflect the degree to which Marylanders have participated in the medicare program. The figures indicate the number of persons enrolled in the hospital and supplemental medical insurance programs as well as the amount of reimbursement for the year 1971.

Because I know that this information will be valuable to a number of interested Marylanders, I ask unanimous consent that the figures for the State of Maryland and Secretary Weinberger's letter be printed in the RECORD.

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

THE SECRETARY OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., February 16, 1973.

Hon. CHARLES McC. MATHIAS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: State and county data on Medicare benefit payments in 1971 have now been completed, and will be published soon. I am glad to enclose an advance set of data most relevant to your State.

The overall total of Medicare payments during the year for services and items furnished beneficiaries was nearly $7.4 billion, and was an increase of approximately $800 million more than the total figure for 1970. In 1971, $5.36 billion was paid under the hospital insurance part of Medicare, and $2.00 billion under the medical insurance part. The average number of people covered by hospital insurance was 20.7 million during the year, while the same figure for medical insurance was 20.0 million. I hope you will find the data interesting and useful.

With best regards,

Sincerely,

CASPAR W. WEINBERGER,
Secretary.

Enclosures 3.

TABLE 2.—NUMBER OF PERSONS ENROLLED IN HEALTH INSURANCE PROGRAM AND TOTAL REIMBURSEMENT FOR HOSPITAL AND MEDICAL INSURANCE BY STATE AND COUNTY

Area of residence	Hospital and/or medical insurance		Hospital insurance		Supplementary medica insurance	
	Number of persons enrolled	Amount reimbursed January–December 1971	Number of persons enrolled	Amount reimbursed January–December 1971	Number of persons enrolled	Amount reimbursed January–December 1971
Maryland	303,367	$108,584,113	299,143	$82,506,995	285,926	$26,077,118
Allegany	10,808	4,254,585	10,759	3,543,234	10,483	711,351
Anne Arundel	16,543	5,166,585	16,383	3,794,009	15,366	1,372,576
Baltimore	48,738	18,336,756	48,446	14,398,226	46,418	3,938,530
Baltimore City	95,173	37,685,086	94,482	29,800,698	88,891	7,884,388
Calvert	1,957	530,721	1,930	414,445	1,838	116,276
Caroline	2,877	634,584	2,851	486,902	2,706	147,682
Carroll	7,161	1,729,824	7,132	1,334,169	6,602	395,655
Cecil	3,819	928,868	3,773	731,376	3,515	197,492
Charles	2,374	896,031	2,306	670,065	2,206	225,966
Dorchester	3,803	907,094	3,775	733,827	3,603	173,267
Frederick	7,738	1,794,868	7,675	1,385,715	7,343	409,153
Garrett	2,348	$509,123	2,328	$410,967	2,233	$98,156
Harford	5,939	1,861,022	5,872	1,438,683	5,474	422,339
Howard	3,103	1,018,909	3,083	786,064	2,967	232,845
Kent	2,402	610,219	2,394	493,928	2,251	116,291
Montgomery	33,740	13,273,513	32,194	8,366,078	32,277	4,907,435
Prince Georges	24,210	10,703,306	23,305	7,644,841	22,791	3,058,465
Queen Annes	1,956	523,484	1,944	410,549	1,838	112,935
St. Marys	2,594	760,836	2,544	607,719	2,440	153,117
Somerset	2,717	633,192	2,704	508,308	2,553	124,884
Talbot	3,563	931,139	3,549	711,481	3,380	219,658
Washington	10,459	2,352,791	10,409	1,798,426	9,917	554,365
Wicomico	5,835	1,537,288	5,812	1,239,984	5,558	297,304
Worcester	3,260	862,798	3,247	686,307	3,075	176,491

SEPARATING FACTS FROM FICTION—THE NIXON BUDGET

Mr. HUMPHREY. Mr. President, I am pleased to see that the press continues to print the facts regarding the President's disastrous social policies, and does not let the rhetoric of this administration go unchallenged. I was particularly struck by an article on impoundment by Louis Fisher, which appeared in the Washington Star, and a public opinion survey by Lou Harris, which appeared in the Washington Post. Both shed truth on the administration's budget and impoundment arguments.

We have heard how the President is supposedly using so-called election mandate in making cutbacks in social programs. The Harris survey documents just how unpopular these cutbacks really are. Harris found that:

1. The elimination of the Office of Economic Opportunity is opposed by 46% of the people, and favored by only 39%.
2. The cutback in REA loans is opposed by 47%, favored by 31%.
3. The cutback in Job Corps is opposed by 64%, favored by 29%.
4. The elimination of Head Start is opposed by 69%, favored by 25%.
5. The cutback of free milk in school lunch programs is opposed by 79%, favored by 18%.
6. The proposal to make older people pay more hospitalization is opposed by 92%, favored by 5%.

The public is not in favor of high spending or waste. And neither am I or other Senators. They oppose, for example, the plan to greatly increase spending for research into new weapons systems by a margin of 58 percent to 33 percent. It is clear that the President's priorities are going to receive critical public review.

The article by Louis Fisher gets right to the heart of what is behind impoundment. He states that:

Choices were not made in terms of the projects, such as cost-benefit ratios or some other criteria. OMB simply decided that the President's budget should stand as is and that all congressional additions should be deferred.

He cites the freeze on housing, and asks:

Was that an attempt to blackmail Congress into passing urban special revenue sharing?

Clearly, the unpopularity of the President's views on social spending has not deterred him from taking unconstitutional steps to impose those views without the approval of Congress.

As law professor Arthur Miller wrote recently in the Washington Star:

This year will be a bruising one; 1973 and the other years of Nixon's second term may well settle whether this country will in fact be ruled by 'presidential government' or whether the time-honored constitutional separation of powers will be followed.

The New York Times has commented:

Previous Chief Executives were just as jealous of their prerogatives; but they also recognized that they shared fiscal power with Congress and that comity between two equal branches of government is not furthered by the arbitrary or frequent exercise of an implicit, hard-to-define authority, which is best kept in reserve. Mr. Nixon lacks that traditional concern for comity.

Mr. President, the people of this country do not support the principle of Presidential legislation by fiat. Furthermore, they oppose the priorities which this particular President has regarding public policy. As the articles from which I have quoted indicate, Congress can and must take its case before the people and change the priorities of this administration.

Mr. President, I ask unanimous consent that the articles I have cited 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. 26, 1973]

PUBLIC DISAGREES WITH MOST OF NIXON WELFARE CUTBACKS

(By Louis Harris)

The American people are not in agreement for the most part with the budget recommendations of the Nixon administration to cut back a number of long-established federal social welfare programs. The decision to eliminate the Office of Economic Opportunity, the coordination agency for the anti-poverty program, for example, is opposed by 46 to 39 per cent.

The major finding of an intensive, special Harris Survey on the Nixon budget shows the public to be in favor of increased spending for such things as job training, rural electrification, Head Start and new hospital construction, even though a majority agrees, by 59 to 28 per cent, that "President Nixon is right in saying that inflation cannot be controlled unless federal spending is cut to the bone."

Between Feb. 14 and 17, a cross-section of 1,505 households was asked:

President Nixon has ordered a sharp halt in rises in spending by the federal government, pledging to keep spending at no more than $269 billions a year. How likely do you feel it is that President Nixon will be able to keep federal spending from going above that limit—very likely, only somewhat likely or highly unlikely?

TOTAL PUBLIC

	Percent
Very likely	15
Only somewhat likely	42
Highly unlikely	34
Not sure	9

Of course, one reason for the public's pessimism on achieving a ceiling in federal spending is that the public, itself, is inclined to oppose many of the major cuts proposed by the President.

To determine attitudes on specific budget recommendations the cross-section was asked:

Let me read you some of the areas of federal spending where President Nixon has proposed some major changes. For each, tell me if you tend to agree or disagree with what President Nixon has proposed. (Read list)

[In percent]

	Agree	Disagree	Not sure
Increase social security payments	70	25	5
Increase pay for military personnel to prepare for volunteer army	68	24	8
Increase Federal aid for education to State and local government	66	26	8
Eliminate Model Cities program	48	31	21
Expand program to aid minority owner businesses	48	38	14
Cut down farm price support paid to farmers	44	44	12
Cut back spending for urban renewal programs	43	42	15
Eliminate Office of Economic Opportunity, the agency running the antipoverty programs	39	46	15
Increase spending for research into new weapons systems	33	58	9
Cut back loan aid under rural electrification	31	47	22
Cut back Job Corps, designed to help train disadvantaged young people	29	64	7
Place less emphasis on enforcing minority rights and more emphasis on enforcing rights of women	27	50	23
Eliminate the Headstart program, designed to help disadvantaged children prepare for school	25	69	6
Cut back on Federal aid for building new hospitals	24	70	6
Cut back free milk in school lunch programs	18	79	3
Make older people pay more than they now pay for medicare	5	92	3

[From the Sunday Star and Daily News, Feb. 25, 1973]

IMPOUNDMENT RELIES ON WEAK ARGUMENTS

(By Louis Fisher)

Exhilarated by his 61 percent November mandate, with 49 states tucked away neatly in his corner, President Nixon has staged a bold confrontation with Congress. Thus far legislators have responded with angry and fiery denunciations about the impoundment of funds. The spectre of "one-man rule" has been raised. Invocations, if not incantations, are made to the Constitution, the Founding Fathers, and the separation of powers doctrine. Amidst all the clamor and heavy rhetoric, the funds remain impounded.

Executive officials, visiting Capitol Hill to defend the legality and political wisdom of impoundment, have little difficulty in marshaling a host of precedents, legislative histories and statutory fragments to support their cause.

The standard litany includes:

"No sense spending money on wasteful and ineffective programs."

"Spending must be curbed or we'll have a tax increase (or renewed inflation)."

"Other Presidents have done it."

"We have to impound to stay within the statutory debt limit and to carry out the Antideficiency Act."

To the uninitiated these arguments may sound reasonable, but are they?

The issue of whether impoundment is constitutional—whether it is legitimate or politically defensible—is beyond the scope of this article. Impoundment comes in many shapes and colors, legitimate in one case and highly questionable in another. A more manageable task is to question the current rationale offered by the administration. Is it as strong as it outwardly appears?

Consider the special section in the new budget on "Program Reductions and Terminations," A major criterion for identifying low-priority programs is this test: "Would they justify an increase in tax rates to pay for the anticipated expense of their continuation? The 1974 budget proposes reducing or eliminating programs that do not meet this criterion."

Is it too much to wonder if that same standard was applied to the space shuttle? To the B–1 bomber or the SST? To the ABM site in North Dakota or to merchant marine subsidies? Or are those, to borrow from the President's Jan. 28 radio address, "sacred cows"?

How does the Office of Management and Budget decide which projects to continue and which to shelve? Roy Ash, in a Feb. 1 appearance at the Joint Ervin-Chiles impoundment hearings, assured the senators that "we are not choosing between good programs and bad programs. In many cases we are forced to choose between good ones and better ones."

Very nice, but is there a measuring rod somewhere that distinguishes between bad, good and better?

Apparently that is not the case. Some insight as to how things work can be gained from hearings held in June 1971. Caspar Weinberger appeared before the House Appropriations Committee to explain why the OMB had impounded, without exception, every public works project that Congress had added to the President's budget.

Choices were not made in terms of the *merits* of the projects, such as cost-benefit ratios or some other criteria. OMB simply decided that the President's budget should stand as is and that all congressional additions should be deferred.

Weinberger admitted that the OMB did not feel qualified to exercise independent judgment on the projects. It was merely a case of depending on the Corps of Engineers and the Bureau of Reclamation as to which projects had a lower priority—"by definition those projects that are not included in the budget . . ."

The image of the President and his budget officials standing in front of a smorgasbord, delicately picking out good programs from better programs, is pure fantasy. The "good programs" are those added by Congress. The "better programs" are those initially requested by the President.

In his news conference of Jan. 31, Mr. Nixon said that he would respond to critics of impoundment in the "same way that Jefferson did, and Jackson did, and Truman did."

The Jefferson example has been something of a godsend, eagerly seized upon by administration spokesmen. Weinberger told the Senate Committee on Labor and Public Welfare on Jan. 17 that "we are doing not only nothing different than any other President since Thomas Jefferson has done; we are doing it in no greater degree." Both points are shaky.

It is almost embarrassing to recall the details of the Jefferson incident. Congress had appropriated $50,000 for gunboats in anticipation of an emergency. When the emergency failed to materialize, Jefferson saw no reason to spend the money. Neither did Congress. He announced that the "favorable and peaceable turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary."

It was a commonsense impoundment, in no way defying Congress. Can anyone seriously offer that as a precedent for cancelling the Rural Environmental Assistance Program (REAP), placing an 18-month moratorium on housing, or withholding $6 billion in contract authority from the water pollution control program? Would not Congress be subject to ridicule if it offered such strained analogies?

Budget officials like to point out that 1967 impoundments represented 6.7 percent of budgetary outlays, compared to only 4.6 percent for 1972 impoundments. To compare administrations with aggregate figures, either with dollar amounts or with percentages, is meaningless. You have to look at individual impoundment actions, separating the routine from the controversial.

Percentages are helpful in showing the impact of impoundment *within* an administration. OMB's Feb. 5 report lists $1.899 billion withheld from the Department of Defense (military functions), $1.497 billion from Agriculture, and $529 million from HUD. Convert that into a percentage of total available budget authority for fiscal 1973 and you get 2.4 percent Defense, 13.0 percent Agriculture, and 10.5 percent HUD. If Defense is underrepresented, the main burden of impoundment obviously falls on the domestic programs. And so it does.

Two other calculations are needed to understand the full impact on domestic programs. The Feb. 5 report is restricted to impoundment of appropriated funds. It is also possible to "impound" by withholding contract authority, such as for home ownership or rental assistance programs. Total impoundments for HUD—in appropriated funds and in contract authority—come to $991 million, 19.8 percent of the Department's total available budget authority.

Also important is the amount of money that will lapse (be lost) at the end of the fiscal year. Of the defense impoundments, all of the funds will be available beyond fiscal 1973 except for $7.5 million in annual accounts. Thus, less than half of one percent will lapse. Compare that to $207 million of Agriculture money that will not be available beyond fiscal 1973—13.8 percent of Agriculture impoundments.

But in addition to the $207 million you have to add other funds that are technically or legally "available" after fiscal 1973, but which the administration has no intention of spending. This category includes $210 million for REAP, $11 million for the Water Bank Program, $456 million for rural electrification loans, and $120 million for rural water and waste disposal grants.

In a practical sense, then, 67 percent of the Agriculture impoundments will be lost after fiscal 1973. In the case of Defense, none of the funds that extend beyond fiscal 1973 face political impoundment.

Of the $529 million in appropriated funds withheld from HUD, all of the money is technically available after fiscal 1973. However, with the single exception of $6.6 million in housing production and mortgage credit, the administration does not intend to spend any of the funds. Moreover, the housing pipeline will be depleted during the 18-month moratorium, resulting in a loss of both of funds and of momentum.

To pinpoint the specific kind of impoundment that disturbs Congress, Sen. Ervin reminded Roy Ash of a 1971 example. Urban funds were withheld at that time because, as George Romney explained, there was no sense in accelerating programs that were "scheduled for termination."

Note that the "scheduling" was by the executive branch, not by Congress. It was the administration's intention to convert urban programs into the President's revenue sharing proposal. Impounding funds in this prospective sense—holding on to money in anticipation that Congress would enact an administration bill—was a new departure for the impoundment technique.

Ash responded by saying that the Romney example "dealt not with this year but earlier. . . . This year the reasons are very compelling ones and different ones." Yet impoundment is still being used today as part of the administration's strategy to enact urban revenue sharing. The 1974 budget stops new project approvals under seven "outmoded and unduly restrictive" grant and loan programs. As these programs decline, they are to be phased (so the script reads) into the administration's $2.3 billion special revenue sharing plan.

This confirmed by a Jan. 15, 1973 letter from Kenneth R. Cole Jr., Director of the President's Domestic Council. He informed Sen. Sparkman that "until the [community] development activities are folded into the revenue sharing proposal, there will be a temporary suspension of new commitments for water and sewer grants, open space and public facilities loans."

Was that an attempt to blackmail Congress into passing urban special revenue sharing?

During the hearings on James Lynn's nomination as the new HUD Secretary, Senator Packwood asked: "If Congress, in its lack of wisdom, refuses to pass the urban and special revenue sharing bill, is it your intention or recommendation to permanently freeze community development funds?" Lynn's reply was nearly incomprehensible: "I think we would have to face up then to what our position would be and would make our recommendations as to what happens to water and sewer quite separately. Yes, we would, but all we are talking about is the time sequence. This is an optimistic plan based on what we think is the right thing to do, and, as you said, Mr. Chairman, the right thing to do is to have revenue sharing. Mr. Cole is saying that we intend to have the revenue sharing substituted for it."

Housing programs are being suspended or terminated, according to the administration, because they are wasteful and ineffective. Does the President apply that same rigorous principle, on such a broad scale, to procurement programs for the military?

The administration had four years to study the housing programs and come up with legislative remedies. Nothing was proposed except for urban special revenue sharing and a consolidation and simplification bill. To wait four years and apply the draconian remedy of a moratorium smacks of bad faith.

The administration professes an open mind on the housing program, evaluating it objectively and impartially during the 18-month period. Some of the statements in the Cole letter ("The program structure we have now cannot possibly yield effective results even with the most professional management") indicate that the evaluation has already been made. That too suggests bad faith.

In their more modest moments, when not invoking the inherent powers of the President, administration officials claim that impoundment is necessary to satisfy statutory directives. This is the humble approach. On such occasions the public debt limit is trotted out to explain why funds are impounded. "Congress set the limit; we cannot go above it."

That is true, but there is nothing to prevent the administration from asking that the limit be raised. They do it all the time nowadays. Why is it we spend billions to meet our commitment in Southeast Asia, put a man on the moon, and extend revenue sharing to the states without feeling constrained by the debt limit?

OMB argues that it would be impossible to stay within the debt limit if outlays for fiscal 1973 exceed $250 billion. That is an administration spending target, not a statutory ceiling. Roy Ash tried to give it a quasi-statutory blessing by saying that both houses had supported a $250 billion limit, even if it was not enacted. Sen. Chiles offered this advice: "Mr. Ash, most things we do around here, if they do not come out to a law, we do not think they amount to much."

The Employment Act of 1946 and the Antideficiency Act are also used to defend impoundment. Weinberger told Senate Labor and Public Welfare on Jan. 17 that the 1946 Act "requires the President to maintain policies that guard against inflation." It does no such thing. It requires the President to present an Economic Report, but he has no special powers (Discretionary spending powers were deleted from the 1945 Full Employment Bill).

The act also declares it to be the responsibility of the Federal Government—i.e. Congress and the President—to use all practicable means "to promote maximum employment, production, and purchasing power." It is true that impoundment, as an anti-inflation weapon, can help promote purchasing power, but that begs the question: where does the act grant power to the President? And second, the Employment Act was meant to promote purchasing power by stimulating employment and production. Impoundment does just the opposite.

As for the Antideficiency Act, that has become an all-purpose contraption to justify practically any kind of impoundment. Yet the act has but two narrow objectives. One is to apportion funds (usually by quarters) so that agencies do not exhaust their funds before the year is out. The second is to set aside reserves to provide for contingencies or to effect savings.

There is nothing in the legislative history to suggest that reserves can be established for the purpose of fighting inflation. Nowhere does the legislative history imply an authority to cancel or curtail a program because the administration doesn't like it. If an administrator can satisfy a statutory purpose by spending fewer dollars than Congress appropriated, all well and good, but the purpose itself is not to be denied.

To challenge these administration arguments is not to dispose of the impoundment issue. Far from it. It is merely to sweep away some of the cobwebs that now confuse us, prevent us from asking more fundamental questions.

The primary motivation behind the controversial impoundments is not obedience to statutory directives. What we are witnessing is an act of administrative policy-making and priority-setting. It is the question of which branch shall decide how to allocate the public funds.

In a revealing interview published last November in The Star-News, President Nixon philosophized about the proper relationship between the Federal Government and the people. The average American was "just like the child in the family. You give him some responsibility and he is going to amount to something." He urged government to "allow people to do more for themselves, to encourage them to do more for themselves." Explicitly rejected was the doctrine that Papa knows best.

That is not exactly the way the President sees his relationship with Congress. The present lack of comity, he explained in a Jan. 31 news conference, is that Congress "represents special interests . . . there is only one place in this government where somebody has got to speak not for the special interests which the Congress represents but interest. . . . I am going to stand for that general interest."

Is Congress likely to stand for the proposition that, at the Federal level, Papa knows best?

[From the New York Times]

IMPOUNDMENT ISSUE

In the controversy over the refusal of the executive branch of the Federal Government to spend money in the amounts and for the purposes written into law by Congress, President Nixon has made a bold bid for executive supremacy.

The President and his apologists have portrayed this effort to disrupt the constitutional balance of power as a fight for fiscal sanity. Congress, they contend, cannot control Government spending; only the President can prevent "ruinous" financial excesses. The record does not support this scare talk. The House and Senate Appropriations Committees reduce Presidential budget requests more often than they increase them. If it were not for three tax cuts in the last decade—two of them urged by Mr. Nixon—the budget would now be in substantial surplus.

The true nature of Mr. Nixon's bid for power was exposed in an exchange between the House Appropriations Committee and Administration officials last week. Representative Jamie Whitten, the conservative Mississippi Democrat, inquired whether the President would obey appropriations bills if Congress kept the over-all level of spending at or below the President's budget ceiling but rearranged spending priorities.

Congress, for example, might accomplish this result by appropriating less than Mr. Nixon wants for defense and space but more for agricultural programs which happen to be Mr. Whitten's chief concern. None of the Administration officials would give the committee any assurance that in that hypothetical case, the President would spend the agricultural funds regardless of the total size of the budget. Representative Whitten commented: "This encroachment is the most dangerous thing I've seen in my thirty years in Congress."

It is possible to disagree with Mr. Whitten's priorities—as this newspaper does—and still share his sense of alarm. In effect, Mr. Nixon insists on substituting his judgment for that of Congress on the desirability of many different programs for which the Government now spends money. It is a novel and dangerous doctrine.

In advancing this doctrine, President Nixon exploits ambiguous constitutional precedents and pretends that what is cloudy is actually well-defined. The power to impound is one of those powers that are always implicit in any grant of executive power. Obviously, if a President finds that he can administer a program with fewer employes or in a more efficient manner than Congress had contemplated when it approved an appropriation, it would be absurd of him to spend the extra money. But efficient management is quite different from a decision to kill a program by not spending any money at all.

In the defense area, the Constitution gives a President broad latitude to exercise judgment in his capacity as Commander in Chief of the armed forces. On defense issues, therefore, the courts would tend to rule in favor of the Chief Executive whether he was President Jefferson refusing to deploy gunboats in the Mississippi or President Truman refusing to buy extra bombing planes. But, again, military expenditures are a special part of the budget and not to be confused with the many civilian programs which Mr. Nixon is trying to put to death.

A third distinction has to be made. Previous Presidents exercised the power to impound funds only in isolated or temporary circumstances. Mr. Nixon is asserting it across the board and as a permanent weapon in his constitutional arsenal. Previous Chief Executives were just as jealous of their prerogatives; but they also recognized that they shared fiscal power with Congress and that comity between two equal branches of government is not furthered by the arbitrary or frequent exercise of an implicit, hard-to-define authority, which is best kept in reserve. Mr. Nixon lacks that traditional concern for comity. Despite occasional rhetoric about cooperation, there stares forth through his words and deeds an ill-concealed disdain for the members of Congress and for the people whose interests they represent.

[From the Washington Evening Star-News]

IS IMPOUNDMENT CONSTITUTIONAL?

(By Arthur Miller)

Last October President Nixon attempted to get Congress to enact a spending ceiling bill, giving him discretion to cut appropriations to a maximum of $250 billion. He lost that battle, but now seems to be winning the war, unless Congress does something drastic soon.

The war is being won, so far at least, by "impounding" funds appropriated by Congress. Impoundment has no precise definition. In general, it means that the President refuses to spend either for some projects he considers undesirable or unnecessary or because he believes too much money was appropriated.

So far Nixon has withheld more than $12 billion. The exact figure will not be known until a report is made to Congress this month.

Although not a new technique, it has been carried to unprecedented heights by the present administration.

In net result, the fight over spending is the core of a growing confrontation between Congress and the President—sure to be the major constitutional problem of 1973.

Silences in the Constitution make the impoundment struggle possible. Congress, and only Congress, can appropriate money for a variety of purposes—and the President is enjoined by the Constitution "to take care that the laws be faithfully executed." But spending of appropriated funds is unexplored legal territory. Superficially, some might think that the President has little discretion. The facts, however, are to the contrary.

The President, operating through a little-known but very powerful part of his staff, the Office of Management and Budget, screens budgetary proposals of government agencies in the first instance and controls allocation of moneys that are appropriated.

Headed now by Caspar Weinberger, the next secretary of Health, Education and Welfare, OMB is the nerve center of the federal bureaucracy, the place where the action is on scores of governmental programs.

Impoundment, in effect, permits the President to exercise, as Sen. Charles Mathias, R-Md. said in 1971, "an informal line-item veto" over projects and programs that Congress wants. Nothing in the Constitution or

any statute permits such a veto, but it has been exercised by many chief executives.

Thomas Jefferson seems to have been the first to impound money—$50,000 appropriated for gunboats on the Mississippi. In addition, a few additional impoundments took place during the 19th century, although the historical record is far from complete.

Jefferson's action has led Weinberger, among others, to assert that all presidents since Jefferson have impounded—a statement not borne out by the known historical record.

The fact seems to be that the practice first began in any substantial sense during the early days of World War II, when President Roosevelt withheld some national defense funds because the particular projects were considered unnecessary for the war effort.

The battle lines were clearly drawn during the Kennedy administration. When, in 1963, the U.S. Civil Rights Commission recommended that federal funds be cut off to Mississippi because of widespread defiance of desegregation decrees, President Kennedy in a news conference flatly said that he had no authority to do so. He was not challenged, perhaps because impoundment of other funds had gotten little public attention.

At about the same time, the Pentagon convinced Congress that it needed a new bomber (the B–70), a weapon opposed by Secretary of Defense Robert S. McNamara. Rep. Carl Vinson, D-Ga., the powerful head of the House Armed Services Committee, was determined to have the plane built. Kennedy talked Vinson out of putting mandatory language in the defense appropriation bill, however, so the issue remained unresolved.

Since then impoundments have continued, under both Presidents Johnson and Nixon, reaching the high-water mark of $12 billion under Nixon. The congressional response, although slow in arising, has become increasingly bitter. In March 1971, Sen. Sam Ervin, D-N.C., a zealous guardian of congressional prerogatives, held hearings on impoundment.

The hearing did clear some of the air. For the first time Congress learned of both the magnitude and specifics of impoundment (it took Ervin two years to pry that data from OMB).

For the first time, also, the extremely shaky legal basis for impoundment was revealed. Weinberger, trying to make the best of a bad case, maintained that the President could refuse to spend money in order to control inflation and to help the U.S. balance of payments. But he was unable to cite specific constitutional or statutory bases for Nixon's actions.

A major counterattack against presidential impoundments has now been launched. Lawsuits have been filed in Missouri, New York, Florida and Virginia; a number of others are contemplated.

The Missouri case is particularly significant. There, a federal district judge invalidated impoundment of highway trust funds in a suit brought by the state. The case is now on appeal before the Eighth Circuit Court of Appeals, which heard argument in early January. No doubt it will get to the Supreme Court.

The state of Florida has challenged President Nixon's termination of money for a barge canal. This case posed the constitutional issue squarely—the Missouri case having been decided purely as a matter of statutory interpretation.

This year will be a bruising one; 1973 and the other years of Nixon's second term may well settle whether this country will in fact be ruled by "presidential government" or whether the time-honored constitutional separation of powers will be followed.

A shrewd gambler would, at the moment, be forced to put his money on the President. In broadest terms, should the President prevail, the Constitution will have been changed without benefit of constitutional amendment.

FOOD ASSISTANCE FOR THE AGED, BLIND, AND DISABLED

Mr. EAGLETON. Mr. President, the Committee on Agriculture and Forestry is currently holding hearings on the farm program and related agricultural programs.

On February 27 I had the privilege of appearing before the committee to speak about S. 255, the bill I have introduced to continue the eligibility of low-income aged, blind, and disabled persons to participate in the food stamp and food distribution programs.

I ask unanimous consent that my statement on that occasion be printed in the RECORD.

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

STATEMENT BY SENATOR THOMAS F. EAGLETON

Mr. Chairman, as you begin hearings today on a number of important programs, I appreciate the opportunity to appear before your Committee on a matter of some importance to those elderly and disabled persons whose income is, by definition, insufficient to enable them to purchase a nutritionally adequate diet.

Last year, as a part of the Social Security Amendments of 1972 (now Public Law 92–603), Congress authorized the establishment of a new federal Supplemental Security Income program (SSI) for the aged, blind, and disabled beginning January 1, 1974.

At the same time, Congress provided that those persons eligible for assistance through SSI would become ineligible to participate in the food stamp and food distribution programs.

I believe that latter action on the part of the 92nd Congress was ill-advised and should be reversed this year.

Accordingly, on January 9th I introduced S. 255 to repeal the pertinent provisions of Public Law 92–603 and thereby continue the eligibility of low-income aged, blind, and disabled persons for food assistance programs.

Nineteen Senators have joined as cosponsors of S. 255. They are: Senators Abourezk, Beall, Clark, Cranston, Hatfield, Huddleston, Hughes, Inouye, Javits, Magnuson, Mondale, Moss, Pastore, Pell, Randolph, Stevens, Stevenson, Tunney, and Williams.

Today I want to outline as briefly as possible why I believe it is imperative that S. 255, or a bill containing similar language, be enacted into law this year.

The effect of the action taken by Congress last year is to make ineligible for food assistance one group of people simply because all or a part of their income is—or could be—derived from the Supplemental Security Income program.

In an attempt to justify this action, Public Law 92–603 provides that the supplemental payments states may choose to make to their aged, blind, and disabled residents may include an amount equal to the bonus value of the eliminated food stamps, and that expenditures for this purpose will be covered by the so-called "hold harmless' provision of the law.

(Under the "hold harmless" provision, a state is guaranteed that its expenditures to maintain January 1972 assistance levels and to replace the bonus value of food stamps will not exceed its calendar 1972 expenditures for assistance to the aged, blind, and disabled. Where a state's expenditures exceed the "hold harmless" line, the federal government will pick up the additional costs.)

The provisions of this law relating to supplementary payments, and the various options available to the states, are rather complex—or at least they seem so to me—and my purpose here is not to deliver a dissertation on that subject.

I do hope to demonstrate that supplementation by the states is a wholly inadequate substitute for the right of the aged, blind, and disabled to participate in food assistance programs.

In essence, the states are being invited to use their own funds to replace what is now a federal benefit. The only financial incentive provided for them to do so is the "hold harmless" guarantee.

However, that guarantee will not operate in those states whose adjusted payment levels are below SSI benefit levels. At this point in time, the Social Security Administration is unable to say how many states will be covered by "hold harmless."

We do know that in approximately one-third of the states all recipients will benefit from SSI and, therefore, there will be no need for supplementary payments. I believe it is unlikely that many of these states will enact authorizing legislation and appropriate funds simply for the purpose of replacing the bonus value of food stamps.

In states such as Missouri, where there is a need to provide supplementary payments to some recipients, the fact that those payments will not be covered by "hold harmless" makes it doubtful that the level of payments will be raised to include the bonus value of food stamps.

Among those states covered by "hold harmless" there is still no guarantee that all will choose to supplement or that all which supplement will include the value of food stamps in their supplementary payments. Only a few of these states are expected to actually qualify for "hold harmless" payments.

Finally, let's consider those states which do choose to include the bonus value of food stamps in their supplementary payments.

In order to be protected by "hold harmless" they must limit those payments to the bonus value of food stamps *as of January 1972.*

One cost-of-living increase in bonus value has occurred since that time and another will ocur on July 1st. Therefore, any cash replacement of food stamps will likely be about $8 less than their real value in 1974.

In summary, Mr. Chairman, it is not unreasonable to predict that, under Public Law 92–603, significant numbers of aged, blind, and disabled persons will receive *no* cash payment in lieu of food stamps and that those who do will receive an inadequate payment.

But the burden of my argument here today is that the issue of supplementary payments by the states is really irrelevant.

For the simple fact is that, regardless of SSI and of any payments that states may provide, several million aged, blind, and disabled persons will continue, for the foreseeable future, to have incomes below the poverty level.

We can take some satisfaction from the estimate that increases in Social Security benefits enacted last year have lifted 1.2 million elderly people above the poverty line.

But 3.1 million elderly persons and unknown numbers of the blind and disabled remain in poverty, and the implementation of SSI next January will not change this situation.

An individual with no other income will receive $130 and a person with, for instance, a Social Security benefit will be guaranteed a total monthly income of $150. This is well below the estimated 1972 poverty level for an aged individual ($165), and it will be even further below the poverty threshold by 1974.

Let me illustrate my point by an example from Missouri.

An elderly widow with no other income now receives an Old Age Assistance grant of $85. Depending upon where she lives, she may also receive commodities with a value of

between $15 and $20 or food stamps with a bonus value of $22 per month.

Beginning next January, this widow will receive $130 from SSI. This is all to the good. But she will still have an income below the poverty level and, by virtue of that very fact, she should be eligible for food assistance.

(Approximately 33,000 elderly persons, 15,000 of the disabled, and 1,800 blind persons in Missouri are in a similar situation.)

Given this continued poverty among the aged, blind and disabled, there is to my mind no rhyme nor reason to a law that would deny them the food assistance that is available to all other low-income persons.

Do we really want to create a situation in which a person with more income, or a younger person with the same income, could avail themselves of the food assistance denied the most impoverished elderly person? I don't believe we do.

To let this law stand would not only create serious inequities. It also would represent a significant step backward in the effort the federal government has undertaken to see to it that every Ameircan has the wherewithal to obtain a nutritionally adequate diet.

Mr. Chairman, with your permission, I will submit for the record a letter I have received from Mr. Edward J. Hekman, Administrator of the Food and Nutrition Service, Department of Agriculture, in which he estimates that approximately 13 per cent of the current participants in the food stamp and food distribution programs—or about 2 million people—would be made ineligible by Public Law 92-603.

In Missouri there are now—in round numbers—120,000 aged, blind, and disabled persons receiving public assistance.

Approximately 33 per cent of them participate in a food assistance program. 11,000 receive food stamps in 11 counties and the City of St. Louis. 28,000 receive donated foods in 103 counties.

Another 2,000 aged, blind, and disabled persons who do not receive public assistance also participate in the food distribution program. Most, if not all, of them would also lose their eligibility.

It may be of some interest to the Committee to know that the rate of participation by the aged, blind, and disabled is generally higher in food distribution counties.

The highest rate of participation in the food stamp program is in the City of St. Louis, which was one of the first jurisdictions in the nation to implement the food stamp program. But that rate is only about 25 per cent.

By way of contrast, Butler County, in the southeastern part of the state, has a participation rate of 80 per cent of the aged, blind, and disabled in the food distribution program. Many of the other food distribution counties have participation rates in the 40–50–60 per cent range.

Therefore, in Missouri the impact of denying food assistance to this group might well be felt most acutely in those rural counties where a large percentage of elderly people rely on the donated foods they receive each month.

Mr. Chairman, I respectfully urge your Committee to send to the Senate at an early date legislation, such as I have proposed, to restore the eligibility of the aged, blind, and disabled for food assistance.

With this corrective action by the Congress, it will be possible to continue the steady progress of recent years toward the elimination of hunger and malnutrition in America.

THE 10TH ANNUAL WEHRKUNDE CONFERENCE ON WESTERN EUROPEAN SECURITY

Mr. TOWER. Mr. President, I recently had the honor of attending the 10th Annual Wehrkunde Conference on Western European security in Munich, Germany. The conference is an unofficial meeting of prominent men interested in European affairs. Its unofficial nature makes frank, fruitful discussions easier and often very intriguing ideas are presented in the course of the conference. This year, my friend, Peter Blaker, Under Secretary of Defense for Great Britain, presented his views on maintaining an adequate military posture in the face of an increasing spirit of detente. The United States was most ably represented by Jerry Friedheim, Assistant Secretary of Defense—Public Affairs—who presented remarks on the role of Europe in U.S. policy. I commend these papers to you and ask unanimous consent that they be printed at this point in the RECORD.

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

MAINTAINING MILITARY SECURITY IN AN ERA OF DÉTENTE

(By Peter Blaker)

There are two lines in one of Shakespeare's late and metaphysical sonnets in which the poet addresses his soul:

"Why so large cost, having so short a lease,
Does thou upon thy fading mansion spend?"—(Sonnet 146).

The feelings of large sectors of the public towards military forces are somewhat similar. If I gauge public opinion correctly, these lines capture rather well what some people are saying to us: "why are you spending so much money—25 billion dollars in Western Europe alone every year—on a luxury you cannot afford, a luxury which even if you could maintain it in the proper state demanded by its own logic has for many years been irrelevant to the modern world and is becoming increasingly so; you will not be able to evade your responsibilities much longer, because the public will not stand for it: your lease is running out." In this paper I want to examine this mood which makes the job of running the defence machine so much more difficult, looking at how and why the mood makes itself felt. I shall play the Devil's Advocate and develop the sort of case against defence which seems to be in the minds of so many people today and which we cannot ignore; placing special emphasis on the way progress towards détente makes any defence activity, let alone increased levels of defence activity, appear incongruous. I then propose to fight back setting out some of the facts and figures of what we are doing and why. I shall admit to the semblance of a paradox but go on to explain it and set out the arguments which I think should be used in countering attacks on defence. Finally, in preparation for our discussion, I shall make a few observations on the problem of getting this message across.

2. First, am I right in thinking defence unpopular? Some would say that I am not. They would point out that in Britain we are successfully running volunteer armed forces, and that while our recruiting targets, totalling well over 40,000 a year, are by no means met in full every year, nevertheless we do get the great majority of the men we need: that is a sure indication that defence is not regarded with hostility. Or taking the issue a different way, it might be said that serious intellectual discussion of defence has never been so widespread as in recent years. There is informed comment in the media, and many institutes have begun to concentrate on defence issues and to do important research which complements the work of government defence departments. Defence has become an important specialization in the study of international relations. Defence, in fact, enjoys a fair degree of popularity in both practical and academic terms.

3. I do not deny any of this. We in Britain are proud of our volunteer forces and are encouraged by the level of debate in which we take part on defence issues. But is the public as a whole aware of defence as a fundamental part of national and European endeavour—not defence the provider of jobs or defence the rich seam of academic theses? I cannot escape the feeling that defence is *not* one of those subjects which, like so many economic or industrial issues for example, hold attention in cafes, in schools and university common rooms.

4. It is more than this. The man in the street shows either complacency or no positive interest. He does not think about defence or security at all, and I feel bound to say that often his attitude is shared by many of his representatives in parliament! But younger people show a negative interest in the form sometimes of open hostility. We are all familiar with the manifestations of anti-militarism—demonstrations and protest meetings, and the semiautomatic championing of the rebel cause often without regard to its justice. Defence authorities, like police authorities, suffer acutely from a common and vocal conviction that Authority is necessarily an oppressor. It is not pacificism—in a violent society honest pacificism has its problems as much as defence does. I think it is more a fear of what is believed to be a mindless and infinitely dangerous defence automation which is interested only in itself, not in people.

5. It is interesting, and might be helpful, to speculate how this feeling has come about. It would be accepted, I think, that it is a relatively new feeling, expressed in the main by the post-war generation of about university age, but by no means confined to them—some older sceptics are identifying themselves with the view. Many people in Britain would claim a connexion with the ending of conscription, and the taste of discipline it fed the young, which coincided with the emergence of the new hostility. I would not agree; nor, I think would my NATO colleagues: it is coincidence, nothing more. The reasons are deeper than a simple absence of experience of authority, although one of the main ones is not unconnected: twenty-seven years of peace in Europe. Or at least absence of war. This has led to a belief, not necessarily conscious, that wars can never be necessary, and that therefore all things military are likewise unnecessary. This belief has been perhaps reinforced by a consciousness of the waning of European power after world war II; by more recent confrontations—Biafra, Bangladesh; and I fear most dramatically and immediately, by the conflict in Vietnam. War in the abstract, war in which peoples' loyalties are involved only at many removes, has thanks to television been brought into peoples' homes in all its horror. As a result people have not been prepared to analyse the justice of causes, only to revile the destructiveness of warfare and the irrelevance of the political framework that allows it: the concept of "defence".

6. In addition to this, people have begun to look further into the means and methods of warfare, and have concluded that, even within its own terms, war is want-only and

unnecessarily cruel. Incendiary weapons, chemical weapons, biological weapons, nuclear weapons: all catch at the emotions. And simultaneously a welcome altruism is developing in the young's perception of social relations—answer enough to those who think conscription alone could instil a sense of service and responsibility. A conviction that the strong should assist the weak, that the rich should help the poor, as a basic principle of human conduct. In this frame of reference defence is to some the prime example of the strong and rich helping themselves.

7. I am not suggesting that I have been outlining logical thought processes; only that I have touched on some of the factors—especially the emotive factors—which predispose people to think in one way, rather than another. Nor am I criticizing people for being uncritical. As I shall explain later, my belief is that people draw the wrong conclusions because they are not given the opportunity to know the full picture.

8. This then is the mood of underlying hostility which indicates the way people, especially young people, regard defence issues. Let me pursue this a little further, narrowing my perspective to concentrate on the way these attitudes could and do take expression as a more thoughtful attack on defence, particularly defense in Europe.

9. The Devil's Advocate might first ask why we are doing it at all. We cannot seriously believe he would say that there is a risk of another major conflict. Who would be so foolish? Do we think that if we removed all our forces, and disbanded them, anything would change? The relationships between major powers have now stabilized to the point where there is an excellent understanding between them about the realities of the international balance of interests. The military aspect is irrelevant now: it is an economic burden that creates more problems than it solves. For example, he would continue NATO, simply by existing, obliges the Warsaw Pact to exist and vice versa. It perpetuates Cold War attitudes—suspicion and distrust—and keeps states apart, where good sense demands they should cooperate together. The very existence of a defence posture indicates a failure of diplomacy, or worse, a conscious desire to wield power at the expense of others. In our alleged desire to show the East we are just as strong as they, we have to rely on weapons of unparelleled destructiveness. We possess the capability of blowing the world apart. By what right do we gamble in this way with the lives of ordinary people? Will the earth itself be able to support the survivors of our holocaust? Will not future generations inherit the scars of our recklessness? And of course, we could always do it by mistake.

10. To keep up this charade, the critic would argue, we are spending in the West about 3½% of our combined Gross National Products on a counter-productive phantasm. Britain is spending 5½ percent. That money could help the under-privileged, at home and abroad; improve health and education services; and contribute to national prosperity. And in addition we could be said to be commandeering large proportions of national resources to meet our private ends: we are forcing large numbers of men to acquire a taste for violence, and removing them from the productive labour force; we are occupying much industrial productive capacity with the manufacture of defence equipment and depriving the economy of growth.

11. It is useless to point to weaknesses in the argument in terms of economic or international relations theory. I indicated earlier how this approach is based upon a conditioned emotional response. But its main elements are that defence is worse than unnecessary because it is:

a. destabilizing;
b. highly expensive; and
c. morally wrong.

12. Our problem is much more acute at a time like the present, when we are entering, in President Nixon's term, an "era of negotiation"; when the public are expecting some tangible signs of thaw in international relationships. The sign they are looking for, naturally enough, is a reduction in defence effort, and the release of resources to other activities. At last, it might be said, statesmen have seen where their best interests lie. Chancellor Brandt's Ostpolitik has led the way; the Russians and Americans have had a certain amount of success in the SALT talks; the Security Conference is being prepared, and so are talks on force reductions. We are urged do all we can to hurry the process on, so that states can enjoy as soon as possible the benefits of relaxed tensions without the burden of a crippling defence effort. We Defence Ministers are asked to recognise that the only obstacle to a rapid East/West reconciliation is the fact that we are maintaining our armed forces in strength, and our strategic deterrent: how irresponsible it is to jeopardize the chances of a genuine detente by so blatantly showing suspicion and plain disbelief of Eastern intentions!

Mr. Brezhnev spoke in Moscow in December apropos of force reductions: "The strengthening of peace in Europe is a very important and great issue for the fate of all mankind. We are fighting with all our energy and purposefulness so that Europe, which has been an eruptive point, should not be the starting point of another war. We can see clearly that reaction, militarism and revenue-seekers of various hues have not given up their attempts to turn the whole course of affairs in Europe back into the past. But this shall not come true." To persist in maintaining our military posture in the face of such a Soviet attitude—so runs the accusation—is to be unashamedly provocative. To argue as we have done against making any reductions in force levels and for improving our defence capabilities is to guarantee that progress towards detente will be stymied.

13. That, I think, is how an argument might run and I hope I have indicated the sort of thinking that might lie beneath it. Now let us shift the frame of reference and examine how governments, and in particular Defence Ministers, perceive these same issues; and see the extent to which our critics are attacking real as opposed to imaginary targets.

14. Governments, despite what may be claimed to the contrary, are probably as well placed as any to appreciate the unspeakable horrors of war. Let no-one accuse Authority of enjoying war as a game. We engage in defence in order to ensure that countries do not have to make a sacrifice. Defence is the price we pay for avoiding war. We engage in detente in order to ensure that that price is as low as possible. We share the aspiration of our critics: a world without armaments, a world without greed, a world in which international cooperation and individual prosperity provide all the security we need. We do not agree with our critics that a world without armaments is necessarily a secure world—yet. We do not think that we are mature enough—yet—to be able to pool our interests and pursue them without the stability given us by a system of alliances based ultimately on the threat of resort to arms to protect our rights to self-determination. We are cynical enough not to pin too much faith in a world without greed. Yet we do believe that the growth of the European Economic community marks one means of progress towards our ultimate common goal. So does the pursuit within that framework of realistic measures of arms control and disarmament.

15. We therefore welcome Ostpolitick. We welcome SALT. We are taking part in the CSCE and MBFR talks. But we must be cautious about detente. We must remember that the political intentions of the East and the present mild international atmosphere could change for the worse a great deal more quickly than we could change our military capabilities to meet a new situation. This rock face is liable to crumble: we must secure every foot-hold before me move into the next. We have already secured the banning of biological weapons. But there is plenty of scope for mistakes. Our American friends have secured the limitation of anti-ballistic missiles; and now they are examining ways with the Russians of securing permanent agreements on strategic offensive systems. We are making progress.

16. On the more political side, the preparatory talks for the projected conference on Cooperation and Security in Europe have made an encouraging start. But we must ensure that the Conference really does give us a secure foothold on the route to better understanding: there is a great danger that the Conference might be tempted to make do with impressive but hollow declarations which will delude the public into thinking firm, a hold that will crumble away as soon as any weight is put upon it. Back in the military field, the exploratory consultations in Vienna concerning Mutual and Balanced Force Reduction have made a cautious start. These of course are at the heart of current thinking about détente. It would be encouraging indeed if we could reach an agreement with the East guaranteeing us undiminished security but at a lower level of forces: That would be a giant step forward. Unfortunately it will be a difficult step to make for many good and practical reasons: it is not easy to judge the relative capabilities of forces as disparate as those of NATO or the Warsaw Pact, or to assess what reductions would leave the balance of security unimpaired. The sad fact is that no straight-forward reductions can do this. One reason for this is the Warsaw's Pact numerical superiority over NATO: we cannot forget that on the Central Front the Warsaw Pact has at present twice as many men as NATO; 17,000 tanks to NATO's 4,200; and 5,000 pieces of artillery to NATO's 1,800. Another is the Warsaw Pact's geographical advantages of speedy reinforcement along landbased supply lines as opposed to NATO's reliance on reinforcement across the Atlantic Ocean. It will be no quick or easy task to unravel the complexities of MSBR and knit them into progress.

17. Western Governments, I suggest, are firmly committed to the pursuit of détente. Any other policy would be unthinkable. But we must secure the substance of détente, not the shadow. Certainly we see as our long term aim a reduction in the expenditure we allot to defence, to enable resources to be released to further other national priorities which might be of more direct positive benefit to our countries. But only as the result of a long and gradual process. Defence costs, like all other costs, rise. The cost of maintaining any given capability relative to one's adversary tends over a period of time to increase in real terms: Volunteer manpower for example is increasingly expensive—it has to be in order to attract the men to maintain a satisfactory manning position—and attempts to reduce manpower costs by designing equipment which needs fewer men to run it quickly increase an equipment bill which is likely to be escalating independently as a result of the increased subtlety of weapon systems. Reducing forces therefore does not necessarily mean lower defence expenditure if the relative balance of security is to be maintained.

18. We are left nevertheless with the paradox that, at a time when tensions are relaxing, we are spending more money in the very

area which on a superficial view seems most likely to increase tensions. I have observed that this is because we have to maintain the balance of military power and that this process is becoming more and more costly. By way of justification of the paradox, it would be as well to remind ourselves why, in answer to our critics, we consider it necessary to maintain such a level of defence: what we are defending ourselves against; and what tools we are buying to do the job.

19. What we are buying first of all, is deterrence. NATO's policy is not offensive. But it is based upon a determination to preserve the territorial integrity of its member countries and upon a will to respond to every stage of aggression with an appropriate level of force.

20. The flexible response strategy, which NATO member Governments re-affirmed only recently, means that we must have the necessary conventional forces to respond appropriately to all levels of aggression. They must be able both to cope with a limited action, perhaps designed to present NATO with a fait accompli, and to defend effectively against a full-scale aggression, to give us time to bring the aggressor to his senses before we have to initiate the use of nuclear weapons to restore the credibility of our deterrent.

21. We think it necessary to maintain a deterrent posture because, despite the peaceful words of Mr. Brezhnev quoted above, we perceive in the armed forces of the Warsaw Pact a vast potential for destruction which is increasing in effectiveness every year. For their part, the East are certainly not anticipating the outcome of East/West negotiations by any relaxation in defence effort and we can only judge their motives by what they do, not by what they say they will do. Soviet Union defence expenditures, we believe, grew by about 5 percent every year during the 1960's, and are still increasing. Currently her annual defence expenditure probably stands at more than 70 billion dollars. She has been steadily building up her strategic capability and her conventional forces, and has maintained her effort to strengthen the other forces of the Warsaw Pact. And these forces maintain a high state of preparedness.

22. But why is this a real threat? Why do we interpret these facts in the sense that it is the Warsaw Pact setting the pace for NATO rather than trying to keep up with it? Experience should tell us that the Soviet doctrine of both international relations and internal administration is very different from our own. It depends on rigid central control, rigid adherence to the central line, and a desire to establish and wield power as widely as possible. The established methods of trade and social and intellectual contacts enjoyed by the West are seen as a threat to the effective pursuit of Soviet interests. It is not NATO which threatens the Warsaw Pact: it is the existence of stable and prosperous and different Western society, which the Soviets are not content to live with on normal terms. The Soviet Union is not geared to fight economic battles. Upon those who have fallen beneath her hegemony she imposes by force what she cannot impose by diplomacy and persuasion. We cannot believe that Budapest, Berlin and Prague were aberrations. Nor that the hounding of critics of the regime and rule-breakers within the Soviet Union are administrative errors. We cannot be confident that if there was nothing to stop her she would be less ruthless with those that still enjoy the right of self-determination.

23. If the armed forces of the Soviet Union and her allies continue steadily to increase in size and strength, and those of the West to reduce, we shall very soon see the West lacking the political will and psychological firmness to stand up to the East; we may even find ourselves unable to act without first taking explicit account of likely Russian reactions.

24. That is why, so long as the other side maintains armed forces, so must we. While NATO maintains and increases its strength it is a permanent reminder that over-ambition will not pay; that force will be met; and that difficulties in international relationships must be resolved over the conference table, not on the battle field. For if the Soviet Union did press aggression to the limit, there would be no victors in an European war. Our security rests upon our will and ability to deter. Defence is its visible manifestation. It follows that the Soviet Union will seek to pursue spoiling tactics towards Western Europe. If she can cause conflict within the North Atlantic Alliance or delay moves towards political integration within the European Economic Community, her influence will be the greater because our cohesion will be less. This is one of the reasons why practical cooperation is so important especially in matters of defence.

25. Within the Western Alliance the European countries, in particular, should seek to cooperate more closely on defence and to establish a greater identity of view. In keeping with the sum of its resources, Europe should seek to exert more influence on the major issues affecting Western security and be prepared to assume increased responsibility for its own defence. There is also continuing pressure on all European Governments to make the most effective use of the limited resources available for defence. Bilateral staff talks, collaborative projects for arms procurement and the practical activities of the Eurogroup are already making important contributions. In the communiqué issued after their last meeting in December the Eurogroup Ministers emphasized their commitment to the principles of collaboration. But it will be necessary to extend existing forms of cooperation both in scope and depth if Europe's needs are to be met. That process should be facilitated by the growing European unity symbolised by agreement on the enlargement of the European Economic Community.

26. The Soviet Union, we fear, will exploit to the full her opportunities to promote divisions by presenting to public opinion—especially uncritical public opinion and opinion conditioned to be hostile—the so-called shortcomings of the western system: its alleged militarism, reaction and unfairness. We must be on our guard against this danger.

27. The Soviet approach to détente is not likely to correspond very closely with that of the West. The Russians will hope to erode the collective will of the Alliance to deter; to split the Alliance by playing on any detectable policy differences between the allies and by holding out to our publics the promise of a world without arms, without threats and without deterrents. No one can deny these are attractive prospects. But it will be clear from my arguments earlier that Soviet motives will be aimed at preparing the ground for an extension of Russian influence. Détente offers them an easy way of doing this; but we must show the East that, while we are anxious for détente, we can only accept what we feel to be genuine détente, in other words a relaxed international situation in which no side will have gained an advantage relative to the other. That is why we must keep our level of security—and not allow precipitate action to put us at a permanent disadvantage. By keeping up our defence efforts we are not jeopardizing détente; we are demonstrating that we take it very seriously: indeed that we are prepared to pay for it.

28. This means that we must not countenance the notion of unilateral reductions in NATO's strength. In negotiations such as those which lie ahead of us at the moment, bargaining from a position of strength is vital to ensure equity, and experience and history show that this is the way to improve the quality of peace. It would be fatal to undermine our position before we start.

29. I believe we shall find it increasingly difficult to maintain security if we cannot get across to our public this message of the risks involved in détente. It has been said many times before that we should give more thought to the public presentation of the problem of defence and foreign policy. At the beginning of this paper I indicated that apathy was no less a problem than hostility. Somehow we must not only argue our case convincingly, but in doing so catch the public imagination: we must *tell* them more; we must overcome the myth that defence is totally secret business—what could be more a matter of public concern than the essential realities of national security? In the British Ministry of Defence we publish a great deal of information in our annual White Paper—we are the only Department to issue a policy statement of this kind every year. We also publish a short illustrated version of the White Paper for distribution in schools. We must be careful how far we go in this direction: we risk being branded as promulgators of militarist and warmongering propaganda; but we must take the risk. We must dispel the mood of complacency and hostility which distorts the real problems. We must stimulate the media; promote more defence studies at universities; we must talk to schools about foreign policy; and we must hope that a new Europeanism will follow from the enlargement of the European Community, and prove more receptive to discussion of these vital common issues.

30. Our news is not without drama, but a great difficulty is that it is not immediate drama. It would be gravely wrong of us to dramatize the issues in the hope of achieving direct emotional appeal. We must I think rely on a more gradual process of widening intellectual and academic interest broadening out into the media. We are doing all we can to encourage this: conferences such as the Wehrkundetagung are of valuable assistance in the process. But we must do more, and do it soon.

31. It is clearly very tempting for governments—and oppositions—not to make the effort that is required; to allow instead vocal public pressure for reductions in defence effort, or perhaps for neutralism, to build up to unsupportable levels and meekly to lower their defence. To me such action would be to accede to demands for negligence. Irresponsible factions might win easy short term popularity—but in these circumstances it is their duty to their parliament—and to their people to explain the true facts of an uncomfortable situation and the paramount importance of defence, and to convince them that it is an era of negotiations for détente, possibly more than at any other time, that military security must be maintained.

The Role of Europe in U.S. Policy

(Speech presented by Jerry W. Friedheim)

I was pleased to accept an invitation to present the United States' paper to this Wehrkunde Conference on "The Role of Europe in U.S. Policy," a subject both important and timely because of our mutual need to maintain a strong defense posture during the ongoing negotiations concerning security and cooperation in Europe and mutual and balanced force reductions.

As you are well aware, U.S. national security strategy is designed to move us toward President Nixon's goal of lasting world peace achieved and maintained through strong deterrence, based on strength, on partnership with our allies, and on a willingness to negotiate.

For 25 years after World War II our international role was shaped by a belief that the responsibility for world peace, stability, and prosperity rested largely on the United States. But what was true for the two decades following World War II is no longer feasible for the 1970's. The United States need no longer be the free world's only policeman.

Increasingly, the domestic and international conditions—which once warranted such a role—have changed, and that change has called for a new role for the United States in international affairs.

Our President's international policy—the Nixon Doctrine—is a statement of the new U.S. role. And, to our Department of Defense our national security strategy, called realistic deterrence, provides the defense tool to implement the President's policies. The Nixon Doctrine defines a new partnership—a more realistic sharing of roles and responsibilities—between us and other nations in the building of common peace, stability and prosperity.

Our policy can be summed up in three statements:

First, the United States must continue to play a major role in world affairs. Our own security and well-being demand it. Our sheer weight in the international scheme of things makes it unavoidable. Any U.S. withdrawal into some sort of modern-day isolationism would be a recipe for disaster—disaster for us and the other nations of the free world. Our objective—and our responsibility—is and must be to work in concert and cooperation with other nations to build a stable, peaceful international order.

Second, the United States cannot and should not do everything itself. As President Nixon has said, "No nation has all the wisdom, and all the understanding, and all the energy required to act wisely on all problems, at all times, in every part of the world."

Moreover, the American people are realists, and they believe that we must place realistic limits on our world role in light of our own interests and our own domestic needs. And it is clear to all free nations that, in the long run, no free society can pursue and sustain international policies which its citizens do not support.

Third, other nations can and must assume greater responsibility than they have in the past in helping to provide for mutual security and economic well-being, and in building a peaceful and prosperous world order. Thus, we have the concept of NATO burden-sharing.

The post-war economic and political recovery here in Europe, and also in Japan, has long been an accomplished fact. Further, many of the newer nations of the world already have demonstrated that they have the resilience and the resources required to assume a greater share of the burden for their own security and well-being.

But, important as it may be that others are capable of doing more than they have done, there is an even more substantive reason for asking a greater degree of burden-sharing from them. It is our view that unless a nation feels itself primarily responsible for its own security and well-being, it will leave the task to others, and fail to marshal its resources and political will in its own defense.

For those nations which demonstrate that will and require technical assistance and materiel resources to assure their own security, the United States will continue to provide security assistance. But as President Nixon said in his recent inaugural address, "Let us measure what we will do for others by what they will do for themselves."

Apart from what a nation does for itself, there is the larger question of its responsibility for maintaining the peace. International order can be stable only if nations have a stake in its maintenance. Nations will not have such a stake unless they have participated in building that order.

These principles—these broad directions—guide current U.S. defense efforts.

In developing our national security strategy of realistic deterrence we have sought answers to these basic questions:

What should be the relative responsibilities of the United States and its allies for deterring threats?

What resources can and should each nation concerned contribute to the common defense?

How can we make optimum use under a total force concept of all available military and related resources to meet the requirements of the common security?

The answers to these questions, and the implementing actions taken delineate what has been accomplished over the past four years and what remains to be done in the years ahead.

First, deterrence of nuclear threats, both to the United States and its allies, has been and will continue to be primarily the responsibility of the United States. No other nation can maintain sufficient strategic nuclear power on the scale required to deter attack, threats or blackmail from the other nuclear super power. Without a continued U.S. nuclear deterrent for the common security of our allies, they might have neither the will nor the reason to do what can and must be done to deter conventional war threats.

But, while U.S. nuclear power is essential to the common security, it is not sufficient to deter the full spectrum of potential conflict and of potential threats to U.S. and allied interests. Thus, the new Nixon Doctrine international policy concept of partnership and the new total force concept of our security comes into full play.

In Asia we face jointly with our allies the problem of how to deter major theater conventional conflict and at the same time to deter sub-theater or localized conventional threats.

There is, of course, a tendency on the part of some persons—on both sides of the Atlantic—to see in the new era of negotiations a reason or an excuse to reduce defense efforts. Yet it must be apparent to thoughtful students of international security that free world and NATO military strength helped bring this new era about by effectively closing all paths except that of negotiation. And it must be equally apparent in Europe that Western positions and interests cannot be adequately protected and advanced in negotiations unless the West shows continued will and ability to maintain its military strength.

President Nixon in 1969 recognized the need to re-examine our collective NATO strategy to see if it was still viable in the light of new circumstances and new realities. We knew there were weaknesses and imbalances in NATO's conventional capabilities vis-a-vis those of the Warsaw Pact. The status of United States Forces in Europe had, before 1969, been affected by our troop commitments to Southeast Asia. It also was important to clear away some of the misunderstandings between the U.S. and its allies which had arisen over the years, and to work together to revitalize the cohesion of the Great Alliance.

Together, we carried out in NATO an exhaustive study of Alliance defense problems for the 1970's in which we reaffirmed the validity of our current military strategy and agreed on ways in which to improve NATO forces, their armaments, logistics, supporting infrastructure, and our ability to consult on their possible use in a crisis.

President Nixon has emphatically reaffirmed the American commitment to NATO. He has firmly said that, given a similar approach by our allies, the U.S. will maintain and will improve its forces deployed in the European area. We will keep that pledge.

But in the years immediately ahead, it will be very difficult to support an undiminished American troop presence in Europe if some of our partners whittle down the effectiveness of their own forces—whether by budget reductions, manpower reductions, or shorter terms of service.

At the NATO Defense Ministers' meeting two months ago our Secretary of Defense based his major intervention on burden-sharing and the need for more of it. Beyond his admonition that defense expenditures must grow in real terms and that funds must be used more efficiently in support of our common defense, he called for a continued European defense improvement program effort, and a decreased United States' cost share of NATO's infrastructure program. These suggestions will be difficult to realize, but the time is right, and our allies must understand the need to relieve us of some of the defense burden.

The era of negotiations is well upon us with agreements we already have concluded—such as SALT I and Berlin—and with CSCE preparatory talks and MBFR initial talks underway. And, in the light of this intricate complex of East-West discussions, we are beginning to hear a great deal from politicians and writers about some sort of profound and lasting shift in the basic attitudes and approach of the Soviet Union toward the West. This talk is premature, and detente without adequate defense is delusion. Profound differences and disagreements continue between the East and ourselves. These differences cannot simply be ascribed to historical accident or misunderstanding. They are rooted in different conceptions of the rights and responsibilities of men and of governments, and in different approaches to dealing with other nations.

Nor dare we ignore other facts of international life:

We cannot discount the large, highly capable and improving Warsaw Pact armed forces in Europe;

We cannot shut our eyes to the rapid, sustained and growing Soviet arms expansion and arms improvement programs;

We cannot ignore the worldwide expansion of Soviet maritime forces and activity, including construction of an aircraft carrier; and

We cannot safely disregard growing Soviet military presence in areas adjacent to NATO such as the Middle East and the Indian Ocean.

The simple fact is that as we meet here in early 1973 the Soviet military buildup, conventional as well as nuclear, continues with vigorous momentum.

Unless we face this strategic and political reality and make this recognition the starting point for our negotiating efforts, we jeopardize the chances for achieving peace, while subjecting our vital interests and our people to serious danger.

This is not to say that we should be totally unprepared to consider certain reasonable risks for peace. On the contrary, we should seek prudently and carefully to build a new relationship, if possible, with the Soviet Union and the nations of Eastern Europe. It should be a relationship based on reciprocal self-restraint and on accommodation of mutual interests. But that relationship only can be built on the foundation of a strong and unified West.

This era of negotiations is, in many ways, more dangerous, difficult and demanding than the previous era of confrontation. But the United States is confident that NATO is equal to the challenge. Some persons have expressed concern about our ability to manage MBFR and other negotiations while maintaining allied cohesion. But however great a challenge MBFR may be for us, in many ways it will be an even more severe test for the East.

Whatever our problems here in the West, the mutual understanding and trust that has long prevailed among us will be a great asset over the months ahead as we negotiate with our adversaries. It is an asset all of us must guard with care.

Let us now briefly consider the U.S. Defense Budget for fiscal year 1974 and relate it to the U.S. role in Europe.

The Department of Defense Budget for fiscal year 1974 continues funding for a strong defense posture essential to the security of the United States and its allies in support of negotiations. It is an austere budget that reflects no real increase in total funds allocated for defense over fiscal year 1973. The transition from support of U.S. Force involvement in Southeast Asia to Vietnamization is substantially completed.

This permits in the fiscal year 1974 Budget the further modernization of our peacetime or "baseline forces," consistent with the principles of the Nixon Doctrine, as we maintain a smaller but ready active and reserve military force, without affecting the size and strength of U.S. Forces in Europe. The budget provides a program balanced between personnel, modernization and technology. And for the first time, it stabilizes the growth of personnel and related costs in order to preserve this balance.

Some of the more important points to be noted are:

Financial

Total budget authority requested for fiscal year 1974 is $85.0 billion, an increase of $4.1 billion over fiscal year 1973. This cost increase largely represents military, and civilian pay increases.

Nixon Doctrine Military Assistance Programs are budgeted at $1.3 billion—ar increase of $800 million over fiscal year 1973.

Major Program Changes

Strategic Forces funding remains level at $7.4 billion between fiscal year 1973 and fiscal year 1974. Major Strategic Weapons Systems funding, however, reflects increases for research and development work on Trident ballistic missile submarines and significant decreases for Safeguard missile defense, Poseidon submarines and the proposed short-range attack missile.

General Purpose Forces program levels will increase slightly. This is the net result of decreases in funding for support of Southeast Asia offset by pay increases and modernization programs.

Significant modernization program increases cover funding for the F–15 fighter, F–4J fighter, a new attack aircraft, another nuclear-powered aircraft carrier, and a new series of destroyers.

Forces and Personnel

Strategic Missile Forces remain stable with programs continuing for the Minutemen III modernization and the conversion of Polaris to Poseidon submarines.

Strategic Bomber Forces are reduced from 30 squadrons to 28 squadrons, reflecting fact-of-life retirements of older B–52's that have reached the end of their structural life.

Naval General Purpose Forces continue to reflect decreases as older, less effective ships and submarines are retired and replaced in lesser numbers by new, highly effective ships. Principal reductions are in destroyers and diesel submarines. Two nuclear ships and four nuclear attack submarines will join the fleet along with five destroyer escorts and a missile frigate.

General Purpose Ground and Air Forces remain substantially at the level programed for fiscal year 1973.

Military personnel are programed to decrease by 55,000 to a total of 2,233,000 during fiscal year 1974. This is in part attributable to programed reductions in Southeast Asia support and in part to efficiencies in overall staffing.

Secretary of Defense Elliot Richardson reported, in response to questions last month by a member of the U.S. Congress, that the most recent Department of Defense estimate of costs for the U.S. Forces and Support Programs earmarked for NATO is roughly $16 billion annually—about one-fifth of our total Defense Budget. This estimate is defined as the annual savings to the Defense Department Budget that would accrue if all of the following did not exist:

All of the U.S. General Purpose Forces and related support elements and headquarters in Europe.

Some of the U.S. General Purpose Forces (both Active and Reserve) that are formally committed to NATO but are not in Europe.

Variable costs of U.S.-based support including training, individual support and logistics for the above forces.

Military assistance for European countries and the NATO infrastructure program.

About $7 billion of the $16 billion is related to the cost of U.S. combat forces actually in Europe and to their U.S.-based support.

SUMMARY

I have described for this Wehrkunde Conference the dominant defense implications of the Nixon Doctrine which have guided U.S. national security planning and actions over the past four years, particularly as they relate to Europe. By any standard of measurement we have covered together a good part of the security road that we must continue to travel together. And it is in the nature of the enterprise that the first steps were the hardest. For they entailed reorienting long-held views and patterns of actions, not only on our part, but on yours. For a quarter century, we had all believed that it was fitting and feasible for the United States to asume primary responsibility for countering all threats to the common security. The lesson we have learned together over the past four years is that partnership, not predominance—sharing, not supremacy—is in our common interest.

"Shared Sufficiency" is what it is all about. The Alliance has been and remains the world's mightiest force for peace. And as President Nixon has said, for the United States this year is the "Year of Europe."

CONTINUATION OF OEO

Mr. JAVITS. Mr. President, on February 22, 1973, I introduced, together with Senator NELSON and 30 of our colleagues, Concurrent Resolution 12, calling upon the President to carry out the provisions of the Economic Opportunity Act of 1964.

That resolution provides, in its material part:

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, 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.

At that time, I urged the administration to reconsider the policy by which it is proceeding, and halt the dismantling of OEO and rather to seek congressional approval under a reorganization plan of those plans it has for the components of the agency.

Last Friday, March 1, the Office of Economic Opportunity announced that it will put funding on a regular basis, beginning on that day.

A press release issued March 1, 1973, by the Office states as follows:

OEO TO RESUME STANDARD FUNDING PROCEDURES ON MARCH 1

OEO Acting Director, Howard Phillips, announced today that "the interim measures, which were instituted in late January to prevent misuse of Federal funds and allow for thorough review of OEO funding during a period of transition, will, as indicated in January, be modified beginning on March 1."

"During the transition period, which ends on February 28, all grants coming due were assured of extension for at least an additional thirty days," Phillips said. "We will now move into a process where grantees approved for refunding will, except for community action agencies, be obligated funds on a normal program year basis, in most cases twelve months. CAA's up for refunding between now and June 30 will receive grants of up to six months, as their OEO linkages are phased out."

"It must be stressed that while this is the last year that community action funds will be obligated by OEO, Federal support for all other OEO activities will be continued at an equivalent or higher level of expenditure in Fiscal Year 1974," Phillips stated.

This action has been confirmed to me in a letter dated March 6, 1973, from Howard Phillips, Acting Director of OEO.

It notes that as a general matter grantees approved for refunding will be obligated funds on a normal program basis with the exception of community action agencies.

It notes further that with respect to community action agencies, OEO funds will be available for obligation through June 30, 1973, and that in some cases grantees will be funded through December 31, 1973.

These plans appear to go at least part of the way toward resumption of normal operations by legal services and other programs which have been hampered by uncertain funding in recent weeks.

But the implementation of these plans will have to be watched closely, to determine that they are carried out evenly and in accordance with existing statutory and contractual obligations.

However, while funding is proceeding, it is clear that the administration intends to eliminate OEO and disperse its programs. The press release itself refers to the phaseout of OEO linkages with community action agencies.

Mr. President, as I indicated in introducing the "Sense of the Congress resolution," the elimination of OEO and its administration of programs should not be considered "fact" but as proposals, which should be acted upon by the Congress in the context of a reorganization proposal, the appropriations process, and in other appropriate contexts.

The President himself, apparently sensitive to this aspect, stated March 1, in his state of the Union message regarding human resources:

Accordingly in keeping with my determination to make every dollar devoted to human resources programs return 100 cents worth of real benefits to the people who most need those benefits, I have decided that most of the anti-poverty activities now conducted by the Office of Economic Opportunity should be transferred into the Cabinet departments

relating to their respective fields of activity. *Adhering strictly to statutory procedures, and requesting Congressional approval whenever necessary,* I shall take action to effect this change. (emphasis added).

I understand that legislation will be submitted in the case of changes proposed in the administration of the community economic development program and the administration's own budget submission for fiscal year 1974, confirmed generally in the President's message of March 1, 1973, indicates that it will submit a new legislative proposal for a legal services corporation.

Mr. President, accordingly once again, I hope that the President will seek congressional approval for the administration's new plan for the anti-poverty program through an executive reorganization proposal. This is the basic thrust of the "sense of the Congress" resolution I have introduced, now with the support of a third of the Senate. I hope that he will do so not only "whenever necessary"—a matter which is before the courts in a number of suits filed in recent weeks—but as a general matter in the broader public interest of giving any new efforts the legislative mandate which the national commitment to the anti-poverty effort deserves.

Mr. President, I ask unanimous consent that the letter from Howard Phillips dated March 6, 1973, together with attachments be printed at this point in the RECORD.

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

OFFICE OF ECONOMIC OPPORTUNITY,
Washington, D.C., March 6, 1973.

Hon. JACOB JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: In light of your expressed interest in the continuance of OEO programs, I am pleased to transmit herewith a copy of OEO Staff Instruction 6710–1, Change 10, dated February 26, 1973, together with a Press Release explaining that grantees approved for refunding will, except for community action agencies, be obligated funds on a normal program year basis. I call your attention to the table attached to the Press Release, setting forth the funding periods applicable to the different programs.

I wish to stress that OEO programs, with the exception of community action, will continue at an equivalent or higher level of expenditure during Fiscal Year 1974. The mere fact that these programs will be assigned to other agencies does not mean that they will not be administered with proper concern for the poor.

With respect to community action agencies, OEO funds will be available for obligation through June 30, 1973. Final OEO grants of up to six months in length are being made which will carry some grantees through December 31, 1973. After discontinuance of OEO funding, community action agencies will remain eligible to receive other resources, whether Federal, state, local, or private in origin.

Sincerely,

HOWARD PHILLIPS,
Acting Director.

FACT SHEET—OEO PROGRAMS TO BE TRANSFERRED TO OTHER DEPARTMENTS

RESEARCH AND DEMONSTRATION

$78 million, an increase of $11.3 million will fund current OEO projects in following agencies and departments:

HEW—National Institute of Education, $23.9 million to continue education voucher program.

HEW—Office of the Secretary, includes million to continue experiments and studies in day care and child development.

Labor—$5.3 million to continue research in manpower training and labor force participation.

HUD—$13.4 million studies in finding adequate housing for disadvantaged persons.

HEW—Office of the Secretary, includes $22.7 million to continue studies on causes of poverty/ways to overcome environmental health and a health insurance experiment.

COMPREHENSIVE HEALTH CENTERS/FAMILY PLANNING

Goes to HEW where FY 74 budget will be $102.6 million to continue OEO activities. $15 million added to HEW budget to cover cost for family planning/research and demonstration projects now in OEO.

DRUG REHABILITATION

To HEW's National Institute of Mental Health (NIMH) with $6.3 million increase from current budget of $23 million to $29.3 million in FY 74 budget of NIMH.

COMMUNITY ECONOMIC DEVELOPMENT

New legislation to be submitted authorizing Office of Minority Business Enterprise of Commerce Department to continue funding Community Development Corporations with $2.6 million more than current OEO levels.

SPECIAL INDIAN PROGRAMS

New program to be established in HEW. With $32.1 million—an increase of $9.7 million over current funding—to go to Indian tribal councils to implement Indian self determination.

ALCOHOLIC COUNSELING AND RECOVERY

OEO will transfer $14.4 million to HEW's National Institute for Alcoholism and Alcohol Abuse (NIAAA) to sustain ongoing OEO projects. Thereafter funds to these projects for FY 74 will be part of HEW budget in NIAAA.

MIGRANT AND SEASONAL FARMWORKER PROGRAMS

Goes to Labor Department with $40 million requested for FY 74, which is $3.7 million more than current OEO funding. This will permit expansion of high school equivalency (HEP) program adding 13 new projects. Other migrant programs to be continued at labor include nutritional assistance, farmworker housing, day care, educational and manpower support.

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"During the transition period, which ends on February 28, all grants coming due were assured of extension for at least an additional thirty days," Phillips said. "We will now move into a process where grantees approved for refunding will, except for community action agencies, be obligated funds on a normal program year basis, in most cases twelve months. CAA's up for refunding between now and June 30 will receive grants of up to six months, as their OEO linkages are phased out."

"It must be stressed that while this is the last year that community action funds will be obligated by OEO, Federal support for all other OEO activities will be continued at an equivalent or higher level of expenditure in Fiscal Year 1974," Phillips stated.

Specific details on funding are attached.

FISCAL YEAR 1973 OEO FUNDING CONSTRAINTS

SECTION OF EOA AND FUNDING INFORMATION

221: Local Initiative—up to 6 month awards phase-out, not to exceed December 31, 1973.

222(a)(3): Legal Services—eligible for 12 month awards.

222(a)(4): Comp. Health—eligible for 12 month awards.

222(a)(5): EFMS—up to 12 month awards until availability of funds is exhausted (about $350,000 remains).

222(a)(6): Family Planning—eligible for 12 month awards.

222(a)(7): SOS—eligible for 12 month awards.

222(a)(8): Alcoholic Counseling—no awards—funds in 1973 made available through NIAAA.

222(a)(9): Drugs—eligible for 12 month awards.

226: Design & Planning—same as 221.

228: Consumer Action—same as 221.

231: SEOOs—up to 12 month awards.

232: R&D—eligible for 12 month awards.

312/314: Migrants—eligible for 12 month awards.

Title VII: Economic Development—eligible for 24 month awards.

FUNDING PERIODS FOR GRANT ACTIONS

1. APPLICABILITY

This Staff Instruction applies to all OEO funding offices.

2. PURPOSE

As indicated shortly after the announcement of the Fiscal Year 1974 Budget, certain interim procedures were instituted on a 30 day basis to conclude on February 28, 1973. Subsequent to that date, the following funding procedures will be applicable within the Fiscal Year 1974 budget guidelines.

3. REINSTATEMENT OF GRANT OBLIGATING AUTHORITY OF REGIONAL DIRECTORS

The applicability of OEO Staff Instruction 6710–1, Change 8 (except the limitation of funding to the grantee's current average level) to grant actions within the preexisting authority of the Regional Directors is hereby terminated and such authority is herewith reinstated by separate delegation of authority.

4. GENERAL LIMITATION ON FUNDING PERIODS

Except as stated in section 6 hereof, no grant action for any program account shall be made with a funding period ending more than 12 months after the end of the last funding period for that program account that ended before January 1, 1973.

5. GRANT ACTIONS SIGNED BEFORE FEBRUARY 28, 1973

Subject to section 4 hereof, obligation of funds shall proceed on all grant actions signed before February 28, 1973. If the funding period of any such grant action on which the funds have not heretofore been obligated does not conform to section 4 hereof, the grant action shall be revised to conform to that section.

6. SPECIFICATION OF FUNDING PERIODS FOR PROJECT CONTINUATION GRANT ACTIONS

A. All project continuation grant actions renewing, extending or supplementing funds provided by grant action under section 221 (except a grant action administered through the Indian Programs Branch), 226 or 228 of the Act shall be made with a funding period of six months, except that such funding shall not expire before August 31, 1973 or after December 31, 1973, unless reason appears to the funding office why the grant action should be made for a shorter period. No grant action shall be made under this paragraph renewing, extending or supplementing funding provided by a grant action made or extended after the date hereof or the funding period of which expires after June 30, 1973.

B. All project continuation grant actions renewing, extending or supplementing, without change of program account, funding provided by grant actions made (i) under section 221 of the Act and administered through the Indian Programs Branch, or (ii) under sections 222, 231, 232, 312 or 314 of the Act, shall be made with a funding period expiring 12 months after the end of the funding period of the last grant action under which funds were obligated, or by which funding was extended, before the date hereof, except that such funding period shall not expire before December 31, 1973 or after June 30, 1974, unless reason appears to the funding office why the grant action should be made for a shorter period.

C. Grant actions made under Title VII of the Act for continuation of economic development projects shall be made with a funding period expiring 12 months after the end of the funding period of the last grant action under which funds were obligated, or by which funding was extended, for the economic development project before the date hereof, unless reason appears to the funding office why the grant action should be made for a shorter or longer period. If for a longer funding period, the funding period shall expire not later than June 30, 1975 or 24 months after the end of the funding period of the last grant action under which funds were obligated, or by which funding was extended, before the date hereof, whichever is earlier. "Economic development project" means a project for which the last grant action under which funds were obligated before the date hereof was (i) made under Title I–D or Title VII of the Act or (ii) made by a Headquarters funding office under section 232 of the Act for Program Account 84 and provided funds under budget category 2.5 specifically for investment or provided funds for the administration of a project for which funds had previously been so provided.

D. Grant actions renewing, extending or supplementing funding provided by grant action under section 230 of the Act shall not be made without the specific written approval of the Acting Director.

E. The specification of funding periods in this section 6 applies only to projects for which the funding office considers it appropriate to provide funding for project continuation. In the case of all other projects the funding period shall comprise only the period of time necessary to phase out the federal interest and to secure the return of funds due to the Government and the proper disposition of property subject to Government disposition.

7. PHASEOUT PROVISIONS OF PROJECT CONTINUATION GRANT ACTIONS

Any grant action expected to be the final grant action for a program account must have a termination date in column 12 of the OEO Form 314 and must contain appropriate terms to secure an orderly phaseout and the return of funds due to the Government and proper disposition of property subject to Government disposition. It is expected that an OEO Staff Instruction will be issued, soon identifying the grant actions, by sections of the Act or Program Accounts, that must be terminal grant actions and prescribing required provisions for them. At present all grant actions made under section 221 of the Act, except grant actions renewing, extending or supplementing funding provided by grant actions administered through the Indian Programs Branch, are identified as required to be terminal grant actions.

8. EFFECTIVE DATE

This Staff Instruction is effective on March 1, 1973.

HOWARD PHILLIPS,
Acting Director.

NEW POSTAL RATE COMMISSION REGULATIONS

Mr. STEVENS. Mr. President, on Wednesday, February 7, at pages 3510–11 of the Federal Register, the Postal Rate Commission published important regulations. These will permit limited participation in postal rate proceedings by persons who do not desire to become full parties. They will permit concerned citizens and persons representing classes to comment upon proposed postal rates.

Because these postal rates affect us all, including persons of limited income, I ask unanimous consent that these new regulations be printed in the RECORD at this point in order that citizens throughout the country who do not have access to the Federal Register may read them.

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

LIMITED PARTICIPATION IN COMMISSION PROCEEDING BY PERSONS NOT PARTIES

(Title 39—Postal Service; Chapter III—Postal Rate Commission; Part 3001 Rules of Practice and Procedure)

In the advance notice of rulemaking regarding proposed revisions to rules of practice and procedure. Docket No. RM73–2, published in the FEDERAL REGISTER on August 16, 1972 (37 FR 16554), the Commission invited interested parties to submit comments for revision of procedural provisions of the Commission's rules of practice and procedure. Proposals were received for revising a number of rules, and these are currently under consideration.

Expressly referred to in the notice was a proposal to allow limited participation in Commission proceedings, permitting a person who did not choose to avail himself of the full hearing rights granted formal parties a means for placing before the Commission his position on any of the issues in the case. This proposal assumed special significance in light of the forthcoming classification case, notice of which was published in the FEDERAL REGISTER on January 30, 1973 (38 FR 2800). Accordingly, this aspect of Docket No. RM73–2 is being considered at this time independently of the other matters in the docket.

Commenting in favor of a rule allowing limited participation, were Second Class Mail Publications, Inc., American Retail Federation, Fairchild Publications, Inc. and Magazine Publishers Association. The Postal Service also supported the concept but argued that the persons having such status must "accept the lesser rights which that status confers along with the lesser obligations it imposes."[1] No comments opposing the adoption of such a rule were received. In essence what supporters of the rule seek is the opportunity to state their views on the record without incurring the burdens in effort and expense that full participation in lengthy and complex proceedings frequently entails. Their comments do not set forth with any specificity what the scope of such participation should be; but they cite as examples of what they seek 14 CFR 302.14(b) and 49 CFR 1100.73, rules of the CAB and ICC, respectively, which provide for limited intervention in the proceedings of those agencies.

As indicated in the notice, the Commission favors a relaxation of the rules to allow limited participation by those who do not desire to become full parties to our proceedings. At the same time we recognize, as do the proponents of the rule,[2] the merits of the Postal Service view that such a rule should not be onesided. Otherwise it could become a means for securing the advantage of full-party status while avoiding the obligations placed on such parties. We believe the rights and limitations being prescribed strike an appropriate balance.

Persons who choose to avail themselves of the status of limited participators will have an adequate opportunity to submit evidence and state their position on the issues without unduly delaying the progress of the hearing or imposing unwarranted burdens on formal parties. The Commission wishes to emphasize, however, that the rules establish significant differences between formal parties and limited participators, particularly in connection with discovery and the opportunity to be heard following issuance of an intermediate decision. Persons contemplating limited participation under the new rules should be mindful of the restrictions placed on their participation in the Commission proceeding and also of the effect their decision may have on their standing to seek appellate review under 39 U.S.C. 3628.

Pursuant to section 3603 of the Postal Reorganization Act, 39 U.S.C. 3603, it is ordered that the rules of practice and procedure are amended as set forth below. Since the amendments are procedural in nature, notice and public procedure thereon are not required, and it is therefore further ordered that they shall become effective on February 7, 1973. Accordingly, in light of the foregoing findings, and after careful consideration of the comments received, the Commission hereby amends Part 3001 of its regulations (39 CFR Part 3001), as follows:

1. Amend the table of contents by adding a new § 3001.19a Limited participation by persons not parties as follows:

Sec.

3001.19a Limited participation by persons not parties.

2. Revise § 3001.5(h) to read:

§ 3001.5 Definitions.

* * * * * *

(h) "Participant" means any party and the officer of the Commission who is designated to represent the interests of the general public and, for purposes of §§ 3001.11(e), 12, 21, 23, 24, 30, 31, and 32 only, it also means persons granted limited participation.

* * * * * *

3. Amend § 3001.7(a) as follows:

§ 3001.7 Ex parte communications.

(a) *Prohibition.* To avoid the possibility or appearance of impropriety or of prejudice to the public interest and persons involved in proceedings pending before the Commission, no person who is a party to any on-the-record proceeding or who is granted limited participation in accordance with § 3001.19a, or his counsel, agent, or other person acting on his behalf, nor any interceder, shall volunteer or submit to any member of the Commission or member of his personal staff, to the presiding officer, or to any employee participating in the decision in such proceeding, any ex parte off-the-record communication regarding any matter at issue in the on-the-record proceeding, except as authorized by law; and no Commissioner, member of his personal staff, presiding officer, or employee participating in the decision in such proceeding, shall request or entertain any such communication. For the purposes of this section, the term "on-the-record proceeding"

[1] Reply comments of USPS, p. 2.

[2] See, e.g, Reply comments of Fairchild Publications, Inc.

means a proceeding noticed pursuant to § 3001.17. The prohibitions of this paragraph shall apply from the date of issuance of such notice.

* * * * *

4. Add a new § 3001.19a reading as follows:

§ 3001.19a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17, in accordance with the following provisions:

(a) *Form of request.* Requests for leave to be heard as a limited participator shall be in writing, shall set forth the nature and extent of the requestor's interest in the proceeding, shall include the name and full mailing address of the person or persons who are to receive service of documents by the Secretary, and, except where good cause for late filing is shown, shall be filed not later than the date fixed for the filing of petitions to intervene pursuant to § 3001.20(c).

(b) *Action on requests.* As soon as practicable the Commission shall act to grant or deny requests for limited participation. The grant of a request for limited participation shall not constitute a determination by the Commission that the grantee has such an interest in the proceeding that he would be aggrieved by an ultimate decision or order of the Commission.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participators may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Sections 3001.25 through 3001.28 shall not be applicable to limited participators. However, limited participators, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

5. Amend § 3001.55 to read:

§ 3001.55 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12. Such service shall also be made on persons who have been granted limited participation.

6. Amend § 3001.65 to read:

§ 3001.65 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12. Such service shall also be made on persons who have been granted limited participation.

7. Amend § 3001.75 to read:

§ 3001.75 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for an advisory opinion and its prepared direct evidence upon such officer and the parties permitted to intervene as provided by § 3001.12. Such service shall also be made on persons who have been granted limited participation.

(Secs. 3603, 3622–3624, 3662 of the Postal Reorganization Act, 84 Stat. 760–762, 764; 39 U.S.C. 3603, 3622–3624, 3661, 3662; 5 U.S.C. 553, 80 Stat. 383–384).

By the Commission.

JOSEPH A. FISHER,
Secretary.

[FR Doc.73-2517 Filed 2-6-73;8:45 am]

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday, March 12, 1973, is as follows:

The Senate will meet at 12 noon. After the two leaders or their designees have been recognized under the standing order, the distinguished Senator from Oklahoma (Mr. BELLMON) will be recognized for not to exceed 15 minutes; to 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 of not to exceed 15 minutes, with statements therein limited to 3 minutes each.

Following the disposition of any legislative business or any executive business thereafter, there will be a period for the delivery of eulogies for the late Senator Guy Gillette. That period is not to exceed 1½ hours, the time to be controlled by the distinguished Senator from Iowa (Mr. HUGHES) and the distinguished Senator from Vermont (Mr. AIKEN).

Rollcall votes could occur on Monday. I foresee none at the moment.

The distinguished majority leader would want me to state that there is a need for committees to expedite business for floor action. There are only two measures on the legislative calendar, as of this time, and neither has been cleared for action. It is hoped, therefore, that the adjournment to Monday will be helpful to committees so that they may find time to act.

ADJOURNMENT TO MONDAY

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 noon on Monday next.

The motion was agreed to, and, at 3:04 p.m., the Senate adjourned until Monday, March 12, 1973, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate March 8, 1973:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Floyd H. Hyde, of California, to be Under Secretary of Housing and Urban Development, vice Richard C. Van Dusen, resigned.

H. R. Crawford, of the District of Columbia, to be an Assistant Secretary of Housing and Urban Development, vice Norman Vickers Watson, resigned.

Sol Mosher, of Missouri, to be an Assistant Secretary of Housing and Urban Development, vice Samuel C. Jackson, resigned.

Michael H. Moskow, of New Jersey, to be an Assistant Secretary of Housing and Urban Development, vice Harold B. Finger, resigned.

James L. Mitchell, of Illinois, to be General Counsel of the Department of Housing and Urban Development, vice David Ogden Maxwell, resigned.

HOUSE OF REPRESENTATIVES—*Thursday, March 8, 1973*

The House met at 12 o'clock noon.

Rabbi Morris A. Cohen, Hebrew Academy of Buffalo, N.Y., offered the following prayer:

אביע מלכנו

Our Father, our King, we are grateful for being able to experience and express the goodness of the creation which surrounds us. In spite of the darkness and chaos, which we frequently encounter, we pray that we may be able to concentrate upon and increase the light and order which is in the potential of Thy creation.

May the ways of life be available to all mankind so that we may all enjoy the realization of Thy divine command which summons us to manifest our partnership with the God of creation and justice.

May everyone be guaranteed the opportunity to be educated and to work according to his own noble choice, so that everyone may look forward to share his own contribution for good with the rest of humanity. And so may it be Thy will.

וכן יהי רצון

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced