PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BURTON:

H.R. 5475. A bill for the relief of Brigida F. Goborbe; to the Committee on the Judiciary.

H.R. 5476. A bill for the relief of Esperanza C. Yauder; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

SENATE—Monday, March 12, 1973

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

PRAYER

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

O Divine Ruler, deliver us from the stress and strain of duty, from the tumult of our days, from the confusion of many voices that in this holy silence we may hear one more: Thy still small voice. Hearing Thy voice, may we find healing and peace. Hearing Thee, may we discover Thy will in the processes of history and in life itself.

Grant us the statesmanship to see beyond the transient skirmish, the interminable debate, and the trivial contention, to the future order of justice and truth toward which we strive. Lead us safely through the days by the light of Thy truth into that higher kingdom on earth, the law of which is love whose builder and maker is God.

Through Him who is King of Kings and Lord of Lords. Amen.

EXECUTIVE REPORTS OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of March 8, 1973, the following favorable reports of nominations were submitted on March 9, 1973:

By Mr. CANNON, from the Committee on Commerce:

Alexander P. Butterfield, of California, to be Administrator of the Federal Aviation Administration;

Dennis Pepe, for permanent appointment to the grade of Lieutenant in the National Oceanic and Atmospheric Administration; and

Kent P. Dolan, for permanent appointment to the grade of Lieutenant (junior grade) in the National Oceanic and Atmospheric Administration.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, March 8, 1973, be dispensed with.

H.R. 5477. A bill for the relief of Josepina Gonzalo (nee Charito Fernandez Bautista); to the Committee on the Judiciary.

MESSAGES FROM THE PRESIDENT

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ANNUAL REPORT OF THE NATIONAL SCIENCE FOUNDATION—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare. The message is as follows:

To the Congress of the United States:

I am pleased to transmit to the Congress the Twenty-Second Annual Report of the National Science Foundation, covering the fiscal year 1972.

During the period covered by this report, the Foundation continued to make an important contribution to the strengthening of our economy and our society through science. It increased its support for scientific research in all disciplines and further expanded its involvement in research focused on domestic problems.

The report should be of special interest to the Congress at this time, in view of the additional responsibilities that would be transferred to the Director of the National Science Foundation from the Office of Science and Technology by Reorganization Plan No. 1 of 1973, which I proposed last month. I believe that this account of the Foundation's outstanding work during 1972 helps to confirm its fitness to undertake a broader role in the national science effort in 1973.

RICHARD NIXON,


EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore 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.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 7) to amend the Vocational Rehabilitation Act to extend and revise the authorization of grants to States for vocational rehabilitation services, to authorize grants for rehabilitation services to those with severe disabilities, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the Legislative Calendar, under rule VIII, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

VIETNAM VETERANS

Mr. MANSFIELD. Mr. President, I hold in my hand an editorial published in the Christian Science Monitor under date of Friday, March 9, 1973, entitled "Forgotten' Vietnam Veterans."

I read in part:

"But the rights or wrongs of the war do not affect the debt due those who fought in a remote land while the home front, for all the war's drag on domestic progress, suffered singularly little inconvenience. A general is retired on generous pension though relieved of his command and demoted amid charges of unauthorized bombing and falsified records. Surely men who inconspicuously did their jobs without taint deserve fair consideration of their needs."

Mr. President, further on—and this is the result of public hearings which have been held throughout the country by our distinguished colleague in the House, Silvio Conte—the editorial states:

"They feel they're forgotten," he said. "They don't know whether they're heroes orbums."

Mr. President, I ask unanimous consent to have this editorial printed in the Record.
The being no objection, the editorial was ordered to be printed in the Record, as follows:

FORGOTTEN VIETNAM VETERANS

You swung off the bus and everybody smiled as your family hugged you. You went home to a job that had been held while you were away, or you went off to the university that was glad to see you with your full tuition money in hand. The older kids admired you, and most of your generation seemed to have been through the same thing. You had done a job that had to be done, and received, in return, its gratitude in a thousand tangible and intangible ways.

Or so it was for a veteran returning from World War II.

A heartbreaking contrast has been developing for the veterans of the Vietnam war, a war no less grim and dislocating for being undisclosed. Yes, the President and the media go all out for the returning POWs, and their special ordeal cannot be minimized. But thousands of their unsung fellows, often grievously injured, have returned to a bleaker welcome. The indifference from their elders, doubt from members of their own generation. They were doing a duty that not everybody should be doing. Now even one of the returning POWs has reportedly broken the POWs' general impression of conviction in survival. "Many of us came to believe that possibly we had inserted our noses into somebody else's business."

But the rights or wrongs of the war do not affect the debt due those who fought "forgotten warriors."

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be immediately notified of the confirmation of these nominations.

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

Mr. MANSFIELD. Mr. President, over the weekend, at the request of the majority leadership in Congress, Senator Abraham Ribicoff responded in a radio address to the President's recent message on the urban crisis.

Senator Ribicoff, as a former Secretary of Health, Education, and Welfare, is one of our most knowledgeable advocates of Federal aid for our cities, both large and small. He laid out in his address the pitfalls of the "new federalism" as proposed by this administration and pointed out what Congress has done and still hopes to do to make our Nation's cities a fit place to live in a democratic society.

I ask unanimous consent that this address of Senator Ribicoff be printed in the Record.

The nominations on the Executive Calendar will be stated.

DEPARTMENT OF AGRICULTURE

The second assistant legislative clerk read the nomination of Robert W. Long, of California, to be an Assistant Secretary of Agriculture.
The future of the republic. But the President won't improve life in this country by procrastinations that our problems no longer exist.

We are all proud of our country and the Congress under more effective and modern procedures on a governmentwide basis. It's time for all of us to stop making debating points—and start working together to assure a better country.

Thank you. Good day.

IMPROVEMENTS OF ADMINISTRATIVE PROCEDURES IN THE DEPARTMENTS AND AGENCIES

Mr. MANSFIELD. Mr. President, it is nearly 10 years since the late minority leader, Senator Dirksen, a beloved colleague, addressed the Senate on the need for improving the procedures used by the departments and agencies of the Federal Government in carrying out their functions. At that time, he introduced the bill as the result of 4 years of work by the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary. That bill, which had the support of the Chairman of that Subcommittee, at that time, drew heavily on the recommendations of the American Bar Association and other bar associations.

The most recent issue of the Administrative Law Review has called attention to that speech of Senator Dirksen in an issue which is devoted entirely to proposals for amendments to update the 1946 Administrative Procedure Act. I urge the appropriate committees of the Senate to give consideration to these proposals because of their impact on the manner in which the Federal Government is managed by the departments and agencies of the Federal Government.

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

([Excerpt from the Administrative Law Review, vol. 24, No. 4]
Comments of Senator Dirksen on S. 1663—Improving Administrative Procedures)

Mr. President, for myself and the distinguished Senator from Missouri [Mr. Long], who is chairman of the Subcommittee on Administrative Practice and Procedure, on which I am the minority member, I introduce, for appropriate reference, a bill to amend the Administrative Procedure Act. I am delighted to report that the drafting of this bill has been carried on jointly with the members of the Committee on the Judiciary of the House, under the chairmanship of that very wonderful man, the gentleman from New York [Mr. Fazio], whom I understand has been a member of the House over 30 years has been a good and great friend of many of us who have served with him, and whose passing over the past week has been a loss to all of us. In the drafting of the bill we have had the help of the able counsel to that subcommittee, Mr. Joseph Fazio.

This is indeed an historic occasion, because after years of study and months of legislative drafting we are approaching a consensus, not only on what ought to be done, but also on how it must be done.

The bill deals with the manner in which the actions of Federal agencies affect the people. There is scarcely any facet of the life of anyone in this country which is not affected by one or another of the myriad of Federal agencies. The prices of things the public buys and the conditions under which they are sold are determined by decisions of Government agencies. They regulate the price of milk and the content of a tube of lipstick; they award benefits and penalties in Government contracts. They regulate the truckers, the railroads, and the airlines. They regulate radio and that new--TV. They even regulate union elections.

A decade ago Mr. Justice Jackson said:

"The rise of administrative bodies probably has been the most significant legal trend in the last century and perhaps more values today are affected by their decisions than by those of all the courts."

But that was a decade ago; and since then their decisions have multiplied beyond belief. It is therefore a great privilege for me to present a part of a legislative measure by the decisions of Government agencies. They regulate the price of milk and the content of a tube of lipstick; they award benefits and penalties in Government contracts. They regulate the truckers, the railroads, and the airlines. They regulate radio and that new--TV. They even regulate union elections.

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the courts. They operate outside of the sys-
tem of judicial review established by our Constitution as they make policy, ex-
ecute it, and sit as judges in cases involv-
ing disputes arising between individual citizens and almost a government unto themselves, and they act with such independence and are subject to so little control that they have become known as the headless fourth branch of Government.

Neither the Congress nor the executive have solved this problem. As far back as 1933, Senator Norris introduced a bill to create a court of administrative jus-
tice, which was referred to the American Bar Association and appointed a special commit-
tee to look into the problem. A little later, President Roosevelt appointed a special com-
mittee on Administrative Management in the execu-
tive branch of the Government, which in 1937 issued a report recommending a com-
plete separation of the administrative func-
tions and personnel from those having to do with investigations or prosecution.

In the next decade, many of the famous Members of Congress were associated with this problem—not only Senator Norris, but also Senator Logan of our late colleague, and Senator Pat McCarran. On the House side, the burden was carried by two very able men. One is the gentleman from Minnesota before the bar. The other is our late beloved colleague, Mr. Walter who labored so long and hard on the drafts of this bill.

The efforts of all these great men resulted in the passage of the Administrative Procedure Act in 1946. It was a great step forward; it was intended to provide a streamlined administrative procedure. A special subcommittee in the House, and the Senate Committee on the Judiciary, has been considering this problem for many years. A bill requiring the agencies to make it hearing conference. The parties and the presiding officer come to the hearing conference with little or no preparation and completely unable to enter into a serious discussion of what is involved in the case. Some teeth are needed in such a procedure. The procedural law requires that not only the agency be prepared, but also the parties be prepared. The law requires that the parties be given a chance to file objections to the presiding officer, to the hearing conference, to the prehearing conference proceeding, and to the date of the hearing conference. The law requires that the parties be given an opportunity to exercise their talent and expertise in arriving at an acceptable decision in the case.

However, to the extent that the decision was not acceptable to the parties and they are not entitled to the Constitution or by stat-
ute to a decision on the record after an opportunity for a formal hearing, the bill provides that any party may file objections to the decision and that the agency will be heard and determined in a formal proceed-
ing. Now, these objections must be specific, to the issues remaining to be decided. But the formal proceeding will be narrow, and I have not noticed that the burden of being specific in the objections is so well in limiting the issues which lawyers raise as it is with those to which they are material. I think by this bill there will be no real unfairness in limiting the issues which lawyers raise as far as those to which they are material. I think by this bill the parties will have the ear of the members.

CONGRESSIONAL RECORD — SENATE
March 12, 1973

Harvard Law School and the other schools. Harvard Law School is one of the most prominent in the country. The bill which has been the subject of searching comment by the Federal administrative agen-
ties, the American Bar Association, and the legislative proposals introduced in the last few years.

POLICY AND PARTICULAR CASES

The bill is a long bill; and at this time I shall mention only some of its significant provisions. The first is the manner in which the Federal Government has been compounded in the last few years by some court decision. It grows out of the fact that the provisions in the existing law applying only to general policy matters but also to particular cases. As a result, some difficulties have arisen. There is no established manner in which to make policy decisions is not necessarily the best way to decide cases. Policymaking requires a certain amount of flexibility and a broad outlook. Particular cases require a look at the facts in the re-
cord. The important thing is that policy should apply fairly and equally to everybody; there should not be one policy for one person and a different policy for another person when the same facts are present. When an agency is dealing with questions of policy, it should have all of the flexibility and all of the guidance necessary. The idea is applying that policy to the facts of a partic-
ular case, it should be limited to the facts in the record.

There may be a great hue and cry by the agencies that they cannot possibly determine what the policy is, and I think necessary at all of the particular situations which may arise in the future. That is true. From time to time policies will have to be made as the agency is proceeding in its hearings and many of the bills require that the agencies make them clear to the public when they are dealing with matters of policy. Right now, the law requires that the agencies make it clear when they are dealing with matters of policy and when they are applying that policy to the facts of a particu-
rar case.

The bill also deals with another aspect of this problem. No matter how carefully an agency makes its policy there will always be the inevitable situation in which a general rule will not work in a partic-
ar case. At the present time, if any relief is to be given in such a case an agency must either change or modify its rule, and in some cases and probably illogical distinc-
tion on the facts. None of these alternatives is a very easy solution. The bill provides a different alternative. It would permit an agency to grant an appropriate excep-
tion to a rule which worked as an unintended hardship, and it would not be necessary to change or abolish the rule. In stead, the agency would only have to con-

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of the agency and the power to pick and choose which has been prepared as they rewrite the decision of the presiding officer. It is said they sometimes torture that record to get the result they want.

That is a dark picture indeed, if the allegations are true. Everyone wants the decisions of the presiding officer to be public but the reluctance of the agencies to make available information is the same; they are trying to conceal the fact that they desire to conceal under the present law. This suggests that the agencies are under the impression that the public is not interested in the information that concerns the public. This is not true. The public is always interested in the information that concerns the public.

The bill also provides that the public right in the agency to hear the appeal. The bill provides for the public right to know the information by the agency prior to the actual commencement of a proceeding. The bill provides for the public right to know the information by the agency prior to the actual commencement of a proceeding. The bill provides for the public right to know the information by the agency prior to the actual commencement of a proceeding. The bill provides for the public right to know the information by the agency prior to the actual commencement of a proceeding.

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the Administrative Procedure Act, represent a highly condensed version of many years of effort and experience.

The 12 recommendations urge:

Recommendation 1. Amending the definition of rule and, therefore, of rulemaking, to include matters of particular applicability.

Recommendation 2. Deleting many of the cumbersome and outmoded phrases such as "upon the making of an administrative determination," and other phrases.

Recommendations 3 and 4. Broadening the separation of functions and parts concepts in the Administrative Procedure Act to include all proceedings required by law to be conducted after an opportunity for agency hearing rather than only adjudicative proceedings.

Recommendation 5. Providing greater uniformity in rules governing pleadings and other matters in informal adjudicative proceedings.

Recommendation 6. Authorizing appeal boards and certiorari type appeal procedures.

Recommendation 7. Making the effective use of prehearing conferences.

Recommendation 8. Giving greater significance to the determination of the hearing officer as it presides over the presentation of evidence.

Recommendation 9. Approving the concept of closed hearings, procedures, with appropriate limitations.

Recommendations 10 & 11. Providing generally for substantial simplification of standards of informal adjudications, and

Recommendation 12. Making available a sanction in the case of prejudicial publicity.

The significance of these proposals is attested by the durability of this project and by the fact that it has been participated in over the years. The project began over a decade and a half ago, in 1955, when the President of the American Bar Association appointed the Special Committee on Legal Services and Procedure to consider both the recommendations which had just been issued by the Hoover Commission and its Task Force on Legal Services and the federal administrative agencies, and the report submitted that year by the General Commission on Administrative Procedure which had been issued by the Hoover Commission and the National Commission on Administrative Procedure which had been assembled after an opportunity for agency hearing rather than only adjudicative proceedings.

In order to respond to the extensive agency opposition to S. 1070, the Special Committee next requested three scholars with broad experience in the administrative process to serve as review committees to comment on the comments of the agencies and prepare an analysis of the comments. The scholars were selected from the project on the new administrative procedures which was prepared by the General Commission on Administrative Procedure Act. Although it did not refer to the specific comments of the various agencies, the project was an effort to answer the objections to the Code which had been expressed by the agencies.

Notwithstanding these efforts of the Special Committee, it almost immediately became clear that the Code of Federal Administrative Procedure proposed in S. 1070 as a complete replacement of the Administrative Procedure Act would be difficult to achieve. The repeated assertion in the agency comments that the complete revision of the Administrative Procedure Act as to style, as well as to substance, as proposed by the American Bar Association, would raise many questions of construction which could only be settled by the extensive litigation, proved to be the American Bar Association proposal than may have been anticipated. As a result, Congressional subcommittees began to explore the possibility of amending the existing Administrative Procedure Act as an alternative approach.

THE CONGRESSIONAL PERIOD

Utilizing to good advantage the compilations and comments of the constituents to the Special Committee, members of the staffs of Senate and House Judiciary subcommittees prepared a proposed bill which adopted in large measure the principles urged by the American Bar Association but which expressed those principles as amendments to the Administrative Procedure Act. This bill, introduced by Senator Dirksen, became the major vehicle during the next five years for the consideration of the recommendations of the federal administrative agencies, as well as other basic reforms in federal administrative procedures.

THE SPECIAL COMMITTEE AND THE CODE

The mandate to seek the replacement of the Administrative Procedure Act by a comprehensive Code of Federal Administrative Procedure was carried out by the Special Committee which, under a successor of able chairmen, Ashley Bellers, Harold L. Russell and Senators Dirksen, was referred to the Subcommittee on Administrative Practice and Procedure which had been established by the Senate Judiciary Committee in 1959.

Footnotes at end of article.
section of a wall. They have been called the headless fourth branch of our Government for this is how it is perceived. Yet they are not mentioned in the Constitution; they are neither the Congress, the President, nor the Supreme Court. But they exercise legislative, executive, and judicial functions. They establish policies which have the force of law; they administer those policies; and they act as a tribunal to decide cases involving the policies."

Nevertheless, in spite of the very substantial powers vested in the Federal Agencies, S. 1336 in an attempt to meet the opposition of the federal agencies, S. 1336 fared little better than its predecessors so far as agency comments were concerned. One agency, for example, began its comments:

"S. 1336 is a better bill in some respects than S. 518, introduced in the 89th Congress. However, we must oppose S. 1336 for essentially the same reasons which compelled us to oppose S. 518. Broadly speaking, the objectionable aspects of S. 1336 are as follows: (1) the imposition of stringent separation-of-functions requirements in rate-making, and in all merger and licensing proceedings, (2) the public information section of the bill that would allow a layman to open their records, (3) the unnecessary infusion of delay-producing judicialized hearings and appellate procedures in place of old-fashioned, comparatively simple, case-processing techniques, and (4) the shifting of decisonal responsibility from the duly appointed agency members to hearing examiners."

Ironically that agency gave its "vast work load" as a reason for its objection to a bill which proposes the work load to hearing examiners. It objected to the application of the separation of functions doctrine to the Federal agencies on the ground that if a hearing examiner had a case involving a problem of cost accounting, he ought not also be evaluating agency cost accounting for advice and assistance without giving the other parties notice and opportunity to participate, and it objected to provisions which would increase the stature of hearing examiners, stating:

"The bill here misconceives the proper role of hearing examiners who are employees of the agency, and not of another branch of government. The proposed change in the bill would not only infuse a feeling of uncertainty over the role of these employees vis-a-vis their employers."

Nevertheless, on June 21, 1966, the Senate passed S. 1336 in the final form recommended by the Senate Judiciary Subcommittee. After almost 7 years, the principal sponsor of the American Bar Association for improved administrative procedures had passed one House of Congress, even though in a format substantially different from the Code originally proposed by the American Bar Association.

Characteristically, after the death of Rep. Walter, the House lacked a focal point for such legislation similar to the Subcommittee on Legal Services and Procedure in the Senate, S. 1336, after its passage by the Senate, remained in the House Committee on the Judiciary until the close of the 89th Congress.

While it is likely that the fate of S. 1336 in the House could be attributed to the absence of sponsors, the reaction of the administrative agencies, the passage of the bill by the Senate and also stirred the agencies to a reappraisal of their own position. This reappraisal was prompted by the Assistant Attorney General, Office of Legal Counsel, and produced two tangible results. One was the preparation of amendments which were submitted 25 days before the Senate voted on it. The other was the convening of a day-long symposium in Washington sponsored by the American Bar Association and attended by a segment of the Senate Judicial Committee, by over 100 senior staff personnel from the various agencies.

At this symposium, held on December 1, 1966, the usual roles were reversed and the agency representatives fired their questions at a panel composed of present and former members of the Senate Judiciary Committee. The Subcommittee on Administrative Practice and Procedure and representatives of the American Bar Association were the only audience of the colloquium which ensued at that symposium, on re-reading the transcript nearly six years later, still clear are the deep-seated fears and concerns which motivated the opposition of the administrative agencies to the various proposals to replace or revise the Administrative Procedure Act. It is well worth reading.22

The following year, Senator Dirksen and the chairman of the subcommittee again introduced legislation, S. 518, and, at the opening of hearings on that bill on March 6, 1967, the chairman of the subcommittee stated:

"It is with a feeling of optimism that we open these hearings. It is the view of many, including myself, that a new, improved Administrative Procedure Act is long overdue."

"As you know, S. 518 is identical in many respects to S. 1336 of the 89th Congress which passed the Senate last June. The changes which have been made in the new bill are the results of a special seminar held in Washington several months ago by the American Bar Association, at which many lawyers from the departments and agencies, we now have a bill that, although not quite perfect, is approaching perfection."

"We are dealing here with the very fabric of government. If the Administrative Procedure Act is to live up to its potential, it is imperative to know just what functions would be newly brought under the Act and what procedures would be newly required."

"Provisions which have worked well, however, should not be changed merely because they are not controversial. If the results of the hearings are that many are not yet persuaded that a revision as far-reaching as S. 518 is desirable, this fact should be clearly stated by the ranks of the removal and narrowing of exemptions."

"It may well be that in some instances the old procedures and administrative agencies should be narrowed. But as to each change we must ask whether it is desirable, and just what the practical consequences would be. Does the rephrasing of an exemption raise new problems of interpretation?"

"A second question is this: Would S. 518 improve the decision-making units and procedures, and would it impair the effectiveness with which some agencies can make policy determinations in the Administration."

The closing testimony at the hearings in the spring of 1967 was by representatives of the American Bar Association and reflected the frustration of the present chairman of the Senate Judiciary Committee:

"We remember that at that time the agencies were resistant to any uniform procedural statute, but the government lawyers have become very different and that their functions were not capable of being reduced to any common form. They now admit the need for some change, other than a piece of legislation on the ground that the 1946 act which they disposed in 1946 is a piece of legislation which does not work.

After hearing the frustration expressed by the proponents of reform and the now desired few and supportive opponents of the legislation, the activation of the permanent Administrative Conference of the United States in the spring of 1967 with the appointment of a new chairman of the Administrative Procedure Act and a "wait and see" approach on the need for legislation until the effectivenss of the Administrative Conference as a means of achieving the desired reforms we await further legislation could be appraised.

ABA reappraisal and the adoption of a new approach

When it became apparent that active Congressional consideration of proposals to revise the Administrative Procedure Act was not likely to be taken up by the full Senate, the Special Committee on the Code and the Committee on Legal Services and Procedure of the Senate reapproached the efforts and goals of the American Bar Association in this area. It appeared, on the one hand, that the Congress to cease its own efforts to develop amendments to the Administrative Procedure Act and adopt a "wait and see" approach on the need for legislation until the effectivenss of the Administrative Conference as a means of achieving the desired reforms we await further legislation could be appraised.

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able in the Administrative Procedure Act. Further responsibility for the project would be transferred to the Section on Administrative Law. The Special Committee carried out its assignment by the preparation of 12 resolutions which were adopted by that body in August, 1970. In addition to the 12 recommendations of the Special Committee, the American Bar Association has long felt need for improvements in the Administrative Procedure Act. These resolutions were presented to the House of Delegates and were adopted by that body in August, 1970. It is readily apparent from an examination of the areas of administrative procedure which the American Bar Association has long felt need to improve. The 1972 Amendments to the Administrative Procedure Act. The improvements in the Administrative Procedure Act which needed attention at the time he introduced S. 1663 in 1963. They are as follows:

**GENERAL POLICY AND PARTICULAR CASES**

The provisions of the present Administrative Procedure Act governing agency rulemaking proceedings apply not only to general policy matters but also to cases involving particular persons. As a result, difficulties have arisen because an appropriate procedure for making policy decisions is not necessarily best suited to involving the rights and obligations of particular persons. Policymaking requires input from many sources. Proceedings involving the rights and obligations of particular persons, on the other hand, require narrow focus on the facts relevant to that particular case. Thus, it would appear desirable to limit the more flexible policymaking procedures to matters of general utility and to treat matters of particular applicability as adjudication. This rationale applies whether or not the particular rulemaking or adjudicative, that is, required by some other statute to be determined on the record after opportunity for agency hearing.

Thus, there is substantial justification for the proposal of the American Bar Association that the definition of rule should be revised so that matters of particular applicability are no longer treated as rulemaking proceedings, and for the recommendation that the specific enumeration of the approval or prescription of rates, wages, corporate or financial structures or reorganization, are not part of the definition of policymaking. To the extent that rates, wages and such other matters are of general applicability they would still come within the definition of rule and, therefore, of rulemaking and be subject to the broader more flexible rulemaking procedures. However, a proceeding dealing, for example, only with the rates, wages, or financial structure of a particular company would become an adjudicatory proceeding, and would be subject to the procedures governing formal adjudication if another statute required the proceeding to be determined on the record after opportunity for agency hearing.

The procedure for exemption or exception from the definition of rule is also worth consideration. At the present time, the procedure for the amendment or modification of the exemption is not the only procedure generally available. However, if permitted by statute, a request for an exemption from a rule could be treated as adjudication and determined either as formal adjudication or as informal adjudication depending on whether another statute required the determination to be made on the record after opportunity for agency hearing. Since both approaches have appeal, it would seem desirable to grant the Administrator the option of determining the request for an exemption from a rule.

**STREAMLINED PROCEDURES**

There is also a need for streamlining the procedure used in many cases. The Administrative Procedure Act has been interpreted by the Courts of Appeals to require the use of the uniform procedures for informal adjudicative proceedings in a non-contested case as in a contested case. It would seem that there should be an authorized procedure which will permit the use of some type of abridged procedure in a non-contested case or in a contested case in which the record has already been submitted in writing and there is no oral cross-examination. Little can be said in favor of the rulemaking procedure which is avoided by some agencies of going through all of the motions of an oral hearing in such cases. It is, of course, essential that an abridged procedure be provided which will accomplish the requirement that the decision be based on the record, or at any of the other fundamental requirements such as the right of the parties to be represented by counsel, the right of the parties of the issues, facts and arguments involved in the case. It is also essential that the concept of abridged procedures should not preclude an agency from requiring the submission of all or part of the evidence in written form without the consent of all parties. However, it is also not prejudiced thereby, as authorized by section 556(d) of the present Administrative Procedure Act.

**PROCEDURES FOR INFORMAL ADJUDICATIVE PROCEEDINGS**

While the present Administrative Procedure Act provides minimum requirements of notice and the right to present data, views and arguments in rulemaking proceedings not required to be determined on the record after opportunity for hearing, and also requires the agency to consider all relevant matters presented before making its decision, it is not clear whether minimum procedural requirements for adjudicative proceedings not required to be determined on the record after opportunity for agency hearing. As administrative proceedings increasingly affect a greater number of persons on an individual basis, it would appear that a provision should be added to the broadly phrased minimum procedural safeguards for "informal" adjudicative proceedings which should be considered as part of the Administrative Procedure Act.

It is worth noting that while S. 1663, as reported out of Conference, required that the conferees staff in 1964, proposed that the minimum standards for informal adjudicative proceedings be such that the procedures would "be plaintiff, properly and fairly inform the agency and the parties of the issues, facts and argu-
ably be expected to harm a person should also be required to make public to the same degree any future agency action which would reduce that harm.

Finally, the decision should be taken to secure these improvements in administrative procedures. One approach would be for the American Bar Association to urge the Congress to use its authority to implement its recommendations be introduced in Congress. I personally hope that such other changes will be taken at this time. While I believe in the need for those improvements, the past course of events indicates that opposition or requests for exemp­ tion may be expected to be made. I think that the points raised must be resolved if the reforms are to be achieved. Perhaps the most valuable step which the American Bar Association took in connection with its past efforts in the area was the conduct of the day-long symposium with agency participants in 1966. By that time the sponsorship of such meetings and through the consideration which the Administrative Conference can give to these recommendations, a consensus may be achieved, on these problems. The agencies and the practicing bar must both be major contributors to the solution of these. In 1946, the Congress indicated its willingness to act when such a consensus was achieved. In 1966 and 1967 the Act was not passed. Failure to achieve such a consensus prevented final Congressional action on the amendments in 1968. However, it should also be noted that no consensus will be forthcoming unless the American Bar Association and others interested in this effort continue to urge that progress be made. The status quo is a dynamic, rather than a passive, state and re­ sists change. The Administrative Procedure Act will not be amended without the application of effort by those who believe that reforms are desirable in the public interest. The American Bar Association must continue to be dedicated.

FOOTNOTES

1. These recommendations, together with the resolution, the suggested statutory lan­ guage and a brief comment appear as the first document in this volume.

2. Supra, Resolution 1.

3. Despite the leadership in the development of the Administrative Procedure Act was under the direction and guidance of the General Counsel of the American Bar Association, Bernard G. Segal as President of the Ameri­ can Bar Association.

4. Donald Schultz, Robert M. Benjamin and Bernard Segal were members, and Ashley Sellers was Chairman.


7. Supra, Resolution 2.

8. By contrast, the leadership in the develop­ ment of the Administrative Procedure Act was under the direction and guidance of the General Counsel of the American Bar Association, Bernard G. Segal as President of the Ameri­ can Bar Association.

9. Donald Schultz, Robert M. Benjamin and Bernard Segal were members, and Ashley Sellers was Chairman.


12. Supra, Resolution 2.

13. The text of the Senate resolution author­ izing this action reads, in part, as follows: "Resolved, that the Auditor, Comptroller, or any duly authorized subcommittee thereof, is authorized... to make a full and complete study and investigation of admin­ istrative procedures and practices with­ in the several departments and agencies of the United States in the exercise of their rulemaking, licensing, and adjudicatory functions, includ­ ing a study of the desirability of the Admin­ istrative Procedure Act and the need for determining whether additional legislation is required to provide for the fair, impartial, and efficient operation of such functions, S. Res. 61, 86th Cong.

14. The bill [S. 7] appears... to offer a hopeful prospect of achieving reasonable uniform­ ity and fairness in administrative pro­ cedures without at the same time interfering with the efficient and economical operation of the Government." Attorney General's Manual, p. 6.

15. Dean Leo A. Huard, Prof. Rex A. Collins, Prof. Robert Benjamin, and others have also suggested by them as well as changes that were request of the Senate and House Judiciary Committee and the Attorney General's Manual on the Administrative Proce­ dure Act, p. 6.

16. In view of its significance as the source of many of the amendatory language pro­ posed during the following years, S. 1070 is printed as the second document in this book.

17. The text of the Senate resolution author­ izing this action reads, in part, as follows: "Resolved, that the Auditor, Comptroller, or any duly authorized subcommittee thereof, is authorized... to make a full and complete study and investigation of admin­ istrative procedures and practices with­ in the several departments and agencies of the United States in the exercise of their rulemaking, licensing, and adjudicatory functions, includ­
School; Prof. James Kirby, Vanderbilt University Law School; Dean Robert Kramer, George Washington University Law School; Prof. Carl Schmitt, University of Virginia Law School; Associate Dean Robert B. McKay, New York University Law School; Prof. Nathaniel L. Nathanson, Northwestern University Law School; and Prof. Frank C. Newman, University of California Law School. Prof. Crommington subsequently was appointed Chairman of the permanent Administrative Conference of the United States in 1971, and 1972, nominated and confirmed to the Senate Judiciary Committee on the nomination of Legal Counsel. 

In view of its importance as a unique expression of other points of view, that transcript is reproduced as the sixth document in this volume.

The hearing is printed in Senate Report No. 518, Committee on Administrative Practice and Procedure, Committee on Judiciary, U.S. Senate, May 3, 1967, P. 23.

ORDER OF BUSINESS—INTRODUCTION OF BILL

The President pro tempore. Under the previous order, the distinguished Senator from Oklahoma (Mr. Bellmon) is now recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, the United States-Cuba antihijacking agreement, as proposed, was the subject of an agreement on February 15, adds to the significant developments which are shaping U.S. foreign policy in a new international system, marked by cooperation and general relaxation of international tensions. President Nixon's initiatives in refocusing U.S. relations with the People's Republic of China and the Soviet Union already have produced major changes in the international community. The end of the bitter experience in Vietnam, with the return of the prisoners of war, encourages all Americans to look forward to a new era of détente in the Western World. The advocates of a new U.S. policy toward Cuba feel that the Nixon administration is excluding Cuba from the politics of détente. They feel that if talks can begin with China, a nation which is fighting for Korea now not too long ago, and Russia, our traditional rivals and foe, then we can begin to talk to the Cubans, close neighbors with whom mutual enmity developed over relatively short span of years.

There are others, among them administration officials, who argue that the Cuban situation is different than that involving the Vietnamese. They feel that no parallels can be drawn. Official U.S. policy toward Cuba—which amounts to isolation of that nation—is based on Cuba's policy of export of revolution in Latin America and the Soviet military presence in Cuba. In addition to these two factors, the administration contends that changes in Cuban attitude and policies will have to be made before relations can be improved. I want to explore the situation governing our relations with Cuba today in an attempt to assess just where we are and where we may be going. 1970 was a very, very volatile year that has been considering regarding this issue. I realize that the United States-Cuba situation has changed markedly since the deterioration of relations resulted in the severing of diplomatic and economic ties on January 3, 1961. The circumstances which pulled our governments apart are quite different from those we face today. On the other hand, I know that there is a great desire to bring the situation settled prior to a normalization of relations and some very real problems created by the reaching of a settlement with Cuba.

The antihijacking agreement was the culmination of indirect U.S.-Cuban talks which began in November 1969. According to Deputy Assistant Secretary of State for Inter-American Affairs Robert Hurwitz, in testimony before the Subcommittee on Inter-American Affairs of the House Committee on Foreign Affairs, February 29, 1973, the talks lagged until 1972. He said that the talks were the bizarre hijackings shocked the parties into earnest activity. The Cuban Government took the initiative after the last bizarre hijacking involving Southern Airways and expressed the desire to conclude an agreement with the United States. Under the "Agreement of Understanding" both countries will either extradite or impose stiff penalties on hijackers of planes or ships. This agreement should put an end to the hijacking syndrome which has placed in jeopardy the lives of innocent passengers over the past years. Hopefully preventing hijackers will now understand that they will find no haven in Havana. In all fairness to the Cuban Government, Havana has not been a comfortable refuge for hijackers. The Cubans have dealt harshly with hijackers and those who sought refuge in Cuba for political reasons. We all recognize this as a positive step by the Cuban Government. There have been some other signs that the Cubans desire a different type of relationship with the United States and the rest of the nations of the Western World.

The export of revolution policy, which at one time was synonymous with the Cuban Revolution, is no longer the rallying point for the Castro government. The vigorous implementation of this policy, which resulted in major setbacks in the mid-1960's, forests diminishes with the death and defeat of Che Guevara in the mountains of Bolivia in 1967. Fidel Castro has not necessarily forsaken the principle of armed revolution but it is clearly recognized that the level of Cuban-supported armed revolution in Latin America is relatively low. In testimony before the Subcommittee on Inter-American Affairs of the House Committee on Foreign Affairs, in September 1972, Major General Richard Stewart, Deputy Director for Intelligence of the Defense Intelligence Agency—DIA—agreed that the level of Cuban-supported insurgency in Latin America is small.

There have been other signs that Cuba desires to improve its relations with its neighbors. In March 1970, Fidel Castro said he would establish diplomatic relations with any country willing to do business with Cuba. The Cuban Government's early relations with Germany and France was extraordinary. Castro invited the U.S. volleyball team to play in Cuba in September 1971 and in October he permitted the Cuban base jumpers to go to Puerto Rico. This move was significant inasmuch as since Castro came to power that an official Cuban team accepted an offer to take part in international competition on U.S. territory, Cuba wants to be accepted as a legitimate country in the world community and in November 1971 was admitted to membership in the "Group of 77," the organization of developing nations within UNCTAD.

In addition, there have been some indications that the Castro government is moderating its stand toward the United States. The Washington Post in November 1971 reported that Cuban Foreign Ministry officials modified their position on the Guantanamo naval base when they said that the United States would have to declare a "willingness to negotiate." This move came from the previous demand that the United States give up Guantanamo outright. More recently, the Washington Post reported that Cuba has made an overture to a Latin American diplomat at the U.N. has personally been assured by Cuban leaders that the Guantanamo base would not be an issue. Moreover, although Castro's rhetoric is still somewhat inflammatory and vile, the content of his speeches on the United States is much less vindictive than in previous years.

Many Latin American nations have recently changed their positions toward the Cuban Government and have adjusted their policies accordingly. This represents a significant modification of the policy of isolation followed by the nations of Latin America. The governments in 1962 and 1964 when Cuba was excluded from participation in the Inter-American system and member states collectively severed diplomatic relations with Pidral Castro's government. Now recognizing Cuba, along with Mexico which never severed relations, are Chile, Peru, Jamaica, Barbados, Guyana, and Trinidad, and Tobago. Ecuador and
Panama are strongly leaning in favor of recognition, and Argentina and Venezuela, the nation that brought on the 1961 failed invasion of Cuba, are considering unilateral moves.

In May 1972, many nations heretofore against considering any question on Cuba before the OAS, voted in favor of discussing Cuba. Resolution 1062, adopted, allowed each nation to determine its own policy toward Cuba. Although the resolution itself was defeated, the decision to discuss the Cuban issue was significant, since previous discussions had taken place in 8 years.

The Soviet Union, Cuba, both military and economic, is a major obstacle to normal relations. DIA estimates that some 3,000 Soviet military personnel are in Cuba, a level which has remained constant for the past three years, and Soviet military assistance to Cuba is estimated to be over $5 billion. According to Major General Stewart, the Cubans do not pose a military threat to the United States. Nevertheless, it is disconcerting to know that the Soviet Union has been associated with Cuba, and a naval facility capable of servicing nuclear submarines is situated at the soft underbelly of the United States.

Economically, the Soviet Union is pouring Cuba, a day in, day out. Fifty-five percent of Russian foreign aid goes to Cuba. In the past several years, the Soviets have increased control over the Cuban economy. At the beginning, Fidel Castro, with sophisticated weapons, proved irritants to normal the major must be settled. Although the losses of Cuba, especially those of political prisoners. Antigovernment activity and dissent are severely repressed. At this point, my esteemed colleagues, I want to rhetorically express what I feel is our dilemma in considering this important question. The arguments on both sides are strong and compelling, but at this particular point in time in the 1970’s, should we not be guided by what I would call enlightened self-interest? At what point is a harsh, hard-line policy toward Cuba no longer a viable one, or perhaps even a counterproductive one? Are the obstacles as seen by the administration and as posed by the Castro government too great to be overcome? Is the export of revolution policy that much a threat in Latin America today? Is the Soviet military and economic presence in Cuba permanent or might it not be subject to change through three-way negotiation between the United States, Cuba, and the Soviet Union? Is it not within our self-interest to see the Soviet influence in Cuba neutralized, or at least diminished? Is not the consciousness issue one for negotiation if the nations would just agree to sit down and talk? Are we not in danger of being isolated in the Western Hemisphere as more and more Latin American countries unilaterally resume relations with Cuba in violation of what they consider an anti-Soviet policy? Is it not within our self-interest to consider our relationship with the rest of Latin America as one of unity and community which has evolved over a period of over 150 years?

We do not like the Cuban Government, and we are not afraid of Castro, but is it not true that we also do not like the harsh treatment of dissidents in the Soviet Union? It is not within our self-interest, especially in light of our deteriorating international trade situation, to conduct commerce with Cuba—which now is carried out vigorously by Canada, Great Britain, and Japan, among others—in commodities which the United States, under normal circumstances, would be the primary supplier?

These are some of the issues and questions over which I have pondered this past year but which have surfaced even more in view of the anti-Jack agreement. We need full and open discussions among all interested parties. We need a thorough review of our policy toward Cuba.

ORDER FOR RECOGNITION OF SENATOR RALPH BARTLETT ON WEDNESDAY, MARCH 14, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Wednesday, after the two leaders or their designees have been recognized under the standing order, the distinguished Senator from Oklahoma (Mr. Bartlett) be recognized for not to exceed 15 minutes.
and public health objectives. It has proved easy to administer. Recently the Yale Law Journal published an insightful and careful analysis of this new approach to tobacco taxaton, "The Tar and Nicotine Tax: Pursuing Public Health Objectives" by William Drayton, Jr., a consultant with McKinsey & Co. I ask unanimous consent that this article be printed in the Record.

When either the Congress or State and local legislators must raise additional revenue, they should consider doing so by raising the cigarette tax on high tar and nicotine cigarettes. Such legislation would effectively reduce public health costs as well as provide a new source of revenue. Mr. President, I ask unanimous consent that certain provisions of the Cigarette Tax and Tax Act and certain provisions of a model State tar and nicotine tax act prepared by the Lawyers' Committee on Tax Reform be printed in the Record.

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

THE TAR AND NICOTINE TAX: PURSUING PUBLIC HEALTH OBJECTIVES

(William Drayton, Jr.)

Government's increasing efforts to discourage cigarette smoking over the last decade have generally failed. Warnings about smoking, and tax increases which raise all cigarette prices, harry the habitual smoker but do not make him stop. In order to change smoking patterns, government must first modify its strategy. Rather than attempting to diminish total cigarette consumption, it should encourage the consumption of lower tar and nicotine levels. The only major strategy that has shown promise in recent years involves reducing the harmfulness of what is smoked. Tobacco manufacturers could lower tar and nicotine levels greatly; smokers that can't quit can switch. A special tax on cigarette brands high in tar and nicotine would be an effective means of executing this strategy. Such a tax would encourage the consumption of lower tar and nicotine brands by making them less expensive than the high quality tobaccos, which are more expensive but have lower tar and nicotine content. Thus, despite the government's efforts, the health situation has not improved. This is because the government's interventions have all shared the common, unrealistic goal of reducing total cigarette consumption. Legislators and public officials must learn from the experience of the last two decades: Most smokers cannot or will not quit.

Given a realistic recognition that aggregate cigarette consumption is not likely to change, governments seeking to minimize the harm done by smoking should consider adopting the Americanization of the British: Depriv and Rule. Government intervention designed to reduce the danger of cigarettes by discouraging the production and sale of the most harmful brands should succeed where intervention designed to cut total sales has failed. The divide and rule strategy would work by taking away from particular brands, rather than away from cigarettes generally. The impact of such a tax is less likely to make smokers dependent on the ability to isolate the harmful elements in cigarettes, the manufacturers' technical ability to reduce those elements significantly, and the legislature's ability to effect an effective mechanism for implementing the strategy. The cigarette components that government intervention could focus on are tar and nicotine. Medical research now accepted as the basis of government policy indicates that the two most hazardous components are tar and nicotine, which cause smoking-related illness and death. However, the proportion of the cancer risk caused by cigarette smoke, particularly the fraction caused by tar and nicotine, has not been clearly established. But it is clear that the tar and nicotine content of cigarettes is roughly proportional to the amount of tar and nicotine in the individual's body. Tar and nicotine levels vary widely from brand to brand. There are, of course, other harmful substances in cigarette smoke, notably carbon monoxide, but they are--""n"y of them would create serious administrative problems. Determining proper standards would be difficult, given existing research knowledge; collection and enforcement would be burdensome, and compliance requirements, since at present the Federal Trade Commission regularly regulates only tar and nicotine levels. In any case, reducing tar and nicotine levels would diminish most of these other substances as well. Smokers will not negate the effects of the new tax by switching to cigarettes that are more high-quality tobacco, which are more expensive but have lower tar and nicotine content.

Both measures are likely to be more highly porous paper and tobacco cuts designed for more complete burning, nitrogen-adverse--""\n
Footnotes at end of article.
Incentive taxes are a powerful and efficient regulatory tool which government can be expected to use in the future. They are likely to be effective primarily because they exploit potent competitive market forces. A well-designed incentive tax changes the profitability function of the producer relative to his competitors. A cigarette manufacturer who lags behind in shifting tobacco to low tar and nicotine brands and is therefore subject to taxes which absorb a substantial portion of his normal per pack profit margin, will feel an unmistakable sharp pressure to bring his products beneath the tax's cut-off points. In a competitive situation, he has no choice but to pay his product over to the public treasury to be lost a part of his market share. Thus, the tax and nicotine tax magnifies the power of its impact on the producer's earning power to the extent that existing, presumably optimal, compensation to the consumer. 

Incentive taxes work through, but are not limited to, market mechanisms. They are likely to affect demand by prodding competitive prices upward and by causing some consumers to switch to new brands. They may also affect supply by changing the relative profitability of producing different brands and by encouraging even more smuggling. The purpose of the tax is to discourage sales of high tar and nicotine brands. It is designed to discredit the cigarette as a health measure. It is also intended to correct the decision—the affected producers and consumers free to make specific production, consumption and consumption decisions. If they do not respond as the legislature intended, government can adjust and quickly change the direction and/or the degree of pressure toward the tax's objectives. 

Incentive taxes do work, but they may improve, the functioning of the market. If a government is seeking to force the public to buy low tar and nicotine cigarettes, it must feel the changes justified by societal costs and benefits. The economic calculation of producers and consumers will force them to recognize more fully the true costs and benefits of their decisions.

Though neither government regulation nor taxation is now considered dangerously unorthodox, incentive taxation sometimes is. Often this fear is due to a misapplicability of the concept of tax "neutrality," the view that a "good" tax, while raising revenue, does not directly affect, or change, the relative prices. Incentive taxes are likely to have substantial effects on the use and consumption of cigarettes. For example, smokers will be encouraged to switch to low tar and nicotine cigarettes, to buy low tar and nicotine cigarettes instead of high tar and nicotine cigarettes, and to buy low tar and nicotine cigarettes rather than low tar and nicotine brand cigarettes which have been changed to higher tar and nicotine content. Thus, the tax may affect the relative price of cigarettes and encourage changes in smoking behavior. 

The implicit assumption of neutrality is that the tax will succeed in diminishing high tar and nicotine consumption. Cigarette manufacturers will respond to the customer through higher prices; (2) they could absorb the taxes; (3) they could respond to the tax's warning and incentive to change their marketing policies in the face of consumer resistance, or (3) they could respond to the tax's warning and incentive by changing their marketing policies in the face of consumer resistance. 

Incentive taxes not only work through, but are designed to work through, market mechanisms. The tax is intended to affect demand by prodding competitive prices upward. It is also intended to encourage the industry to increase the level of its research and development for low tar and nicotine cigarettes. 

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prices in the city do not reflect the tax's low rates. The evidence to thirteen per cent estimate of consumer switching could be wrong for three reasons:

1. It is possible that the pretext distribution of brands sold in New York was different from the national mix used in calculating the shift. If New York consumers were selecting more low tar and nicotine brands than the national average, the shift estimate would be too high. Unfortunately, there is almost no evidence available on this point.

2. Second, if the period of analysis coincided with a nationwide switch away from high tar and nicotine brands, the twelve to thirteen per cent figure would also be overstated. The small impact of the tax. However, this was almost certainly not the case. The average tar and nicotine per cigarette consumed nationally during the period did not decrease. If it increased, the shift estimate would be too low.

3. Third, New York's significant level of smuggling (averaging about twenty per cent of cigarette sales in the city) may distort the calculations. Smugglers may prefer to sell high tar and nicotine brands because of the greater profit margin. Furthermore, if they were able to manipulate their market, this would create an exaggerated impression of smuggling. There was some evidence that the tax was based only on cigarettes actually taxed. But this danger seems limited. There was only about a two per cent increase in the volume of both smuggling and avoidance attributable to the tax over its first ten months. Moreover, the smugglers probably have to accept lower prices for brands subject to the tax. Thus, the impact of the tax's incentives seems not to be lost even on those who do not legally pay it.

While the twelve to thirteen per cent estimate may require some modifications, the revenue figures do suggest that the tax and nicotine tax has paid for some of the public health impact intended.

C. The tar and nicotine tax as a source of revenue

For those who envision the tax and nicotine tax solely as a revenue raiser as well as a regulatory measure, a potential objection is that it may decrease the proportion of cigarettes sold at relatively low prices. Public officials may be unnerved because revenue calculations may not extend the tax actually lowers tar and nicotine consumption. They should not be: The amount of revenue to be expected from the tax can be predicted and adjusted if necessary.

Exact predictions are, of course, impossible because the responses of the tobacco industry and its customers to a unique, new stimulus are unknown. Predicting state or local revenue is even more uncertain because of smuggling and varying degrees of tax evasion. But these uncertainties are largely a function of the tax's novelty: Switching by consumers in response to the tax will probably occur over time. Thereafter, revenue should hold relatively constant, and reliable future estimates can be made.

Moreover, with only New York's limited experience available, revenue calculations made from relatively small samples of the tobacco market's narrow range of likely results for a national tax. The following table shows the probable revenue that would be generated in the first year, if a tax on tar and nicotine content by four different rates:

<table>
<thead>
<tr>
<th>Tar/Nicotine Tax Rate</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Medium</td>
</tr>
<tr>
<td>Medium</td>
<td>High</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Low Tar/Nicotine Rate</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.3 cents</td>
<td>656</td>
</tr>
<tr>
<td>0.4 cents</td>
<td>639</td>
</tr>
<tr>
<td>0.5 cents</td>
<td>629</td>
</tr>
<tr>
<td>0.6 cents</td>
<td>623</td>
</tr>
<tr>
<td>0.7 cents</td>
<td>618</td>
</tr>
<tr>
<td>0.8 cents</td>
<td>613</td>
</tr>
<tr>
<td>0.9 cents</td>
<td>609</td>
</tr>
</tbody>
</table>

Note: Footnotes at end of article.
smuggle created by high-tax local governments increasing their taxes on cigarettes might well be offset by increased and more effective enforcement of the tax system.

E. The equity of a tax and nicotine tax

Any increase in cigarette taxes, regardless of form, will be somewhat regressive. All things being equal, and the poor spend more on tobacco than the poor, this expenditure is a smaller proportion of their income. However, whether or not they spend more, nicotine taxation should be less regressive than a customary flat-rate tax: The poor consumer can escape the tax entirely by switching to low tar and nicotine brands, whereas the tax does not provide the same escape to switch, the net result of health cost savings might even prove quite progressive. In sum, a tax and nicotine tax gives a government an effective tool for inducing reduction in tar and nicotine levels, while providing a reliable source of revenue. Although a flat-rate tax poses fewer administrative problems, a tax and nicotine tax, which in any case uses the same collection mechanism as the flat-rate tax, is quite administrable. However, smuggling and extraterritorial purchases may lessen the effectiveness of a tax on a par with the tax's net effect on excise taxes, may be somewhat regressive.

III. ENGINEERING AN EFFECTIVE TAX

Designing the most effective tax and nicotine tax involves determining the limit to the tax of the cigarettes, the best milligram cutoff points for tar and nicotine liability, the optimal rate structure, and the level of cost that the tax will impose.

A. Taxing cigarettes only

Health and administrative reasons dictate that the tax be restricted to cigarettes. In terms of health, public and private health-inducing habit entailing a very much smaller quantity of tar and nicotine. Thus, while cigarettes contribute somewhat less than one per cent of all tobacco sales, they are the cause of ninety-six per cent of all tobacco related deaths. Therefore medical authorities argue that cigars and pipes should be given relative encouragement. But cigar and pipe smokers are substantially less likely to be regular smokers and are much more likely to switch both smoking mode and brand than cigarette smokers. The cigar industry has consequently been very aggressive in seeking a good economic position on the consumer's part: Thus, tax increases on cigars and pipe tobacco would undoubtedly contribute to maintaining their persistent long-term loss of tobacco market share.

Administratively, it is easier to tax only cigarettes than to tax all tobacco: New cigarette tax can be collected through mechanisms already established for collecting the current cigarette taxes, whereas taxes on other forms of tobacco would generally require new collection procedures. Moreover, Federal Trade Commission tests of cigarette tar and nicotine content would provide a dependable, generally accepted, and no-cost method of determining appropriate brands and types of cigarettes. To extend a tax and nicotine tax to cigars and pipe tobacco, however, government would have to develop and implement a comprehensive tax system for a large number of low-volume tobacco products. Since relatively little research has been done on cigarettes' nicotine content and because determining appropriate standards would also be a problem.

B. Defining tax liability

Since a negative amount of tar or nicotine is not "safe," only less harmful than a larger dosage, there are no medical, medically determined cutoff points for tax liability. Consequently, tax liability should be selected so as to produce the largest and most rapid reduction in both tar and nicotine levels. As manufacturers can reduce tar without altering nicotine content, and vice versa, and as government is seeking to diminish the consumption of both elements should base tax liability on both. More than one cutoff point for one or both substances would be required to create a wide range of corresponding tax rates. It would probably be desirable, for example, to establish a cutoff point for the small class of cigarettes with exceptionally low tar and nicotine levels. However, New York's experience with the 4-cent tax indicates that to achieve adequate impact at the retail level, each tax increment should be ideally be at least a nickel; and this factor, clear to all of levels of most governments will be able to impose. The determination of the exact cutoff points for tar and nicotine involves an inevitable tradeoff. When the level of tar and nicotine subject to the tax is lowered, more smokers will be induced to switch. Consequently, higher tax rates are appropriate when both points are exceeded. This indicates that the optimal tax, with the tax be restricted to cigarettes. Of the tax be restricted to cigarettes. The tax rate could be increased if either of the two cutoff points is exceeded. Since tar and nicotine levels are usually closely related, cigarettes with both high tar and nicotine levels are likely to contain more tar and more nicotine than cigarettes with one of the elements above the cutoff point. Consequently, higher tax rates are appropriate when both cutoff points are exceeded. This reasoning suggests a three-tiered system of incremental taxation with low or no tax increase for cigarettes with tar and nicotine content below both the cutoff points, and a sharp increase in tax liability if one cutoff point is exceeded, and another, smaller increase if both points are violated. As switching to high tar brands for the tax is not inevitable, fewer and fewer cigarettes will be subject to the pull of the tax's incentive to change brands. Consequently, governments should probably plan to review the cutoffs periodically to determine whether they should be lowered to ensure that the tax's effectiveness is maintained. Such periodic, gradual lowering of the cutoff would maintain the tax's incentive impact at a high level, allow the incentive to be varied in response to changing habits and government objectives, and provide a relatively steady flow of revenue from the tax despite steadily receding tar and nicotine levels.

C. Determining the tax rates

The tax rates applied to different brands of cigarettes can be varied depending on their tar and nicotine content. For example, by raising existing taxes or by simply increasing the rates applied to the high tar and nicotine levels of the tobacco, the government could achieve a more proportional distribution of tax savings. The critical consideration is that assuming manufacturers believe that lowering a brand's tar and nicotine content will lose brand loyalty, the incentives for manufacturers change created by a variable tax would be greater as tar and nicotine content exceed the cutoff points. From the standpoint of manufacturer incentive, the cutoff points should thus be just below the levels contained in a large number of competing brands. Presently, a band, group of over six per cent of all cigarettes exists within a narrow range just above 17.0 milligrams of tar and just below 1.1 milligrams of nicotine per cigarette.

More specifically, a tar cutoff between 19 and 19.9 milligrams, and a nicotine cutoff point between 1.1 and 1.2 milligrams or 1.2 and 1.3 milligrams appears to maximize the tax's impact. If any other points or combination of points is possible and may become desirable as tar and nicotine levels shift, 17.0 milligrams tar, and 1.1 milligrams of nicotine per cigarette seem to be the most effective cutoff points now. These cutoff points would provide more effective cuts if producers would; they leave a larger number of cigarettes subject to the tax's incentives. Yet, whatever incentive impact they lose by allowing a large number of consumers to escape the tax by switching to the gain by having a larger number of cigarettes very close to the border that would enable the tax to reach a wide range of cigarettes with relatively little effort. They are the cutoff points adopted by New York.

The tax rate could be increased if either or both of the two cutoff points is exceeded. Since tar and nicotine levels are usually closely related, cigarettes with both high tar and nicotine levels are likely to contain more tar and more nicotine than cigarettes with one of the elements above the cutoffs. Consequently, higher tax rates are appropriate when both cutoff points are exceeded. This reasoning suggests a three-tiered system of incremental taxation with low or no tax increase for cigarettes with both tar and nicotine content below both the cutoff points, and a sharp increase in tax liability if one cutoff point is exceeded, and another, smaller increase if both points are violated. As switching to high tar brands for the tax is not inevitable, fewer and fewer cigarettes will be subject to the pull of the tax's incentive to change brands. Consequently, governments should probably plan to review the cutoffs periodically to determine whether they should be lowered to ensure that the tax's effectiveness is maintained. Such periodic, gradual lowering of the cutoff would maintain the tax's incentive impact at a high level, allow the incentive to be varied in response to changing habits and government objectives, and provide a relatively steady flow of revenue from the tax despite steadily receding tar and nicotine levels.

Appendix A

Notes at end of article.
highest rate; the nine per cent that exceeded only one standard would be taxed at a slightly lower rate, and those taxed more than three cents and less than four would not be taxed at all. The rate applied to double violators must be at least two cents and should be more than four or five cents per pack.

D. Level of government

While a tax and nicotine tax could be adopted by any level of government, New York State was the first to impose a tax. New York law empowered the state to impose a cigarette tax, and the eleven per cent below the cutoffs would not be.

Moreover, new taxes in such areas should reduce local sales to smugglers. Increases in cigarette taxation in low-rate jurisdictions were accompanied by reductions in high-tax areas without an increase in smuggling over present levels.

It is the opinion of some that must be weighed in designing any new cigarette tax is the proportion of the population within the jurisdiction that comprises the states or to from other areas. If not for example, than for other areas. However, if avoidance is already occurring, incremental losses may be small as in New York.

The imposition of a tax and nicotine tax by a state government will have a much lower incentive effect on national cigarette manufacturers than would a national tax, or even a number of low state taxes. The New York tax, for example, applies to only 3.5 per cent of the taxed cigarette sales in the nation. Manufacturers may be reluctant to make major product or marketing changes in response to special tax problems encountered in their markets.

The leverage local taxes can have on national producers should not, however, be underestimated. Even New York's small cigarette sales amounts to 16.5 billion cigarettes a year, hardly an insignificant market. Further, the warning effect of a tax varyin...the cigarette...tends...and smokers. These rates are merely added to the city's existing four cents and nicotine measurements of the Federal Trade Commission in August, 1971.

Administratively the tax and nicotine tax simply "piggy-back" the taxation of cigarette and nicotine. Both are collected simultaneously at the wholesale level through the sale of required tax stamps, and policing one another. The New York tax applies only to cigarettes, not cigars or manufactured tobacco.

**FOOTNOTES**


2. See p. 1490.

3. Under the New York program, cigarettes with 17 milligrams of tar and 1.1 milligrams of nicotine or less are tax-free; those exceeding both standards are taxed at four cents per pack. Thus, according to the tax and nicotine measurements of the Federal Trade Commission in August, 1971, Winstons are taxed at four cents while lower tar and nicotine Durac are not taxed at all. These rates were merely added to the city's existing four cents-per-pack, general cigarette tax, in order to reflect a 50-cent increase in the cigarette tax. This resulted in a total tax burden on the consumer of 50 cents, which is comparable to the overall tax on cigarettes.

4. The increase in smoking, according to the Federal Bureau of Health, dose a tax.

5. The study initially weighed a range of alternative tobacco taxes. The author is indebted to the city for recommending tax. The study is not included in the article.

6. See p. 150.

7. The Federal Communications Commission has held that it is no longer a controversial issue.

8. A partial list includes: American Association for Cancer Research; American Association for Thoracic Surgery; American Cancer Society; American College of Chest Physicians; American College of Physicians; American Academy of Pediatrics; American Medical Association; and the medical associations of California, New York, and Pennsylvania.


10. See p. 150.

11. The study is not included in the article.
age from cigarette fires, and higher auto accident rates. H. DREWEL, TOBACCO AND YOUR HEALTH: THE SMOKING CONTROVERSY 106, 198, 200, 211 (1961); FEDERAL TRADE COMMISSION, PROGRESS AGAINST CANCER 1970, at 42; Speer, Tobacco and the Non-Smoker: A Study of Subjective Symptoms, 6 ARCH. ENVIRONMENTAL HEALTH 203 (1968). Although there is an association between smoking and work loss and hospitalization seems firmly established (see Drewel, id., at 198), exact percentages are less certain given the ambiguity in diagnosing many diseases as well as the problem of natural variation. Smoking may not only harm the individual and require joint action, it is argued that each person is and should continue to be—free to choose whether or not to smoke.

There are two counter arguments to this anti-interventionist position. The first is that the individual has no free will once he has begun to smoke and has become habituated. This argument is reinforced by the fact that most people who start to smoke do so when they are young.

The second counter argument is that the ill effects of smoking and in particular death linked to tobacco are harmful and costly to society as well as the individual victim and thus justify government intervention. See note 12 supra.

Whether or not the smoker who creates these costs is able to stop at will, the considerable costs he imposes on society by not doing so justify government intervention, if only to limit the costs and/or to seek compensation.

a TOBACCO TAX COUNCIL, INC., THE TAX BURDEN ON TOBACCO: HISTORICAL COMPIILATION 79 (1971). New York’s new tax and nicotine tax, however, are in the tradition of developing trend of legislative intent against smoking.

b By the Surgeon General and the Public Health Service, the government issued repeated warnings to the public. It caused warnings to appear on cigarette packs, cigarette advertisements under the authority of the FCC’s equal-time doctrine, and it required cigarette manufacturers to print warnings on each pack sold.

c Effective January, 1971, cigarette advertisements were banned from the broadcast media. Wash. Post, Jan. 1, 1971, B, at 1, col. 1.

d High cigarette taxes and published warnings by the surgeon general and the harm done by smoking to some degree by discouraging some potential smokers from beginning and by encouraging those who smoke to stop smoking, have caused cigarette manufacturers to produce cigarettes to relatively less harmful cigarette and pipe smoking. All the efforts against smoking have in fact caused the manufacturers to respond to the health issue by catering to the market for lower tar and nicotine content cigarettes. The Philip Morris Company introduced a new “low tar and nicotine” varied length and filter cigarette brand called “Marlboro Lights,” just after New York passed its tax and nicotine content laws.

e Although the traditional flat-rate cigarette tax in New York, New York State, and five neighboring states during the last ten years reveals a small decrease in the number of packs taxed per capita after most increases in the tax rates. McKeevfy Study, part of the data and analyses prepared for New York City, on file with the Bureau of Narcotics and Dangerous Drugs, 1969; United States Public Health Service’s National Advisory Cancer Council recommended in 1970 that the federal government should completely ban cigarette smoking, Cigarette Smoking, Hearings, supra note 22, at 455, 456, and p. 1, at 87. FEDERAL TRADE COMMISSION, REPORT TO CONGRESS PURSUANT TO THE PUBLIC HEALTH CIGARETTE SMOKING ACT, December 1967 and 1970.

f In the words of a committee reporting to the Surgeon General: “The preponderance of scientific evidence strongly suggests that the lower tar and nicotine content of cigarette smoke, the less harmful are the effects.” Hearings on H.R. 643, 1327, 3053, 6543, and Similar Bills Before the Committee on Interstate and Foreign Commerce, 91st Cong., 1st Sess., ser. 91-11, pt. 2, at 485 (1969).

g See Hammond, Smoking in Relation to Public Health, Public Health, 152, 153 (1961). In 1910 his “lowered tar and nicotine” levels were 6, 9, and 13 percent of 184 (1961); Wynder & Hoffman, Reduction of Tumorigenicity of Cigarette Smoke: An Analysis of a Concept, Science, 139, 139-141 (1965); Forat, Tobacco Control, supra note 19, at 910 (1969); Moore, Bross, Shamberger & Bock, supra note 19, at 323 (1967).

h Such as carbon monoxide, which displaces essential oxygen in the blood’s hemoglobin, has been linked to association with respiratory heart disease, and temporary mental slowing.

i The most comprehensive national studies of cigarette smoking usually associated with work loss and hospitalization seems firmly established (see, supra. stag notes 307 and 801). Smoking in Relation to Work Loss and Hospitalization, 34 ARcH. ENVIRONMENTAL HEALTH 208, 209 (1972).

j See Maxwell, supra note 18. In 1972 the average cigarette, taking nicotine content from 1.2 to 1.2 percent level as 1970, but an increase from 1.3 to 1.4 milligrams of nicotine (in a range of 1.0 to 1.8) per cigarette relative to 1970, Federal Trade Commission, The Tar and Nicotine Content of Cigarettes, April, 1972; Maxwell, Cigarette Smoke, 20 BARRON’S 158, 162 (1972). See L. Stanton, supra note 19, at 7, col. 1.

k Generally, king-sized cigarettes have higher tar and nicotine levels and are heavier in weight and length than filtered cigarettes. See note 12 supra. Generally, king-sized cigarettes have high-

l The Surgeon General, supra note 19, at 910 (1969); Moore, Bross, Shamberger & Bock, supra note 19, at 323 (1967).

m See, supra note 16. Telephone interview with Dr. D. Schoplind of the New York City Fire Department, Feb. 16, 1972. Telephone interview with Dr. D. Schoplind of the New York City Fire Department, Feb. 16, 1972.

Beer is taxed at a rate of $9.00 per thirty-one gallon barrel. 26 U.S.C. § 5051 (1970). If beer were taxed at the distilled spirits rate, the tax per unit would be five times as high. Essentially, the same is true of the raises in the price of cigarettes. The higher rates for higher proof drinks are defended instead primarily on the grounds of general deterrent effectiveness. Moreover, there is a great deal of difference between beer and scotch, table wine and sherry—much more so than between Winstons and Marlboros. This difference is particularly important when comparing effectiveness of a tax designed to cause switching by creating price differences. None­theless, the differences that do exist in fact can be encouraged by some marginal switching from distilled spirits to “the poor man’s drink.”


The costs of the smoking-related illnesses and premature death cannot of course be quantified. Even if exact charges could be calculated, administrative limitations would probably not allow as many rate differentials between beer and cigarettes as the differences in the so imposed costs would justify.

Given the difficulty of preventing such smuggling, the government might well consider alternative taxes based on something that goes on in the mind rather than in the body. See Robertson, supra note 19, at 323, 331; Moore, supra, note 19.
clearly been the case in New York. The size of the tax will be a major factor in these decisions. The yields per pack from the tax are more easily absorbed than a dime. See pp. 1506-06.

In 1971, the major cigarette manufacturers cut their prices forty percent to deal with "economy cigarettes" sold by competitors. Robertson, supra note 36, at 31-32.

In any event, the calculation does not include wholesaler and retailer margins because these men are unlikely to be willing to give up much of their margins to protect a brand one another as long as total sales are not immediately threatened.

Even after the one-price tax was enacted, the Philip Morris Company introduced "Mariboro Lights," a variant on their leading Mariboro brand with tar and nicotine levels "lowered" below the city's cut-off points. This introduction of a variant on a major brand, instead of an entirely new name, was a departure from the industry norm. At the same time, American Brands introduced a conventional new low tar brand, "Lucky Strike," and Philip Morris "Mariboro Lights.

The introduction of these brands may have been caused by factors other than the New York tax, such as a growing consumer demand for low or tar cigarettes as a result of the health issue. It is quite probable, however, that the tax at least added to the already considerable "health issue" pressure on the industry, and possibly suggested a way to respond.

"Tar and Nicotine Ordinances, Local Law 34, § 1, N.Y., N.Y.N., ADMIN. CODE § 640.6 (Supp. 1971).

In spite of his authority to control prices, the Financial Administration initiated an effort only to the extent that all retailers post notices provided by the city explaining why and how much each brand is taxed. See The New York Times, Dec. 2, and N.Y. TIMES, Dec. 24, 1971, at col. 3.

Robertson, supra note 36, at 29-34.

LUCY SCHNABEL CULTURE, June 1970, at 9 TOBACCO SITUATION.

See note 13.

This estimate is computed by determining how many packs of cigarettes actually passed through the city's tax mechanism by dividing total revenue from the low-four-centers tax by the tax rate of 122-23.

By taking the pretax proportion of total cigarette sales attributable to each level of tar and nicotine consumed, one can compute what the size of the difference would be if no shifting had occurred. The average monthly revenue from New York's one-price tax is $217 million per year.

The two per cent increase attributed to the tax and nicotine tax is derived as follows.

The difference would be explained if there had been a shift of 12.7 per cent of all cigarettes sold from high tar and nicotine to exempt brands. This figure assumes that the yield per pack from the tax is $0.03. Since the city's tax was a flat-rate tax, the average yield per pack from the tax is $0.03. This figure is used to compute the average yield per pack from the tax and the average yield per pack from the tax.

The calculation of twenty per cent of the tax is made on the basis of the assumption that the tax would be levied on only half the cigarettes sold.

The low tax differentials of three to four per cent are often used to explain the ease with which smokers switch to other brands. The reason why this is so is that the tax is levied on all cigarettes sold, not just on those sold to smokers who buy from legitimate dealers. Since those who buy from the tax and nicotine tax sources will almost always buy the same brand in both places, the trend observed in sales attributable to each level of tar and nicotine is not significantly affected by the tax.

Thus, some New York smuggling operations are reported to be charging a higher price for cigarettes subject to the tax and nicotine tax than for cigarettes subject to the tax.

The low tax differentials of three to four per cent are often cited as evidence of the ease with which smokers switch to other brands. The reason why this is so is that the tax is levied on all cigarettes sold, not just on those sold to smokers who buy from legitimate dealers. Since those who buy from the tax and nicotine tax sources will almost always buy the same brand in both places, the trend observed in sales attributable to each level of tax and nicotine is not significantly affected by the tax.

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See supra note 51 and supra note 53.

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and small stores. Increased price variation would reduce the value of these older machines, thereby hurting the small businesses.

In either case the vending machine companies, whether the taxes are on cigarettes or tobacco products, would prefer to have more of one brand than those taxed at a higher rate, which should lead operators to sell a larger percentage of low tax cigarettes.

Vending machine operators in New York City have experienced a short-term conversion that resulted in increased record keeping, the vending machines required for exchanges as a result of the higher state tax. Increased price variation also has increased small stores. Increased price variation would reduce the value of these older machines. Increased price variation would reduce the value of these older machines. Increased price variation would reduce the value of these older machines.

The Saurenman, regardless of the volume smuggled. However, the civil tax penalties, which are based on the unpaid cigarette tax, would be increased, plus fifty percent of the unpaid cigarette tax. Any increase in cigarette taxes, regardless of its form, will have to meet the objections of the industry. The poor and near-poor begin smoking at an earlier age and smoke more than the wealthier smokers. The Federal Trade Commission estimated in 1963 that 40% of all smokers are women. In 1965, the FTC estimated that the average per capita expenditure on cigarettes was $100 per year, or about $1 per month. The FTC also estimated that the average smoker on any given day would smoke about 20 cigarettes.

Many states have imposed cigarette taxes in the past few years, and in some instances these taxes have been increased. The New York State tax on cigarettes, for example, was increased from 20 cents to 50 cents per pack in 1970. The New York State tax on cigarettes is used to support the maintenance of the state's health care programs.

The New York State tax on cigarettes is used to support the maintenance of the state's health care programs. The tax is paid by the consumer and is not deductible. The tax is imposed on both cigars and cigarettes. The tax is collected by the state and is paid by the consumer at the time of purchase. The tax is based on the price of the cigarettes and is not based on the number of cigarettes purchased.

The New York State tax on cigarettes has been a controversial issue. Some people feel that the tax is too high and is unfair to low-income people. Others feel that the tax is a necessary part of the state's health care programs.

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March 12, 1973

CONGRESSIONAL RECORD—SENATE

threat. It could afford to do so, even in the face of steep local taxes, if a procedure for supporting local dealers with resources from the Federal Government would be developed and utilized. In the words of one New York City official, "Who can oppose a tax on cancer?"

S. 456

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 "Cigarette Tar Tax Act".

Sec. 2. (a) Section 5701(b) of the Internal Revenue Code of 1954 (relating to tax on cigarettes) is amended to read as follows:

"(1) Cigarettes, manufactured in or imported into the United States, shall be taxed at the rate of -- cents for each cigarette; except that for each-- milligrams the tax shall be increased by -- cents."

"(b) In addition to the tax provided for in subsection (a), there is hereby imposed a tax of -- cents for each ten cigarettes, where the nicotine content exceeds -- milligrams per cigarette over -- milligrams per cigarette the tax shall be increased by -- cents.

"(c) The term "use" means the exercise of any right or power actual or constructive and shall include but is not limited to, the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale.

Sec. 2. The [State Commissioner of Revenue] shall prepare annually a list of the tax, and nicotine content of all brands of cigarettes sold within this State. In establishing said list, the most recently published report of the Federal Trade Commission concerning the tar and nicotine content of said cigarettes, at the following rates:

1. -- cents for each ten cigarettes where the tar content exceeds -- milligrams per cigarette; except that for each -- milligrams per cigarette over -- milligrams the tax shall be increased by -- cents.

2. -- cents for each ten cigarettes where the nicotine content exceeds -- milligrams per cigarette; except that for each -- milligrams per cigarette over -- milligrams the tax shall be increased by -- cents.

"(d) The term "use" means the exercise of any right or power actual or constructive and shall include but is not limited to, the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale.

Sec. 2. The [State Commissioner of Revenue] shall utilize the list provided for in Section 2 to annually assess the amount of additional tax to be imposed on each brand and type of cigarette as provided in Section 1(b).

Sec. 4. The [State Commissioner of Revenue] is hereby empowered to do all acts necessary for effectuating the purposes of this law, including adoption of rules and regulations in the nature of the necessary statutory purpose.

Sec. 5. It is intended that the ultimate incidence of the tax shall be upon the consumer of such tobacco, and that the [State Commissioner of Revenue] may provide by appropriate regulation for the maintenance of such differentials in wholesale and retail prices of cigarettes sold by any vendor, other than the manufacturer, so as to reflect the amount of tax attributable to the tar and nicotine content of cigarettes, and the burden of proof that any cigarettes are not taxable hereunder shall be upon the person in possession thereof.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ROBERT C. BYRD. Mr. President, if the Chair will recognize me, I will be glad to yield to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for an additional five minutes.

Mr. MOSS. Mr. President, I thank the Senator from West Virginia for his courtesy.

QUORUM CALL

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

PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

NOTICE PUBLISHED IN THE FEDERAL REGISTER

A letter from the Acting Assistant Secretary for Science and Technology, Department of Commerce, transmitting, for the information of the Senate, a notice published in the Federal Register that a flammability standard for children's sleepwear, sizes 7 to 14, shall be prima facie evidence of the tar and nicotine content of the various brands of cigarettes.

Reports of Committees

The following reports of committees were submitted:

By Mr. HUMPHREY, from the Committee on Agriculture and Forestry, with an amendment:

H.R. 4278. An act to amend the National School Lunch Act to assure that Federal financial assistance to the child nutrition programs is maintained at the level budgeted for fiscal year ending June 30, 1973 (Rept. No. 93-50).

By Mr. CANNON, from the Committee on Rules and Administration, with an amendment:

S. Res. 80. An original resolution to pay a gratuity to Shirley L. Bacon. Placed on calendar.

By Mr. FULBRIGHT, from the Committee on Armed Services, with an amendment:

S. 500. A bill to require that future appointments of certain officers in the Executive branch of the President be subject to confirmation by the Senate (Rept. No. 93-50).

Referred to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HUMPHREY, from the Committee on Agriculture and Forestry, with an amendment:

H.R. 4278. An act to amend the National School Lunch Act to assure that Federal financial assistance to the child nutrition programs is maintained at the level budgeted for fiscal year ending June 30, 1973 (Rept. No. 93-50).

By Mr. CANNON, from the Committee on Rules and Administration, with an amendment:

S. Res. 80. An original resolution to pay a gratuity to Shirley L. Bacon. Placed on calendar.

By Mr. FULBRIGHT, from the Committee on Armed Services, with an amendment:

S. 500. A bill to require that future appointments of certain officers in the Executive branch of the President be subject to confirmation by the Senate (Rept. No. 93-50).

Referred to the Committee on Armed Services.
The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred to as indicated:

S.1162. A bill to encourage the development of the natural energy resources of the United States in order to assure dependable and adequate energy supplies. Referred to the Committee on Interior and Insular Affairs, by unanimous consent.

S.1163. A bill to provide for a program for the regulation of surface mining of coal, and for other purposes. Referred to the Committee on Interior and Insular Affairs, by unanimous consent.

S.1164. A bill to provide for the establishment of the Guano River National Park in the State of Florida, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

S.1165. A bill to amend the Federal Cigarette Labeling and Advertising Act of 1965, as amended by the Public Health Cigarette Smoking Act of 1969, to define the term "little cigar" and for other purposes. Referred to the Committee on Commerce.

S.1166. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to extend the establishment of a Federal motor vehicle safety standard with respect to rear lighting. Referred to the Committee on Commerce.

S.1167. A bill to supplement the antitrust laws, and to protect trade and commerce against oligopoly power or monopoly power, and for other purposes. Referred to the Committee on the Judiciary.

S.1168. A bill to provide for the establishment of an Older Workers Conservation Corps, and for other purposes. Referred to the Committee on Labor and Public Welfare.

S.1169. A bill for the relief of Henry Edmunds, Sr. Referred to the Committee on the Judiciary.

S.1170. A bill authorizing additional appropriations for Peace Corps. Referred to the Committee on Foreign Relations.

S.1171. A bill to amend the Foreign Service Act of 1947, to authorize additional appropriations, and for other purposes. Referred to the Committee on Foreign Relations.


S.1173. A joint resolution to authorize the President to issue a proclamation designating the last full calendar week in April as "National Secretaries Week." Referred to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

M. R. BELLMON: Mr. President, plainly the events of the last few months have proved that the United States must have a clear, concise, definite national energy policy. I am today introducing a bill to help accomplish this objective.

This proposal is based primarily upon my experiences as a member of the Interior Committee which, under the leadership of its able chairman, Senator Randolph, has produced months of hearing on energy policy. These hearings are pursuant to the terms of Senate Resolution 45 whose principal author is the distinguished Senator from West Virginia (Mr. Randolph).

It is not the intent of this proposal in any way to attempt to preempt the work of the Senate Interior Committee, which is well along in developing a proposal for a national energy policy under the terms of Senate Resolution 45. Rather, it is my intent to sum up the impressions gained in 20 years of a period of study by the Interior Committee and to contribute to the total effort of the Senate in developing a national energy policy.

Mr. President, absurd as it sounds, every American citizen of this Nation should now be giving thanks for the weatherman—we should bless him because he has been particularly rough on us this winter. This winter he has hit the country with a series of low blows almost unparalleled in our country's history. Consider—record snows in the South, record early cold in the Midwest, record rains in the Corn Belt, January temperatures 20-30 degrees below normal, and ice storms all over the Nation. In so doing he has done the country a real favor.

Until now, our country has been fiddling while the natural energy resources went to waste. The Nation up to its energy problems and bringing environmental realism than all the energy spokesmen to the country.

Miraculously, just when the weatherman had the country down for a nine-month away, he relaxed his grip; and it now appears we will make it through the rest of the winter without people freezing in the dark.

But another winter is less than 12 months away. We must use this time to correct the senseless energy policy or lack of policy we have followed these past 20 years.

The energy problem—whether it is a crisis or not—now has the country's attention. It does not take many hours in a cold home or office or many days of factory shutdown to convince folks that the Nation's energy problems are very real and very, very present.

The question is asked: Do we need to run out of oil? Do we need to run out of natural gas? No, we had oil in the ground to last at least 500 years. We have more than enough natural deposits of oil, natural gas, uranium, coal, and oil in the ground to last at least 500 years.

Beyond that, who knows? By then surely we will have perfected a solar cell or harnessed fission or learned to draw heat from the earth. In fact, we may have practical, workable breeder reactors operating by 1990. Our big energy problem consists of getting along for these next 20 years. A person can get awfully cold and hungry in 20 years, or 20 days, or 20 hours.

If all these natural energy sources are lying around, how did we get in this shape? Let me tell it like it is. The plain, bald fact is this: Our problem is mostly the fault of Government.

First, there is the Federal Power Commission. It got started in the energy policy business after production got going, as other gas producing States got fed up with seeing their natural gas being burned up in flares. They passed laws saying the oil producers could not sell their crude oil below a certain price, and even producers found a market for their natural gas.

That forced the producers to scramble around to find buyers for the natural gas which no one seemed to want so the companies could sell the crude oil which everyone wanted. So gas was for sale to anyone— at any price. Big pipelines were built from Texas, Kansas, Wyoming, Louisiana, Oklahoma, and other gas producing States to the large cities where natural gas was a much more desirable fuel than the coal that had been used for fuel.

This is where the Federal Commission came along. Government became concerned that once the cities were hooked, literally, on natural gas, the producers would rate it. The FPC's job was to see that the consumer got a fair shake. No gouging.

For awhile everything went well. Even the natural gas was sold for so cheap no one could afford to drill for it. But the producers found plenty of gas accidentally as they drilled more and more oil wells. Coal mines either shut down or failed to expand because who wanted dirty, sweaty, coal producers could not sell their crude oil below a certain price, and even producers found a market for their natural gas.

Now the plot thickens. Because cheap gas took over much of the market the prices of other kinds of fuel were depressed. Even crude oil could not compete, at least not when it was produced in the high-cost fields in the continental U.S.A.

So the oil producers began to look around. They found fabulous oil fields in what is now the oil producing area of the Persian Gulf. When this oil began to threaten the oil industry, the old black oil companies—so to speak—bought the Persian Gulf oil fields for a bajillion dollars.

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So the oil producers began to look around. They found fabulous oil fields in what is now the oil producing area of the Persian Gulf. When this oil began to threaten the oil industry, the old black oil companies—so to speak—bought the Persian Gulf oil fields for a bajillion dollars.
The purpose of the oil import program was to hold down the level of imported crude to about 12 percent of U.S. consumption. It was felt that the country's national security would be endangered if we became dependent for more than that amount of imported crude. Also, the oil import program helped hold the price of domestically produced crude up to levels that made continue U.S. production profitable—at least for a time.

All this time, the United States and world demand for energy was growing—air conditioning, space heating, more and more cars, bigger trucks and planes and cars and trains. No one worried about running out of fuel. No one entered the environmentalists. These are the folks who feel that anyone or anything that messes up the air or water or earth should be stopped.

Among the worst of the bad guys in the market place are those who dig oil wells in the ocean and occasionally spill some crude. In the same category are the coal miners who strip away the overburden to get at seams of coal andlegg. Not far behind are the utility companies who build power generating plants in places where danger from atomic leakage or pollution exists. A special degree of hatred was reserved by the environmental movement for the companies who wanted to build a high oil line across the Alaskan tundra to bring north slope oil to consumers in the lower 48 States.

So while a bigger and bigger population was using more and more energy to live better and better, the domestic energy-producing industry was getting bigger and further and further behind.

Lacking profits comparable with those earned by investments in other types of endeavors, the domestic energy industry either languished or went to foreign countries. No man who wished to have his cake and eat it too had enough available to turn electrical generators. Even though there is oil in oil shale deposits sufficient for several hundred years, none is being produced.

Plainly, something is wrong—and as is often the case, much of the blame rests upon Government.

Take the Federal Power Commission, for example. By holding down the price of natural gas to unrealistically low levels, it encouraged overuse of natural gas. The price of burning fuel is being burned under boilers because it is cheaper than other fuels. At the same time, because gas is so cheap, production of other fuels is discouraged.

Take Congress. Right when Government should have been providing an economic incentive to accelerate domestic oil and gas production, Congress hiked taxes on the energy industry by some $700 million annually. This tax increase simply meant $700 million less each year for developing new energy supplies.

Take the Treasury and Interior Departments. Right when drilling on the Outer Continental Shelf and other Federal lands should have been accelerated, the availability of public land for energy development was actually reduced. Also, the construction of the Alaskan Pipeline was postponed for years—and still is.

So here we are in this country—sitting on hundreds of years' supply of energy, but our fuel tanks are nearly empty. Here we are with spring upon us, and already there is talk of gas rationing for the coming summer.

To illustrate the problem, I would like to quote from a letter I received recently from Earl R. Gibble, president of the Gibble Oil Co. in Cushing, Okla. Mr. Gibble wrote:

I am sure you are aware of our problems here in Oklahoma, particularly in the Cushing area, through Forrest Fuqua with Midland Oil and Gas. He has made so many trips to Washington to talk with you. Gibble Oil Company has always purchased all of its fuel oil from wells that the company has closed the refinery, we will have to close our stations. We have a little over 200 stations in Oklahoma. We only have a 55% supply left in March, 11% in February, and a 50% supply for March. At present we have no supply at all for April. That means over two hundred families will be without employment. We certainly hate to have to give up what we have worked 37 years to build.

Now what we need is to find oil, and too, we need pipe lines laid into the Midwest whereby we can get some of this foreign oil in the United States. The oil companies have told you many times that we are afraid at the time that this was going to happen. We are afraid it will happen.

Also I would like to quote from a letter Mr. Gibble sent to all Gibble Gas dealers on February 6, 1973:

We really have some bad news for you this time. This I hate to tell you, As you know, I have told you many times that we would have or I believed that we would have plenty of gas for the Gibble Gas stations. This is what the refinery has been telling me, that they were going to take care of Gibble Oil Company. Now they are running short of crude and it is impossible to meet the needs for the refinery. The first we knew we were going to be short was the first of this month. Then we didn't know how much. The refinery officials here have just gotten back from a meeting with the officials in Minneapolis. On Saturday, February 5, they told us the refinery is cut back 45% on our January purchases. They were 3,170,391 gallons and the amount we will have for the month is 1,764,040 gallons. The amount we have for you is 85% of what you purchased in January.

What must we do? Two courses are open to us. We can continue on the path we have followed. We can continue to develop our abundant environmentally and economically—the production of energy from our abundant domestic resources. Following this course we will see the U.S.A. 50-percent dependent upon imported crude by 1976—the drain on our foreign exchange will be at least $9 billion per year. The danger and damage from this policy is plain. What if the energy hungry countries out-bid us for their oil in the ground than our shrinking dollars—which they do not need—in the bank? What if the other energy hungry countries out-bid us for the world's limited supply of oil? Over dependence on energy imports is an open invitation to economic chaos and national disaster.

Fortunately another course is open. We can adopt a national energy policy geared to make the country basically self-reliant. This is what we should have done long ago energywise. By doing so we avoid both the economic and national security dangers which accompany high levels of oil imports. By so doing we can ensure genuine freedom to live and grow that we have had during our lifetimes.

Mr. President, the bill is not long and it is not complicated. Briefly, here is what the bill does. It assigns the authority and the responsibility of the present Joint Committee on Atomic Energy to encompass all forms of energy. This Congressional public forum for debating and deciding Government policy relating to atomic energy which this committee provides will be extended to cover all energy forms.

If such a forum exists, as a result much misinformation on energy matters has been inflicted upon energy users who have had no opportunity to have the full facts. This condition needs to be remedied immediately.

At present there is no official in the executive branch below the level of the President who has the stature and the clear authority to adequately deal with such a position, an Under Secretary of Interior for Energy.

Since much of the Nation's remaining energy resources are on public lands, immediate steps must be taken to make these deposits available for development if the Nation's energy needs are to be reliably met. The bill makes such action National policy. It further provides an additional option for leasing so that capital needed for exploration and development will not be unnecessarily immobilized. Total income to the Government will likely be increased.

The bill makes provision for a government commission to develop methods of reducing waste and improving the distribution of the Nation's scarce energy resources.

Mr. President, present unrealistic government regulation of domestically produced natural gas has caused wasteful overutilization and serious underproduction of this conventional clean burning fuel. This bill provides for the orderly deregulation of all natural gas prices. Market influences will quickly restrain wasteful usage of natural gas and accelerate serious underproduction of this conventional clean burning fuel. This bill provides for the orderly deregulation of all natural gas prices.
undeepable imported liquefied natural gas, will then be better served.

Mr. President, at the very time the Nation's energy requirements began to exceed our producing capability the Congress acted to remove or decrease one of the most important incentives for new exploration and development—the depleting allowance. Predictably, the rate of drilling new oil and gas well has declined.

The number of U.S. wells are as follows: 1956, 16,207; 1960, 11,704; 1965, 9,466; 1970, 7,683; 1971, 6,622; and 1972, 5,878.

This trend must be reversed or the Nation's present energy crunch will become a catastrophe.

This bill provides a new means of applying the depleting allowances to provide an extra incentive for exploring and developing the Nation's domestic energy resources.

In order to accelerate research on new and better means of finding and developing domestic energy resources, the bill provides for a leveling Industry-wide drilling efforts. The same provisions would allow joint or coordinated programs to desulfurize coal or crude oil.

Mr. President, as was done when atomic energy was first developed, provision is made to allow the Defense Department to contract for new sources of needed fuel at above current market prices. This provision will allow for construction and operation of demonstration plants to produce crude oil from coal or oil shale. Several years will be saved by getting these plants into operation now before the economic viability of the industry would normally justify such investments.

Mr. President, I ask unanimous consent that the bill may be printed in the Record, together with a section-by-section analysis of the bill.

There being no objection, the 6, 11 and 12 provisions were ordered to be printed in the Record, as follows:

S. 1162

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be known as the "National Energy Resource Development Act of 1973."

TITLE I—CHANGE OF JOINT COMMITTEE ON ATOMIC ENERGY INTO JOINT COMMITTEE ON ENERGY

CHANGE OF NAME AND FUNCTIONS


(1) by striking out "Atomic" in the chapter heading;

(2) by striking out "Atomic" in section 201; and

(3) by striking out section 202 and inserting in lieu thereof the following:

"Sec. 202. (a) Notwithstanding any provision of law to the contrary, the Secretary of the Interior shall determine and put into effect, not later than ninety days after the date of enactment of this Act, with respect to mineral leases entered into or renewed thereafter, the amount of payment for the system of leasing, a system of payments for mineral leases on offshore Federal lands which is based on the amount of production under such leases, and which includes work performance requirements determined by the Secretary.

(b) Leases issued or renewed after enactment of this Act shall not be transferable nor may lessee acquire partners without the express consent of the Secretary of the Interior.

INCREASE IN MINERAL LEASING

Sec. 203. The Secretary of the Interior shall immediately undertake a program to increase the acreage under mineral leases on offshore Federal lands in the first year after the date of enactment of this Act to an amount equal to five times the amount of that acreage for the year 1972 for leases which are included for the purpose of determining—

(1) means of making the optimum utilization of energy supplies, including but not limited to matters relating to energy supplies, conservation, and environmental protection, and

(2) means of improving energy logistics, including but not limited to flexibility in water and power systems and the relationship to energy processing and consuming centers. The Commission shall make an investigation and study of such investments, to the Congress and the Secretary of the Interior.

(3) there is authorized to be appropriated for this purpose a sum not to exceed $500,000.

TITLE III—TERMINATION OF FEDERAL POWERS COMMIS'SON'S AUTHORITY TO REGULATE CHARGES FOR THE PRODUCTION OR GATHERING OF NATURAL GAS

AMENDMENT OF NATURAL GAS ACT

Sec. 301. Section 5 of the Natural Gas Act (15 U.S.C. 717d) is amended by inserting at the end thereof the following new subsections:

"(c) Notwithstanding any other provision of this Act except as provided in subsection (b), the Commission shall establish, not later than ninety days after the effective date of this subsection, a minimum charge for the production and gathering of natural gas by a natural gas company. Such charge shall be equal to the average charge, during the calendar year immediately preceding the year in which the charge is in effect, for the gathering of domestically produced and gathered natural gas (not including any charge for transportation), multiplied by 60 per cent thereof. Effective one year after such charge, the Commission shall increase such charge by an amount equal to 25 per cent thereof. Effective three years after such increase the Commission shall establish an additional increase amounting to 25 per cent of the previous year's charge. A minimum charge pursuant to this subsection shall apply only to contracts for sale entered into on or renegotiated during the period when such charge is in effect.

"(d) Effective three years after the initial establishment of a minimum charge pursuant to paragraph (c) of this subsection, the Commission with respect to the fixing of the charge for the production or gathering of natural gas in accordance with a plan for phased deregulation which makes adequate provision for the time, at the end of such three-year period, when such authority of the Commission will terminate.

(e) Effective on the date of enactment of this subsection, the Commission shall have jurisdiction with respect to the fixing of the charge for the production or gathering of natural gas which is brought into production after such date is terminated."
TITLE IV—ADDITIONAL PERCENTAGE DEPLETION FOR OIL AND GAS AND ELIMINATION OF PERCENTAGE DEPLETION FOR OIL AND GAS PRODUCED OUTSIDE THE UNITED STATES

Sec. 401. (a) Section 613 of the Internal Revenue Code of 1954 (relating to percentage depletion) is amended by adding at the end thereof the following new subsection: "(e) Increased Domestic Production of Oil and Gas.—

(1) Additional percentage depletion allowed.—In the case of oil and gas wells located in the United States, the percentage specified in paragraph (1) shall be increased by 1% for each 5% or major fraction thereof of increased production by the taxpayer during the taxable year beginning after the date of enactment of this Act. The rate of increase for increased production by taxpayers located in the United States shall be 5% per year. The increased percentage of increased production by taxpayers located in the United States shall be 10%.

(2) Increased production.—For purposes of paragraph (1), the percentage of increased production by a taxpayer during any taxable year is the percentage by which the amount of oil and gas produced by him from wells located in the United States during the taxable year exceeds the amount of oil and gas produced by him from wells located in the United States during the taxable year beginning after the date of enactment of this Act.

(b) The amendment made by subsection (a) shall not apply to taxable years beginning after the date of enactment of this Act.

AMENDMENTS OF INTERNAL REVENUE CODE OF 1954 APPLYING TO INTERNAL RESOURCES

Sec. 402. (a) Effective with respect to taxable years beginning during the one-year period beginning after the date of enactment of this Act, the provision of section 613(b)(1)(A) of the Internal Revenue Code of 1954 (relating to percentage depletion rate for oil and gas wells) is amended to read as follows: "(A) oil and gas wells located in the United States (if located outside the United States, the rate shall be 15 percent.

(b) Effective with respect to taxable years beginning during the one-year period beginning after the date of enactment of this Act, the provision of section 613(b)(1)(A) of such Code is amended by striking out "15 percent" and inserting in lieu thereof "20 percent".

(c) Effective with respect to taxable years beginning during the one-year period beginning after the date of enactment of this Act, the provision of section 613(b)(1)(A) of such Code is amended by adding at the end thereof the following new sentence: "In the case of oil and gas wells located outside the United States, the allowances for depletion under section 611 shall not be computed without reference to this section.

TITLE V—OTHER PROVISIONS TO PROMOTE DOMESTIC ENERGY SUPPLIES

Sec. 501. (a) The anti-trust laws, as defined in section 1 of the Act of October 15, 1914 (15 U.S.C. 12) and in the Federal Trade Commission Act (15 U.S.C. 41 et seq.), shall not apply to any joint agreement by or among persons engaged in the production or development of energy resources, including but not limited to secondary and tertiary recovery of crude oil or gas and extraction of hydrocarbons from coal and/or oil shale up to the level of new investment. Any such agreement is solely for the purpose of carrying out research to improve such production or development of energy resources. (b) In the case of any such agreement, the provisions of this chapter shall apply to the price, value, or amount of such agreements or agreements among joint owners, including joint owners with respect to the control of the same activity, for the purpose of carrying out research to improve such production or development of energy resources.


(d) Nothing in this section shall affect any action of the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), the Clayton Act (15 U.S.C. 1 et seq.), or the Robinson-Patman Act (15 U.S.C. 13 et seq.), with respect to any such agreement for the purpose of carrying out research to improve such production or development of energy resources. For the purpose of carrying out research to improve such production or development of energy resources, the provisions of this chapter shall apply to the price, value, or amount of such agreements or agreements among joint owners, including joint owners with respect to the control of the same activity, for the purpose of carrying out research to improve such production or development of energy resources.

(e) Increased Domestic Production of Oil and Gas.—(1) The percentage of increased production by a taxpayer during any taxable year is the percentage by which the amount of oil and gas produced by him from wells located in the United States during the taxable year exceeds the amount of oil and gas produced by him from wells located in the United States during the taxable year beginning after the date of enactment of this Act.

(2) Increased production.—For purposes of paragraph (1), the percentage of increased production by a taxpayer during any taxable year is the percentage by which the amount of oil and gas produced by him from wells located in the United States during the taxable year exceeds the amount of oil and gas produced by him from wells located in the United States during the taxable year beginning after the date of enactment of this Act.

(b) The amendment made by subsection (a) shall not apply to taxable years beginning after the date of enactment of this Act.
Second, it zeroes in on the major source of abuse in mining, the strip-mining of the Appalachian region borders on disaster. I can sympathize with those who would ban coal surface mining, for the Appalachian region is extensively despoiled by coal surface mining brought into balance. It will bring strip mining under control when was time. The situation then as now in the Appalachian region borders on disaster. I sincerely hope that we will see action on this legislation early in this session.

Coal production in this country is an extremely important industry and demand for increased power in years to come. The last Congress saw many programs advanced representing a broad spectrum of approaches to this problem. Some of these failed to take full cognizance of the secondary and offsite impacts of thousands of acres of land in the West. It is imperative that the economic benefits and environmental hazard of coal surface mining be brought into balance. The bill demands that reclamation of the site as proposed is approved the Administrator may permit storage of excess spoil material. The bill demands that the program and a permit mechanism to effectuate these standards. After this initial 6 months no surface mining for coal could be carried on without a permit issued by EPA. Within 8 months after the promulgation of guidelines by the EPA—for which a period of 9 months has been established—a permit to submit programs covering the industry in that State. The Administrator must within 4 months thereafter either approve or disapprove the plan submitted. If the State program or a portion thereof is approved the Administrator may delegate to the designated State agency all or a portion of his authority under the bill.

As is apparent from the foregoing the Administrator of the permit program is vested with a great deal of discretion. He must plan with very difficult decisions bearing heavily upon the environmental and economic success of the program. In 1970, the administration, with the consent of the Congress, saw fit to create an agency to advise and protect the public interest in the industry. I am convinced that the public interest in the industry is served. The industry can and will move beyond these problems presently associated with it.

One such new technique—the so-called double-box cut method of mining—is presently being studied by the Tennessee Valley Authority. This spring I intend to view the results of the experiment. Hopefully this technique will prove to be one way of meeting the environmental problem in an economically sound manner.

I am convinced that those who decry extensive despoliation of the environment do not possess little faith in the ingenuity of American enterprise. The standards in the bill I have introduced demand no more than careful planning and employment of long available earth-moving techniques. Hopefully this technique will prove to be one way of meeting the environmental problem in an economically sound manner.

The bill which I have sent to the desk contains a permit program administered on an interim basis by the Federal Government to insure an immediate and timely response to the problem and then delegated to the States as they establish the machinery and power to deal with the problem. The bill requires that the regulatory scheme deal with all aspects of mining and reclamation—blasting and road building practices—to insure that landslides, erosion, and other offsite impacts of operations will be controlled, and that reclamation of the site will substantially restore both the original topography and vegetative cover. To assure that these requirements are carried out, a carefully monitored permit program is established, providing that no permit for mining shall issue if there is probable cause to believe that reclamation of the site as proposed by the applicant cannot be accomplished—if the mining operation will pose an undue hazard to adjacent lands or waters or if the mining would result in the degradation of a scenic resource valuable to the area.

Additionally before any permit can issue under this program a performance bond must be filed in an amount sufficient to reclaim the site should the permittee default in his obligation. The bond remains in effect throughout operations and only reclamation, including revegetation, is complete.

While the bill necessarily leaves much of the detail of reclamation to regulation, it specifies several stringent standards.

Reclamation of the site must leave the land in substantially the same use and contour as existed prior to mining. The bill demands that revegetation be of plants and trees indigenous to the area and must have achieved sufficient stability to be self-sustaining. Offsite storage of spoil—long the prime cause of landslides and siltation—is allowed only to permit storage of excess spoil material and for construction of necessary drainage. The bill demands careful monitoring of such storage to insure that storage sites are rapidly stabilizing.

Under the bill existing State controls over coal surface mining would continue after enactment for a period of 6 months. During this period the Environmental Protection Agency would develop the regulations and guidelines for the program and a permit mechanism to effectuate these standards. After this initial 6 months no surface mining for coal could be carried on without a permit issued by EPA. Within 8 months after the promulgation of guidelines by the EPA—for which a period of 9 months has been established—a permit to submit programs covering the industry in that State. The Administrator must within 4 months thereafter either approve or disapprove the plan submitted. If the State program or a portion thereof is approved the Administrator may delegate to the designated State agency all or a portion of his authority under the bill.

For this reason, I have added a title to the bill at the desk giving the Soil Conservation Service of the Department of Agriculture the power to render technical assistance and grants of up to 75 percent of project costs to soil conservation districts across the Nation for the purpose of ameliorating problems resulting from orphan surface mine sites.
There are over 2 million acres of non-federally owned surface mined lands in the United States needing conservation treatment. In their present state, these areas are nonproductive, eroding, and subject to toxic runoff to the communities, counties, States, and the Nation. The annual load of sediment produced by erosion from these abandoned surface mined areas is estimated to range up to 300 million tons per year. Landfilling is being deposited on adjacent areas and in down-stream channels and reservoirs. In addition, acid draining from the mined areas in stream channels and reservoirs can contaminate water in streams and reservoirs. This erosion, pollution, and contamination is restricting the economic base of the people in the affected areas by unnecessarily limiting the available life sustaining soil and water resources.

The present efforts to rehabilitate old surface mined areas are inadequate. Damaging runoff from adjacent lands, water, fish, wildlife, and beauty continue. Much needs to be done and can be done to restore these areas and make them assets to the community with which they are land to redress their damaging effect on other areas. The incentive of Federal participation is needed to stimulate and assist local action. The necessary local organizations, Federal agencies and local units of government, already exist and are ready to participate in sponsoring needed improvements when Federal and State assistance is available.

A classic example of what can be done to reclaim lands affected by mining comes from West Virginia. Soil conservation districts there have been entering into contracts with mine operators to carry out reclamation treatments for nearly 20 years. Between 1954 and 1971, there were 4,948 plans developed covering 106,706 acres of affected lands. Of this area, 32,500 acres had been planted to protective vegetation.

But, this is only an example of what the unique cooperative efforts of soil conservation districts and the Soil Conservation Service can do. Our plan is to make this important environmental problem the subject of a USDA news release of September 14, 1972, and accompanying data by States showing how effective the work of this Federal agency and local units of State government have been.

I ask unanimous consent that the certain pertinent material be printed in the Record.

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

SCS HELPS TURN HAZARDOUS MINES Spoils INTO USEFUL LAND

WASHINGTON, September 14.—Surface-mined land can be transformed from a hazardous eyesore into acreage useful for many farm or community purposes, USDA Soil Conservation Service Administrator Kenneth E. Grant said today.

Mr. Grant announced that 10,000 private landowners re-claimed over a third of a million acres from 1968-71 alone, Mr. Grant said. He cited recent SCS reports from each state showing that landowners and mine operators had reclaimed a total of 388,000 acres in the seven-year period.

"Their work has resulted in significant reductions in soil erosion, sedimentation, and acid pollution of streams from these sites," Mr. Grant said. "They have added to the beauty of the countryside. And they have helped turn these lands into valuable property for forest, pasture or range, wildlife habitat, recreation areas, crop production, and other purposes."

Mr. Grant stressed that much more work needs to be done, since more than 4 million acres had been disturbed as of January 1, 1972, in surface-mining operations to harvest coal, sand and gravel, and some other commodities.

"More than 90 percent of this land is privately owned," Mr. Grant said. "It is intermingled with farm, ranch, forest and other land uses. And where such land is combined with which SCS already is giving conservation help through districts and in watershed projects and resource conservation and development projects."

Of the total acreage disturbed, Mr. Grant said that 2,181,200 acres needs land shaping, plantings, or water-control structures to prevent further land and water damage. The remaining 1,828,700 acres already have been reclaimed or have stabilized themselves over a period of years. Mr. Grant said that surface mining has been practiced for more than 100 years.

"About 15 percent of the land needing reclamation has been treated in the last seven years," Mr. Grant said. "This is significant progress, which indicates that there is no formal program for technical and financial help on these problem sites on private land. Distinct cooperators have undertaken mined-land reclamation as part of their overall conservation activities."

Mr. Grant said that about one third of the States now have districts calling for some form of surface-mined land reclamation work. Their provisions vary widely.

SCS participation in surface-mined land restoration began in the 1930's, Mr. Grant said. In addition to recommending vegetative and mechanical measures to restore a mined area, SCS also is active in developing new plants that can survive under the difficult slopes and acid conditions found on most surface-mined land. One of the 22 SCS plant materials centers, at Quickstand, Ky., was established specifically to locate, study, and increase the supply of plants suitable for surface-mined land. Several other centers also are turning out useful plants. Among those found especially well suited are deer-tongue grass, switchgrass, 'Carmel' autumn-sleep, 'Chemung' and 'Emerald' crown-vetch, 'Lat¬acho' clover, 'Red' brome, 'Chisholm' Red, Amur honeysuckle, Japanese bush isopseuda, and weeping lorgass.

These plants are well adapted to mined-land conditions and provide a higher percentage of surface cover in a shorter period of time than trees," Mr. Grant said. "They also provide excellent food and cover for many species of wildlife. And their flowers and foliage have a high esthetic value."

In addition to the new figures announced today, more details about surface-mined land problems and opportunities are in a 1971 SCS publication, MP-1082, "Restoring Surface-Mined Land." Copies are available from local SCS offices or for 15 cents from the U.S. Government Printing Office, Washington, D.C. 20402.

STATUS OF LAND DISTURBED BY SURFACE MINING IN THE UNITED STATES, AS OF JAN. 1, 1972, BY STATE (thousand acres)

<table>
<thead>
<tr>
<th>State</th>
<th>Land requiring reclamation</th>
<th>Land not requiring reclamation</th>
<th>Total land reclaimed</th>
<th>Total land disturbed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>127.9</td>
<td>43.1</td>
<td>171.0</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>26.7</td>
<td>28.3</td>
<td>55.0</td>
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<tr>
<td>Arkansas</td>
<td>11.3</td>
<td>6.4</td>
<td>17.7</td>
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<tr>
<td>California</td>
<td>60.7</td>
<td>105.5</td>
<td>166.2</td>
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</tr>
</tbody>
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*Compiled from estimates provided by State offices of the Soil Conservation Service, USDA.*

MINE-LAND RECLAMATION WORK IN CONSERVATION DISTRICTS: 1965-71 INCLUSIVE

<table>
<thead>
<tr>
<th>State</th>
<th>Number of districts</th>
<th>Number of cooperators</th>
<th>Area reclaimed (thousand acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>49</td>
<td>205</td>
<td>43.1</td>
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<tr>
<td>Arkansas</td>
<td>8</td>
<td>4</td>
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<tr>
<td>California</td>
<td>42</td>
<td>58</td>
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<td>Colorado</td>
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<td>4</td>
<td>52</td>
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<tr>
<td>Florida</td>
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<tr>
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<td>Ohio</td>
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<tr>
<td>Virginia</td>
<td>1</td>
<td>100</td>
<td>28.0</td>
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</table>
Mr. BAKER. Mr. President, this widespread interest on the part of private landowners prior to the recent emphasis on the problems associated with mining is significant. It is strong evidence that a sound Federal-State-private program will be locally supported.

Reclamation and conservation treatment of surface mined lands can be accomplished most effectively and efficiently as part of a total soil and water conservation program on privately owned lands. These lands are an integral part of the drainage area in which they are located and their treatment cannot be separated from other lands in the drainage area in which the Department of Agriculture is already giving technical and financial assistance. In short, the Federal organization already exists with longstanding working relationships with state and local governments and private landowners to get on with the job.

The Soil Conservation Service furnishes technical assistance through soil conservation districts to individual landowners and operators under the Soil Conservation Act of 1935. This agency and other USDA agencies also provide both technical and financial assistance for treating surface mined areas in small watershed projects and resource conservation and development projects that are high sediment producing sources. These programs are helpful and have produced good results as illustrated above, but they have not been adequate to treat the many critical areas in the Nation to which this bill would be applicable.

Experience gained under the existing programs has proven that mined areas and the associated spoil banks can be effectively treated. The cost of applying vegetative practices alone, however, will vary from $100 to over $300 per acre. Because of the nature of the spoil, the establishment of vegetative cover is unusually slow. May years will elapse before landowners can expect to realize onsite benefits from applying the sediment-stabilizing cover to the spoil.

The proportion of these costs to be borne by the private citizen, for industry, and for local, State, and Federal governments. Surface mined lands are intermingled with forested, agricultural, and other rural and urban areas. This makes it imperative that long-range solutions for surface mined land reclamation be based on total land-use planning. Plans for treating, developing, and land use on surface mined lands must be consistent with plans of adjacent lands and be applied on a watershed basis. Plans must provide for sound multiple use of forest lands, crop lands, and grasslands, and should emphasize improvements for fish, wildlife, and outdoor recreation. The impact of land use and treatment on water must receive major attention. It cannot be overemphasized.

Preventing damages on lands and waters to be mined in the future will be dealt with in other bills before the Congress and the Department of Agriculture and the Department of the Interior. The Department of Agriculture is already giving technical and financial assistance. In short, the Federal organization already exists with longstanding working relationships with state and local governments and private landowners to get on with the job.

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TITLE I—FEDERAL INTERIM PROGRAM

REGULATION

Sec. 101. (a) On and after the date of the enactment of this Act, no person shall mine any coal in or under the surface of lands under Federal jurisdiction, or any place for which a Federal interim permit is required, unless the mining is subject to the provisions of this Act or to any regulations issued pursuant thereto; or

(b) On and after two hundred and seventy days from the enactment of this Act, no person shall engage in or carry out any activity, including the extension of a coal mine from a surface mine subject to the provisions of this Act by surface mining methods, unless such person has first obtained a permit issued in accordance with the provisions of this Act.

CRITERIA

Sec. 102. (a) Within ninety days following the enactment of this Act, the Administrator of the Environmental Protection Agency in consultation with the Secretary of Agriculture and the Secretary of the Interior shall promulgate (and from time to time thereafter revise) such regulations as he deems necessary in connection with the surface mining of coal set forth:

1. the criteria for reclamation programs required in connection with the issuance of a permit to engage in the extraction of minerals by surface mining methods;

2. criteria on necessary procedures, methods and techniques to be followed in the operation of surface mining methods pursuant to section 103(a) of this Act, in accordance with the provisions of this Act;

3. criteria on land identification zones wherein, due to undesirable characteristics, mining or reclamation within such zones cannot be adequately reclaimed, surface mining shall not be permitted;

4. criteria on procedures, methods and techniques to be used in connection with the use of explosives in strip mining operations subject to this Act; and

5. criteria on regulating road construction necessary in connection with the surface mining operations subject to this Act.

(b) Such regulations shall insure, among other things that:

1. reclamation of the site will be carried out to a land use and contour substantially as it existed prior to commencement of operations by the applicant; and

2. the use of strip mining methods by the applicant is necessary in connection with the surface mining operations subject to this Act.

PERMITS

Sec. 103. (a) On and after the date of enactment of this Act and until a State regulatory program is in effect under title II of this Act, no permit for the extraction of coal or any other minerals as the Administrator shall by regulations prescribe in accordance with the provisions of this Act, or for any other activity, including the extension of a coal mine from a surface mine subject to the provisions of this Act by surface mining methods, unless such person has first obtained a permit issued in accordance with the provisions of this Act.

(b) Within ninety days following the enactment of this Act, the Administrator shall notify the Congress of the technical and economic feasibility of establishing national standards for the extraction of coal and such other minerals as the Administrator shall prescribe, that will be designed and constructed to meet the requirements of this Act; and the same extent and in the same manner as required for on-site reclamation.

(c) Upon investigating and approving or disapproving an application for a permit, the Administrator shall issue a permit under this Act or of any regulation issued pursuant thereto.

(d) The Administrator shall have the power to require any person filing an application or renewal application under this Act to provide a bond, in such amount as the Administrator may prescribe, for the performance of the purposes of this Act or of any regulation issued pursuant thereto, where such application or renewal application is in violation of any provision of this Act or of any regulation issued pursuant thereto; or

(e) The person filing such application is in violation of any provision of this Act or of any regulation issued pursuant thereto.

(f) The person has forfeited a bond or other security for the performance of the purposes of this Act or of any regulation issued pursuant thereto.

(g) The person has forfeited a bond or other security for the performance of the purposes of this Act or of any regulation issued pursuant thereto.

(h) The proposed plan of mining and reclamation would render practically or economically infeasible a significant known reserve of coal or would otherwise result in the wasting of a significant amount of coal.

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(j) No permit application shall be approved unless the plain of operation and reclamation required under section 103(b) of this Act or of any regulation issued pursuant thereto.

(k) Any person filing an application shall file with the Administrator a plan of mining and reclamation for the purpose of this Act or of any regulation issued pursuant thereto.

(l) The Administrator shall not notify the applicant that the application has been approved until after the receipt of the complete application, whether the application has been approved or disapproved. If the application has been approved, the Administrator shall issue the permit within the prescribed period, the applicant may request in writing a hearing before the Administrator prior to the issuance of the permit, which hearing shall be held within thirty days after receipt of the request.

(m) If the application for permit or renewal of permit is denied by the Administrator after the hearing, the applicant may appeal to the Court of Claims of the United States for the issuance of injunctions to restrain the Administrator or the applicant from proceeding with the operation for which the application was made.
is approved, the Administrator shall determine the amount of bond per acre that the operator shall furnish before a permit or renewal is issued. The amount of bond shall be in the notice of approval sent to the applicant.

(e) If the application is not approved, the Administrator shall state the reasons for the disapproval and may propose modifications, delete areas, or reject it entirely. If the applicant disagrees with the decision of the Administrator, he may request in writing a hearing before the Administrator. The Administrator shall hold the hearing within thirty days of the receipt of the request for hearing. The decision of the Administrator shall be final. The Administrator may prescribe regulations involving the fraud or any willful or knowing violation on the part of such permit holder; in all such cases an injunction may be issued and the operator may be held liable for any violation of the provisions of this Act.

BONDING REQUIREMENTS

SEC. 106. (a) After a permit application has been approved, but before a permit is issued, the applicant shall file with the Administrator the bond for performance, on a form prescribed and furnished by the Administrator, payable to the Administrator and conditioned that the applicant shall faithfully perform all the applicable requirements of this Act and regulations issued pursuant thereto. The amount of the bond required for each permit shall depend upon the reclamation requirements, and shall be determined by the Administrator. Liability under the bond shall be limited to the duration of mining at the operation and for a period of five years thereafter, unless released sooner as provided in the permit. All of this bond shall be executed by the applicant and a corporate surety licensed to do business in the United States, or the United States Government or such State, or bonds of the Government of such State, or negotiable certificates of deposit having a par value equal to or greater than the amount of the surety bond and issued by any bank organized or transacting business in the United States. Cash or securities so deposited shall be deposited upon such terms as the Administrator may prescribe.

(b) After the permit application has been approved, and the bond or deposit filed, the Administrator shall issue a permit to the applicant.

(c) Any permit issued pursuant to this title shall be effective for a period of ten years following its date of issuance. No surface mining operations shall be conducted until a reclamation bond for the operation is issued and action taken under section 110 immediately.

SECTIONS

SEC. 110. (a) (1) Whoever knowingly violates the provisions of this Act or obtains a permit or renewal thereof pursuant to this Act through fraud, shall be fined not more than $10,000.

(2) In addition to the fine authorized under paragraph (1) of this subsection, and subject to section 111, the operator of the operation which is subject to this Act if it shall appear that said bond or portion thereof may be so released consistent with the requirements of this Act and such regulations and terms not exceeding its term and the number and location of acres of land reclaimed. An annual report with the same type of information shall be filed by the applicant not later than the first day of February of each year for the previous year.

SEC. 111. (a) The Administrator may, subject to the provisions of this Act, revoke any permit or renewal thereof issued pursuant to this Act if he determines that:

1. the operator has violated any provision of this Act or any regulation issued pursuant thereto; or
2. such permit or renewal was obtained through fraud.

SEC. 111. (a) The Administrator may upon the application of the operator issue in whole or in part any bond issued pursuant to this Act if it shall appear that said bond or portion thereof may be so released consistent with the requirements of this title.

(b) If the Administrator does not approve the reclamation performed by the permittee, the Administrator shall notify the permittee within thirty days after the request for release is filed. The notice shall state reasons for said rejection, and shall accompany any refusal to issue said bond or portion thereof, and shall afford the operator an opportunity for hearing. Judicial review of any decision under this section shall be in the United States District Court for the District in which said operations are located.

TITLE II—STATE REGULATORY PROGRAM

PROGRAM

SEC. 201. (a) (1) Each State in which surface mining for coal is conducted shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within the time period specified in subparagraph (B) of this subsection, criteria and guidelines for reclamation of surface and subsurface lands affected by said operation. If upon the expiration of such period contained in that notification the State has not so complied, the Administrator, or he shall fail or refuse to terminate said operations as ordered by the Administrator, the Administrator shall immediately take action in accordance with the provisions of section 110 of this Act, to revoke such permit. If the Administrator orders the immediate termination of such operation prior to the date of expiration of such period, in compliance with the provisions of this Act and such regulations and terms with respect to which he was so notified, he shall take no action with respect to revoking such permit if the Rudding Administrator determined not to be a violation for purposes of sections 106 and 110. The provisions of this section requiring notification of noncompliance shall not apply in any case in which the Administrator has determined that it was adopted after reasonable notice and hearing and that—

(i) the criteria and guidelines for reclamation of surface and subsurface lands influenced by said operation are consistent with the requirements of this Act or any regulation issued pursuant thereto or the Administrator may request in writing a hearing before the Administrator. The Administrator shall have the hearing within thirty days of the receipt of the request for hearing. The decision of the Administrator shall be final. The Administrator may prescribe regulations involving the fraud or any willful or knowing violation on the part of such permit holder; in all such cases an injunction may be issued and the operator may be held liable for any violation of the provisions of this Act.

(ii) the criteria and guidelines for reclamation of surface and subsurface lands influenced by said operation are consistent with the requirements of this Act or any regulation issued pursuant thereto or the Administrator may request in writing a hearing before the Administrator. The Administrator shall have the hearing within thirty days of the receipt of the request for hearing. The decision of the Administrator shall be final. The Administrator may prescribe regulations involving the fraud or any willful or knowing violation on the part of such permit holder; in all such cases an injunction may be issued and the operator may be held liable for any violation of the provisions of this Act.

(iii) the criteria and guidelines for reclamation of surface and subsurface lands influenced by said operation are consistent with the requirements of this Act or any regulation issued pursuant thereto or the Administrator may request in writing a hearing before the Administrator. The Administrator shall have the hearing within thirty days of the receipt of the request for hearing. The decision of the Administrator shall be final. The Administrator may prescribe regulations involving the fraud or any willful or knowing violation on the part of such permit holder; in all such cases an injunction may be issued and the operator may be held liable for any violation of the provisions of this Act.

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(b) If the Administrator orders the immediate termination of any operation in which surface mining for coal is conducted, shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within the time period specified in subparagraph (B) of this subsection, criteria and guidelines for reclamation of surface and subsurface lands affected by said operation. If upon the expiration of such period contained in that notification the State has not so complied, the Administrator, or he shall fail or refuse to terminate said operations as ordered by the Administrator, the Administrator shall immediately take action in accordance with the provisions of section 110 of this Act, to revoke such permit. If the Administrator orders the immediate termination of such operation prior to the date of expiration of such period, in compliance with the provisions of this Act and such regulations and terms with respect to which he was so notified, he shall take no action with respect to revoking such permit if the Rudding Administrator determined not to be a violation for purposes of sections 106 and 110. The provisions of this section requiring notification of noncompliance shall not apply in any case in which the Administrator has determined that it was adopted after reasonable notice and hearing and that—

(i) the criteria and guidelines for reclamation of surface and subsurface lands influenced by said operation are consistent with the requirements of this Act or any regulation issued pursuant thereto or the Administrator may request in writing a hearing before the Administrator. The Administrator shall have the hearing within thirty days of the receipt of the request for hearing. The decision of the Administrator shall be final. The Administrator may prescribe regulations involving the fraud or any willful or knowing violation on the part of such permit holder; in all such cases an injunction may be issued and the operator may be held liable for any violation of the provisions of this Act.

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(C) It provides that permits are fixed on terms not exceeding two years; annual reports may be terminated or modified for cause including, but not limited to, the following:

(1) Violations of any conditions of the permit;

(2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(3) Changes in conditions that require either a temporary or permanent change, including conditions, in the permitted activity;

(4) It provides for inspection, monitoring, entering, and reports in a manner which will ensure the requirements of section 203 of this Act;

(5) It provides for abatement of violations of the regulatory program, including permits and permit conditions involving civil and criminal penalties and other ways and means of enforcement;

(6) It provides for the filing of restoration plans and procedures, including restoration measures taken during and after completion of surface mine operation;

(7) It provides for the posting of performance bonds sufficient to insure restoration in compliance with the approved restoration plan;

(8) It provides for the designation of a single agency, or with the Administrator's approval, an implementing agency, upon which the responsibility for administering and enforcing the program is conferred by the Administrator, which will be responsible for the implementation of those agencies responsible for air quality, water quality, and other areas of environmental protection;

(9) It provides for funding and manpower are or will be committed to the administrator for enforcement of the regulations sufficient carry out the purposes of this title;

(10) It provides for monitoring by the State agency of environmental changes in surface and subsurface waters to assess the effectiveness of the regulatory program; and

(11) It provides for revision, after public hearings, of such program from time to time, but at least every five years, as may be necessary to take account of revisions of criteria and guidelines under section 102 of this Act.

SEC. 202. (a) (1) Each State in which surface mining for coal is conducted shall, after reasonable notice and public hearings, adopt, and submit to the Administrator, within the time period specified in subparagraph (B) of this subsection, criteria and guidelines for reclamation of surface and subsurface lands affected by said operation. If upon the expiration of such period contained in that notification the State has not so complied, the Administrator, or he shall fail or refuse to terminate said operations as ordered by the Administrator, the Administrator shall immediately take action in accordance with the provisions of section 110 of this Act, to revoke such permit.
requirements of this section for permits or groups of permits where deemed appropriate.

(2) No permit shall issue until the Administrator determines that the requirements of this section for permits or groups of permits, including the rules issued under this section, have been met.

(3) If application for permits or parts of permits is denied, the Administrator may revoke any permit or order it modified in accordance with this section to result from a failure of the State in which such permit applicable to or part thereof, to which the Administrator shall withdraw approval of such program.

(f) If any permit application and any permit issued under this section shall be available to the public, in an appropriate place in each State. Such permit applications or permits, or portions thereof, shall be further available on request for the purposes of reproduction.

Sec. 202. INSPECTION, MONITORING, AND ENTRY

Sec. 202. (a) For the purpose of (1) developing or assisting in the development of any regulatory program under this Act or any permit under this Act, or (2) determining whether any person is in violation of any requirement of such a plan or any other provision of this Act.

(A) The Administrator may require any person owning or operating any surface coal mine to (i) establish and maintain such record, (ii) install, use, and maintain such monitoring equipment or method, and (iii) provide such other information as the Administrator may reasonably require; and (B) the Administrator or his authorized representative, upon presentation of his credentials and (i) shall have a right of entry, to upon, or through any surface coal mine or any premises in which any records required to be maintained under paragraph (2) of this subsection are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (2) of this subsection.

(b) The Administrator may, after notice, conduct an on-the-spot inspection of any of the conditions to be administered, and authorized representatives of the United States at any time, the authority granted under this section.

(c) Any records, reports, or information obtained under this section shall be available to the public, except that, upon a showing that such information is material and necessary for any judicial proceeding, the Administrator may exclude such information from public disclosure.

(d) No person shall have access under this section, if made public, would divulge methods or information that records, reports, or information, or particular part thereof, to which the Administrator has access under this section, and authorized representatives of the United States shall, upon a showing that such information is material and necessary for any judicial proceeding, the Administrator may exclude such information from public disclosure.

(e) No person who knowing makes any false statements or representations to the Administrator, or who otherwise violates any requirement of this Act or any regulation issued thereunder, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or both.

Sec. 203. (a) (1) Whenever, on the basis of information that such record, report, or information, or particular part thereof, to which the Administrator shall have access under this section, he shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program.

(2) Any person who knowingly makes any false statements or representations to the Administrator, or who otherwise violates any requirement of this Act, or any regulation issued thereunder, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or both.
TITLE III—ORPHAN MINE RECLAMATION

Sec. 301. Congress recognizes that there are large areas of non-Federal lands in the Nation which have been damaged by surface mining for coal and other minerals, have never been reclaimed or rehabilitated, and that runoff and erosion of soils in these areas is resulting in soil and water pollution, damage to adjacent lands, and injury to the public health and safety, and it is, therefore, declared to be the policy of Congress to provide Federal assistance in reclamation and rehabilitation of such lands and thereby to contribute to flood prevention, control and prevention of soil erosion, reduction of sediment damage, prevention of pollution, restoration of productivity and natural beauty, promotion of public recreation, development of fish, wildlife, and other natural resources, improvement of the economy and stability of the affected areas, and promotion of the public health, safety, and general welfare.

Sec. 302. In order to assist States and their political subdivisions, soil and water conservation districts, and other eligible political subdivisions in carrying out within watershed and subwatershed areas plans for works and measures for the reclamation and rehabilitation of such lands which have been damaged by surface mining and which are presently in a scarred condition, the Secretary, hereinafter referred to in this title as the Secretary, is authorized, upon the request of States:
(1) to make grants to the States and soil conservation districts for technical assistance by the Soil Conservation Service for developing plans for the reclamation and rehabilitation of such lands, which plans may include works and measures such as revegetation, land improvements, soil stabilization and gulley-control structures, debris basins, bank sloping, drainage, access roads for maintenance, and any other works, measures, or practices deemed necessary by the Secretary; and
(2) to cooperate and enter into agreements with, and to make grants to, and provide other aid as the Secretary deems necessary and appropriate in the public interest to do so, with the States and soil conservation districts for the purpose of carrying out any such plan that has been approved by the Secretary.

Sec. 303. The program herein authorized shall apply to the unreclaimed or unrehabilitated lands damaged by surface mining located in States which have heretofore enacted, or shall hereafter enact, legislation requiring reclamation or rehabilitation of lands damaged by surface mining when the Secretary determines that:
(a) significant public benefits will be derived from the reclamation and rehabilitation of such lands;
(b) lands were damaged by surface mining prior to the date of enactment of this Act, sometimes referred to as "orphan lands"; and
(c) there does not exist a contractual or other legal requirement for the adequate reclamation or rehabilitation of such lands.

Sec. 304. The Secretary may require as a condition to the furnishing of assistance hereunder to any owner of lands included in an approved plan that such landowner shall:
(a) enter into an agreement of not to exceed two years providing for the installation and maintenance of the needed works and measures specified in such plan; and
(b) install or cause to be installed such needed works and measures in accordance with technical specifications as approved by the Secretary.

Sec. 305. The Secretary is authorized to prescribe such rules and regulations as he deems necessary or desirable to carry out the purposes of this title.

TITLE IV
DEFINITIONS

Sec. 401. For the purposes of this Act, the term—
"Administrator" means the Administrator of the Environmental Protection Agency;
"Commerce" means the Department of Commerce, or its designated representative, subject to such conditions as may be prescribed by the Secretary: Provided, That the term shall not be limited to private, corporate, or other organizations, but shall include any governmental body, or governmental body or agency, or organization, or association, or other body, or any combination thereof, included as a participant in any such program or any combination thereof, or combination thereof;
"Coal" includes bituminous coal, lignite, and anthracite;
"Contour" means the land from which the original slope and plane of the land is preserved or utilized in the northeast Florida area;
"Deposit" means all or any portion of the overburden above the coal and overburden have been removed, after removal of all or part of the overburden above, its natural deposits in the earth;
"Person" includes an individual, partnership, association, corporation, firm, sub-division of a corporation, or other organization;
"State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, Guam, Trust Territory of the Pacific Islands, and Indian tribes;
"Spoil bank" means the soil and rock which structures, facilities, equipment and processing activities of the operator, including but not limited to private ways and roads appurtenant to any such area, land excavations, mining residue, tailings, slag, ashes, coal, or other material deposited or approved; and
"Surface mining" means all or any part of the process followed in the production of minerals from a natural mineral deposit by the open pit or open cut method, auger or other method which requires a new cut or removal of overburden, or any other mining method in which the original slope and plane of the land is substantially restored to a permanent and stable condition.

PROGRAMS

Appropriations

Sec. 402. In addition to such sums as may be collected pursuant to the provisions of this Act, there is authorized to be appropriated to the Administrator the sum of $ for fiscal year 1974, and the sum of $ for fiscal year 1975, and thereafter such sums as may be necessary for the purposes of this Act.

By Mr. CHILES (for himself and Mr. GURNEY):
S. 1164.--A bill to provide for the establishment of the Guano River National Park in the State of Florida, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

This legislation would authorize the Secretary of the Interior to designate and acquire the land for recreational purposes.

This irreplaceable and precious natural resource is valued and appreciated by almost 2 million people living within a 100-mile radius of the area. It is the only land of its type available in the northeast Florida area.

The acquisition of this area represents the kind of legacy which we need to protect and preserve, for not only this generation, but for all to come.

Efforts to acquire this unique area have broad support in my home State of Florida and would offer an invaluable asset for use and enjoyment for all our citizens.

I sincerely hope this legislation will receive an early hearing by the Congress so that we may move to protect one of the most unique and beautiful areas in Florida.

I am grateful that a copy of this legislation be printed at this point in my remarks.

There being no objection, the bill was ordered to be printed in the Record, as follows:
S. 1164
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the purpose of preserving a relatively

CONGRESSIONAL RECORD—SENATE
March 12, 1973

7314
Cigarette smoking is controlled by the federal government under the Federal Cigarette Tax Act of 1932, as amended by the Public Health Cigarette Smoking Act of 1969. The act went into effect on March 16, 1973, and is intended to reduce the demand for cigarettes by controls on the advertising and sale of cigarettes.


The amendment made by this Act shall become effective 30 days after the date of enactment.


To: Dr. Gerald P. Murphy.

From: Fred Bock, Orchard Park Laboratories of RPM.

Subject: Position Paper on the Public Health Implications of Little Cigars.

The importance of little cigars in public health is a result of the interaction of scientific factors that can be measured and intangible characteristics of social behavior and governmental action. In an attempt to sort out these inter-related factors, I have attempted to break the overall problem into a number of questions that permit simpler answers.

What are little cigars? The definition of a cigar depends on the bias of the organization using the term. The cigar industry presumably would like to consider any product that is composed of tobacco and wrapped in tobacco leaf but not to require the manufacturer to designate the product as a cigar. Because cigars are taxed at a much lower rate than cigarettes, the distinction is important to the manufacturer. They consider a little cigar as a cigar having the general size and characteristics of a cigar, produced and habitually packaged like cigarettes. The Internal Revenue Service goes one step further by requiring that cigars be composed of tobacco types other than the tobacco derivative as a cigar. Since cigars are taxed at a much lower rate than cigarettes, the distinction is important to the manufacturer. They consider a little cigar as a cigar having the general size and characteristics of a cigar, produced and habitually packaged like cigarettes. The Internal Revenue Service goes one step further by requiring that cigars be composed of tobacco types other than the tobacco derivative as a cigar.

Contributing to my thinking have been several technical papers which have been submitted by Dr. Fred Bock and Dr. Irwin Bross of Roswell Park Memorial Institute as well as one by Dr. Ernest Wynder of the American Health Foundation. Mr. President, I ask unanimous consent that following my remarks the text of the bill be printed in the Record as well as the technical papers supplied by Drs. Bock, Bross and Wynder.

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

S. 1105

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 "Little Cigar Act of 1973."

Sec. 2. Section 3 of the Federal Cigarette Tax Act (15 U.S.C. 1331-1340) as amended by the Public Health Cigarette Smoking Act of 1969 is amended by inserting the words, "and little cigars" after the word "cigarettes."
Is smoke from little cigars inhalable? The inhalability of smoke depends on three factors: the pH, the smoke temperature, and the chemical compounds present in the smoke. The pH of the smoke is influenced by the type of tobacco, the way the tobacco is processed, and the conditions under which the cigars are smoked.

Half a loaf seems better than none. It may be necessary for the government to collect additional data to provide a more accurate picture of the risks associated with smoking little cigars. Without this information, the appropriate measures cannot be taken to prevent and control the use of these products.

Footnotes

Footnotes at end of article.
We intend to analyze and compare the smoke of various tobacco products for these and additional smoke constituents with the eventual goal of establishing a relationship between physicochemical properties of tobacco smoke and the probability of total inhalation by man. Such a study is important in assessing the final harmful potential of smoking products in relation to the way they are used by man.

DIEHTRICH HOFFMAN
R respective REFERENCES AND NOTES

1. No. XVIII of "Chemical Studies on Tobacco Smoke"


4. The Kentucky standard cigarettes are manufactured for research purposes only.

5. Their "tar" yield is rather high compared to commercial U.S. cigarettes of the same length and with cigarette filters.


18. Supported in part by American Cancer Society Grant 33060 and by National Cancer Institute Grant NIH-NCI-70-3067.

### TABLE 1.—ANALYSIS OF CIGARETTES AND LITTLE CIGARS AND SOME OF THEIR SMOKE CONSTITUENTS

<table>
<thead>
<tr>
<th>Sample</th>
<th>Cigarette (nonfilter)</th>
<th>Filter cigarette (1-millimeter filter)</th>
<th>Little cigar A (21-millimeter filter)</th>
<th>Little cigar B (18-millimeter filter)</th>
<th>Little cigar C (15-millimeter filter)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Weight grams</td>
<td>Reducing sugars (percent of tobacco weight)</td>
<td>Draw resistance (inches)</td>
<td>Burning rate (milligrams per minute)</td>
<td></td>
</tr>
<tr>
<td>Cigarette (nonfilter)</td>
<td>85</td>
<td>1.100</td>
<td>9.3</td>
<td>7.6</td>
<td>51.3</td>
</tr>
<tr>
<td>Filter cigarette (1-millimeter filter)</td>
<td>85</td>
<td>1.010</td>
<td>7.9</td>
<td>5.3</td>
<td>61.7</td>
</tr>
<tr>
<td>Little cigar A (21-millimeter filter)</td>
<td>85</td>
<td>0.956</td>
<td>1.9</td>
<td>5.2</td>
<td>72.2</td>
</tr>
<tr>
<td>Little cigar B (18-millimeter filter)</td>
<td>85</td>
<td>1.775</td>
<td>2.9</td>
<td>5.1</td>
<td>61.0</td>
</tr>
<tr>
<td>Small cigar C (15-millimeter filter)</td>
<td>99</td>
<td>1.527</td>
<td>2.7</td>
<td>3.5</td>
<td>90.1</td>
</tr>
</tbody>
</table>

**Note:** Without filter.

### TABLE 2.—pH OF TOTAL MAINSTREAM SMOKE

| Sample | 
|--------|--------------------|
| Cigarette (nonfilter) | 11.0 |
| Filter cigarette | 10.0 |
| Little cigar A | 9.6 |
| Little cigar B | 9.6 |
| Small cigar C | 11.6 |

### TABLE 3.—SELECTED COMPOUNDS IN MAINSTREAM SMOKE

<table>
<thead>
<tr>
<th>Smoke compound</th>
<th>Cigarette</th>
<th>Filter cigarette</th>
<th>Little cigar A</th>
<th>Little cigar B</th>
<th>Little cigar C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nicotine (mg per cigarette)</td>
<td>10.4</td>
<td>10.4</td>
<td>10.4</td>
<td>10.4</td>
<td>10.4</td>
</tr>
<tr>
<td>CO (mg per cigarette)</td>
<td>0.7</td>
<td>0.7</td>
<td>0.7</td>
<td>0.7</td>
<td>0.7</td>
</tr>
<tr>
<td>CO2 (mg per cigarette)</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
</tr>
<tr>
<td>Phenol (mg per cigarette)</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td>Pyridine (mg per cigarette)</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Acetaldehyde (mg per cigarette)</td>
<td>0.05</td>
<td>0.05</td>
<td>0.05</td>
<td>0.05</td>
<td>0.05</td>
</tr>
<tr>
<td>Formaldehyde (mg per cigarette)</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
</tr>
</tbody>
</table>

**Note:** For comparison the pH values of the popular U.S. cigarette D: 34 puff—6.26, 6.47, 6.67; 8th puff—6.93, 6.37, 5.55; 18th puff—6.02, 6.29, 6.37; 18th puff—6.16, 6.41, 6.77; 23rd puff—6.46, 6.11, 7.27, 25th puff—6.43, 7.22, 7.81; 53rd puff—7.32, 7.93, 7.56; 35th puff—7.46, 7.76, 8.15; 43rd puff—7.96, 7.96, 8.86. (Average number of puffs: 15.)
taxed as cigarettes? What restrictions on advertising are necessary?

Several different federal agencies as well as the general public have a stake in determining whether smoking small cigars has the same adverse health effects as smoking regular cigarettes. In addition, some public agencies have asked for regulations governing the marketing of small cigars and the Federal Trade Commission has asked for "additional evidence . . . on the question of whether, in actual use by consumers, 'small cigars' are inhaled in the same manner as cigarettes." For full-sized cigars there is ample evidence that the risk of lung cancer and certain other health hazards is much lower than for cigarettes. A number of factors are probably involved in this difference. The processing and cutting of the tobacco leaf, the burning temperature and other combustion properties, the number smoked per day, and the extent to which the smoke is inhaled or exhaled are all critical differences between small cigars or cigarettes. However the small cigars are much more like cigarettes and there was no evidence that the higher health hazards may also be more like those of cigarettes. Therefore it is important to get some assessment of health hazards as soon as possible.

For some factors, information is available. The tar and nicotine levels of the small cigars are much higher than those of the Federal Trade Commission's laboratory. Comparison with a report from the same source for cigarettes and the ratio of these levels for the small cigars are tabulated against the tar levels for the small cigars tend to be somewhat higher than for cigarettes. The median level for cigarettes is 19 mg. and for cigars 27.6 mg. These are a conservative estimate for higher levels for cigarettes and the lower levels for small cigars.

Since there is no reason to believe that the tar from the small cigars is any less carcinogenic, if there were any health advantage to the cigarettes it would have to come from reduced exposure to smoke. The crucial factor here is probably inhalation.

Only rather limited direct evidence on inhalation patterns can be obtained from studies of persons who switched from cigarettes to small cigars. However, a small percentage of smokers use products, there are a number of different brands with different burning characteristics. Inhalation patterns for persons who have just switched to small cigars may not have stabilized. Hence it is not possible at this time to obtain a representative sample of persons who switched to small cigars to get reliable results.

It will take some time to obtain the desired information and it is undesirable to indefinitely postpone several crucial decisions about the importation of small cigars or the warning label as cigarettes? Should they be tax.

### Table 1: Selected Toxic Agents in the Smoke of a Single Puff

<table>
<thead>
<tr>
<th>Tobacco Type</th>
<th>TPMA (mg)</th>
<th>Nicotine (mg)</th>
<th>pH</th>
<th>CO (mg)</th>
<th>COH (mg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cigarette</td>
<td>9.2</td>
<td>0.8</td>
<td>7.3</td>
<td>69.7</td>
<td>12.0</td>
</tr>
<tr>
<td>Filter Cigar</td>
<td>7.3</td>
<td>0.5</td>
<td>7.0</td>
<td>54.3</td>
<td>10.5</td>
</tr>
<tr>
<td>Little Cigar A</td>
<td>6.5</td>
<td>0.4</td>
<td>7.0</td>
<td>49.2</td>
<td>9.8</td>
</tr>
<tr>
<td>Little Cigar B</td>
<td>5.2</td>
<td>0.3</td>
<td>6.8</td>
<td>45.1</td>
<td>9.2</td>
</tr>
<tr>
<td>Small Cigar C</td>
<td>4.5</td>
<td>0.2</td>
<td>6.5</td>
<td>40.7</td>
<td>8.7</td>
</tr>
</tbody>
</table>

### Footnotes at end of article.

- TPMA value for TPMA; TPMA wet minus water and nicotine.
- % FCT value for TPMA; TPMA wet minus water and nicotine.

### Implications of the Data

Figure 1 uses simple biostatistical procedure to check for a clearcut validation of the hypothesis that cigarette smoking carries over their inhalation habits to regular cigarettes when they switch (or switch back and forth). The immediate implications concerning the health hazards of small cigars can be seen from relatively simple and straightforward scientific arguments. For example, although the data does not involve the cigarette-like cigars, some prediction can be made concerning the proportion inhaling "almost every puff" for persons switching from cigarettes to such cigar smokers. This proportion is close, somewhere between the 20 percent for regular cigars and the 75 percent for cigarettes. To get a closer estimate we will interpose the data points at the extremes of the two endpoints on the basis of the physical characteristics of the products and their respective percentages and confidence intervals.

### Small Cigarettes

Should the FDA estimate the number of people who switched to small cigars to get reliable data? Should the FDA estimate the number of people who switched to small cigars to get reliable data? Should the FDA estimate the number of people who switched to small cigars to get reliable data? Should the FDA estimate the number of people who switched to small cigars to get reliable data?

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March 12, 1973

CONGRESSIONAL RECORD—SENATE

TABLE I.—CONFIDENCE INTERVALS ON PERCENTAGE REPORTING INHALATION “ALMOST EVERY PUFF”: CURRENT AND PREVIOUS TOBACCO USAGE BY TYPE OF TOBACCO, CIGAR, OR CIGARETTE

<table>
<thead>
<tr>
<th>Number of patients</th>
<th>Type inhaled</th>
<th>Percent</th>
<th>Confidence limits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cigarettes only</td>
<td>2,259</td>
<td>74.8</td>
</tr>
<tr>
<td></td>
<td>Cigarettes only</td>
<td>664</td>
<td>75.9</td>
</tr>
<tr>
<td></td>
<td>Cigarettes and cigars</td>
<td>530</td>
<td>74.4</td>
</tr>
<tr>
<td></td>
<td>Cigars only</td>
<td>82</td>
<td>75.4</td>
</tr>
<tr>
<td></td>
<td>Cigars</td>
<td>186</td>
<td>77.9</td>
</tr>
<tr>
<td></td>
<td>Cigarettes only</td>
<td>68</td>
<td>77.2</td>
</tr>
</tbody>
</table>

FOOTNOTES

1 Status of tobacco usage by type of tobacco.

"SEAR LIGHTING STANDARD"

"Sec. 109A. (a) Within 180 days after the date of enactment of the Motor Vehicle Rear Lighting Act, the Secretary shall establish by order a Federal motor vehicle safety standard relating to rear lighting systems consistent with the requirements of this section. The standard so established shall be in addition to and consistent with any standard established under section 103 with respect to lamps, reflective devices, and associated equipment and other standards established under that section which relate to the mechanisms governing the acceleration or braking of motor vehicles:"

"(b) The Federal motor vehicle safety standard relating to rear lighting systems, which the Secretary is required under subsection (a) to establish, shall require that the rear lighting system of any motor vehicle manufactured after the effective date of the standard shall include:

"(1) a green light (or lights), visible from behind the motor vehicle, activated only when the accelerator control mechanism is holding the throttle in a position other than idle; and
"(2) an amber light (or lights), visible from behind the motor vehicle, activated whenever neither the light referred to in paragraph (1) is being activated nor the braking indicator light is being activated.

"(c) The rear lighting system standard required under this section shall also provide:

"(1) that the entire rear lighting system of any motor vehicle to which the standard applies shall be so arranged and displayed that an individual with defective color vision will be able to determine which lights are being activated on a motor vehicle in front of him;
"(2) that the rear lighting system of any motor vehicle to which the standard applies shall be displayed in such a manner as to avoid any confusion with traffic semaphore signals; and
"(3) for the avoidance of overlapping and ambiguous lighting signal displays to the greatest extent practicable."

By Mr. HART:

S. 1167. A bill to supplement the antitrust laws, and to protect trade and commerce against oligopoly power or monopoly power, and for other purposes. Referred to the Committee on the Judiciary.

INDUSTRIAL REORGANIZATION ACT

Mr. HART. Mr. President, back in 1939, Senator John Sherman rose to begin the debate that led to passage of the first antitrust law and explained that he had not planned lengthy remarks because

I supposed the public facts upon which it (the bill) is founded were so manifest that no debate was necessary to bring these facts to the attention of the Senate.

The trusts, of course, in those days were rampant. Name a possibility, if existed—oil, whisky, lumber, sugar, tea, steel, paper.

Of course, in those days there were no militant consumer groups to reckon with and there was no public relations industry to smooth over the rough edges of monopoly arrogance and greed.

So the disagreeable nature of monopoly power and the unpleasant attitude of the men who ran it was much more patent.

But in terms of concentration of economic power and all its unhealthy side effects, the situation today is not much different from what it was then.

With about 400,000 manufacturing firms in this country today, a mere 200 control two-thirds of the assets of all.

In the major sectors of our economy, markets are dominated by two, three or five companies that often behave as one when it comes to pricing policy.

The Antitrust and Monopoly Subcommittee has been examining this problem for a number of years and in the mind of this student there is no longer any doubt that concentration of economic power has contributed heavily to the waves of inflation that plague us so consistently.

Consumers in this economy must depend on competition to get value. And competition does not flourish when the number of competitors is being steadily diminished.

The Sherman and Clayton Acts, in my opinion, were soundly conceived bills, but they did not contemplate the complex business conditions that exist today. And the acts have been so interpreted over the years that enforcers are sent on distant chases after fox while the chicken coop remains infested with wolves.

In fact, the wolves are often in such solid possession of the coop that whatever enforcers can be mustered are often too small in number to mount an assault.

Consider the IBM case. Four years ago, the Government charged the company with monopolization under the Sherman Act.

Several private cases were also filed against IBM—the best-known being brought by the Control Data Corp.

As part of the discovery process, IBM produced 40 million documents.

At first, the Antitrust Division attempted to set up its own retrieval system and data bank for these 40 million documents. After several special systems the Division realized that Control Data was far ahead in its efforts—and had developed a more sophisticated system.

Justice therefore asked for—and
received—access to the company's retrieval system.

Control Data, I am told, expended about $3 million in compiling this material. In contrast, may I note that the entire Antitrust Division's budget is $12½ million. On that line another interesting figure is that when the Control Data case was settled IBM paid CDC $15 million for costs and expenses of the litigation, including fees and disbursements of counsel.

The irony of the situation is that as part of a settlement of their private case, Congress weeks ago passed the index to the documents. Unless the court forces reconstruction of the index, Justice must start all over again.

There are those who think that such a battle is a trap for the Division, and that the IBM case will never be prosecuted effectively because of this.

The situation demonstrates that we have only one choice if we persist in attempting to eradicate economic concentration by showing in each case exactly how it harms the Nation: make the Government agencies administering the law in large part unequally matched with their opponents.

We are hogtied on the time element involved in a major antitrust case. Look at the IBM case again. It is 4 years since it began and the best estimate is that another 2 to 3 years will lapse before completion—with the possibility of more time devoted to appeals. Obviously, if there is harm being done by corporations involved in major antitrust cases, the Nation must wait far too long for any relief that a governmental victory can bring.

Take another example: The Government's case in El Paso Pipeline was filed in 1957. It has three times been up before the Supreme Court—divestiture has been ordered and still El Paso owns the property that the Supreme Court has ordered sold.

Clearly, even with a many times larger Antitrust Division—and millions more dollars yearly—it would take a couple of centuries of "behavioral" cases to eradicate economic concentration that haunts this country.

Time, I feel, is a luxury we do not have. Nor can I embrace the general idea—for I dislike gianitism in Government for many of the same reasons I dislike it in industry: When the battle of the giants begins, the people will be more and more left out of the decisions.

My real fear is that we will forsake the antitrust route for dealing with the problems created by the lack of competition in the economy, and instead embrace direct Government regulation.

And one has only to look at the record for most governmental regulatory bodies, and wage and price controls which have been used off and on through the years, to see how inequitable and inefficient Government regulation is compared to antitrust.

Mr. President, the Industrial Reorganization Act which I reintroduce today is the basis of this country since its inception: Too much power in too few hands is incompatible with democracy.

In this I sign on with Senator Sherman—a Republican—who said back in 1890:

"If we will not endure a king as a political power we should not endure a king over the production, transportation and sale of any of the necessities of life. If we would not submit to an emporer that he may submit an autocrat of trade, with power to prevent competition and to fix the price of any commodity.

It was the power itself that Senator Sherman—speaking for the majority of his day—feared. And it is power that we should fear today. In industry, a giant corporation has many, varied, and subtle impacts on competition in that industry.

Its hulking size has much to do with entry of competitors, behavior of competitors and competition in general in the industry. For example, a woman who was attempting to get financing to begin a small computer service corporation once told me that bank after bank turned her down and her dream will never be quar­ rel with her qualifications and abilities. But they simply shook their heads and said:

How can you expect to make it when IBM dominates that industry?

The impacts are subtle and have absolutely nothing to do with the presence or lack of good intentions of the management of the big firm.

The industrial reorganization bill that I reintroduce today should add what I believe are two important new wrinkles to antitrust enforcement procedures.

Trustbusters would no longer have to rely on evidence that defendant firms intended to create monopolies to control prices or to exclude competitors. Under this bill we would concern ourselves less with the intent of the defendant firms and more with the result of their actions.

The antitrust enforcement system would for the first time be geared to deal with the mechanics of dismantling monopo­ lies, but primarily to prevent that the present system has trouble managing.

Mr. President, in addition to prescribing ways of determining if monopoly power is present and providing for its dissolution, the bill also establishes a special commission to study concentrated industries and develop plans to make them more competitive.

These plans would then be submitted to Congress for approval, rejection, or change.

The bill being reintroduced today is identical to the one I proposed last year as a dialog bill. Following its introduction last June, I circulated it widely among the top 200 corporations, anti­ trust experts, economists, and others for comment. Some valuable suggestions for modifications proposed and others are promised. I have not altered the bill at this time, because we plan to begin hearings on it within a few weeks at which time these and other suggestions can be considered.

Those hearings will begin late this month, and I invite anyone interested in participating to contact the Senate Antitrust Subcommittee.

Mr. President, I ask unanimous consent that the complete text of the Industrial Reorganization Act be printed as an insert in the Rearrow.

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

S. 1167

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 "Industrial Reorganization Act". The Congress finds and declares that (1) the United States of America is subjected to a private enterprise system and a free market economy, in the belief that competition spurs innovation, promotes productivity, preserves a democratic society; and provides an opportunity for a more equitable distribution of wealth while avoiding the undue concentration of economic, social, and political power; (2) the decline of competition in industries with oligopoly or monopoly power has contributed to unemployment, in­ sufficient efficiency, instability of economic capacity, and the decline of exports, thereby rendering monetary and fiscal policies to stimulate our economy more difficult and necessitating Government market controls subverting our basic commitment to a free market economy; (3) the preservation of a private enterprise system and free markets is a democratic society in the United States of America requires legislation to supplement the antitrust laws to encourage the use of new enforcement mechanisms designed to re­ sponsibly restructure industries dominated by oligopoly or monopoly power; (4) the powers vested in these new enforcement mechanisms are to be exercised to promote competition throughout the economy to the maximum extent feasible, and to protect trade and commerce against oligopoly or monopoly power.

TITLE I—POSSESSION OF MONOPOLY POWER

SEC. 101. (a) It is hereby declared to be unlawful for any corporation or two or more corporations to possess monopoly power in any line of commerce in any section of the country or with respect to foreign nations.

(b) There shall be a rebuttable presumption that monopoly power is possessed—

(1) by any corporation if the average rate of profit on net sales for the most recent five-year period is in excess of 15 per centum over a period of five consecutive years out of the most recent seven years preceding the filing of the complaint, or

(2) if there has been no substantial price competition among two or more corporations in any line of commerce in any section of the country for a period of three consecutive years out of the most recent five years preceding the filing of the complaint, or

(3) if any four or fewer corporations account for 90 per centum (or more) of sales in any line of commerce in any section of the country in any year out of the most recent three years preceding the filing of the complaint.

In all other instances, the burden shall lie on the Industrial Reorganization Commission established under title II of this Act to prove the possession of monopoly power.

(c) A corporation shall not be required to divest monopoly power if it can show—

(1) the power is required to prevent evading the ownership of valid patents, lawfully acquired and lawfully used, or

(2) such a divestiture would result in a loss of substantial economies.

The burden shall be upon the corporation or corporations to prove that monopoly power should not be divested. (See paragraphs (1) and (2) of the above subsection:...
TITLE III—INDUSTRIAL REORGANIZATION COMMISSION

Sec. 201. As used in this title, the term—

(1) "industry" means all extractive, processing, smelting, refining, transporting, marketing, and other services, facilities, or activities―including, without limitation, constructing, financing, distributing, or other economic activity carried on in closely related parts of commerce, or of trade, or in the production of goods or the flow of information, whether or not in a single national market, which have economic activity by reason of their structure, ownership, control, or management in such market or the control of such market by virtue of that economic activity.

(2) "Unincorporated business enterprise," "corporation," and "unincorporated business enterprise or corporation" means a firm required by the Commission to file a registration statement under section 206;

(3) "Commissioner" means the Industrial Reorganization Commission established under section 202;

(4) "Commissioner" means the Commissioner of the Commission;

(5) "person" means an individual, a corporation, a partnership, a partnership in association, a joint stock company, a business trust, or an unincorporated business association; and

(6) "bank" means a bank, trust company, savings bank, savings and loan association, or other similar financial institution, which accepts deposits or accepts funds on a trust basis; and "stock, Treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement or contract, or any right to subscribe to stock or to purchase, any of the foregoing.

ESTABLISHMENT OF COMMISSION

Sec. 202. (a) There is an independent agency to be known as the Industrial Reorganization Commission.

(b) The Commission shall be under the direction and supervision of a Commissioner, who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of seven years, and shall be compensated at a rate of the compensation as he deems necessary.

(c) The Commissioner shall appoint and fix the compensation of an Executive Director and such other officers, agents, and employees as he deems necessary to assist him in carrying out the duties of the Commission. The Executive Director shall be the chief administrative officer of the Commission, and he shall perform his duties under the direction and supervision of the Commissioner. The Commissioner may delegate any of his functions, other than the making of regulations, to the Executive Director.

(d) The Commission shall have an official seal which shall be judicially noticed.

(e) Section 5914 of the 5, United States Code, is amended by adding at the end thereof the following:

(59) Commissioner, Industrial Reorganization Commission.

(f) The Office of Management and Budget shall not inspect, examine, audit, or review the records or work of the Commission, and shall not make available for inspection by the General Accounting Office such records as the Comptroller General may require, and the Commissioner shall not inspect, examine, audit, or review the records or work of the Commission as he deems necessary.

(c) Whenever the Commission obtains information under this title which furnishes a reasonable basis for inferring that any corporation or person has acted in violation of any provision of this Act or any order or rule made by the Commission, it shall notify the appropriate law enforcement agency, as the Commission deems necessary.

POWERS OF THE COMMISSION

Sec. 204. (a) The Commission shall have power—

(1) to conduct studies of the structure, performance, and control of an industry, or of any part or aspect thereof, and its and its collective bargaining practices and policies, directly or by contract or other arrangements;

(2) to require corporations in industries managed by the Commission, or any corporation, partnership, or association engaged in or connected with any activity or business similar to any activity or business within any industry, whether or not that activity or business is interstate or foreign, to make available, either directly or through an agent or representative, information and data, including without limitation the following: Description of the nature of the business and the relevant industry, information about the production, sale, marketing, and distribution of products, and information about the activities, operations, policies, practices, and financing of the business; the capability and capacity of the business to produce and market its products; information about its competitors and the relevant industry; information about the prices charged by the business and by its competitors, the conditions under which the prices are charged, and the effect of prices on the business and on the relevant industry; and any other information that in the Commission's judgment is necessary in order to carry out the provisions of this Act;

(3) to request periodic and special reports and such other information of corporations, persons, or other entities that it shall determine to be necessary in order to carry out the provisions of this Act;

(4) to require corporations, persons, or other entities that it shall determine to be necessary in order to carry out the provisions of this Act, to file registration statements in such form as the Commission may require in order to carry out the provisions of this Act;

(5) to require interlocking relationship reports and such other information of corporations, persons, or other entities that it shall determine to be necessary in order to carry out the provisions of this Act.

(6) to request the Comptroller General of the United States to issue subpoenas, and to take such other action as the Commission deems necessary in order to carry out the provisions of this Act.

(7) to sue and be sued in its own name and appear by its own counsel in any legal proceedings brought by or against it;

(8) to request and obtain from any executive department or agency any information or assistance it deems necessary in order to carry out the provisions of this Act;

(9) to submit proposed orders of reorganization to the President, and to request the President to submit such orders to Congress, after a reasonable time for public comment on any such order proposed by the Commission.

(10) to carry out such investigations as it deems necessary in order to determine whether there is any violation of any provision of this Act;

(11) to sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony, and the production of any books, records, correspondence, memoranda, papers, and documents at its request, and to administer oaths and affirmations to witnesses appearing before it;

(12) to disclose by publication, or otherwise to make available upon request, any information (other than trade secrets or information which is privileged or confidential or which is otherwise protected from disclosure by law).

(b) The Commission shall perform its duties under the direction of the President, and shall carry out its functions and powers under this Act as he deems necessary.

(c) Whenever the Commission obtains information under this title which furnishes a reasonable basis for inferring that any corporation or person has acted in violation of any provision of this Act or any order or rule made by the Commission, it shall notify the appropriate law enforcement agency, as the Commission deems necessary.
processes) It deems appropriate for public disclosure, subject to the provisions of section 207;
(13) to procure temporary and intermit­
tent injunctions, upon such terms and in such manner as the Commission may authorize by section 8109 of title 8, United States Code, but at rates not to exceed $125 a
(14) to issue such regulations, orders, and
reports as may be necessary to carry out the
provisions of this title; and
(15) to take such other actions as may be
necessary to enable it to carry out its duties under the provisions of this title, and
(c) Subpoenas shall be issued under the
signature of the Commissioner or Executive
Director and may be served by any person
designated. In the case of conviction or re­
fusal to obey a subpoena issued under para­
graph (11) of subsection (a) by any person
who resides, is found, or transacts business
within the jurisdiction of any district court
of the United States, such court, upon ap­
lication made by the Commission, shall have
jurisdiction to issue such process. in such form
requiring such persons to appear before the
Commission or an employee thereof, there to
make such disclosures. or to give testimony
therein as a contempt thereof.
Registration statements; reports; records
Sec. 205. (a) Any corporation or any per­
son required by the Commission to register
under section 204 (a) (2) shall file with the
Commission a registration statement and
such additional reports and information as
the Commission may require from time to
time.
(b) Each registration statement shall con­
tain:
(1) a copy of the corporate charter, articles
of incorporation, partnership agreement, or
other agreement or document under which
that corporation is organized and doing business;
(2) a copy of such related documents, in­clud­ing but not limited to, bylaws, indentures,
mortgages, trust indentures, under­
writing agreements, and voting trust agree­
ments, and all financial statements, accounts,
and cost accounting procedures available
for inspection at reasonable time to
Commission employees.
Reports by officers, directors, and other
persons
Sec. 206. (a) Any person who is a director
or officer of a registered corporation shall
file with the Commission a statement of the
corporation in such form and at such times
as the Commission may require. The report
shall contain:
(1) a list of the name and address of,
and amount of securities held beneficially and/or
of record in any other corporation by any
officer or employee;
(2) if required by the Commission, a re­
port of changes in the securities ownership
in any other corporation; and
(3) a list of the name and address of each
other corporation of which that person is an
officer, director, or employee.
(b) Any person who, directly or indirectly,
through one or more persons, owns bene­
cficially or of record, or executes, or
votes the right to vote, 1 per centum or
more of any class of security of
any corporation, or if the aggre­
gate percentages of the classes total 1 per
centum or more, shall file a report under
this section with the Commission in such
form and at such times as the Commission
may require. The report is to be cal­
culated on the basis of the number of shares
of, or for debt securities the face amount of,
any class of security actually outstanding.
If not a natural person, the Commission
shall require such additional information as
may be necessary to carry out the purpose
of this subsection.
Public disclosure of information
Sec. 207. (a) When the public disclosure of
information obtained under this title
would be in the public interest, as deter­
mined by the Commission, the Commission
may, after notice of the appropriate corpo­
rator or person, make that information
available to the public, under such charges
and conditions as the Commission may pre­
scribe.
(b) Any person filing a registration state­
ment, report, notification, or other docu­
ment with the Commission may object to public
disclosure of any information contained therein
by filing a petition with the Industrial Reor­
ganization Court established pursuant to
Title III, for an order in accordance with the
provisions of that title.
(c) It shall be unlawful for any officer or
employee of the Commission—
(1) to disclose any patent application,
trade secret, or secret process contained in
any document filed with the Commission or
obtained under this title except as necessary
to carry out its duties under this title; and
(2) to disclose to any person other than
person any information contained in any document filed
with the Commission or obtained under this
title, except as provided in this title or in
order to carry out its duties under this title,
or to use any such information for personal
benefit, unless that information has been
specifically made a public record by order of
the Commission and is available to the public
under subsection (a), for a reasonable period
of time prior to such use.
Penalties
Sec. 208. Any person who violates any pro­
vision of this title shall be guilty of a
misdemeanor, and upon conviction thereof,
shall be punished by a fine not exceeding
$500,000, if not a natural person, or if a
natural person, $100,000, or by imprisonment
not exceeding one year, or both.
Authorization of Appropriations
Sec. 209. There are authorized to be ap­
propriated such sums as may be necessary to
carry out the provisions of this title.
Title III—Establishment of Industrial Reorganization Court
Sec. 251. (1) Part I of title 26, United States
Code, is amended by inserting after chapter
11 thereof the following new chapter:
"Chapter 12—Industrial Reorganiza­tion Court"
"Sec. 271. Appointment and number of judges.
"Sec. 272. Precedence of judges.
"Sec. 273. Tenure and salaries of judges.
"Sec. 274. Sessions.
"Sec. 275. Division of business.
"Sec. 276. Single-judge trials.
"Sec. 277. Three-Judge trials.
"Sec. 278. Vacant Judgeship.
"Sec. 279. Publication of decisions.
"Sec. 280. Bias or prejudice of judge.
"Sec. 271. Appointment and number of judges.
"Sec. 272. Precedence of judges.
"Sec. 273. Tenure and salaries of judges.
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"Sec. 271. Appointment and number of judges.
"Sec. 272. Precedence of judges.
"Sec. 273. Tenure and salaries of judges.
"Sec. 274. Sessions.
"Sec. 275. Division of business.
"Sec. 276. Single-judge trials.
"Sec. 277. Three-Judge trials.
OFFICERS AND EMPLOYEES

SEC. 737. Single-judge trials
"Except as otherwise provided in section 727 of this title, the judicial power of the district courts shall be exercised by a single judge of the court, with respect to any case, suit, or proceeding, shall be exercised by a single judge, who may proceed alone or with the assistance of clerks, and other persons as may be necessary, all of whom shall be subject to removal by the court. The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him."

SEC. 738. Attachment of personal property
"The marshal may, upon the application of any party to a civil action, or upon his own initiative, the chief judge of the Industrial Reorganization Court shall designate any three judges of the court to hear and determine any civil action which the chief judge finds—"

(1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President, or an Executive order; or

(b) is concerned with the application of any Act of Congress, a proclamation of the President, or an Executive order; or

(c) involves a question concerning the construction of title II of the United States Code in which the court shall be required to construe a statute or a constitutional provision.

SEC. 837. Affidavit of necessity
"When a party to any proceeding in the Industrial Reorganization Court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear and determine such proceeding on such petition and affidavit.

(2) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

SEC. 821. Report of court proceedings
"The Industrial Reorganization Court is authorized to contract for the reporting of all proceedings made in open court, and in such cases to fix the terms and conditions under which such reporting services shall be performed including the terms under which transcripts shall be supplied by the contractors to the court and other persons, departments, and agencies."

SEC. 822. Chapter analysis
"The chapter analysis of part I of such title is amended by striking out "and in section 2114 of this title the court shall determine, wherever located; and the court shall enter judgment" and inserting "the direction of the court, the assets so divested shall be turned over to the Custodian under the direction of the court, the assets so disposed of, and the court shall enter judgment:""

JURISDICTION

SUS. 400. (a) Part II of title 28, United States Code, is amended by inserting after chapter 55 the following new chapter:

"Chapter 55—INDUSTRIAL REORGANIZATION COURT

"Sec. 912. Clerk and employees
"The Industrial Reorganization Court may appoint a clerk and such assistant clerks, stenographic or typewriting clerks, clerical assistants, and other employees as may be necessary, all of whom shall be subject to removal by the court. The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him.

"Sec. 913. Marshal and deputy marshals
"The Industrial Reorganization Court may appoint a marshal and deputy marshals, who shall be subject to removal by the court.

"Each marshal and his deputy marshals shall attend court at its sessions, serve and execute all process and orders issued by it, and perform the powers and duties concerning all matters within such court's jurisdiction assigned to them by the court.

"Under regulations prescribed by the Director of the Administrative Office of the United States Courts, the marshal shall pay the salaries and travel and subsistence allowances of the judges, officers, and employees of the court, and shall discharge all other funds appropriated for all expenses of the court.

"On all disbursements made by the marshal of the Industrial Reorganization Court for official certificates, the certificate of the payee shall be sufficient without verification on oath.

"United States marshals for other districts where sessions of the court are held shall serve as marshals of the court.

"Sec. 914. Bailiffs and messengers
"The Industrial Reorganization Court may appoint necessary bailiffs and messengers who shall be subject to removal by the court.

"Each bailiff and messenger of the court, preserve order, and perform such other necessary duties as the court directs.

"Sec. 915. Bailiffs and messengers
"Section 914 is amended by striking out "and in order to augment the Industrial Reorganization Commission under title I of the Industrial Reorganization Act."

"(b) After the Industrial Reorganization Corporation has filed a petition for a proposed order of reorganization, the Industrial Reorganization Court shall enter a judgment declaring whether the matter is one in which two or more corporations possess monopoly power in any part of trade or commerce among the several States or with foreign nations.

"(c) The Industrial Reorganization Court shall also have original jurisdiction of petitions, amendments, or modifications of any order of reorganization filed by the Corporation under title I of the Act, and of such other proceedings under that Act as the court shall deem necessary and appropriate to effectuate its purposes.

"§ 1593. Restoration of effective competition
"(a) Any corporation or two or more corporations may, within sixty days from the entry of judgment pursuant to section 1592, file an alternative proposed order or orders of reorganization.

"(b) If, in filing the alternative proposed order or reorganization, the Industrial Reorganization Court determines whether or not the proposed order or orders of reorganization would restore effective competition in making its determinations, those determinations shall be in accordance with the provisions of sections 2652 and 2653 of this title.

"The court shall enter an order of reorganization appropriate to effectuate the purposes of this Act. The order of reorganization may require a corporation or two or more corporations to take such action as the court shall find necessary to restore effective competition. The order may include—"

(1) a requirement that a corporation modify any contract to which it is a party, terminate any agreement with another corporation, or modify its methods of distribution;

(2) a requirement that a corporation divest itself of particular assets, including securities, accounts receivable, and other obligations; and

(3) such other requirements as the court may deem necessary to restore effective competition.

"(d) Any order entered under this section shall be subject to judicial review as provided in section 2114 of this title.

"§ 1594. Enforcement of orders of reorganization
"The Industrial Reorganization Commissioner may apply to the Industrial Reorganization Court to enforce compliance with any order issued under section 1593 of this title. In any such proceeding the court as a matter of equity shall have all power which it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and may cause any portion thereof, and the assets, or any portion thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee, and the court may constitute and appoint the Commissioner as trustee to vend, lease, assign, or dispose of any asset with respect to which the court shall have jurisdiction, pursuant to section 2652. Any order of the court issued under this section shall be effective only with the approval of the court, shall have power
to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with the order to restore effective competition, which shall be served on all parties by the court after opportunity for hearing.

In any proceeding under this section, the court may, in its discretion, order any person other than the Commission as trustee or receiver without notifying the Commission and giving an opportunity for hearing, to be called by the court.

"In any proceeding before it under this title, the Industrial Reorganization Court may, for a major expansion of job opportunities for older Americans—S. 3208 in the last Congress. Mr. President, it is almost beyond comprehension to me that we have ignored the older workers, the American citizens, despite the tremendous expansion of manpower assistance to other groups in the last decade. The unemployment rate for persons 51 and over is 16.3 percent at the end of 1972—including some 425,000 unemployed. Yet, out of 903,200 enrollees in manpower programs during fiscal 1972, only 3.7 percent—or 32,310 individuals—were 55 years old and over.

Rarely has a Government program been designed so well to exclude those who most need its help, as have our manpower programs. This exclusion is little more than a national scandal. Clearly many of the 6 million people 55 and over who are now in poverty would not be there if employment were available.

It seems as though the Government has completely ignored the idea that older people have the right to expect help in finding employment and training once they lose a job. Yet there are countless numbers of unemployed over 55 years old who are supporting themselves and getting greater satisfaction from life by being active and working. A recent report by the Department of Health, Education, and Welfare, in fact, finds a direct correlation between continued activity and sustained health during older years.

Mr. President, under my bill, an Older Workers Conservation Corps program would be established which would be administered by the Secretaries of Agriculture and Interior (hereinafter referred to as the Secretaries) are authorized to establish an Older Workers Conservation Corps (hereinafter referred to as the "program").

In order to carry out the provisions of this Act, the Secretaries are authorized:

(1) to enter into agreements where feasible with public or private nonprofit agencies or organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing bodies or a combination of both), or an organization, in order to further the purposes and goals of the program. Such agreements may include provisions for the payment of costs, as provided in subsection (a), of projects developed by such organizations in cooperation with the Secretaries in order to make the program effective or to supplement it. No payment shall be made by the Secretaries toward the cost of such projects developed by any organization or agency unless they determine that such projects, if placed upon the establishment of effective and comprehensive community service programs, will provide good job opportunities at a fair wage for thousands of older Americans in our rural counties. They want to work, not wait still longer in destitution and despair. They want to continue to share in the development and improvement of our country, not be pushed aside and told to get along on meager savings and accept their isolation from society.

That is why, in addition to again jointly sponsoring major legislation to establish such a comprehensive community service program, and to provide good job opportunities at a fair wage for thousands of older Americans in rural areas, this is why, in addition to again jointly supporting major legislation to establish such a comprehensive community service program, and to provide good job opportunities at a fair wage for thousands of older Americans in our rural counties. They want to work, not wait still longer in destitution and despair. They want to continue to share in the development and improvement of our country, not be pushed aside and told to get along on meager savings and accept their isolation from society.

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(B) will provide employment in the immediate areas in which the individuals reside;
(C) will employ eligible individuals in projects involving the construction, operation, or maintenance of any facility used or to be used as a place of sectarian religious instruction or worship;
(1) will contribute to the general welfare of the Nation, State, and community;
(9) will provide employment for eligible individuals who have been unemployed for other suitable public or private paid employment, other than projects supported under the Economic Opportunity Act of 1964, or under this Act;
(9) will result in an increase in employment opportunities for eligible individuals and will not result in the displacement of employed workers or impair existing contracts for employment;
(9) will utilize methods of recruitment and selection which will assure that the maximum number of eligible individuals will have the opportunity to participate in the program;
(I) will include short-term training as may be necessary to make the most effective use of the skills and talents of those individuals who are participating;
(9) will provide the following educational and healthy conditions of work will be provided, and will assure that persons employed under such program will be paid rates comparable to the rates prevailing in the same labor market area for persons in similar occupations, but in no event shall any person employed under such program be paid less than that prescribed by section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended;
(9) will be established or administered with the advice of persons competent in the field of service in which employment is being provided, and of persons who are knowledgeable with regard to the needs of older persons; and
(9) will authorize pay for transportation costs of eligible participants which may be incurred in employment in any project funded under this Act, in accordance with regulations promulgated by the Secretaries.
(9) to make, issue, and amend such regulations as may be necessary to effectively carry out the provisions of this Act.
(c) (1) The Secretaries are authorized to pay not to exceed $77,001,000 for the fiscal year ending June 30, 1974, and $150,000,000 for fiscal year ending June 30, 1975.

By Mr. FULBRIGHT (by request):
S. 1170. A bill authorizing continuing appropriations for Peace Corps. Referred to the Committee on Foreign Relations.

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate referral a bill to amend the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292-301), to provide authorization for appropriations for the buildings program for fiscal years 1974 and 1975 and to appropriate portions of the basic statute.
The bill has been requested by the Acting Assistant Secretary of State for Congressional Relations and I am introducing this bill in order that there may be specific legislation to which Members of the Senate and the public may direct their attention and comments.
I reserve my 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 Acting Assistant Secretary of State for Congressional Relations to the Vice President dated February 23, 1973.

I reserve my right to make further modification, the bill and letter were ordered to be printed in the Record, as follows:

S. 1171

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 292), is further amended—
By adding the following new paragraph subsection (g):

(g) In addition to amounts authorized before the date of enactment of this sub-section, there is hereby authorized to be appropriated to the Secretary of State —

(1) $8,000 for the purchase or construction (including acquisition of lease-holds) of sites and buildings in foreign countries under this act, and for major alterations of buildings acquired under this act, for fiscal years 1974 and 1975, $15,811,000, of which not to exceed $4,615,000 may be appropriated for fiscal year 1974; and,

(2) for use to carry out other purposes of this act for fiscal years 1974 and 1975, $46,800,000, of which not to exceed $31,700,000 may be appropriated for fiscal year 1974.

Sec. 2. Former subsection (g) of section 1, shall be deleted and the following submitted in lieu thereof:

"(g) By adding the following new paragraph to section 1(b) and inserting in lieu thereof:

"Each former President shall fix basic rates of compensation for persons employed for his personal or official use, and such rates and compensation payable to any such person shall not exceed the annual rate of basic pay now or hereafter provided for level II of the Executive Schedule. The aggregate compensation for the staff may not exceed $12,500,000 for the fiscal year 1974, and for fiscal year 1975, $12,000,000. The funds for fiscal years 1974 and 1975 are available to the former President and members of his staff. The funds provided for the President's staff are appropriated to the Executive Schedule and the Staff Schedule.

"(h) As an extension of section 4 of the Act, the new section:

"(Sec. 2. This Act, other than subsections (a) and (e) of section 1, shall not become effective until the end of the fiscal year next succeeding the fiscal year in which the funds authorized by this Act are appropriated."


Hon. Spiro T. Agnew,
President of the Senate,
Washington, D.C.

Dear Mr. President: The Department of State enclosed and requested our consideration of proposed legislation to amend the Foreign Service Buildings Act of 1926, as amended, to provide for an additional or supplemental amount as may be necessary for increases in salary, pay, retirement, and the like, and other direct expenses of the Department of State.

There is transmitted for your consideration a copy of a letter from the Acting Administrator of the General Services Administration explaining the need for its consideration and enactment be privy to the Senate and House of Representatives of the United States of America in Congress assembled, on August 25, 1958 (72 Stat. 838), as amended, is further amended by:

(a) deleting the following clause of section 1(b) and inserting in lieu thereof:

"Each former President shall fix basic rates of compensation for persons employed for his personal or official use, and such rates and compensation payable to any such person shall not exceed the annual rate of basic pay now or hereafter provided for level II of the Executive Schedule."

Sec. 2. Former subsection (g) of section 1, shall be deleted and the following submitted in lieu thereof:

"(2) In addition to such sums as are authorized by paragraph subsection (g) above, there are hereby authorized to be appropriated necessary sums for use to carry out the purposes of this Act, for fiscal years 1974 and 1975, $46,800,000, of which not to exceed $31,700,000 may be appropriated for fiscal year 1974.

"(3) For the operating expenses of the Department of State, the amount of $12,500,000 is authorized for fiscal year 1974 and $12,000,000 for fiscal year 1975.

The Department of State has been informed by the Office of Management and Budget that there is no objection to this proposal from the standpoint of the Administration's program for the fiscal years 1974 and 1975.

A letter similar in content is being sent to the Speaker of the House.

Sincerely yours,

Marshall Wright
Acting Assistant Secretary for Congressional Relations.

By Mr. ERVIN (by request):


Mr. ERVIN. Mr. President, I introduce, by request, a bill to amend the act of August 25, 1958, as amended, and the President's Transition Act of 1963.

This legislation was requested by the General Services Administration and I ask unanimous consent that a copy of the bill be placed in the Record.

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

S. 1172

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, on August 25, 1958 (72 Stat. 838), as amended, is further amended by:

(a) deleting the following two sentences of section 1(b) and inserting in lieu thereof:

"Each former President shall fix basic rates of compensation for persons employed for his personal or official use, and such rates and compensation payable to any such person shall not exceed the annual rate of basic pay now or hereafter provided for level II of the Executive Schedule."

Sec. 2. Former subsection (g) of section 1, shall be deleted and the following submitted in lieu thereof:

"(g) By adding the following new paragraph to section 1(b) and inserting in lieu thereof:

"Each former President shall fix basic rates of compensation for persons employed for his personal or official use, and such rates and compensation payable to any such person shall not exceed the annual rate of basic pay now or hereafter provided for level II of the Executive Schedule. The aggregate compensation for the staff may not exceed $12,500,000 for the fiscal year 1974, and for fiscal year 1975, $12,000,000. The funds for fiscal years 1974 and 1975 are available to the former President and members of his staff. The funds provided for the President's staff are appropriated to the Executive Schedule and the Staff Schedule.

"(h) As an extension of section 4 of the Act, the new section:

"(Sec. 2. This Act, other than subsections (a) and (e) of section 1, shall not become effective until the end of the fiscal year next succeeding the fiscal year in which the funds authorized by this Act are appropriated."


Hon. Spiro T. Agnew,
President of the Senate,
Washington, D.C.

Dear Mr. President: There is transmitted herewith for referral to the appropriate Committee a draft of legislation "To amend the Act of August 25, 1958, as amended, and the President's Transition Act of 1963."

The bill would accomplish three things:

1. Reduce the compensation payable to members of a former President's staff;
2. Extend the period of availability of funds for former Vice Presidents;
3. Increase from $900,000 to $1,500,000 the authorization for funds for carrying out a Presidential transition.

In a report to the Congress dated November 16, 1970, entitled "Federal Assistance for Presidential Transitions," the Comptroller General of the United States states that the Congress may wish to consider: (1) providing for adjustment of the overall limit on compensation of the former President's staff in line with pay raises, or eliminating the $900,000 limit, and (2) providing for availability of funds to the former President and Vice President; and (3) increasing the funds authorized for the incoming President and Vice President.

The first recommendation concerns funds available to former Presidents under the Act of August 25, 1958, commonly known as the President's Transition Act, after termination of the Executive Schedule and General Schedule salaries. At present, the compensation of a member of the former President's staff must not exceed $900,000, while the staff salaries are taxed to Executive Level pay scales which are increased periodically, the overall limitation is fixed in law. This limitation would be increased from $900,000 to $1,500,000 for fiscal year 1974 and $1,500,000 for fiscal year 1975. The additional amount for fiscal year 1974 is authorized to provide temporary compensation for that portion of the fiscal year which precedes the fiscal year in which the funds are appropriated to the incoming President. We believe that this second recommendation, concerning the period of availability of transitional funds, is necessary to provide the outgoing President with a mechanism for providing for the PRC's of its staff. The President's Transition Act provides that services and monies appropriated thereunder for a former President or Vice President shall be available for a period of months from the date of expiration of the term of office. After this period, funds at a much-reduced level are available to the succeeding President. No further provision is made for a former Vice President. Under the draft bill, the average monthly rate would be $62,500, for the first six months of the fiscal year, $8,000 for the former and nothing for the latter.

The experience of the latest transition indicates that a longer period of availability of funds under the President's Transition Act is desirable, since the burdens of former Presidents and their staffs are greatest in the months immediately after leaving office, do not decline as rapidly as the six-month period provided in the screening of President Johnson's papers prior to release to the presidential library had hardly begun when the funds would have terminated.

As to the third recommendation, the present law provides $850,000 for Presidential Transitions. In the current transition process, the General Accounting Office found the provision of $450,000 to be clearly inadequate. The new bill would increase the amount to $1,500,000 for fiscal year 1974.
bilities of Presidents-elect and Vice Presidents-elect. We concur in their belief that, although there is no objective means of determining the proportion in which total expenses should be borne by public and private funds, the Federal assistance must cover a substantial part of the transition expenses if the Presidential Transition Act is to function as intended. The draft bill would increase the President's authorization to $1,500,000 with 60% of any amount appropriated to be available to the incoming administration and 40% to the outgoing. This would raise the ceiling from $400,000 to $800,000 for the incoming Administration, and from $450,000 to $600,000 for the outgoing. The Comptroller General has not specifically recommended an increase for the outgoing administration, the need therefor is implicit in the first and second recommendations, discussed above.

It is believed that the draft bill would provide more equitable treatment to both incoming and outgoing Presidents and Vice Presidents, and make for a more orderly and efficient transition. We urge its prompt introduction and enactment.

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

Sincerely,

ARTHUR F. SAMPSON,
Acting Administrator.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 355
At the request of Mr. Mansfield (for Mr. Magnuson), the Senator from North Dakota (Mr. Burdick) and the Senator from Illinois (Mr. Percy) were added as cosponsors of S. 555, to amend the National Traffic and Motor Vehicle Safety Act of 1966 to provide for remedies of defects without charge, and for other purposes.

S. 356
At the request of Mr. Mansfield (for Mr. Magnuson), the Senator from Illinois (Mr. Percy) was added as a cosponsor of S. 356, to provide disclosure standards for written consumer product warranties; to amend the act; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

S. 433
At the request of Mr. Robert C. Byrd (for Mr. Magnuson), the Senator from Tennessee (Mr. Baker), the Senator from Indiana (Mr. Muskie), the Senator from West Virginia (Mr. Cranston), the Senator from California (Mr. msJames), the Senator from Arkansas (Mr. Hatfield), the Senator from Iowa (Mr. Hrushe), the Senator from Maine (Mr. Collin), the Senator from North Carolina (Mr. Hunt), the Senator from Massachusetts (Mr. Kennedy), the Senator from Wyoming (Mr. Craig), the Senator from South Dakota (Mr. McGovern), the Senator from Utah (Mr. Bennett), the Senator from West Virginia (Mr. Randoph), the Senator from Rhode Island (Mr. Pell), the Senator from Alaska (Mr. Stevens), the Senator from New Jersey (Mr. Williams), and the Senator from New York (Mr. Mondale) were added as cosponsors of S. 433, a bill to assure that the public is provided with an adequate quantity of safe drinking water, and for other purposes.

S. 514
At the request of Mr. Moss, the Senator from Alabama (Mr. Sparkman) was added as a cosponsor of S. 514, to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

S. 582
At the request of Mr. Scott of Pennsylvania, the Senator from North Dakota (Mr. Burdick) was added as a cosponsor of S. 582, providing social services for the aged.

S. 589
At the request of Mr. Atten, the Senator from Minnesota (Mr. Mondale) was added as a cosponsor of S. 589, making an urgent supplemental appropriation for the National Industrial Reserve under the Independent Agencies Appropriation Act for the fiscal year ending June 30, 1973.

S. 628, S. 627, S. 628, and S. 629
At the request of Mr. Moss, the Senator from Alabama (Mr. Sparkman) was added as a cosponsor of S. 626, to provide increases in certain annuities payable under chapter 83 of title 5, United States Code; S. 627, to provide that the first $4,000 received as Civil Service retirement annuity from the United States or any agency thereof shall be excluded in determining contributions to the Social Security and Federal Employees' Retirement System.

S. 722
At the request of Mr. Scott of Pennsylvania, the Senator from North Carolina (Mr. Helms) was added as a cosponsor of S. 722, to incorporate Pop Warner Little Scholars, Inc., as a tax-exempt organization.

S. 709
At the request of Mr. Sparkman, the Senator from Colorado (Mr. Haskell) was added as a cosponsor of S. 780, to amend the Clayton Act by adding a new section to prohibit sales below cost for the purpose of destroying competition or eliminating a competitor.

S. 763
At the request of Mr. Chiles, the Senator from Minnesota (Mr. Humphrey), the Senator from Maine (Mr. Muskie) and the Senator from South Dakota (Mr. Abraham) were added as cosponsors of S. 783, to establish the Everglades-Big Cypress National Recreation Area in the State of Florida.

S. 871
Mr. Cotton, Mr. President, I ask that the names of the senior Senator from Georgia (Mr. Talmadge) and the senior Senator from Minnesota (Mr. Mondale) be added as cosponsors to S. 871 to correct certain inequities in the crediting of National Guard Technician Service in connection with Civil Service retirement.

At the request of the two Senators, from far distant regions of the Nation, brings to a total of 17 Senators who are sponsoring this measure; and is a further indication of the broad support for equity for the National Guard technicians.

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

At the request of Mr. Sparkman, the Senator from Florida (Mr. Chiles) was added as a cosponsor of S. 968, to authorize Federal savings and loan associations and national banks to own stock in and invest in loans to certain State housing corporations.

S. 1065
At the request of Mr. Mansfield (for Mr. Magnuson), the Senator from New Hampshire (Mr. Cottton) was added as a cosponsor of S. 1065, to amend section 1306(a) of the Federal Aviation Act of 1958, as amended, to authorize the investment of the war risk insurance fund in securities of, or guaranteed by, the United States.

S. 1066
At the request of Mr. Mansfield (for Mr. Magnuson), the Senator from New Hampshire (Mr. Cottton) was added as a cosponsor of S. 1066, to amend title 49, United States Code, to provide for criminal penalties for all who knowingly and willfully refuse or fail to file required reports, keep required data or falsify records; provide criminal penalties for unlawful carriage of persons for compensation or hire; to increase the civil penalty limits; and for other purposes.

S. 1083
At the request of Mr. Mansfield (for Mr. Bayh), the Senator from North Carolina (Mr. Ervin) was added as a cosponsor of S. 1083, to amend certain provisions of Federal law relating to explosives.

SENATE JOINT RESOLUTION 64
At the request of Mr. Church, the Senator from Nevada (Mr. Bayle), the Senator from North Carolina (Mr. Ervin), and the Senator from Iowa (Mr. Hughes) were added as cosponsors of Senate Joint Resolution 64, a resolution to protect religious rights in the case of abortion and sterilization procedures.

SENATE RESOLUTION 80—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY
(Ordred to be placed on the calendar.)

Mr. Cannon, from the Committee on Rules and Administration, reported the following resolution:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Shirley L. Bacon, widow of Raymond E. Bacon, an employee of the Senate at the time of his death, a sum equal to one year's compensation at the rate he was receiving by law at the time of his death, said sum to be deducted inclusive of funeral expenses, and all other allowances.

HIGHWAY CONSTRUCTION AUTHORIZATIONS—AMENDMENT

AMENDMENT NO. 28
(Ordered to be printed and referred to the Committee on Public Works.)
Mr. HANSEN (for himself and Mr. McGee) submitted an amendment intended to be proposed by them jointly to the bill (S. 502) to authorize appropriations for the construction, development, and improvement of federal highways in accordance with title 23 of the United States Code, and for other purposes.

ORDER FOR STAR PRINT OF AMENDMENT NO. 27 TO S. 158

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the following amendment to the Senate from California (Mr. Cranston) that amendment No. 27 to S. 158, introduced on March 8, 1973, be reprinted as a star print to reflect certain changes that resulted from an error in printing.

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

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 21 TO S. 517

At the request of Mr. Couzens, the name of Mr. HANSEN (for himself and Mr. Bentsen) was added as a cosponsor of amendment No. 21 to S. 517, to extend titles I, II, III, IV, V, and VII of the Agricultural Act of 1970 for 5 years.

ANNOUNCEMENT OF HEARINGS CONCERNING HOUSING PROGRAMS

Mr. SPARKMAN. Mr. President, I should like to announce that the Subcommittee on Housing and Urban Affairs will conduct oversight hearings on housing and urban development programs for 2 weeks starting April 3, 1973.

The primary purpose of the hearings is to obtain information from the public and users of the programs to enable the committee to evaluate the programs as to their effectiveness and efficiency in carrying out the purpose for which they were created. Data will be provided on housing needs and to what extent the programs are meeting these needs, the cost and failure rate of housing subsidy programs, and the success and failure of community development programs.

A secondary purpose is to hear testimony on the impoundment of appropriated funds for housing and urban development programs announced by the Secretary of Housing and Urban Development on January 11. The sudden cutoff of Federal housing assistance funds has placed many sponsoring groups, home builders, nonprofit church groups, city governments, and many others in a serious financial loss position. Since the original announcement, a number of HUD field orders have been issued which have modified the original impoundment orders, in some cases easing up on the orders, but in others placing further restrictions on the use of Federal funds. The most serious issue remaining seems to be the position of the administration on the urban development budget cuts for the interim period until new programs can be authorized and funded sometime in fiscal 1975. The subcommittee would like to have the administration explain its position on these cutoffs and what it intends to do about the many inequities that still exist as a result of the arbitrary freeze on housing and urban development funds.

Testimony from a cross-section of public witnesses will be heard to give the subcommittee a basis for developing legislation for which subcommittee hearings will be held this summer.

The subcommittee would welcome statements for inclusion in the record of the hearings.

The hearings will commence each day at 10 a.m. in room 5302 of the Dirksen Senate Office Building.

ANNOUNCEMENT OF HEARINGS CONCERNING SOFTWOOD LUMBER

Mr. SPARKMAN. Mr. President, I should like to announce that the Subcommittee on Banking, Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate has held 2 days of hearings on Monday, March 26, and Tuesday, March 27, on the supply and price of softwood lumber, including S. 1033 on lumber imports introduced by Senator Packwood.

The subcommittee would welcome statements for inclusion in the record of the hearings.

The hearings will commence each day at 10 a.m. in room 5302 of the Dirksen Senate Office Building.

NOTICE OF HEARING

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Senator from Louisiana (Mr. Johnston), I ask unanimous consent to have a notice of hearing printed in the Record.

The PRESIDING OFFICER. Without objection it is so ordered.

NOTICE OF HEARING ON AUTHORIZATION FOR APPROPRIATIONS

Mr. JOHNSTON. Mr. President, the Subcommittee on Production and Stabilization of the Committee on Banking, Housing, and Urban Affairs will commence hearings on legislation to authorize appropriations for the President's National Commission for Productivity at 10:00 a.m. on March 14, 1973, in room 5302, New Senate Office Building.

All persons wishing to testify should contact Mr. Gerald Allen, room 5300, New Senate Office Building; telephone 235-7931.

ADDITIONAL STATEMENTS

RAINBOW BRIDGE CRISIS

Mr. MOSS. Mr. President, the February 1 Federal court ruling, which orders the Secretary of the Interior to remove any waters of Lake Powell which have crossed over the boundaries of Rainbow Bridge National Monument in southern Utah, and to prevent any water from entering the future, has precipitated a crisis in the Upper Colorado River Basin states of Utah, Wyoming, Colorado, and New Mexico.

Within a few days, unless a stay is granted, 4 million acres of water may be released from Lake Powell, to be lost forever to the upper basin, and the purpose of the Colorado River Storage Act will be violated, because the upper basin will be unable to meet its legal water deliveries to the lower basin States of Arizona, Nevada, and California. Under the provisions of the court decree, there will be a continuing loss of approximately 1 million acre-feet of water per year, and a $3 million loss each year in power revenues due to the power failure as reparation of the project costs.

The tragic aspect of the entire situation is that neither Rainbow Bridge National Monument, nor the arch of Rainbow Bridge itself, is being—or can ever be—harmed in any way by the small flow of water into the monument. A U.S. Geological Survey study conducted in 1972 reported that Rainbow Bridge, created by the impoundment of Lake Powell, is in no danger of having its abutments of the bridge not be touched or affected in any way. Moreover, in my opinion, the clear, calm streamer of blue water would enhance the beauty of the arch.

I have introduced a bill, S. 1057, to remove from the Colorado River Storage Act the requirement that no lake water be allowed to enter any national park or monument. The function of the act, I hope it can be given immediate consideration.

In support of the bill, I ask unanimous consent that the following materials be placed in the Congressional Record: First, a copy of S. 1057; second, a memorandum I have prepared giving the background of the crisis, and detailing the current situation; third, a memorandum outlining in full the effects of the court order which has been prepared by Ival Goslin, executive director of the Upper Colorado River Commission; and fourth, excerpts from a study conducted by U.S. O.C.S. and the Bureau of Reclamation which were the basis of a proposal to build a barrier dam to keep the waters out of the monument.

These studies bear out my contention that the maximum water level of Lake Powell would never damage Rainbow Bridge.

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

S. 1057

A bill to amend the Colorado River Storage Project Act in order to remove the prohibition against constructing dams or reservoirs authorized in such Act within national parks or monuments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the third section of the Act entitled "An Act to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes," approved April 11, 1966 (70 Stat. 105), is amended by striking out the words therein, and inserting the following:

"That the Senate and House of Representatives of the United States of America in Congress assembled, That the Act be and is hereby enacted that no dam or reservoir constructed under the authorization of this Act shall be within any national park or monument."
March 12, 1973

CONGRESSIONAL RECORD—SENATE

7329

RAINBOW BRIDGE CRISIS

(Memorandum by Senator Frank E. Moss)

1968 when the Colorado River Storage Project Act was passed, language was included as follows:

"It is the intention of Congress that no dam shall be constructed under the authorization of this Act shall remain within any national park or monument."

This language was inserted primarily to protect Dinosaur National Monument should Echo Park Dam be built, but it also applies to the Glen Canyon National Recreation Area, the Rainbow Bridge Monument, and the waters of Lake Powell.

As Lake Powell has filled, some water has backed up into the Rainbow Bridge National Monument. But it has receded far below the base of Rainbow Bridge, and in no way endangers it. The level of the Lake would be more than 30 feet below the base of the Bridge at one side, and 30 feet at the other.

Some time ago, a group of environmentalists met in Utah and decided to ensure that the Department of the Interior to enforce the provisions of the Colorado River Storage Act as they relate to Rainbow Bridge National Monument. On February 27 of this year, Judge Willis Ritter, Senior Federal Judge in Utah, handed down a decree which provided for the reorganization of the Department of the Interior to remove any waters of Lake Powell from the National Monument, and enjoined the Department to take whatever steps are necessary to prevent any water from entering the Monument in the future.

The Department of the Interior intends to ask for a stay of execution, and also to appeal Judge Ritter's decision to the Tenth Circuit Court of Appeals. They are not sure, however, that Judge Ritter will grant a stay, and the outcome of the appeal is uncertain.

The Department's decision nullifies the purpose of the Colorado River Storage Act of 1954, and of the Colorado River Basin Project Act of 1968, which further spells out operating procedures.

Within a few days, unless a stay of execution is granted, the Department of the Interior, to prepare for the Spring run-off, will have to initiate the release of at least four million acre feet of water from Lake Powell in excess of that required to be released under the dam's operating criteria. This water would be lost forever to the Upper Basin states, and would be unable to be used to supply to the Lower Basin in exchange for diversions of water upstream.

If the mandate is allowed to stand, the four Upper Colorado states—Utah, Colorado, Wyoming, and New Mexico, will lose approximately one million acre feet a year of water available to them for consumption use under the Colorado River Compact, and the Upper Colorado River Basin Compact.

In addition, about $3 million will be lost each year in power revenues to the Treasury as repayment of the costs of the Colorado River Storage Act and participating projects whose parameters are subscribed in Section 603 of the Colorado River Basin Project Act of 1968. The costs of these projects were included in the budget requests for both 1961 and 1962; funds were requested to build a barrier dam which would have prevented any water from entering Lake Powell when it filled to the 3,700 foot level (the maximum level of the lake). The dam would have cost about $35 million, and would have left a small scar on the landscape. Furthermore, when the water receded at low water periods, it would have left an ugly mud flat, and a mud-splattered dam.

I went before the Senate Appropriations Committee on both the 1961 and 1962 budget requests and asked that the money be deleted. The late great Senator Carl Hayden, then Chairman of the Senate Appropriations Committee, said there was no senseless and unnecessary expenditure, and the money, for the Rainbow Bridge barrier dam was never appropriated.

The Department of the Interior has ignored a great disaster. The clear blue finger of water is not. It is there now, and it should stay there. Lake Powell must not be lowered. The water and power supply system of the Upper Colorado River Basin States must not be endangered.

EFFECTS OF JUDGE'S DECREE OF FEBRUARY 27, 1973, IN RAINBOW BRIDGE CASE ON FOUR UPPER DIVISION STATES: UTAH, COLORADO, NEW MEXICO, AND WYOMING

(By Dr. David C. Lockwood, director, Upper Colorado River Commission)

The Judge's decree permanently orders and enjoins the Secretary of the Interior to reorganize the Department to remove all waters of Lake Powell that are within the boundaries of the 160-acre Rainbow Bridge National Monument and to take whatever steps are necessary to prevent any water from entering the Monument in the future. The major adverse effects of this decree on the four Upper Division States are:

1. Within a few days, unless a stay of execution is requested and granted, in order to comply with this decree, there will have to be initiated the release of at least four million acre feet of water from Lake Powell in excess of that required to be released under the long-term operating criteria. This water will be forever lost to the Upper Basin states insofar as its use for regulated delivery is concerned.

2. The release of the additional four million acre feet of water in 1973 constitutes an immediate violation of the operating criteria whose parameters are subscribed in Section 602 of the Colorado River Basin Project Act of 1968.

3. If the decree is allowed to stand, the four Upper Basin States will be prevented from using the water apportioned to them under the "laws of the river," the Colorado River Compact and the Upper Colorado River Basin Compact. The loss will be approximately $1.5 million in 1973.

This reduction in water use will have to be imposed because the storage water in Lake Powell between elevations 3606 and 3700 feet above sea level will be lost. The Upper Basin will be unable to make compact deliveries to the Lower Basin without curtailting water use in Utah, Colorado, New Mexico and Wyoming in years of low river flow. It was planned that about half the water in Lake Powell between elevations 3606 and 3700 feet above sea level will be lost. The Upper Basin will be unable to make compact deliveries to the Lower Basin without curtailting water use in Utah, Colorado, New Mexico and Wyoming in years of low river flow.

For the reason stated above, I urge the Congress to reconsider the four mile rule in the Colorado River Storage Act as it pertains to the storage of water in Lake Powell.
 Highlands of 1972 NASA ACTIVITIES

Mr. GOLDFATER. Mr. President, as ranking Republican member of the Senate and Space Sciences Committee, I am happy to report that the year 1972 was one of the most productive and successful periods in the history of our space program.

As we all know, the year saw the successful flight of Apollo 17 and its return to earth. Apollo 17, for your information, was the last and longest manned moon landing flight. It recorded the longest manned lunar landing flight—301 hours and 51 minutes. It included the longest time spent in extravehicular activity—47 hours and 46 minutes; the longest total extravehicular activity time—23 hours and 12 minutes. In addition, the Apollo 17 recorded the largest moon sample return—an estimated 249 pounds of material.

The Apollo 17 which splashed down December 19, Mr. President was a fitting climax to a truly spectacular year in space exploration.

Because of these important developments and their bearing on future space activities, I ask unanimous consent to have the highlights of NASA's 1972 activities printed in the Record.

Therefore, without objection, the highlights were ordered to be printed in the Record, as follows:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION HIGHLIGHTS OF 1972 ACTIVITIES

Early in January, President Nixon recommended, and the Congress approved, proceeding with the development of the Space Shuttle—a reusable manned space vehicle which will be used for a wide variety of space missions in earth orbit. The Space Shuttle will be launched as a rocket and landed as an airplane.

The Shuttle will operate from Kennedy Space Center in Florida and Vandenberg Air Force Base in California. North American Rockwell Corporation's Space Division, Downey, California, was selected as the prime contractor.

With the return to earth of Apollo 17 on December 19, the United States concluded the last, longest, and most successful of seven manned moon landings.

Apollo 17 records included:

- Longest manned lunar landing flight: 301 hours, 51 minutes.
- Largest lunar sample return: An estimated 115 kilograms (249 pounds).
- Longest total extravehicular activity time: 23 hours, 12 minutes.
- Longest time in lunar orbit: 174 hours, 48 minutes.
- Apollo 17 was launched at 12:33 a.m. December 7. It was manned by Eugene A. Cernan, Commander; Ronald E. Evans, Command Module Pilot; and, Harrison H. Schmitt, Lunar Module Pilot.

In addition, Apollo 17 took place April 19. After lift-off from Cape Kennedy April 16, John Young, Command Module Pilot, and Charles Duke, Lunar Module Pilot, landed April 19 on the Descartes highlands region of the moon while Ken Mattingly, Command Module Pilot, orbited the moon in the Apollo CSM. They have since composed an array of scientific instruments and two lunar mapping cameras. Apollo 16 splash down in the Pacific Ocean October 18.

During his visit to Russia in May, Presi­dentity Nixon signed an agreement with Chair­man Khrushchev of the U.S.S.R. on an earth orbital rendezvous and docking of a U.S. spacecraft with a Russian spacecraft. In July 1972, a U.S. Apollo spacecraft will link up with a Soviet Soyuz spacecraft and While docked together, astronauts and cosmonauts will visit both spacecraft and perform a number of scientific experiments. For the purpose of the Apollo Soyuz Test Project (ASTP) is to develop a rescue capability by demonstrating systems capable of docking in orbit of any future manned spacecraft of either nation.

For SkyLab, the nation's first space station, was the inevitable beginning coming together. The three flight crews and two backup crews were named in January and the assembly began an intensive year of training.

The hardware elements—spacecraft components and equipment for conducting scientific, technical and biomedical investigations—were built and tested in many parts of the country and then shipped to Florida for final assembly and testing.

Back-to-back 1973 launches, planned for May 14 and 15, will get SkyLab started on an eight-month operational period during which the spacecraft cluster will be visited three times for periods of up to 86 days by three-man crews who will conduct a wide range of experiments in earth resources, solar astronomy, medical and other fields.

The manned orbital research facility will have features that cannot be found on earth: zero-gravity; a broad view of the earth's surface features; a capability for demonstrating the sun and stars from inside the earth's dense and hampering atmosphere.

SPACE SCIENCE

Mariner 9 was put into orbit around Mars late in 1971. The solar-powered spacecraft circled the planet 889 times in 349 days and before being shut down on October 27, completely mapped the Martian surface.

As the spacecraft's TV cameras watched the seasons change below, its scientific instruments returned a wealth of data that has revised all previous concepts of Mars.

Among Mariner 9's major observations were:

A geologically active planet with volcanic mountains larger than any on earth;

An equatorial crater three to four times deeper than the Grand Canyon;

Indications that free-flowing water may have once existed on Mars;

A land of deep canyons, once filled with flowing water, and covered with an evaporation-dust storm that raged to an altitude of 50 to 60 kilometers (30 to 35 miles), cooling the surface temperature to between 100 and 180 degrees Fahrenheit.

Mariner 9's findings laid the groundwork for America's next venture to Mars, the Viking expedition in 1975-76 which will search for evidence of life on the planet.

Pioneer 10 was the first spacecraft to fly be-
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yon the orbit of Mars, the first to penetrate the Asteroid Belt, the first intended to look closeup at Jupiter, a thousand times as big as the Earth, which is the first destined to escape the solar system. As the year ended, Pioneer 10 had passed safely beyond the orbit of Jupiter. It is now in the Asteroid Belt but still had a quarter of a billion miles to fly before training its cameras on Jupiter's colorful bands and constructing a Red Spot. In December of 1973, From that distance its radio signal will take 45 minutes to reach us.

The heaviest and most complex U.S. space observatory, named for the Polish astronomer Copernicus, was launched on August 21 and began returning evidence of nuclear reactions on the surface of the universe beyond. Ten of them, plus two smaller ones, were launched from Kennedy Space Center, Florida.

AERONAUTICAL RESEARCH AND TECHNOLOGY

Major thrusts of NASA's aeronautical research are directed at the problems of jet engine noise abatement and the reduction of airway and airport congestion. Significant progress has been achieved in programs to develop technology for a quiet jet engine, to develop designs for quieting U.S. commercial jetliners flying the nation's airways today, and to develop quieter aircraft takeoff and landing procedures.

Programs for control of jet engine exhaust emissions have demonstrated techniques for achieving significant reductions in pollutants.

Additional progress was achieved in composite materials research, avionics, aerodynamics including the supercritical and anti-symmetrical wings), heat-resistant lightweight control systems, pollution safety, supersonic and hypersonic research, and in basic research in materials and structures.

NASA continued to distribute information about benefits from aerospace technology to both the private and public sectors of the national economy at an ever-increasing rate during 1972. Noteworthy during the year was accelerated use of computer aids for destructive and nondestructive testing, and engineering design. Many other fields and disciplines used NASA services in creating new commercial products, and improving others.

A compact, fully automatic gas analyzer now on the commercial market offers prompt information on respiratory and metabolic functions. It can be used in hospital intensive care units and by anesthesiologists.

Ultra-clean laminar air-flow techniques developed by NASA for assembling spacecraft are helping surgeons prevent infections in hospital operating rooms. The number of these special surgical procedures has risen from less than 50 a year ago to nearly 200 today.

Devices such as eye-operated switches have been used in a Huntsville, Alabama, hospital to test various applications of NASA-developed technology.

Immobilized patients are able to do such things as open and close doors and windows, control room temperatures, change radio and TV stations, adjust the position of their beds, and signal the nurse.

Nondestructive testing techniques developed by NASA are gaining widespread industrial use. A good example is a rapid-scan infrared tire tester being used daily by a major U.S. tire manufacturer.

NASTRAN, a computer program designed by NASA to analyze the behavior of structures under stress, is now a design aid for the U.S. Armed Forces and for a firm to more than 600 American engineers outside the space agency. More than 70 industries, universities, laboratories and Government agencies are using it to solve their engineering problems.

For example, front suspension and steering linkages in farm tractors and buses, and on commercial and military aircraft are being analyzed for NASTRAN assistance. NASTRAN analysis can also be applied to bridge design, power plants, skyscrapers, and airplanes.

Increasingly items of fireproof or fire resistant clothing, fabrics, and resistant building materials appeared on the commercial market, spurred by NASA research.

NASA has developed several fire retardant or non-flammable foams, paints, fabrics, and fiberglass laminates. The International Association of Firefighters recently asked NASA to demonstrate the effectiveness of these materials first developed for the space program.

New, successful lines of high-energy batteries appeared in 1972. Several of them were first developed during 1972, providing sure, fast starts for portable power tools and sports equipment, thanks to battery technology originally developed by NASA.

These new products include both lead-acid and nickel-cadmium batteries capable of being recharged 50 to 100 times faster than existing batteries. Most commercial batteries required 14 to 18 hours for full recharge. The new lines appeared in 15 to 20 minutes without damage to the cells and some nickel-cadmium units can be recharged in as little as 6 minutes.

A heat pin, developed jointly by NASA and the Atomic Energy Commission, found increasing use during 1972 in products for industrial and household uses. The heat pin, first used in NASA spacecraft and in cooling nuclear reactors can transport heat at a rate possible with the best solid conductors. It is being used to speed the cooking of roasts, to recover heat from steam flues and to cool the oil in motorcycles.

Paper-thin flat conductors, an adaptation of technology developed for space travel, are now being used commercially. The adhesive-backed flat cables and switches are applied on walls, ceilings and floors with no need for costly insulation. The new conductor can be readily concealed by paint, wallpaper, tile or carpeting.

INTERNATIONAL AFFAIRS

The principal events affecting the NASA international program in 1972 were the May 24 US/USSR Agreement Concerning Cooperation in the Exploration and Use of Outerspace, and the European decision to proceed with system definition studies of a sortie laboratory for use with the Space Shuttle.

In other areas of cooperative international activity, 1972 was marked by satellite and probe launchings, foreign participation in the NASA mission to Mars, and one each from Wallops Satellites, NASA's Skylab, and NASA's Nimbus 5. The SOFIE mission was a comprehensive information base about the earth's resources and its surface environment with the launch of the first Earth Resources Technology Satellite (ERTS-1). The 891-kilogram (1,965-pound) satellite was placed into a 920-kilometer (570-mile) orbit by a Delta launch vehicle from the Western Test Range (WTR), California, and began returning important pictures of the earth's surface July 25.

The main purpose of this first mission is to demonstrate the usefulness of remote sensing of conditions on land, sea and environment on a global scale and on a repetitive basis. It is expected that data from ERTS-1 will contribute importantly to the fields of agriculture, forestry, geography, geology (land use management), hydrology, pollution control, oceanography, meteorology and ecology.

Two weather satellites were launched on Delta rockets from WTR: National Oceanic and Atmospheric Administration-2 (NOAA-2) and NASA's Nimbus-5. The latter is a solar-geophysical meteorological satellite launched by NASA October 15 for the NOAA as part of that Agency's operational weather satellite system. Nimbus, launched December 11, is a research and development satellite carrying three new experiments along with three improved experiments similar to those on Nimbus-1 satellites. One experiment involves, for the first time, taking vertical temperature measurements throughout the entire atmosphere.

Two commercial communications satellites were launched on Delta rockets: Intelsat IV series were launched January 21 and August 6. The Communications Satellite Corporation aboard NASA's Atlas Centaur launch vehicle to bring Intelsats and Nimbus-5 to the geostationary position, and NASA's Tracking and Data Relay Satellites (TDRS), which are key communications satellites for the space program.

In addition a small communications relay satellite, Oscar-6, was carried into orbit aboard the NOA-A 2 launch vehicle for the Research and Development Center. It is now being used by ham radio operators around the world. And the first in a new series of Canadian communications satellites, TELESAT-A of "Anik" (Eskimo for brother), was launched by NASA on a Delta rocket. Both the Intelsats and the Canadian satellite were launched from Kennedy Space Center, Florida.

Two commercial communications satellites were launched with the SOFIE mission. Skylab, a 45,450-kilogram (100,000-pound) computerized laboratory, was launched from Kennedy Space Center, Florida.

SUMMARY

In 1972, some programs came to close with their initial goals reached or surpassed, while newer programs were being developed with a robust momentum on an overall growth pattern. In 1972, NASA-developed technology...
and systems found increasingly wider use in both the private and public sectors of the national and international economy. In sum-

TRIBUTE TO CAST IRON SOIL PIPE INDUSTRY AND TO ALABAMA’S ROLE THEREIN

Mr. ALLEN. Mr. President, I rise at this time to extend congratulations to the Cast Iron Soil Pipe Institute and to its company members who produce over 98 percent of the cast iron soil pipe and fittings manufactured in this country. I further extend my sincere congratulations to the thousands of fine, industrious citizens who are employees of these companies. The industry has just completed a remarkably successful record year and I pay tribute to all those who made that success possible. Cast iron soil pipe producing companies, and to the loyal and dedicated work of their many employees.

Mr. James B. Horan of Tyler Industries, Tyler, Tex. I congratulate him upon his election and I extend to him and his fellow officers and board members, every best wish for a successful quarterly membership meeting to be held this week at the Sheraton-Dallas Hotel in Dallas, Texas. Women and woménn

SECOND ANNUAL MODEL U.S. SENATE IN DELAND, FLA.

Mr. CHILES. Mr. President, on the occasion of the annual model Senate Assembly will sponsor its Second Annual Model U.S. Senate in Deland, Fla. The 4 days have been planned with the goal of duplicating as closely as possible the activities of the U.S. Senate. Representing 50 colleges and universities, 100 students from across the Southeast will each assume a senatorial characterization and participate in committee, floor, party caucus, and Senate sessions.

The students will be active in writing legislation as well as voicing their opinions on current issues facing our Congress today. You will agree with me when I note that this particular form of simulation is an important learning tool for our Nation’s future lawmakers. I feel also that this model Senate is worthy of our attention for another reason, and that is for the possible interchange of ideas between us who attend the workshop and our voting youth.

The meeting will be at the busy schedules to attend the Senate are the other political science faculty advisers, Dr. T. Wayne Bailey and Dr. Gary L. Maris, as well as to Dr. John E. Johns, president of Stetson.

However, the responsibility for a successful program rests in the hands of the student senators.

I should like to give recognition to the two political science faculty advisers, Dr. T. Wayne Bailey and Dr. Gary L. Maris, as well as to Dr. John E. Johns, president of Stetson.

DEATH OF GEORGE W. SARBACHER, JR.

Mr. SCOTT of Pennsylvania. Mr. Presi-
dent, it was with a sense of shock and profound sorrow that I learned of the death of an old friend and an esteemed former colleague in the House of Representative.

Mr. George W. Sarbacher, Jr. who represented the old Fifth Pennsylvania District in the 80th Congress and who passed away on Sunday, March 4 at the Suburban Hospital in Montgomery County, Md., where he had resided for many years.

After leaving the Congress he served his State as deputy director of revenue for the Commonwealth of Pennsylvania. Later he returned to his old area where he joined the National Scientific Laboratories. He moved up through various positions with that firm, rising to become president and chairman of the board. In 1970 at the invitation of former Postmaster General Blount, he joined the Postal Service and at the time of his death was serving as President of Management advisory team.

George Sarbacher- crowed much adventure and achievement into his comparatively short span of 53 years. Born in Philadelphia, he graduated from Temple University and enlisted in the Marine Corps in 1941. He served with distinction in the 2d Marine Division through the campaigns of Guadalcanal, Bougainville, and Guam, for which service he received several citations and medals.

In 1946 while still on active duty in the Marine Corps he was drafted to run for the House of Representatives. Because he was an officer on active duty he could not campaign nor participate in any way. Despite this, however, he defeated the incumbent, who had considerable seniority. Only then did he transfer from the regular Marine Corps to the reserves.

When he took his seat at the age of 27 he was the youngest Member of the Congress. He had a winning, dismale smile that made him look even younger than he was. During his first week of service, one of the very senior chairman of one of the most prestigious committees in the House looked in his direction, pointed and snapped his fingers as though calling for a page. But the next day the young man in the House did not wear distinctive garb, as they now do. This incident prompted George to have a friendly talk with Speaker Joe Martin. Shortly thereafter a regulation was adopted requiring all pages in the House to wear dark blue suits and black ties.

George delighted to relate this story and once observed:

If I’m not remembered for anything else, they can always say that I was responsible for putting the House pages into blue suits.

But he will be remembered for much else. During his congressional service he was an ardent advocate for improved veterans’ rights and services. He made a coast-to-coast detailed inspection of hospitals administered by the veterans’ administration and the result in an exhaustive report, which in turn was responsible for vastly improved practices and facilities in VA hospitals.

George was utterly devoted to his family. I offer my sincere sympathy to
Mr. President—honored guests—ladies and gentlemen: It is a great pleasure for me to participate in this important annual meeting of the AIAA and an honor for me to be able to address this important luncheon meeting on certain aspects of our national space program. A program at a very difficult crossroads, in fact. But I believe that particularly at AIAA, the Aeronautilcal and Space Administration (NASA), it is fifteen years since the organization of NASA. It is an intricate piece of tapestry that we are weaving together by the神器 efforts of thousands of highly competent men and women whose efforts contribute to the development of the new knowledge which benefits all mankind.

My feeling is that the decline in long-range planning for scientific programs has recently been heightened by a speech delivered by Dean Courtland Perkins, the highest ranking officer of the Administration, at Princeton University. Speaking before a meeting of the American Institute of Aeronautics and Astronautics on January 3, 1973, Dean Perkins made three major points: First it is important to preserve in some fashion the great competence built up within NASA; second it is important to agree on NASA's role for the future; and third we must do something to intrigue our best young minds back to important areas of technology and science.

Mr. President, this is a subject of vital importance to the United States. It is a subject about which we are not unanimous. It is a subject about which Dean Perkins' remarks be printed in the Record so that they may be readily available for reading by all Senators.

There being no objection, the remarks were ordered to be printed in the Record, as follows:

A LOOK AT OUR NATIONAL SPACE PROGRAM

Mr. President—honored guests—ladies and gentlemen: It is a great pleasure for me to participate in this important annual meeting of the AIAA and an honor for me to be able to address this important luncheon meeting on certain aspects of our national space program. A program at a very difficult crossroads, in fact. But I believe that particularly at AIAA, the Aeronautilcal and Space Administration (NASA), it is fifteen years since the organization of NASA. It is an intricate piece of tapestry that we are weaving together by the神器 efforts of thousands of highly competent men and women whose efforts contribute to the development of the new knowledge which benefits all mankind.

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The first big decision upon which cast our country's future is Apollo. Everyone knew that it would take a maximum effort of our technical skills, a pure commitment and a great deal of money to succeed. And we have a good chance of accomplishing this mission before the Russians.

The second big decision upon which cast our country's future is our ability to hold up the dream of NASA's manned space program by NASA and by the military. We have witnessed on both sides a succession of failures. The mercury and the space travel. Today we are all unsure of what we have accomplished and where this leads us.

This afternoon I want to make these points:

1. It is important to preserve in some fashion the great competence built up within NASA in terms of our space program. A program at a very difficult crossroads, in fact. But I believe that particularly at AIAA, the Aeronautilcal and Space Administration (NASA), it is fifteen years since the organization of NASA. It is an intricate piece of tapestry that we are weaving together by the神器 efforts of thousands of highly competent men and women whose efforts contribute to the development of the new knowledge which benefits all mankind.

2. It is important to agree on NASA's role for the future; and better delineate its operations and technical responsibilities and all mankind.

3. We must do something to intrigue our best young minds back to important areas of technology and science.

Any discussion of space activities today can hardly help but start from consideration of the Apollo program completed so magnificently last month. I believe all will agree that the total NASA manned program culminating in Apollo 17 was the most spectacular and technically significant event in history. It had witnessed to date, and certainly achieved Apollo's great objective set out by President Kennedy of "landing a man on the moon and recovering him safely before 1970. This was a startling goal and a great target that focused the and used many of our best minds—motivated our young scholars—and funded as a product, many things that we could never have done otherwise. It has been a brilliant success and achieved its major objective of demonstrating我国的技术 available to the world and our peaceful intentions in space. We remain in awe of this great accomplishment and only wonder at what do we now?

It is very difficult to imagine Apollo if one had not lived through the events of the 1950s. At the end of World War II and up into the early 1950s this country was convinced that it had no competition in science and technology and its prestige and self respect were monumental. Hadn't we perfected radar and developed the A and H bombs, the intercontinental bomber, television and others?

Then in swift succession we received three tremendous shocks to our country to its foundation. First the Russians whom we felt would take years to develop nuclear weapons outpaced the bomb showed earthshaking advances over us and in fact almost exploded their first hydrogen device before we did.

Shortly thereafter intelligence sources discovered that the Russians were experimenting with and developing ballistic missiles with ranges and payloads making ICBMs a near reality. This information received our instant attention and helped create our crash missile program of Atlas—Titan—MM— and Polaris. By 1959 the lead of the Russians in ballistry gave us great concern and we faced with real fear a "Missile Gap." Politically massive retalation had to be abandoned and national leading eventually to various forms of mutual deterence. It was rapidly eroded confidence in our own power for application technology and in its place came doubt and concern.

This concern was deepened in 1959 when the Russians announced the first earth orbiting Satellite "Sputnik" and high-lighted our own activities as both inadequate and some­where behind. The ground of our concern was a sound fear of a missile gap with concern over loss of prestige and real self doubt. We took it as fact the Russians successfully orbited their first manned spacecraft far in advance of our own Mercury program the country started extraordinary action. We wanted to catch up with them but also to accomplish a major space flight to prove to the world and to ourselves that we were number one in science and tech­
would they like to start. It would be an un-
acceptable waste to merely throw it all away.
The space program was designed to take full advantage of space 
and in some ways the space program of interest to the country in 
last decades of the twentieth century. It is up to us to move forward. 
Congress must more clearly state the mission and 
rationale for the NASA during the next 
fifteen years.

Dr. E. E. Webb then the administrator of NASA sug-
gest that the motivations that were giving Americans and
inexpensive space exploration were indeed likely, and that NASA 
should concern itself more with the use of space for military 
applications. There was considerable question at 
that time as to Russian intention toward a manned lunar program and many realized 
that a new major program like Apollo could not be supported in an environment where 
fear and concern over prestige were elimi-
nated.

NASA had been thinking along the same lines since 1965/67 
and erected summer studies in 1966/67 to focus attention on the very real
possibilities of the use of orbiting spacecraft.
The NASA mission was considered at first to be an 
important military potential and the Air Force was unhappy when their man in space 
program had not been approved for funding by the Senate at the time of its activation. The Air Force then embarked on its Winged Re-
entry program by 1968 and then to its space 
station the Manned Orbiting Laboratory (MOL) . Finally all manned military 
programs were eliminated and the missile 
mision was uncovered for man in earth 
orbit. It was learned finally that the Air 
Force could not have its major and most 
expensive R&D line item, a program for 
which a real mission was not understood. Man in earth orbit has little military pay-
off as well as economic payoff. Many of the programs that we aren't doing are those programs for 
non-military missions in earth orbit as well. The NASA Sky-lab 
program should help resolve this 
p particular debate.

After the initial euphoria, the USAP and 
DOD concentrated on real military payoffs, 
none of which fulfilled that program's necessity. The Air Force then embarked on its Winged Re-
entry program by 1968 and then to its space 
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non-military missions in earth orbit as well. The NASA Sky-lab 
program should help resolve this 
p particular debate.

In today's constrained budget the Armed 
Services have to give up a front line operation 
and have to substitute them with multi-function 
systems. The system then must be very 
good indeed to have the Navy give up a new 
ship or the Air Force give up a new wing of 
fighters to pay for it. Military space programs 
then have achieved a solid base of real pay-
fors. These will inevitably expand further in 
the years ahead, particularly if the very high 
cost of space operations can be reduced.

The successful programs both in the NASA and the military have been 
astonishingly successful and through them we have bought and paid for a position of 
dominance and most advanced space technologies. We have established 
great leads in the following technical areas:

1. Solid State devices-integrated circuits-
computers
2. Inertial guidance
3. Design for high reliability
4. Operational use of liquid hydrogen as a 
fuel
5. Simulation based training
6. Fusion concepts
7. Systems management and control

Technological leadership like this is crucial to our economic position in world affairs, requires that we continue to maintain our 
emminence in areas of high technology. Our National problem is that our young bright 
people are not interested in advanced research and they are not interested in the military. They are not interested in space technology and if this continues much fur-
ther we are in for really difficult times. We need to do our utmost to convince them that their own interest and the Inter-
est of the country are involved in the discov-
ery of new frontiers of technology and new 
frontiers of military operations. There is nothing as inspiring to young bright peo-
ple as the development of new space technologies. We have established 
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1. Solid State devices-integrated circuits-
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2. Inertial guidance
3. Design for high reliability
4. Operational use of liquid hydrogen as a 
fuel
5. Simulation based training
6. Fusion concepts
7. Systems management and control

The role of agriculture in the economy

Mr. CURTIS. Mr. President, the im-
portant role of agriculture in our 
economy and our way of life are mis-
understood by a majority of the Ameri-
can people.

I am convinced of this because I have made a long study of it. More than a year ago I held discussions with experts from Texas, Mr. GEORGE MAHON, and I set out 
to do something to change that.

Congressman MAHON and I called to-
gether the leaders of a number of private companies that depend, for the success of their firms, on sales of their products to 
farmers and ranchers. We asked these 
companies to help tell the positive story of our agriculture to our people.

The National Agricultural Institute took 
the job of coordinating the effort. Congressmen MAHON and I are very pleased 
with the way it is going, and we expect to announce significant developments to be made soon.

The role of agriculture in the economy

The role of agriculture in the economy

The role of agriculture in the economy
CONGRESSIONAL RECORD—SENATE

March 12, 1973

We are especially pleased that the press of the country is awakening to the great lack of understanding that exists about agriculture. This includes some editors and newspapers in the metropolitan areas which is very encouraging.

In the February 24 issue of Editor and Publisher magazine, Mr. Terrence L. Day wrote an excellent article explaining the problems we face with the metropolitan press. I respectfully request permission to print his article, "Agriculture, a Metropolitan Cinderella," be printed in full in the RECORD.

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

Agriculture, a Metropolitan Cinderella?
(By Terrence L. Day)

There is a void in modern reportage, a gulf which could lead to a major crisis in America.

Never in the world's history have so many been so dependent upon so few, or so ignorant of those few as the American farmer is today. More than 95 percent of the nation's people are dependent upon the less than 6 percent who man the nation's farms.

Agriculture is a metropolitan Cinderella, many farmers say, but who works without appreciation because there is a knowledge chasm left unbridged by modern journalism, or inadequately bridged at that.

Many farmers feel that wage increases will be held that low because food prices have not gone up, and that the nation's people are dependent upon the less than 6 percent who man the nation's farms.

Agriculture is a metropolitan Cinderella, many farmers say, but who works without appreciation because there is a knowledge chasm left unbridged by modern journalism, or inadequately bridged at that.

In other words, the unparalleled efficiency of the American farm is one of the basic reasons for the high and rising American standard of living, a principal difference between our standard of living and that of other countries (Englishmen spend 29 percent of their income for food, Italians 46 percent, and Indians 80 percent).

EXPANSION OF PRESIDENTIAL POWERS

Mr. Ervin. Mr. President, the New York Times recently published a series of four articles which explored with great perception and insight the expansion of presidential powers under the Nixon administration.

The Times reporter, Mr. John Herbers, surveyed several ways in which presidential authority has grown, such as the increasing use of executive impoundment of funds appropriated by the Congress, and the use of executive privilege to keep lower-level White House officials from testifying before Congress.

Mr. Herbers examined the historical development of presidential powers, and he conducted interviews with several leading students of the presidency.

Mr. President, these articles have especial significance in light of the struggle that is now being undertaken in Congress and the Executive over the proper role of the legislative branch in our constitutional system of government.

I ask unanimous consent that the four articles from the New York Times be printed in the RECORD.

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

Nixon's Presidency: Expansion of Power
(By John Herbers)

WASHINGTON, March 9.—Richard M. Nixon, in what he achieved in his first term and what he has undertaken in his second, is attempting an expansion of Presidential
powers that could have more impact on the national Government than that of any President since Franklin D. Roosevelt.

That is the opinion of historians, political scientists and other students of the Presidency who were interviewed during recent weeks as the President was restructured his Administration for another four years and challenging Congress to what could be a bitter struggle over the constitutional balance of power.

"In so many ways," said Henry Steele Commager, the historian, "I think Mr. Nixon has done as much, if not more, than any previous Presidents in our history."

Thomas E. Cronin, a young Presidential scholar at the Roosevelt Institute, Democratic Institutions, Santa Barbara, Calif., said of Mr. Nixon: "He has systematically gone about trying to strengthen the Presidency in a great many ways, frequently by circumventing the Constitution or expanding on past practices that were ambiguous or questionable."

This has been done by strong Presidents in the past, and some have emerged as heroes. Mr. Jefferson, as recorded in Mr. Franklin D. Roosevelt during the Depression of the nineteen-thirties, for example, he deviated from precedent to save the banking system from the brink of collapse. More recently, as society has become more technologically and complicated, Presidents have been limited in what they could decide, and the size of management of the economy under the White House.

What is involved in the current struggle, however, is a great deal more. It is the sub­

tailing of national priorities, the future of the system of checks and balances established by the Founding Fathers, and the question of whether Presidents would have to make war by their own decisions.

Although Mr. Nixon, as a self-proclaimed activist President, is expanding his authority in almost every area, he says that his efforts to gain more control over the economy and foreign policy must be balanced by the need to preserve the authority that future Presidents will have to make war by their own decisions.

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IDEOLOGICAL SHIFTS

In the uproar, many Americans have come loose from their ideological moorings as President Nixon has moved to gain more influence over Congress, the Supreme Court, the Federal bureaucracy, his own political party and public opinion.

Conservatives who have traditionally favored a strong Congress and a weakened Presidency are now advocating the reverse. Liberals who have long viewed the Presidency as the best means of achieving a humane foreign policy and helping the needy at home are crying for restraints on the President.

Among intellectuals, there is division and confusion about the direction of policy and what should be done. But the feeling is that the balance of powers may be out of kilter. This is not a situation that can be fixed by the kind of war and therefore the kind of in­

Second, in domestic affairs, Mr. Nixon is using his office to reverse some aspects of a trend that has been under way since the nineteen-thirties—the growth of the national Government as the chief instrument for public policy has been expanding on past practices that were ambiguous or questionable."

President Nixon, however, has taken this old constitutional struggle into a new era. In the past, strong Presidents who viewed their office as the "tribune of the people" usually sought an expansion of governmental responsibility, for a more active Presi­
dence, President Kennedy, especially in the manage­ment of the economy.

The conflict is heightened by the fact that Mr. Nixon has made it clear that, after the Congressional challenge of his war powers was resolved. Pending in Congress, among other measures, is President Nixon's proposal for the congressional approval of any act of war 30 days after the President initiates it, legislation that faces almost certain veto should it pass both houses.

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"SURE, he is leading a counterrevolution, one that is sure to have more impact on the scientists and other students of the Presi­dency who were interviewed during recent weeks as the President was restructured his Administration for another four years and challenging Congress to what could be a bitter struggle over the constitutional balance of power.

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to carry out a “mandate” from last November's elections, when the President won re-election by a landslide.

Another struggle in the White House is an analysis of last year's elections by Kevin Phillips, a columnist and former Justice Department official, who says that Congress, too, has a national mandate, one that is quite different from Mr. Nixon's. "Nixon's mandate," he wrote, "was to change the administration by achieving a 'hard-right' majority. The administration changed but a majority did not. In the House, Republicans failed to support his program, and in the Senate his program failed to get through."

Another aspect of the Nixon war moves and a "mandate" to eliminate Great Society social programs.

While Mr. Phillips' analysis is less direct, there is a deep faith in the White House that President Nixon is so confident of havin­
ging a large majority that he is in no mood to proceed with more restraint.

There is a strong belief among scholars and observers that Nixon could win a vote on the war stimulus bills and energy issues. It is reported to be the only issue on which the White House has more confidence than the Congress.

Mr. Phillips, in "The American Presidency," published in 1968, wrote, "The President is not a Gulliver, immobilized by 100,000 tiny men of affairs who have not even felt the need to rock him from his broad reservation. He is, rather, a kind of magnificent lion who can roam widely and can be great and dangerous without trying to break loose from his broad reservation."

The reservation has become considerably larger since the 1964 Eisenhower Administration and the boundaries are now in dispute.

NIXON'S PRESIDENCY: CHANGING OF THE GUARD

WASHINGTON, March 4—"You just think we're dumb," Senator Clifford P. Case, Republican of New Jersey, told George P. Shultz, Secretary of State, in a recent interview with the President, during a recent hearing on Capitol Hill.

Case was not only right about White House disdain of members of Congress, he was also understating it. "Congress is lazy, too," said a President aide, pounding his fist on his desk for emphasis during a recent interview. "They work short hours. They don't know how to conduct business. They say they want to consult with the President, but then they come up here and don’t say anything."

"They criticize him for not advising or consulting them in military matters," he continued. "But they cannot keep a secret. If we tell them anything it is out within 30 minutes of the meeting in the White House." That attitude toward Congress runs deep in the White House, and it underscores the seriousness of the struggle now being waged between the executive and legis­lative branches of the Government as President Nixon, wielding perhaps more power than any President in history, moves into a second term with a landslide victory behind him.

At the heart of the contest is the President's recent move to reorder domestic prior­ities by impounding funds and liquidating large parts of Great Society programs. But it also involves a general erosion of powers from the Congress to the Presi­dent for the first time in many years but has accelerated in the Nixon Administration.

A survey of a wide range of authorities on the Government during the last several weeks shows that, in the opinion of many, the struggle is so weighted to the side of the White House that it is impossible for those resisting his demands—his aides insist that he will not—Congress could be left far weaker than it already was when Mr. Nixon took office in 1969.

"We are now in the midst of a grave and dynamic redistribution of power set on by the Administration's unilateral efforts to reorder our domestic priorities," said Senator Jacob K. Javits, who actively supported Mr. Nixon's re-election. "This crisis covers every aspect of legislation pending in the Congress and which may be produced by the Administration's policies."

SOME ADMINISTRATION CONCERN

On the other hand, there is concern within the Administration that the fight will be one that the President may es­caped by taking the side of the majority in these matters and to take positions that "contra­dict the American dream." This opinion of course, is strongly rejected by Nixon support­ers, but it nevertheless has wide currency and is the source of the many fears about the Nixon Government.

Another fear is the effect of the 22d Amendment on the President's ability to run for a third term and was ratified after the four-term Roosevelt Administration. James MacGregor Burns, director of the Center for Public Affairs at Harvard University, writes widely on the Presidency, said, "Nixon is our only acknowledged lame duck President in history except Eisenhower, who governed with restraint."

MAGNIFICENT LION

Mr. Burns suggested that Mr. Nixon might be moving with more caution if he had a chance of winning another term. An advi­cator of a strong Presidency, Mr. Burns said that the office should have more power in do­mestic matters, not less, but that the Presi­dent should be under more political re­straints, one of which would be abolition of the 22d Amendment.

Mr. Rossetti, in "The American Presidency," published in 1968, wrote, "The President is not a Gulliver, immobilized by 100,000 tiny men of affairs who have not even felt the need to rock him from his broad reservation."
"The Interior Committee wants to have more parks and the Agriculture Committee wants cheap R.R.A. [Railroading Exclusively and unreasonably]. Education and Labor wants more for education, and each of these wants we all sympathize with..."

March 12, 1973

CONGRESSIONAL RECORD—S}EATE

"Today it is Congress struggling to find ways to resist Presidential dominance. In the past, each President gained new powers they remained for his successors. Clinton Rossiter, the historian, wrote during the Eisenhower Administration that 'strong Presidents have their share of influence in the aftermath of every dictator.' Congress has exulted in the restoration of the balance so eagerly desired by the nation. Yet the checks and balances have been more apparent than real, and each new strong President has picked up where his predecessor left off."

Presidential scholars, who have educated millions of Americans on the need for a strong Presidency and are now frightened by the Nixon phenomenon, are large advocates of a strong Presidency but want to keep a vital Congress as a check on the executive power."

Henry Steel Commager, asked for an answer to the current struggle, said, "One answer would be impeachment if the Congress had any guts, but it doesn't. The simple answer is to really assert the appropriations power."

"But the question is whether the country would support the Congress even in that endeavor, the Nixon White House is confident that it would not."

THE CONSTITUTION ON POWERS

[From the New York Times]

WASHINGTON, March 11—The following are certain provisions of the Constitution regarding the delegation of powers between the Congress and the President:

Constitution on Powers (Article I, section 8)

The Congress shall have power:

- To lay and collect taxes, duties, and excises, to pay debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States; and may be abolished or regulated by Congress alone.

- To borrow money on the credit of the United States; and to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

- To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

- To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

- To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

- To provide and maintain a navy;

- To make rules for the government and regulation of the land and naval forces;

- To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

THE PRESIDENT

(Article II, sections 2 and 3)

The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of his office, and he shall have power to grant reprieves and pardons for offenses against the United States, except in case of impeachment.

He shall have power, by and with the
advice and consent of the Senate, to make treaties provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.

Nixon's Presidency: Centralized Control

By John Herbers

WASHINGTON, March 5 — Frederic V. Malek is a 36-year-old self-made millionaire with boyish blue eyes, degrees from West Point and Harvard Business School and a reputation for being a super manager and an effective but restrained hatchet man in the jungles of Washington bureaucracy.

The new deputy director of the Office of Management and Budget, Mr. Malek has set up a network of loyal Nixon men like himself — aids and plotters to help President Nixon get control of the permanent government run by 2.5 million civil servants.

Mr. Nixon, the prototype of the managerial and business people whom Mr. Nixon has placed in high positions, and the Malek operation, is the most creative of domestic methods as he has gone further than any modern President in trying to shape the bureaucracy to conform to both the style and purposes of the President.

The result is a highly centralized and homogeneous leadership in the executive branch that accelerates a long trend of concentrating more authority and decision-making power in the hands of the President.

Mr. Nixon, by executive order, has put in force the main features of an Administration-wide reorganization plan that Congress had refused to pass. The Nixon order created a super Cabinet devoid of any former elected officials. He has moved into the White House authority over a variety of affairs, such as lobbying and press relations, that had rested in the departments.

Senator Edward M. Kennedy said an interview that the White House often abandons the Washington bureaucracy is so great that if Mr. Nixon succeeds, in the opinion of some Government experts, he may well set a precedent that will shape the future of the Presidency.

Nevertheless, the erosion of decision-making power from the departments to the White House, which is inaccessible to many groups, has been increasing for some time, during the Kennedy and Johnson administrations, but more rapidly under Mr. Nixon.

SENATOR'S SOURCE SHIFTS

Senator Ernest F. Hollings, Democrat of South Carolina, who has written widely on the problem of Government isolated from traditional, constitutional checks and balances.

Mr. Kennedy said the trend is a common practice for "anonymous, selected and untrialed aides" to take important actions in both foreign and domestic areas "with no semblance of accountability or responsibility.

There also are complaints from the President's critics that in his massive reorganization, Mr. Nixon has created a sanctum of Government isolated from traditional, constitutional checks and balances.

Examples of departmental loss of power abound. The Treasury Department, with a $62 billion budget, has been cut from the forefront of administration innovations on tax legislation. Now, sources say the department is allowed to comment on high-level policy discussions go on in the White House.

The Office of Management and Budget, a White House agency, recently suspended the Department of Housing and Urban Development, which is in charge of the Department's recent controversial reorganization plan that Congress had long ignored.

Even Mr. Nixon's enemies agree that a President must, said in a White House interview that the White House often abandons the Washington bureaucracy is so great that if Mr. Nixon succeeds, in the opinion of some Government experts, he may well set a precedent that will shape the future of the Presidency.

The President would make a policy and enforce it, "I said to him," Mr. Kennedy said. "I am forced to go to the White House agency, recently suspended the Department of Housing and Urban Development, which is in charge of the Department's recent controversial reorganization plan that Congress had long ignored.

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But this is considered largely a symbolic protest. Even if Congress should prevail by overriding the President's expected veto on the issue, the President's power is so great in the selection of appointees that he could simply give Mr. Ash another title and let him perform the same duties, according to sources outside the Administration.

Foreign policy has increasingly centered on the new national security apparatus, with the President's assistant for national security affairs but is frequently called the de facto Secretary of State.

"We must put it in the foreign policy, outside the President himself, of course," said an Administration official. "When Henry is off on a peace mission, we can't say something happens, say in Africa, the State Department just Rounders around and wait all of its members more authoritative sources outside the Department, just flounders around if something happens, say in Africa, the State Department just Rounders around and wait.

There were conflicting reports on how the operation will work. Some sources said that Mr. Malek, with four or five assistants in the Office of Management and Budget, would work directly with White House lobbyists out in the departments to achieve goals and timetables to see that the President's policies were carried out.

Others, however, said it would mostly involve Mr. Malek and his assistants working with, and sometimes for, department officials with full participation of the Secretaries. Nevertheless, the entire operation points to much White House part, position in departmental operations, according to several sources, and this is enhanced by the fact that Mr. Malek was formerly the President's talent scout who recruited into government many of the officials involved.

In the past, department heads have frequently disagreed with the President and, in most cases, have been completely in accord with those of the President.

"This is a thing of the past now," said a high Nixon aide.

There are other operations of a similar nature still in existence.

The lobbying operation for the executive branch is being reorganized at Mr. Nixon's direction under William E. Timmons, the President's assistant for government relations, to make all of its members more responsive to the White House. Departmental lobbyists in the past have been picked by individual secretaries and thus have been loyal to the secretary first and the White House second, particularly if the Secretary does not see eye to eye with the president. Hereafter all Government lobbyists will be picked by the White House team and come directly under its jurisdiction.

The public information offices in the executive branch are being more centralized under the direction of a single agency. It is expected that the operation will be headed by Ronald L. Ziegler, the President's assistant for public information.

A new branch will be set up in the White House to approve the public information offices in the agencies, insuring in most cases that they be in complete accord with the White House.

The growing White House responsibility has required another layer of overseers to cover the country. Mr. Nixon has in eight four officials into the White House as counselors, while permitting them to retain Secretary functions. They are George F. Shultz, Treasury Secretary, for economics, James T. Lynn, Housing and Urban Development Secretary, for community development; Casper W. Weinberger, Health, Education and Welfare Secretary, for education and labor; Casper W. Weinberger, Agriculture Secretary, for national resources.

Among students of government there is less concern about the concentration of power than about the processes of government becoming obscured in the executive offices of the White House.

"We know almost everything about Presidents," James Mcgregor Burns wrote recently. "But we know all too little about the vast gray executive establishment that expands, proliferates, and partly devours the decision-making branch of the Government, behind the pleasantly deceptive "low profile" of the White House."

NIXON'S PRESIDENCY: A NATION IS CHANGED

(John Herbers)

WASHINGTON, March 6.—For four years, Nixon Administration officials traveled the nation, hurling the Federal Government, over which they were presiding, was flawed in many ways as a means of delivering services to the public.

The standard argument, used by every one from the President to deputy assistant secretaries, was that the Federal Government had "muscle-bound" under a "patronizing bureaucratic elite" and that local governments should be trusted and strengthened.

Now they are fulfilling their prophecy. Money and authority are flowing back to the states and the cities. Nixon and his aides, dismantling programs built by four decades of Democratic government. Although it has just begun, this reversal of a long-term trend is one of the many ways in which the Nixon Presidency has had enormous impact on the nation.

In what he accomplished in his first term and what he has undertaken in his second, Nixon is strongly influencing what kind of schools people attend, what kind of cities and communities they live in, what kind of news they watch on television and read in the press, what taxes they pay and to whom, what system of justice they live under, what their employment and income opportunities will be, and what kind of other matters affecting their daily lives.

Like all Presidents, Mr. Nixon is seeking to have an impact on the nation. But he has undertaken to make fundamental changes in what kind of schools people attend, what kind of cities and communities they live in, what kind of news they watch on television and read in the papers, what taxes they pay and to whom, what system of justice they live under, what their employment and income opportunities will be and what kind of other matters affecting their daily lives.

Mr. Nixon is making an extraordinary mark on American society, according to political leaders and students of the Presidency, by making some of the biggest and most far-reaching changes in what kind of schools people attend, what kind of cities and communities they live in, what kind of news they watch on television and read in the papers, what taxes they pay and to whom, what system of justice they live under, what their employment and income opportunities will be and what kind of other matters affecting their daily lives.

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This is going to be known as the Nixon era," said one of his aides. "I know it is."
March 12, 1973

CONGRESSIONAL RECORD—SENATE

Lewis F. Powell, Jr., a lawyer who had written ten widely in support of Administration policies, such as crime control.

When Nixon was formed, remaining in his term, it is considered almost certain that Mr. Nixon will have an ideological majority on the nine-member Court before his term is out.

Beyond appointments, Mr. Nixon has gone further in using his appointments to attack the media. He has used his influence to wind up in the media to accept a virtual halt to court-ordered efforts to integrate schools where new transportation is involved.

His Justice Department stopped publication of the Pentagon papers for 12 days on the grounds of national security and has sought to force reporters to disclose confidential information in criminal cases.

His Office of Telecommunications has proposed legislation that could curtail criticism of government by local stations responsible for news balance on network broadcasts.

The precise effect of this and other actions on the freedom of news is in dispute. On the one hand, Herbert G. Klein, the President's director of communications, gave the White House a green light in a "Meet the Press" television Jan. 7: "I think the key thing is that while there has been a lot of talk about intimidation, I have not met any intimidated reporters and I never will. One thing I would say is that since the actions, the actions of the Administration, the implementation of the Freedom of Information Act has opened more [official documents]. The actions which we are supporting in Congress, including taking a new look at [reporters'] shield laws, are ones which I think are favorable toward the media."

CRITICAL LOOK AT NEWS

One belief current among both critics and supporters of the Administration is that the Nixon formula is that the President has become in recent years.

For several years, some political scientists have been complaining that the Presidency has become so sanctified in the public mind that Americans equate criticism of the President with criticism of the nation's Capitol. Instead, they have decided to cancel their trip and donate the funds they worked so hard to collect to Buddy Dale and his parents to help cover his tremendous medical expenses.

These fine young people washed cars and sponsored bake sales; they encouraged other citizens and community groups to help and they opened a Buddy Dale Fund at the Lafayette County State Bank.

The road to recovery for Buddy Dale will be a long, difficult one. But the love, concern, and compassion of his classmates and neighbors have helped give him the courage and determination to begin.

ADDRESS BY VICE PRESIDENT AT DINNER OF VFV

Mr. GOLDWATER, Mr. President, since the fighting ended in Vietnam, a public debate seems to have arisen over whether our Government should extend unconditional amnesty to draft dodgers and deserters. Many of the arguments in favor of forgiving those men who refused to serve were fighting and dying, raise the Civil War.

Recently, Mr. President, the Honorable Spiro T. Agnew, Vice President of the United States, addressed himself to the question of amnesty and the Lincoln question in an address to the congressional dinner of the Veterans of Foreign Wars. Among other things, the Vice President pointed out:

Now, it is true that Abraham Lincoln issued several decrees of amnesty but none were limited to draft laws and all had strings attached. Amnesties regarding union army deserters required them to return to their units and serve out their enlistments with address: protect and strengthen the powers of the Presidency for the rewards of history; if all else fails, wage war on the press. Most White House observers agree that Mr. Nixon has followed the script quite well.

"The most sensible resolution," Mr. Cronin concluded, "is to deinstitutionalize the Presidency, to understand how it works, to appreciate what it can and cannot do to hold Presidents critically to account."

ALL THAT IS RIGHT WITH TODAY'S YOUTH

Mr. CHILES, Mr. President, we hear a great deal today about what is wrong with the youth of America. Yet, I would like to share with you a situation that occurred in the small Florida community of Mayo that points up all that is right with today's youth.

On February 8, 1973, Buddy Dale Lyons was practicing wrestling holds in the Lafayette High School gymnasium in Mayo. Buddy Dale had a freak, tragic accident, suffering a broken neck and a fractured vertebra. He is now totally paralyzed.

His friends and classmates rallied to this young man's support. Each year the senior class at Lafayette sponsors fund-raising activities in May to enable them to come to Washington to see their Government in action. We were expecting them on March 13.

This year, the seniors will not visit their Nation's Capitol. Instead, they have decided to cancel their trip and donate the funds they worked so hard to collect to Buddy Dale and his parents to help cover his tremendous medical expenses.

The few young people washed cars and sponsored bake sales; they encouraged other citizens and community groups to help and they opened a Buddy Dale Fund at the Lafayette County State Bank.

The road to recovery for Buddy Dale will be a long, difficult one. But the love, concern, and compassion of his classmates and neighbors have helped give him the courage and determination to begin.
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forfeiture of pay and allowances, and in some instances, with additional time tacked on to their original tours of duty. Can those of you who have served in the armed forces remember a more difficult punishment for a deserter than to serve out the remainder of his time in his old unit just back from combat? And without pay?

The Vice President emphasized that the Vietnam draft dodgers and deserters have not admitted that they were wrong but, on the contrary, claim that the United States is wrong.

The Vice President added: If we simply accepted all of these people back and said, you’re forgiven, you are right, it was an immoral war, what would happen if trouble broke out ten or twenty years from now? We would have established a precedent that would encourage those who chose to evade their responsibilities to do so; after all, they might reason, they’ll be automatically forgiven once the trouble ceases. Ladies and gentlemen, we cannot afford to—and we do not intend to—establish that precedent.

In the same speech, Mr. Agnew, reviewed his recent trip to eight Asian nations and said that the peace agreement signed there served to solidify respect and integrity for the United States throughout the Far East.

Mr. President, I ask unanimous consent that Mr. Agnew’s speech for March 6, 1973 be printed at this point in the Record.

There being no objection, the address was ordered to be printed in the Record, as follows:

ADDRESS BY THE VICE PRESIDENT OF THE UNITED STATES

It gives me special pleasure to address you at a time when we stand poised, for the first time in decades, on the verge of a generation of peace, just as we stood firmly behind the judgment of our nation’s leaders.

And there is another issue on which I know we all stand united. That issue is immediate and unqualified amnesty for draft dodgers and deserters. We oppose it.

It is an issue which is being blown out of proportion, but that’s to be expected. Now, as the country loses interest in the war, the anti-war movement has collapsed, and all those idee Paris have to have something to shout about. People make mistakes. We all understand that. When they recognize their mistakes and accept the punishment as the natural consequence of those mistakes, certainly we should not condone it any further. But these draft dodgers and deserters have not admitted that they are wrong; on the contrary, they say that the country is wrong, and that the leaders who told them to go fight for their country were wrong. It is a natural consequence of the way the world has been since World War II, and the way the world has changed in the past 20 years.

We’ve come to pass unless the President had made it possible for us to sit down with the leaders of the People’s Republic of China and talk about our differences, rather than fighting about them.

Now, as for the desisters and draft dodgers. People make mistakes. We all understand that. When they recognize their mistakes and accept the punishment as the natural consequence of those mistakes, certainly we should not condone it any further. In his search for a settlement, the President chose the tough, direct approach. He tried for what his critics said was impossible—a comprehensive agreement to stop the fighting throughout Vietnam, and later throughout the rest of Indochina, and to establish the machinery for a lasting peace.

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be able, through mutual efforts, to achieve a true neutrality and independence based on their ability to defend themselves.

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Malaysia: Its economic and social programs are models of progressive planning, admired throughout the world. Malaysia is a genuine, land reform, and other devices, to redistribute the wealth in a fair way to its people. This is not just an economic development but something overbuilt, but it is trying to work its way through this equitably and doing very well.

Or consider Thailand: It is blessed with strength and an inherent stability; a benign monarchy, a King who goes every week into the hills to visit with the tribes to show his presence; and a tough Prime Minister, a military man who insists on a law and order environment. Thailand remains a very formidable obstacle to the spread of insurgency and Communism in Southeast Asia.

During the course of my trip, I had long sessions with the top young technocrats in each of the countries I visited. These are able young people, many trained in the United States and many sharing our own economic concepts and drive for disciplined development. The men and women of their hopes, their plans and their needs. They are in touch with each other throughout the area devising ways of cooperating to achieve their common goals.

But, more important, the leaders who direct these aspirations and objectives of one of the most important and most misunderstood human relationships which trouble our country. I ask unanimous consent to insert an article as follows:

HUMAN REWARD

Mr. FULLBRIGHT. Mr. President, from time to time an article appears in one of the newspapers worthy of insertion in the Congressional Record for the attention of the Members of this body.

Such an article is that written by Mr. F. R. Buckley appearing in the New York Times of March 6, 1973.

It is a report on the treatment of one of the most important and most misunderstood human relationships which trouble our country.

I ask unanimous consent to insert it in the Record.

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

HUMAN REWARD

(By F. R. Buckley)

Should any human being serve another? Is it right for one person to devote his life to the care of the demanding, a role that is often the most difficult and most demanding of all? Is it right for the domestic care of someone else? And is it, whether wrong or right, desirable?

These social tender questions are often asked by the young, by the old, and by all persons, as they continue to itch. The writer's position was that for white or black, domestic service is a right. More than that, it's an American, and a black. In Spain, my white waitresses of four years left to get married. Her husband had planted her with two infant children, drank away the funds of the flower shop we had financed for him, and ran off. Polo can neither read nor write (and refuses to learn). She has no industrial skills. For a time, she lived in a cafe with the restaurant's 50 centipos, and she couldn't take her back; and contentedly ruled my household until I left Spain, ten years later. She is pensioned, financially secure; but she writes of two weeks ago that she misses us desperately, and would somehow bring her over.

These anecdotes make do for half a dozen more I could tell. Not only are some people untrained for increasingly technological contemporary life; not only are some individuals incapable of learning industrial skills, mentally or emotionally; but there are people in our country who prefer the personal contact of working with a family. All forms of labor, without curitas, are intolerable. That goes for the junior executive as well as the person at the very bottom. This is a preference for the intimacy in the observation of master and servant within a household. All forms of labor, without curitas, are intolerable. This is a preference for the intimacy in the observation of master and servant within a household.

No mother is demeaned in the wiping of her baby's bottom; no nurse in the same act of love for helpless old people. Because we are bom in America, and because we descend from white immigrants who may have been virtual serfs in the Old Country, we have a mistaken idea that domestic service (not everybody makes a good servant, that is) is among the world's most honorable; so long as there is curitas. And no matter how uncle, no matter how envious, there will always be some for whom work in a household is the logical profession. Dependence, that can't be had elsewhere. My feeling is that thousands of our presently employed would find this to be so if only Americans flushed out of their psyches the notions that to hire out as a domestic is necessarily to lead a servile existence.

The Pope is the first servant of the church, the President of the people. Every queen has her ladies-in-waiting, every bride her maids. In one of us, the impression is something, and the only valid criterion is whether we work and commands our love.

No mother is demeaned in the wiping of her baby's bottom; no nurse in the same act of love for helpless old people. Because we are bom in America, and because we descend from white immigrants who may have been virtual serfs in the Old Country, we have a mistaken idea that domestic service (not everybody makes a good servant, that is) is among the world's most honorable; so long as there is curitas. And no matter how uncle, no matter how envious, there will always be some for whom work in a household is the logical profession. Dependence, that can't be had elsewhere. My feeling is that thousands of our presently employed would find this to be so if only Americans flushed out of their psyches the notions that to hire out as a domestic is necessarily to lead a servile existence.
TREE PLANTING

Mr. SPARKMAN. Mr. President, as we are all aware, our country is facing a serious shortage of lumber today. Unless active steps are taken soon to alleviate this situation, it could have a most serious and critical effect on many facets of our Nation's economy, as well as an immediate impact on the housing construction situation that already is approaching the crisis stage. In this regard, I am pleased to present a proposal which I undertook a preliminary investigation to determine the causes of this shortage and the reasons for the high prices existing in this market today.

I would like to compliment the Weyerhaeuser Corp. on its reforestation program which was so well advertised and publicized in the February 27 full page ad of the Washington Post entitled: "This year we'll plant two trees for every family in America." Weyerhaeuser will plant 100 million seedlings in 1973 alone, or 720,000 seedlings a day. The company is located in the States of Washington, Oregon, North Carolina, Arkansas, Oklahoma, Mississippi, and in my own home State of Alabama.

Had a ambitious program—and expensive. Certainly we all know that such programs are necessary if we are going to keep up with demands for lumber, plywood, paper and the thousands of other things we use from wood. In emphasizing these demands, Weyerhaeuser points out that every man, woman, and child in the United States uses the equivalent of one tree every year.

I think that we all know that forests do more than provide wood. They add beauty, enrich the ecology for all living things, and provide land for recreation. I would like to commend the Weyerhaeuser Corp. on its 100 million annual planting, which is the largest project of its kind ever undertaken. Last year it planted 74 million new seedlings and has consistently been following the principles of tree farming since its very origin, often bringing previously brushy and poorly stocked land into full production with seedlings coming from its own nurseries.

THE DAY MY FAITH MEANT MOST TO ME

Mr. DOMINICK. Mr. President, I am pleased to bring to the attention of my colleagues an article which was written by Michael Kercheval, a young constituent of mine from Granville and Union Counties. His essay was written in response to the annual Guideposts Youth Writing Contest which resulted in 1,348 entries. Guideposts is an inter-faith publication of Guidepost Associates, Inc. Carmel, New York. Dr. Norman Vincent Peale is a co-founder and the publisher of Guideposts magazine.

At the annual writing contest, three finalists, Mike Kercheval was brought to Washington, D.C., and the other finalists were guests at an award luncheon in the Capitol reception room and refused a trip to Europe.

The five finalists represented a cross-section of America, coming from Colorado, Tennessee, Michigan, California, and Connecticut. Mike Kercheval's second place award was a $2,000 scholarship to the college of his choice. He is a junior at Grand Junction High School and the son of Mr. and Mrs. Michael Kercheval of Grand Junction.

For the benefit of my colleagues and readers of the Record, I ask unanimous consent that Mike Kercheval's essay entitled "The Day My Faith Meant Most to Me" be released for printing.

There being no objection, the essay was ordered to be printed in the Record, as follows:

THE DAY MY FAITH MEANT MOST TO ME

By Michael Kercheval

On the Sunday before I left for South America, our family attended church. It was hard to keep my mind on the service, as I was filled with such excitement, but I tried to put my mind to God during our silent prayer. I had just begun to pray when my mind wandered back to the Colombian trip. Doubt hit me. "What am I really doing? Here I am, an inexperienced sixteen-year-old boy, splitting for the wilds—different language, different customs, different people. What if I run into a problem?"

At that moment I tried to think of some way I could possibly forget about everything and hope it would go away. The minister was now reading the Scripture. Even with my mind wandering very well, I remember these words, "Let us give of ourselves unto others."

I had an opportunity to do just this. I realized for sure that I couldn't pass up the chance. I asked God for this reassurance and asked Him to guide me. After church, I felt confident and asked Him to guide me. After church, I thanked God for this reassurance.

I was in the station ready to vaccinate and immediately in business. I was in the station ready to vaccinate and immediately in business.

I had five more hours to travel. I thought I could never get violent as he became sober and the pain increased. Suddenly the man ripped the bandage from his abdomen, exposing the gory wound. The last thing I wanted to do was touch that mess of a man, but I knew I had to act quickly. I thought of Jesus teaching the lepers as I seized the man's arms and blood-covered hands, and tightly restrained them. The man calmed down, replaced the bandages and dropped back in his seat. He continued to maintain a warm clasp on one of the man's hands.

The Jeep jolted along and I realized we had five more hours to travel. I thought I could never last the night. The salary reduced, the bandages and dropped back in his seat. He continued to maintain a warm clasp on one of the man's hands.

When the patient would moan or try to grab his bandage, I was able to reassure him by merely squeezing more firmly on his hand.

We reached the hospital at 5:15 a.m. and turned our patient over to the capable doctors. On the return journey, the sun was just rising over the mountains. Another day was about to begin in Colombia.

I A PROPHET WHO HAS HONOR IN HIS OWN COUNTRY

Mr. ERVIN. Mr. President, as a general rule, I do not make insertions in the CONGRESSIONAL RECORD concerning North Carolinians who have distinguished themselves in various walks of life. I am constrained to depart from this rule in this instance.

My good friend of many years, J. D.
Fitz, publisher of the Morganton News-Herald, has been elected as Man of the Year for 1972. As appears from the attached news items, J. D. Fitz has been extremely active in the business, civic, religious, and political life of his community, and in many other community roles through the years. His memberships and affiliations and positions of honor and service are too numerous to reproduce here.

His booster trait permeates his life. He is currently president of the North Carolina Press Association, which is charged with the responsibility of representing the state and its newspapers and newspapermen before the various press functions. He sounds like a one-man roving Chamber of Commerce for Morganton when he and his newspaper are traveling over the state to various press functions, and has upheld and encouraged him in his committee work.

It was after he retired as advertising manager of The News Herald, in 1945, that he was elected president. A director since 1969, he has participated in many other community roles through the years, and in many other community roles through the years. His memberships and affiliations and positions of honor and service are too numerous to reproduce here.

He has had a part in saluting many prior Men of the Year, and during the years he has assisted with many of the award ceremonies—as master of ceremonies, program chairman, and the like.

He has served on the committee that arranged for the case of the Fitzes. The former Lena Truitt has been active in a variety of civic and church affairs. It was as a Rotarian that she served as chairwoman of the club’s luncheon for the community-wide dinner. The 1971 Man of the Year, merchant Burress L. McGinnis, will make the presentation of the trophy which he has held for the past year. In turn, he will receive from the former Mrs. J. D. Fitz, Jr., a smaller loving cup for his permanent possession.

Fitz was president of the Rotary Club and during the years he has assisted with many of the award ceremonies—as master of ceremonies, program chairman, and the like.

In 1945 he accepted the position of advertising manager of The News Herald, in 1949 he became assistant publisher; in 1956 he was publisher. In 1960 he became publisher and he has since been president of The News Herald Publishing Corporation.

He was secretary of North Carolina Press Association when he was first elected president. A director since 1969, he has served on many committees and is a director of the Journalists Association.

It was after he retired as advertising manager of The News Herald, in 1945, that he was elected president. A director since 1969, he has served on many committees and is a director of the Journalists Association.

He was president of the Burke County Chamber of Commerce in 1970. He served as a United States Commissioner from 1948 to 1951. He was appointed by Governor Terry Sanford as one of the original ex-officio members of the newly formed North Carolina Merchants Association in 1959-1969, and in 1972 was elected president. A director since 1969, he has served on many committees and is a director of the Journalists Association.

He has been active in the Burke County Chamber of Commerce and served as its president in 1971. He served as a United States Commissioner from 1948 to 1951. He was appointed by Governor Terry Sanford as one of the original ex-officio members of the newly formed North Carolina Merchants Association in 1959-1969, and in 1972 was elected president. A director since 1969, he has served on many committees and is a director of the Journalists Association.

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Of course, the Man of the Year is not chosen solely because of his outstanding business or civic accomplishments. His character qualities—his goodness and his kindness—are also important considerations. Fitz has always been known as a man who is always willing to work for the betterment of his community. He has been a leader in many civic organizations, and has used his influence to bring about positive changes in the community.

Fitz has been active in the Burke County Chamber of Commerce and served as its president in 1971. He served as a United States Commissioner from 1948 to 1951. He was appointed by Governor Terry Sanford as one of the original ex-officio members of the newly formed North Carolina Merchants Association in 1959-1969, and in 1972 was elected president. A director since 1969, he has served on many committees and is a director of the Journalists Association.

Today, as Fitz himself said, he is thinking about the honor and about himself. He was completely willing for the news department to quote the simple and brief announcement from Rotarian Club President Charles G. Stinney.

"I just don't know what the committee was thinking about," he said, with his voice trailing off, as if coming out of a daze.

People at The News Herald know the committee had many things to think about. One of them should have been a booster, if you will. Because of that talent, things happen when he is around. The committee was only to follow his trail through many interests, all dating back to his arrival in Morganton in 1945. A longtime member of the Rotary Club, he served as president of the Burke Rotary Club in 1948 when Fitz was president of the Rotary Club.

"From 1943-1945, during World War II, he was first sergeant of the Tank Destroyer Training Center at Fort Hood, Texas. It was a sad day for the service in World War II that he came to Morganton for what he thought would be a stopover. But he liked the city, and has remained here to make his home and carve out his career."

"Morganton has saluted the recipients. It was over the selection of Publisher J. D. Fitz as News Herald from front door to back shop. The Fitzes considered it an honor for their city."

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mediate need of legislation in the field of human experimentation. At the first open session of a Government probe into the Tuskegee Study, which began in 1942 and was widely publicized last year, several doctors testified that there is no evidence that participants in the controversial Federal syphilis experiment ever gave their informed consent to participate.

Mr. President, in introducing the National Human Experimentation Board Act of 1973 (S. 376) I stated that mere consent was an inadequate protection for people involved in complicated and dangerous human experimentation. We need information on and guidelines for all experiments involving human subjects that occur in this country. We here in Congress have a moral responsibility to see that Federal funds are not used in inhuman and careless ways.

Two days after the above information was revealed, Caspar W. Weinberger, Secretary of Health, Education, and Welfare, announced that all necessary medical care would be given to the survivors of this experiment. Mr. Weinberger said:

I have personally reviewed the facts in this study, because of this highly unusual and terrible situation. In my research project, I feel that the Federal Government should have a strong obligation to continue needed medical care to the participants by providing them a full range of medical services for the rest of their lives.

Mr. President, I submit that the Secretary of Health, Education, and Welfare has no way of knowing whether the Tuskegee study is unusual or not. We have no method of obtaining reliable information on Federal projects involving human experimentation.

Mr. President, I ask unanimous consent that the article on the Tuskegee study be printed in the Record.

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


SYphilis Study Is Key To Notifying Patients
(By James H. Holler)

Doctors testified yesterday that there is no evidence that participants in a controversial federal syphilis experiment ever gave their informed consent to take part.

Furthermore, they said, the Alabama black men who participated probably didn't know they were subjects of a scientific experiment or understand the nature and potential danger of the disease they had.

A number of the doctors said he believed the participants were subjected to undue coercion to cooperate.

The men testified at the first open session of a Government-ordered citizens' panel investigating the experiment, known as the Tuskegee Study, which began in 1942 and ended after public pressure forced the project's cancellation last summer. The experiment was sponsored by the U.S. Public Health Service, a division of the Department of Health, Education and Welfare.

In the study, conducted among poor, rural black men in Macon County, Ala., more than 40 men all with syphilis, were never given treatment for the disease so that PHS doctors could study what damage untreated syphilis does to the human body.

At least 28, and possibly as many as 107, of the men died as a direct result of untreated syphilis.

Dr. Reginald James, now with the Social Security Administration, was in Macon County during the late 1930s and early 1940s when he saw a variety of disease treatments: a gram for the Alabama state health department.

He testified that a nurse assigned to him also was participating in the administration of the Tuskegee Study and pointed out the experiment's participants so the doctor would treat them.

"There were some people who wanted treatment and were told if they took it they would be kicked out of the study," Dr. James said. "They knew they would lose the cash and free burial which had been promised to them in return for their participation."

Dr. J. W. Williams, a Tuskegee doctor who worked as an intern on the experiment in 1932-33, told the panel he helped take blood tests of men who came to the clinics set up by the PHS.

"In the early clinics, nobody was told about the active condition of his syphilis," Dr. Williams said. "In some cases maybe a person was told he had bad blood and he knew that was a social stigma, but he didn't know what the consequences would be."

Dr. Arnold Schroeter, now a consultant in dermatology at the Mayo Clinic in Rochester, Minn., managed the Tuskegee Study between 1949 and 1971.

"If a patient asked what was wrong with him, he was told he had bad blood," Dr. Schroeter said. "So far as informed consent, I have no knowledge, no record, that was obtained."

However, he added that the concept of informed consent did not exist as strongly in the 1930s as it does today.

TECHNOLOGY SCARE STORIES

Mr. GOLDWATER. Mr. President, the administration is making determined efforts to eliminate discrimination against American goods and services abroad.

Because Japanese industry was in shambles after World War II, the United States agreed that Japan should pursue restrictive policies until her economy was rebuilt. Today Japan is thriving, but we are still attempting to convince those who have not had the opportunity to study rocket technology. Just linking the words "Japanese," "rocket," and "ICBM" is enough to rekindle unpleasant memories.

In view of our trade problems with the Japanese, it is staggering to see an important labor union official churn the shambles after World War II, the United States agreed to sell the Japanese the needed technology to peaceful purposes. In addition, the Japanese agreed to prevent the transfer of U.S. technology and equipment to third countries.

I believe our Government was right to approve the sale of the Thor-Delta technology and that Mr. Biemiller is wrong for the following reasons:

First, no guidance system is being provided to the Japanese.

Second, to say that the liquid-fueled Thor-Delta can be converted into an ICBM is a little like saying a Lockheed Electra can be converted into a bomber.

Both can be done, but in each case you end up with an outmoded, ineffective, vulnerable, and expensive weapon.

Third, the aerospace industry is put at a disadvantage from America's investment in high technology research and development in the Japanese.

Fourth, there are other nations that could provide Japan with the needed launch vehicles.

This appears to be a situation in which technology scare stories are being thrown up to conceal the real motives of the story-tellers. It is the passion of those who have not had the opportunity to study rocket technology. Just linking the words "Japanese," "rocket," and "ICBM" is enough to rekindle unpleasant memories.

There is an overriding concern in this episode. America must trade in order to survive. Any efforts to disrupt international trade place the Nation in peril.

For example, the United States is increasingly dependent upon foreign sources of energy, mainly petroleum.

A look at the figures shows what has been happening. In 1960, we imported $1.5 billion of petroleum products and exported $478 million for a deficit of about $1.2 billion. Each year since then we have imported more. In 1972, the picture was $4.3 billion worth of petroleum imports and $448 million of exports for a deficit of about $3.8 billion.

Those who would disrupt America's trade patterns would be well advised to note the passions of others and closely reexamine their own.

Mr. President, I ask unanimous consent to include the two newspaper articles mentioned at this point in my remarks.

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

Third, the aerospace industry is putting "profits above patriotism" because the deal provides for production in Japan under license and "because of the possibility of Japan converting the Thor-Deltas into ICBM's."

What are the facts of the case?

The decision to sell Thor-Delta technology to Japan is a little like saying a Lockheed Electra would be allowed to carry nuclear weapons.

The Japanese undertook to restrict any activities resulting from the use of U.S. technology to peaceful purposes. In addition, the Japanese agreed to prevent the transfer of U.S. technology and equipment to third countries.

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There being no objection, the articles were ordered to be printed in the Record, as follows:
AFL-CIO SAYS ROCKET SOLD TO JAPAN CAN BE CONVERTED TO MILITARY MISSILE
(By John W. Finney)

WASHINGTON, March 6—The AFL-CIO complained to Congress today that the McDonnell-Douglas Corporation, with Government encouragement, is helping Japan develop a rocket that could be converted into a military ballistic missile.

The complaint was lodged by Andrew J. Biemiller, legislative director of the American Federation of Labor and Congress of Industrial Organizations, at a recent Senate Finance subcommittee on international trade.

TERMS OF ACCORD CITED

Mr. Biemiller cited the sale of the rocket, a Thor-Delta, as an example of what he said was the way the United States aerospace industry was putting "profits ahead of patriotism," by exporting technology developed at Government expense, with a resulting loss of jobs for American workers.

The State Department replied that the Thor-Delta was being sold to Japan under a 1969 agreement on space cooperation in which the United States offered to help Japan develop high-energy rocket technology needed to launch communications and other types of satellites. The 1969 agreement specifically referred to "aiding Japan on Thor-Delta rocket technology."

Noting that the sale of the Thor-Delta technology is still under the post-agreement policy of encouraging international cooperation in space research, the State Department spokesman, Charles W. Bray 3rd, emphasized that the agreement specifically provided that any technology or equipment transferred to Japan "be used solely for peaceful purposes."

Mr. Bray also contended that the Thor-Delta rocket "has very little or no military potential," as was supported by spokesmen for the McDonnell-Douglas Corporation.

A conflicting view as offered by Mr. Biemiller, was that "with little modification," the Thor-Delta rocket could be converted into an offensive missile capable of carrying a one-ton warhead over distances of 1,500 to 5,000 miles.

In a statement on the Senate floor, Senator Abraham A. Ribicoff, Democrat of Connecticut, who is chairman of the Senate Finance subcommittee, said that Mr. Biemiller's testimony about the export of modern weapons technology "serves to heighten serious national security implications."

"The sale of our military technology to foreign nations does not do justice to the intent of what this technology, created at great expense to the American taxpayer, is being sold to foreign companies for production abroad," he said.

MILITARY VALUE DENIED

The Thor rocket was developed by the Air Force in the mid-thirties-finals as an intercontinental ballistic missile with a 1,500-mile range. With the development of longer-range, more reliable intercontinental missiles as well as the Thor-Delta rocket, the Thor was removed from the classification of military weapons and converted into a rocket for launching satellites. With the addition of the high-energy upper stages, the Thor-Delta has become the workhorse of both the civilian and military space programs.

The argument made by State Department and McDonnell-Douglas officials is that it would take substantial engineering to reconstruct the Thor-Delta rocket that is being sold to Japan back to a military role. Even then, they contend, Japan would have an obsolete, militarily ballistic missile.

For example, it was pointed out by these officials, the Thor-Delta, with radio-controlled landing gear, would face the extreme problem of obtaining inertial guidance now used in military ballistic missiles. In addition, they noted that the Thor-Delta uses liquid fuels, making it extremely difficult to keep and maintain the short notice normally required for military missiles.

In theory, officials acknowledged, the Thor rocket could be converted into a military weapon. But as a deterrent against a missile attack, it could not be a highly vulnerable, ineffective weapon.

Under a principle that has grown out of the pacific Japanese Constitution, imposed by the United States after the World War II occupation period, Tokyo has renounced the acquisition of any offensive weapons. Officials said that the Thor-Delta had been decided that this prohibition did not apply to the Thor-Delta since the rocket is little military potential and would be used only for peaceful purposes in launching communications and scientific satellites.

Under a contract written by the United States Government, McDonnell-Douglas will assist Japan in producing an early version of the first stage of the Thor-Delta rocket, with Japan developing her own upper stages. The prototype of the first Thor-Delta rocket for Japan is now being built at the McDonnell-Douglas plant in St. Louis, but eventually the rockets will be produced in Japan.

The missile arrangement with Japan is the first of its kind, the American officials said.

LOSS OF JOBS CHARGED

The potential effect of the agreement, Mr. Biemiller said, will be to displace several hundred workers employed in production of the Thor-Delta rocket as well as to place the Japanese in direct competition with the United States in producing this technology.

The rejoner of State Department officials was that the model of the rocket being sold to Japan was no longer being produced in the United States. Mr. Biemiller planned to produce only a small number of the rockets for its own purposes, with the first launching not scheduled until 1975.

As another example of how "American industrial leadership is being rapidly sold off and exploited abroad," Mr. Biemiller cited a recent Government-approved contract under which McDonnell-Douglas licensed Mitsubishi of Japan to produce 91 of its F-4 fighter-bombers.

The result, he said, was a heavy loss of employment among United States aircraft workers, who have lost out at the expense of U.S. aerospace and automobile workers, he said. American firms with subsidiaries abroad are making profits ahead of patriotism," he added.

Sen. Abraham Ribicoff (D-Conn.), chairman of the subcommittee investigating the impact of multinational corporations on U.S. foreign policy, said "serious national security implications" in yesterday's disclosures.

"The sale of our military technology to foreign nations also raised the issue of why this technology, created at great expense to the American taxpayer, is being sold to foreign companies for production abroad," he said.

UNION CAMP CORP.'S DONATION FOR CONSERVATION OF THE GREAT DISMAL SWAMP

Mr. Ervin. Mr. President, Union Camp Corp.'s donation of 50,000 acres of the Great Dismal Swamp in Virginia to the Nature Conservancy will not only prove to be of great benefit to Union Camp and its stockholders, but has also nourished the hope of all conservationists.

The Dismal Swamp, including the regions of Lake Drummond and Washington, D.C., is a unique and picturesque swamp in the United States and is unlike other swamplands. It is the region of a singular history but its wildlife preservation has been of continued interest to many conservationists, both locally and nationally. The cost, however, has heretofore prohibited conservationists from acquiring the Great Dismal Swamp in order to preserve it.

Union Camp has nurtured this huge tract and its thick growth of hardwoods, even though pines are preferable to its business interests. This sacrifice, of course, left the heart of the Great Dismal Swamp unspoiled.
For those of us—whether ecologically or historically minded—who share an interest in preserving this region, Union Camp's generous gift is to be considered a far-reaching one which will enable this swamp to be used and enjoyed for generations. Others hopefully will take their cue from Union Camp and consolidate their efforts in a movement to preserve our diminishing natural areas.

Mr. President, I ask unanimous consent that six newspaper articles from the Greensboro Daily News be printed in the Record.

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

[From the Virginian Pilot, Jan. 17, 1973]

**UCG To Give Dismal Swamp—50,000 Acres As Preserve**

(By Wayne Woodlief and Don Hill)

WASHINGTON.—Union Camp Corp., is donating its entire Dismal swamp holdings—50,000 acres valued at $12.6 million—for preservation and enjoyment.

The donation of prime land in the Virginia portion of the historic swamp, astride the Virginia-North Carolina line, has been announced officially from the forest products firm's Wayne, N.J., headquarters.

Announcing the Rotunda gift to the Nature Conservancy, the country's largest nonprofit land conservation organization, showed up on Capitol Hill Tuesday.

Several Virginia and North Carolina senators and congressmen have pressed legislation intended to preserve and protect the Dismal Swamp.

The Nature Conservancy plans to convey the 50,000 acres to the U.S. Department of Interior for operation as a national wildlife refuge.

A formal donation ceremony, involving Interior Secretary Rogers Morton and Union Camp and Nature Conservancy officials, will be held next month in Washington.

Union Camp, at next month's ceremonies, will donate an "undivided interest" of 40 per cent of its Dismal Swamp holdings, and will add more land over the next three years, with complete transfer scheduled during 1975, in time for the national celebration of the Bicentennial.

The Union Camp donation includes Lake Drummond, a nearly circular lake covering about 3,000 acres with an average maximum depth of five feet. To the legend has it, was created centuries ago by the "Fire Bird"—perhaps a meteor.

Dismal Swamp, the Augustinian ditch, dug by George Washington and his associates in 1783 to drain the land for agricultural purposes.

The 50,000 acres represent about half of the Dismal Swamp acreage in Virginia and is "the largest and most significant land gift the Conservancy has received" in its 20-year history, according to Conservancy President Everett M. Woodman.

The area is a land of forest and bog, and still contains stands of juniper, cypress, and other hardwoods. Its abundant wildlife includes wood ducks, pheasants, warblers, Carolina parakeets, bald eagles, red-shouldered hawks, deer, wildcat, and bear.

The swamp is rich in folklore, with tales of ghosts and pirates, and eerie lights in the night.

The Union Camp press release indicates that a combination of conservation-mindedness and tax benefits led to the extraordinary gift.

Union Camp Board Chairman Alexander Camp Jr. said: "The historic significance of our Dismal Swamp acreage and its proximity to a rapidly-growing major population center (11 miles southwest of Norfolk), make it a vital asset to be retained for enjoyment and use by present and future citizens while providing an important addition to the National Wildlife Refuge system."

Samuel M. Kinney Jr., president of the company, said: "This tax law, quite properly, encourages this type of action by individuals and corporations."

"These laws like our ability for Union Camp to donate one of its assets—in this case a beautiful natural resource—and in exchange receive the benefit of its appraised value from taxable earnings over a period of several years. This benefit is enjoyed by everyday, generation after generation, as well as Union Camp Corp., and its shareholders."

Union Camp owns about 1,700,000 acres in six Southern states. One of its predecessors, Camp Manufacturing Co., acquired the Dismal Swamp holdings in 1969.

[From the Greensboro Daily News, Jan. 21, 1973]

**DISMAL'S CONSERVATION IS THIRD ALTERNATIVE**

(By Don Hill)

WASHINGTON.—There were many lovers of the Great Dismal Swamp—and I was one of them—until they learned that the fate of that enchanting wilderness was sealed. But in 1968 a new and happier fate began to be woven for a significant section of the swamp.

The land was acquired by the Conservancy. The holdings of the John L. Roper Lumber co., had been acquired by Noonan in 1909. The company was to retain the property forever out of conservationists' reach.

At that time, a remarkable group called The Nature Conservancy, which could place its roots back to 1916, was known to only a few thousand conservationists.

The Nature Conservancy has had its eye on the Virginia-North Carolina swamp for a long time. But it was in 1968 that its keen-eyed professionals began to perceive the near­ ing of a tipping point when land values and development methods would place the Dismal Swamp technologically and economically forever out of conservationists' reach.

At practically that same time, Union Camp Corp. began a routine study to find the best use for 50,000 acres of the Dismal Swamp which is numbered among its vast holdings in the East.

It had a number of alternatives.

Its tract, by far the wildest, largest, best managed and best preserved property left in the Great Dismal was heavily forested in juniper, cypress and other hardwoods. It had to be reaching full maturity in about 20 more years. Timbering for profit was clearly a possibility.

So was clearing and draining the swampland, subdividing it and bringing it to the point of first harvest. The "reclamation" would enhance the land's value. Combined with lumbering it could reap millions of dollars.

But a third alternative, conserving the land, was attractive also. This has been called the "biologic" method. Union Camp's holdings in the Dismal included Lake Drummond, a hidden-away jewel among lakes. It included huge tracts of federal land. It also included the proposed site of a dam.

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In the course of studying this third alternative, Union Camp's corporate officials in Wayne, New Jersey, contacted land organizations to which they might look for help.

In Washington, D.C., the Nature Conservancy's officials were also making a list—of key land owners in the Dismal Swamp. At the head of that list, as the largest and best, was Union Camp.

Pat Noonan, at 28 vice president and director for development for The Nature Conservancy, wrote to Union Camp expressing interest in the tract.

March 12, 1973

Samuel M. Kinney, then executive vice president, now president of Union Camp, reached a decision made to contact The Nature Conservancy. On the basis of the group's annual reports and the caliber of its backers, like the Ford Foundation, which had been placed at the top of Union Camp's list.

About a year ago, Kinney and other Union Camp people traveled to Washington to meet with Noonan and his staff. The conversation considered a number of approaches, including the Conservancy's buying the Union Camp Dismal Swamp holdings.

Pat Noonan is not what a company president might describe as a conventional conservationist. He is an idealistic young conservationist. Noonan is a tough, direct man, born in the South but raised in Washington, D.C., the son of a lawyer and a former scholarship football player at Gettysburg College. He earned a degree in business at Gettysburg and a masters in city and regional planning in night school.

He thought for awhile, then struck out in his own direction in 1967. He's still a licensed broker in D.C. and a professional real estate appraiser. You can get rich from the business, but Noonan is not like Noonan's. He is not a quitter to join The Nature Conservancy. "We all have different goals," he says. "Some people who join The Nature Conservancy is you have something tangible when you finish your work."

Union Camp employees, voting with Noonan, decided before Union Camp's officials. Among them must have been these: If you sell a $12.6 million piece of property, you can expect brokerage fees and financing amounts to exceed $520,000. If the property was originally acquired for very little, as were Union Camp's Swamp holdings in 1968, the company may find it possible to follow in the footsteps of Union Camp.

A company like Union Camp, which had already invested heavily in the stewardship of its Dismal Swamp holdings and had demonstrated its interest in their conservation, their economics must have seemed irresistible.

But there was a clincher: The federal government since 1926 had been officially cognizant of the desirability of preserving the swampland and the environmental benefits of both Virginia and North Carolina.

Conservation organization had been crying "Save the Dismal" for years. The public had begun to join the clamor.

It is clear that well over a million dollars worth of good will was built into a proposition of Union Camp's. Without its section of the Dismal Swamp to be maintained in perpetuity as a wilderness reserve of unique characteristic.

After years of talk, two years of intensive study, and six months of Con negotiations, the deal was struck a week ago last Thursday afternoon and formally announced by Union Camp.

There are other important owners of Dismal Swamp land, including Atlantic Farms, Inc., Georgia-Pacific, and Weyerhaeuser.

There are many lovers of the Great Dismal Swamp—and I am one of them—who find reason for optimism that some of these other propositions will find favor with Union Camp's lead and give or sell their holdings to the Conservancy.

[From the Virginian Pilot, Jan. 17, 1973]

**GIFT OF SWAMP "TREMENDOUS"**

(By Nita Sizer)

SYRACUSE.—"This is tremendous," was conservationist William E. Ashley Jr.'s reaction Wednesday to news that Union Camp Corp. is donating 50,000 acres of swamp holdings in Virginia to The Nature Conservancy for a reservation as a natural wilderness.
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The 50,000-acre section, unique among wild areas remaining on the east coast, has an appraised value of $12.6 million.

Many call for the swamp land to be conveyed by the Interior Department for operation as a national wildlife refuge.

Ashley, who has actively sought the preservation of this property for several years, said that he is "truly delighted. I knew something would be done, but I didn't know Union Camp would come through so generously."

"I'm working Union Camp today on behalf of local, state and national Izaac Walton League."

"The gift, said Ashley, "is going to mean a lot. Our generation will not see the full potential of this gift unless we see what it means when this area grows into one big metropolitan area.

"It will be probably the only place where people can get away from the hustle and bustle. This was the last place on the Eastern seaboard to be worked."

Work on preservation of the swamp as a wildlife refuge has been underway for several years, Ashley said, with the National Conservation Foundation leading the unconfidential effort. Ashley was vice president of an informal group formed 2½ years ago in Virginia Beach or the Dismal Swamp.

That group effort failed. However, Ashley, representing Virginia's Izaac Walton League, and several other representatives forming the Virginia Wilderness Society, appeared before Senate and congressional committees in Washington last week to urge the Interior Department to preserve the swamp.

He and Duke won national conservation awards in Chicago last year for their efforts on preservation of the swamp. The committee concluded that it would be feasible to maintain the swamp as a wildlife refuge.

Interior Secretary Morton said, "We are particularly pleased that Union Camp has so appropriately recognized the high responsibility to the nation that goes with the ownership of an area of property with such outstanding value in illustrating the natural history of the United States.

"Our first step, started by a group of scientists in 1946 as The Ecologist Union, was incorporated in 1951 under its present name as a nonprofit land conservation agency. Credited headquarters in metropolitan Washington and regional offices in Atlanta, Minneapolis, Cincinnati, San Francisco, and Arlington."

"The Swamp Agency, first started by a group of scientists in 1946 as The Ecologist Union, was incorporated in 1951 under its present name as a nonprofit land conservation agency. Credited headquarters in metropolitan Washington and regional offices in Atlanta, Minneapolis, Cincinnati, San Francisco, and Arlington."

Jack Lynn, of the organization's Arlington office, said that the Dismal Swamp property will be transferred to the Interior Department. The department's Bureau of Sports Fisheries and Wildlife will develop a use plan for it within the next year, Lynn said, and since the intent is to preserve the ecological system (of the swamp) any plan would have to adhere to that.

He said the swamp will be open to the public in the immediate future, adding "My guess is that there will be little change in the plan, but there may be some."

His organization has about 25,000 members, Lynn said, and exists on support from the public. To date, it has helped in preserving about 1,250,000 acres of land. He said that they have 850 projects in 45 states and Virgin Islands. Projects include swamps, marshes, prairies, mountains, and beaches.

[From the Virginian Pilot, Jan. 27, 1973]"HER DIMAL SWAMP SECRET WELL-KEPT"

By Patrice Owens

VA RGINIA BEACH—Don't ever tell Mrs. Barbara Racin that a woman cannot keep a secret, Mrs. Racin said that for about a year she kept a secret that was between Union Camp Corp. and the Nature Conservancy.

"The Swamp is the largest land conservation organization in the nation. It has a national policy of preserving land for future use. This property is valued at $12.6 million."

Mrs. Racin was chairman of the Dismal Swamp Preservation Committee of the Conservancy last year. The committee's goal is to acquire one million acres of swamp land within the next year, Lynn said, and at that time to establish a national wildlife refuge.

The Swamp is interested in the land because of its natural state. The property is valued at $12.6 million.

The Swamp has purchased land in the past, Mrs. Racin said, including the marsh land in the western part of the state. The property is now valued at $12.6 million.

Mrs. Racin said that she had a call from the conservancy office informing her that Union Camp had purchased the swamp land.

A spokesman for the Nature Conservancy said that Mrs. Racin was "kept into the loop locally. We don't really know who could keep the pot boiling."

Mrs. Racin became interested in the swamp while acting as environmental quality chairman for the Virginia Beach chapter of the League of Women Voters.

She said, "I have lived all over the United States and I have seen places that are more beautiful. The swamp is anything but dreary and dismal. It is the largest open space area left of the eastern seaboard.

"I have read volumes on the swamp, talked to oldtimers in the area, and to the Corps of Engineers about it. I have slept at night and dreamt about the Dismal Swamp. I really don't think I'd get involved with anything this big again, she said."

"I was working on a civic committee to improve the sewer in our area. My husband said once, 'How many husbands can say when they answer the phone that their wives were either out at the swamp or at the sewer?'"

[From the Virginian Pilot, Jan. 18, 1973]"UNION CAMP'S GIFT TO THE PEOPLE"

"The Dismal Swamp Preservation Committee, which oversees the preservation of 50,000 acres of the Great Dismal Swamp, has now been made available to the public."

"We have provided the Conservation Council of Virginia, the Virginia Beach chapter of the League of Women Voters, and the Virginia Beach chapter of the League of Women Voters, with pictures of the Dismal Swamp. The Corps of Engineers added us in getting National Park Service officials into the Dismal Swamp unnoticed."

"The Dismal Swamp Preservation Committee instigated the first move towards the acquisition of land by the Nature Conservancy, and the Nature Conservancy. It has been a long wait for citizens interested in preservation of the Dismal Swamp, and many citizens have worked towards this day."

"We hope that all citizens of Tidewater Virginia have a chance to appreciate what the Dismal Swamp company has made history with this present to the public. Not enough can be said in commending it for its action."

BARBARA RACIN,

Chairman, Dismal Swamp Preservation Committee

VIRGINIA BEACH,

[From the Virginian Pilot, Jan. 19, 1973]"THE SWAMP GIFT"

Union Camp Corporation President Samuel M. Kinney, Jr. long may be remembered for his refreshing candor when he explained why his company is donating its entire Dismal Swamp holdings to the Nature Conservancy.

"Although the Nation's tax laws encourage this type action, we were Virginia companies interested in self-interest," he admitted.

"Other companies have decided to be involved in human charity rather than rate what's the real inducement, a tax benefit. And there are many aspects of the gift that Mr. Kinney could have exploited. This is prime land in Virginia's portion of the historic swamp. It includes the famous Dismal Swamp, a nearly circular body of shallow, creek-stained water that, according to legend, was created by the 'Fire Bird.'"
Mr. Kinney did admit the swamp is a “beautiful natural resource,” but didn’t mind explaining that the impulse for disposing of it was not that its stretch of hardwood isn’t accessible for fast, inexpensive harvesting. Today forestry companies such as Union Camp prefer to raise growing pines, move in, with harvesting equipment, then reforest with pines, a method that retains and creates a legacy of development. In the Union Camp holdings, canals were dug sparingly and no roads were built from swamp spoil.

Mr. Kinney spoke frankly because he wanted stockholders to know the company is protecting their interests. But the company has, in this instance, looked out for the interests of nature lovers, too.

SCRAP IRON EXPORTS

Mr. SPARKMAN. Mr. President, a major objective of our national economic policy must be to insure a continuing and reliable supply of adequate housing for shelter. At all price levels, that supply depends in turn upon a constant and reliable flow of building materials at prices builders and the homebuying public can afford.

In my own view, both the Congress and the housing agencies of the Federal Government have for several decades devoted much time and effort to assuring that supply lines of needed materials shall remain open and the prices remain within the realm of reason.

Because of this I am deeply concerned by the daily reports of serious shortages developing in the domestic supply of essential building materials—shortages which are traceable in some instances to extensive outflows in the form of exports.

A case in point is that of scrap iron and steel. Last year, according to Department of Commerce reports, total exports of ferrous scrap totaled slightly over 7 million tons. This year it is estimated that the total of such exports will reach 11 million tons. Figures released for the month of January 1973 indicate that total ferrous scrap exports for that month were 900,458 tons, and this is 44 percent higher than for the 11 million estimate for this coming year. This sudden and dramatic increase in the volume of scrap exports has been at the expense of domestic industry and the American foundry. As late as March 1, 1973, a representative of the National Foundrymen’s Association informed me that since the early months of this year, the price of cast iron scrap in Alabama has risen from $42 a gross ton to $56 a gross ton. Price differentials for other grades of scrap have been even more dramatic.

I am also informed that cast iron foundries in the State of Alabama have cut back production by 1 day’s supply of ferrous scrap in inventory as a result of large exports.

Congress expressed its concern about the risks of uncontrolled exports when it enacted the Export Administration Act of 1969. Only last year, this body extended the life of that act for 2 additional years.

The Senate of the Congress in the original enactment of this legislation and the subsequent renewals is perfectly clear. There are times and circumstances when the need for judicial application of the law to significant and sweeping controls to commodity is overwhelming. At such times, the national interest is not well served by redundant studies and analyses, or by the conference of like-minded expressions of sympathy spoken by administration officials to persons and industries in dire need.

I am therefore taking this occasion to call upon my colleagues to join me in a forthright call to action. What the domestic building industry needs and what the various segments of the iron and steel industry need is action to meet a grave national shortage of iron and steel scrap. The act which was passed by the Congress for situations such as this one needs to be triggered into action.

Incidentally, I am informed that the United States is the only country in the world now allowing the export of steel scrap. This, obviously, greatly increases the pressures on the American supply of building materials, and the American housing industry is seriously threatened, and I urge remedial action without delay.

COMMENTS ON SENATOR PROXMIRE’S RELEASE DATED MARCH 8, 1973

Mr. GOLDWATER. Mr. President, in his press release dated March 8, 1973, the junior Senator from Wisconsin charged that there has been a “44-percent increase in 3 years” in the price of each B-1 bomber. His conclusion is wrong—in fact, grossly wrong—and I think that it is imperative that the record be set straight in this regard.

Over the past 3 years, the actual increase in the procurement unit price of the B-1 jet fighter has been only 3.6 percent, not the 44 percent alleged by Senator Proxmire. By unit price, I mean the unit procurement cost in terms of constant 1970 dollars, which is a fair, realistic, and standard basis for identification of costs for comparison purposes. Also, I think it is important to point out that this very small increase has been fully reported to the appropriate committees of Congress by the Air Force. In a moment I will explain exactly how this 3.6-percent increase is calculated.

Why is the Senator’s conclusion wrong? The basic reason—that is, it is based on erroneous assumptions and unsound analysis. Consider the following examples:

First, his figure for percentage increase is incorrect. In Proxmire’s calculation, he divided the price of a figure stated in 1968 dollars with a figure stated in “then year” dollars, that is, a figure which includes a factor for continuing inflation in the years ahead. This is the old story of comparing apples and oranges. The way to make an accurate objective comparison is to first convert all dollar figures to a constant-year basis. This my colleague did not do.

Next, the Senator stated that the price for each B-1 will be $51.5 million. This is wrong. In fact, this overstates the “then year” unit program cost, which includes operating costs as well as procurement costs, by more than 10 percent. In this connection, he made the error of adding operational type costs to acquisition costs and 16 years of operating costs to arrive at his “unit program cost.” Of course, this is in contradiction to the procurement unit and program unit costs concept applied to all aircraft, and reported to the Congress on a regular, periodic basis.

So in short, what my colleague has done is to compare accurate data in an roundabout way.

Now the facts of the B-1 program are as follows:

The B-1 contract was awarded in June 1970. At that time, the estimate for the unit procurement cost converted to constant 1970 dollars was $44 million. A comparison of these two figures, both accurate and both expressed on a common constant dollar basis, shows that the procurement unit price of the B-1 jets has increased by only 3.6 percent. The cost data for this current estimate includes those costs associated with factors such as a recently reported weight increase, and a 5-month extension in the flight program. The program will allow 6 full months of avionics flight testing by Air Force crews prior to a production decision being made.

Regarding this 3-month extension in the flight program, it must be noted that this in no way can be called a cost growth. Rather, it was a deliberate decision by the Air Force to increase the "fly-after-buy" philosophy, which the Senator from Wisconsin strongly advocates—as do I. However, we must also recognize that "fly-before-buy" does add cost to a program. The Air Force does not intend to let this happen in the B-1.

Allow me to explain further. In order to focus design emphasis on aircraft structure and not on weight, the Air Force developed a weight goal that was established in lieu of a specified empty weight. This empty weight goal was based on preliminary engineering drawings. Since the goal was established, the empty weight estimate has increased only 12 percent. The latest empty weight estimates are based on calculations made from engineering drawings which are now 75 percent completed.
With regard to other assertions made by Senator Proxmire, I can only state that they appear either misleading, or inaccurate, or both. For example, he states that the program appears to be in violation of the "fly-before-buy" concept, when it will be recalled, the B-1 program is a premier example of the "fly-before-buy" approach. There is no production option in the current B-1 development contract. Instead, the Strategic Air Command, as well as other commands, will participate in the flight test program and will conduct an operational test and evaluation prior to the production decision. This will include captive flight testing of the short-range attack missile—SRAM—to prove the aircraft and missile compatibility. In addition, aerial drops of SRAM dummy missiles will be accomplished to test the safe separation of the SRAM from the B-1. The performance of the SRAM, once released from an aircraft, has already been demonstrated in launch tests conducted by B-52 and FB-111 aircraft.

I could go on at length about the Senator's charges. However, what is important is that they not be deluded by impulsive, unfounded assertions. Rather, we need to keep the true, fundamental aspects of the program before us. There is an essential need to modernize and improve the heavy bomber force, which is now composed of aging B-52's, and there is an essential need to be able to counter the more advanced, sophisticated threats being specifically designed to satisfy these needs. The B-1 program is an orderly development program which will yield high dividends for our national security. In this regard, there is no substitute for the contribution made by the bomber to our strategic deterrent posture—and no more cost-effective way to maintain the effectiveness of the bomber force than the B-1 program.

A SERIOUS SITUATION IN THE DOMINICAN REPUBLIC

Mr. FULBRIGHT. Mr. President, I desire to call the attention of the Senate to a serious situation in the Dominican Republic. Although some of the facts are still obscure, the basic outline is clear enough:

Approximately a month ago, eight or 10 armed men landed undetected in a small motor boat off the coast of the Dominican Republic. As they made their way inland into rugged mountain terrain, they were detected by peasants who reported the presence of armed men. Twenty or more of the National Guardsmen were killed or wounded. In the second, three guerrillas were killed, one of them identified by the Dominican authorities as former Col. Francisco Caamaño Denó who, it is believed, was the example of the leaders of the uprising which resulted in the 1965 U.S. intervention in the Dominican Republic. The other five—or seven, as the case may be—guerrillas escaped and at last reports were still at large.

The Government of the Dominican Republic, headed by President Joaquin Balaguer, reacted strongly to this incident. It ordered the arrest of former President Juan Bosch, whom Balaguer defeated in the elections of 1966; of Jose Francisco Peña Gómez, secretary-general of the Partido Revolucionario Democratico; and of approximately 300 other PRD members. Although Bosch's house in Santo Domingo was searched by the police, Bosch himself managed to escape, as did Peña Gómez. Many other PRD leaders were in fact arrested and held in jail for a short time. I understand that most of them have now been released. Despite assurances from President Balaguer, Bosch, and Peña Gómez remain in hiding, apparently fearful for their safety.

I bring these facts to the attention of the Senate because of the history of Intimate U.S. involvement in the internal affairs of the Dominican Republic. As a consequence of this history, most Dominicans believe that the United States may have an incidental influence on events in their country. It is my opinion that the influence has decreased substantially from what it was 8 years ago, but the operative fact is not what I think but what most Dominicans think.

I would be opposed to any renewed U.S. intervention in Dominican affairs, either open or covert. I do not think we should support either President Balaguer or his opposition. Nor do I think we should give the appearance of supporting either one or the other.

However, given the history of our past actions, it is fair to say that most Dominicans think we are supporting the Balaguer Government. The necessity of establishing not only military, but also the credibility of such a policy, provides a golden opportunity to break what ties remain between the U.S. Government and the security forces of the Dominican Government.

We have an opportunity to reestablish our credibility in the Dominican Republic if we now take advantage of this opportunity to withdraw the U.S. military assistance advisory group and publicly to end what is left of the AID public safety program.

The Dominican Republican will have a presidential election in 1974. Preelectoral maneuvering has already started, with the intention of determining the outcome of the election. It is possible that President Balaguer will seek to succeed himself. How he deals with the opposition in the meantime thus becomes an important and delicate matter for consideration. One of the fact that, as a consequence of the long Trujillo dictatorship, continismo is an emotional and volatile issue in Dominican politics. Were the President to succumb to the temptation which he faced in 1965 to use force, the backlash in the fall of 1974 will serve notice on all concerned that the United States not only intends to follow a noninterventionist policy, but also intends to give the appearance of such a policy.

I hope that the events of the last month do not prove to be the forerunner of a policy of deliberate harassment of the opposition. If they do, then we should also reconsider other forms of assistance to the Dominican Republic which last year amounted to $30 million.

MINORITY VIEWS OF SENATOR SAM J. ERVIN, JR., ON THE CONSUMER PROTECTION AGENCY BILL

Mr. ERVIN. Mr. President, legislation will be coming before the Senate again this year to create an independent Consumer Protection Agency. For this reason, I ask unanimous consent that my minority views expressed in a reporting to the Committee on Government Operations on S. 3970, the Consumer Protection Organization Act of 1972, be printed in the Record. The bill was the object of much debate in committee as well as on the floor of the Senate last year and was finally laid aside in the last days of Congress. I am hopeful all Members of the Senate will carefully study my arguments against this legislation.

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

Majority Views of Senator Sam J. Ervin

"The existence of the CPA will unquestionably make consumers relatively poorer. There will of course be the deprivation of income and benefits which will occur because of the massive bureaucratic delays caused by the CPA and because of the tax revenues needed to cover the CPA and the cost of the CPA itself. Consumers would almost surely be better off without such regulation and with the money they pay in taxes to any more bureaucratic agencies."-Prof. Ralph Winters, Professor of Law, Yale Law School.

INTRODUCTION

I firmly believe that S. 1177 and the mood it represents presents the basic issues of the United States Senate of how far we want to travel down the road to a totally federally compartmentalized and regulated society. To my mind, S. 1177 is another major step to allow over-zealous bureaucrats to slow down and impede action within our economic system. New government regulations depend on the production and development of products within our free enterprise system. We have no desire to see any government danger point where our economic system, like a burned-out star could cave in on itself.

This measure puts the Federal government directly into every transaction relating to goods or services consumed or contracted for and to be furnished. It proceeds on the idea that we must let the government do for the people what the people ought to do for themselves. It is based on the idea that the people of the United States cannot manage their own affairs without government supervision. It proceeds on the idea that the people of the United States shall no longer be required to recognize
their responsibility for the activities of their life, the life of liberty.

In short, the bill is based on the theory that every businessman in the United States sits up all night scheming about how he can cheat his customers and how he can possibly cheat his customers. There are a bunch of idiotic nitwits who ought to be put under bureaucratic guard because they are not mentally capable of being free men.

This bill is being pushed in the name of the consumer, but I cannot forget that when this bill was introduced, Mr. Davis, in the House, introduced a famous French lady during the French Revolution, she exclaimed, "O Liberty, how many crimes are contained within this name." I want to say, "O Consumers, what crimes we are about to commit in your name."

TITLE II—CONSUMER PROTECTION AGENCY

Title II would create an independent Consumer Protection Agency (CPA) to act as the agency at its head to select its own mission and which I supported, changed the structure, majority of the Committee's wishes to report. The Agency may act whenever it feels it the obligation carefully to circumscribe it the touchstone of the Agency's authority where the Agency will act. This bill provides that CPA's discretionary power in practice.

The point is, the NLRB is required to make its decision on the record. If the Board must allow the CPA into a proceeding as a full participant, as under present law, the hearing record could be 'staked' by the CPA's tax-funded lawyers. The CPA's freedom of action is uncertain. Without the CPA, the agencies will refuse to comment on the CPA's wish to comment. The CPA is not required to comment under present law. The CPA's tax-funded courts would rely if the tax-funded CPA appeals the tax-funded NLRB decision.

It is for this reason and others that the Federal Trade Commission, no longer a slouch when it comes to consumer protection, is an unequal right to participate in all of the informal activities in which the government may engage. Under the bill, the advocate is to be present to present his views to responsible officials.

Such Federal activities encompass everything a Federal agency or any of its personnel may do, including receiving, reviewing or acting on an unauthorized telephone call, holding an intra-agency conference. See Sec. 401(4).

The "activities" are a matter of unchallengeable right, present oral or written briefs and arguments in situations where persons outside the agency do not participate. See Sec. 203(b)(1). Such a situation would be a policy conference between a Department Secretary and his staff.

In addition, Section 203(b)(2) would require that the advocate "have an opportunity equal to that of any other person outside the Agency to participate in such activity." Such a situation would be a trade negotiation activity between the President or a State Department official and a representative of a foreign government. This section is the most difficult, ill-conceived and incomprehensible provision of the bill.

The point is, the NLRB is required to insert to prevent complete chaos where activities with outcomes took place over the "activities." The so-called "loan or forbearance of goods,..." provides that such CPA's equal-time participation in activities need not be simultaneous with that of the other, should occur within a reasonable time. See Sec. 203(b)(2).

I have grave concern with the inclusion of authority for participation (CPA) equal time and every informal activity which may be carried out in the government.

The point is, the NLRB is required to participate in the billions of Federal deliberations of an
structured nature will no doubt result in considerable difficulties for the existing agencies concerned with the unsuspecting public when used.

Take, for example, a recent matter of considerable importance to the consumers of goods in the marketplace—dock strikes.

What will happen in Federally mediated collective bargaining negotiations when a consumer protection agent shows up, briefs, and arranges the parties and the substantive issues of concern to the consumers of goods in the marketplace—dock strikes.

I must concur, for example, with the views of the Department of Justice in its comments on intrusion of the Agency in decisions concerning whether or not particular cases should be filed, settled or appealed. As Deputy Attorney General Braden stated:

"No other government official has that right at present, and for good reason. The exercise of prosecutorial discretion is a delicate and sensitive task, best left to the branch of government chosen by Congress to conduct litigation.

Not only is any acquiescence in a proposal which would inject the Agency in matters of foreign trade and currency exchange which touch upon the heart of our foreign policy for that matter, in many other areas as well. My first difficulty with this section is that we have here the concept of preemption and we can only dimly perceive the ramifications such intrusions entail.

The language of Section 207(3) is a source of still further concern. It is unmistakable. Every day thousands of government officials deal with thousands of persons outside the agencies in the daily conduct of business. Those dealings over the entire range of human behavior. In these circumstances, the entire range of human behavior, it would be a question of the proper duty of the agency to establish for itself, in every instance, some kind of immunity "equal" to that of someone else who did or might theoretically participate in a government decision? When an agency deals with many parties, each playing different roles, by what role is that opportunity to be defined and recorded?

There is little solace in the explanation offered by the report. In effect, the report states that the language does not mean what it says. It is the duty of the agency to establish for itself, in every instance, some kind of immunity "equal" to that of someone else who did or might theoretically participate in a government decision? When an agency deals with many parties, each playing different roles, by what role is that opportunity to be defined and recorded?

As we have seen with the Law Enforcement Assistance Administration—the principal purpose of which is to install new vigor in the efforts—

Administrator of the Agency consumer protection efforts.

I see two general problems with this title, one philosophical, the other pragmatic.

I would not readily acquiesce in a proposal that provided similar State and local grants in an effort to decentralize consumer protection functions but at the same time increase Federal control over activities of the State and local levels, however, is nothing more than a neat, cold, analytical barb. It is sure to give the out-of-construction taxpayer a hernia. If not a broken back.

If there is any doubt that Title III would add to the Federal agencies in the mass of records and files, there is little solace in the explanation offered by the report. In effect, the report states that the language does not mean what it says. It is the duty of the agency to establish for itself, in every instance, some kind of immunity "equal" to that of someone else who did or might theoretically participate in a government decision? When an agency deals with many parties, each playing different roles, by what role is that opportunity to be defined and recorded?

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Administrative agencies cannot function in a total fishbowl. As a recent House Report stated:

"A full and frank exchange of opinions would be impossible if all internal (agency) communications were made public (A) vice from staff assistants and the exchange of ideas amongst agency personnel would not be completely frank if they were forced to operate in a fishbowl.

Now can they function where their own sources of information will dry up because of their inability to guarantee the confidentiality of the material which can only be obtained on that understanding. They certainly cannot function where one man has—(1) a secret, and another man is under the most intimate and privileged details of agency advice and planning for use against the agency itself.

Information relating to national security, personnel, routine executive and administrative matters, and agency's staff recommendations. It would also exclude information which an agency is expressly provided to protect itself from disclosing to another Federal agency.

Finally, we have created this Agency to provide fair representation of views in the Federal government. It is for this purpose that we have authorized the Agency to litigate, when necessary, with other agencies and with third parties as well. The special status afforded the Agency under Section 207(c) destroys the very fair representation of views in the Federal government, this section would do more: it would grant to the Agency access to the work product of counsel and confidential sources of information against whom it is litigating—and in the midst of the litigation itself. The ultimate protection against misuse of the assembled data is the restriction of access to it.

We would create here a commission, the chief purpose of which is to install new vigor in the efforts—

Yest, during their very first year, we would ridicule the three CPA families with the burden of administering a major grants-in-aid program that would be applicable in all States and territories.

As we have seen with the Law Enforcement Assistance Administration—the principal purpose of which is to install new vigor in the efforts—

"The more you explain it, the more I don't understand it."

The Chenery case, still the law until this inapprehensible bill is enacted, held in pertinent part that the courts cannot disturb

*332 U.S. 194, 214 (1947)."
a decision of an administrative agency where—
universe. Whether we agree or disagree with the result reached, it is an allowable judgment which administrative agencies are best equipped to make and which justifies the use of the administrative process.
Under this bill, Congress will be conferring upon the CFA legislative “standing” to take other Federal agencies endowed by Congress with the automatic right to sue to protect the “interests of consumers” which administrative agencies are equipped to make and which justifies the use of the administrative process.
Is this decision of an administrative agency where—
whether we agree or disagree with the result reached, it is an allowable judgment which administrative agencies are best equipped to make and which justifies the use of the administrative process.

In cases of special interests challenging governmental actions which affect them, the courts are the arbiters of the pervasive intrusions and vagaries of what is best for each case in his community. It is for Congress to attempt to achieve this goal by drafting a law with considerably more attention given to the problems involved than has been given in this bill.

CFA’S IMPACT ON THE COURT
It is legislation such as this that Chief Justice Warren Burger had in mind when he delivered this “Statement” to the American Bar Association in San Francisco last month.

Chief Justice Burger urged that reporting committees file with the Judiciary Committee a “Court Impact Statement” so that the bill’s effect could be considered by Congress as well as the needs for new legislation.

In this regard, I have received letters from two high-ranking administrators in the Judicial branch, the Head of the Administrative Office of the Courts, and the Director of the Federal Judicial Center, stating that referral of this bill to the Judiciary Committee would be appropriate.

CFA’S IMPACT ON AGENCIES
The CFA’s Congressional Committee on Agriculture and the Committee on Banking and Currency have written to me as Chairman of the Government Operations Committee in response to this bill stating that the CFA could be considered by Congress as well as the courts in the bill’s effect.

This may have some salutary aspects, but, on the other hand, we must realize that we may be legislating governmental cat fights here in our efforts as in the courts.

CFA’S IMPACT ON AGENCIES
It was the late President John F. Kennedy who warned Congress that statutes under which Federal agencies operate “should neither place responsibilities upon agencies beyond the practical limits of administrative action, nor couch their objectives in such inexact terms that they can be used to circumvent the intent of a free play of agency discretion.”

This bill flunks that test in a unique way—It places responsibilities on safety agencies well beyond the practical limits of administrative action by commanding all of them to give “adequate consideration” to accommodate the free play of CFA discretion in their deliberations. See Sec. 203(c).

In that same Message to Congress, President Kennedy warned that, although Congress and the President should oversee carefully the activities of Federal agencies—

This does not mean that either the President or the Congress should intrude or seek to intervene in those matters which by law these agencies have to decide on the basis of open and recorded evidence, what areas are open for the free play of agency discretion.

Nonparallel present cases
To be sure, there are now very limited instances where one Federal agency’s differences with another government agency are likely to be taken on limited grounds, rather than the broader and more logical Congressional creation of an administrative process.

Confusion of Public Duties and Private Interests
Some may point to this example and say, quite rightly, that the consumer groups and manufacturers involved could have appealed. In point of fact, this FDA, peanut butter decision was appealed by the manufacturing interests. The courts denied their pleas on, among others, the grounds mentioned above in the Chenery case.

Some might ask, therefore, why not give the same Congressional authority as the Manufacturers’? The answer is fundamental to our form of government, but a point that has been to often overlooked in considering this bill.

It is one thing to point at the actions of private special interest representatives, be they consumer groups or environmentalists, in challenging their government in court. That is their right, a right to be cherished.

It is an entirely different thing to confuse that private right with the congressional mandates for which Federal agencies to protect the rights of the public.

2Ibid. at 208-09 (1947).


4See Message from the President of the United States relative to the Regulatory Agencies of Our Government, April 13, 1961.

5Ibid.
in the bill to mean "agency" as defined by the Administrative Procedure Act, including wholly owned Government corporations. See Sec. 4.

The Administrative Procedure Act, in turn, defines an "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency"; certain few exceptions are provided for. See, e.g., the Federal Courts and territorial governments.

During the Committee's executive sessions, we exempted the Central Intelligence Agency, Federal Communications Commission, Federal Bureau of Investigation, Intelligence Service, National Security Agency and the national security and intelligence functions of both the Department of Defense and the Office of Emergency Preparedness.

A question to be resolved on the floor is whether it is appropriate to delegate to one agency such potentially disruptive discretionary power, or are there areas of our oversight that we should rely on the judgment of some unknown political appointees, and not worry about them sticking their noses into where they clearly do not belong.

If the CPA does not belong in any particular area of Federal activity, we should prevent it from entering that activity now, not wait until it does unexpected damage five, ten or fifty years from now.

Allowing blanket participation in all of Government might be acceptable if we were treating this CPA as part of the Government under the Amicus Amendment. But we are here creating a fox to put in the Federal henhouse.

AGENCIES RESPONSES STILL RELEVANT

There may be some who, either having not read the bill or read it if at all in the informal, may question whether Federal agency responses based upon Committee prints prior to this hearing are still relevant.

A complete review of the letters indicated that they still reflect accurately the effect the reported bill will have on the agencies responding.

After the Committee completed action on S. 1177, I wrote to each agency and asked if their initial response would be changed by the Committee bill. All the answers which I have received thus far indicate that there would be no change in the original letters. While I have not heard from the Internal Revenue Service, there is one major exception.

There is a Committee report of the CPA's response that describes proceedings and activities revolving around income tax returns. Senator Allen was successful in amending the bill in Committee to modify the proposed power under which the CPA would have an unchallengeable right to demand and review copies of consumers' income tax returns. His amendment would prevent any CPA requests of this type. The many other listed proceedings described in the IRS letter still apply, however.

What was not obvious in the letter pertaining to parts of the responses of the Defense Supply Agency and the Office of Emergency Preparedness. Those few described proceedings and activities of intelligence functions no longer would be covered under an amendment made during the last stages of the full Committee's review. See Sec. 407.

The remainder of the proceedings still would be subject to CPA disruption if the CPA decides to enter them.

No one can stop the CPA from entering any Federal agency deliberation of its choice. See Sec. 406.

If the CPA says that any Federal agency deliberation may affect substantially the interests of consumers, then that deliberation must be made open to the public.

The "guideline" provided the CPA for determining what "affect" means is extremely broad as to be all-inclusive. See Section 401(11). Literally everything the Federal government does easily could be interpreted as having an impact on the marketplace.

The agency would be able to avoid any disruption of privacy by declaring war, or a declaration of war, for example, would be an "agency activity" that "may result in a substantial disruption of the marketplace relating to the costs or availability of goods bought in the marketplace."

FEDERAL AGENCIES WARM AGAINST CONSUMER PROTECTION AGENCY

Although Senator Allen's inquiries asked the Federal agencies to submit to him a list with a list of their proceedings or activities that would be subject to CPA intrusion and agencies' responses, there is no need for the agencies to "not suppress their fears or refrain from asking directly or by implication for an exemption.

Two agencies, the Department of Justice and the Internal Revenue Service, have made the most stinging objections to the bill, warning that CPA intrusion in the Department's exercise of its prosecutorial discretion to file, set aside, or modify pending charges, would be a "delicate and sensitive task."

The Justice Department, registering several warnings relating to the Internal Revenue Service procedural advocacy, stated its total opposition to the bill and concluded the "proposed (Consumer Protection) agency's powers of advocacy and intervention in Federal administrative agencies' decision-making are too broad, and pose a threat that the orderly and effective dispatch of the public business in the public interest might be significantly disrupted."

The Tariff Commission raised several problems that would be caused by CPA intrusion under this bill, chief of which was the difficulty of preserving the Commission's independence. The Tariff Commission warned that if the bill were enacted, it would be required publicly to give its reasons therefor [and be subject to court appeal by CPA]; the answer, of course, is yes.

The Department of Agriculture, in the cover letter to its memorandum listing affected USDA proceedings, asks whether its administrative decisions to recommend institution of criminal prosecutions or civil or administrative proceedings would be subject to CPA intrusion. The answer, of course, is yes. (I also have been asked whether a Committee amendment excluding "Government sales to foreign governments" from the section 401(11) definition of "interests of consumers" exempts the activities of the Commodity Credit Corporation. The amendment has been made to the effect that it does not, and, if that was the intent of the Committee, a more specific amendment will have to be offered on the floor.)

The Agency for International Development was recently asked to consider its activities to affect American consumers "directly." AID's opinions as to direct or indirect effects, of course, have nothing to do with this bill under which the CPA makes all such decisions.

The Atomic Energy Commission pointed out that even its preparation for congressional hearings and its drafting of recommended legislation, because they are authorized activities, would be subject to CPA intrusion.

The Federal Mediation and Conciliation Service has functionally been commenting on the impact of CPA intrusion in its collective bargaining activities, saying that it would have an impact on the public decision-making of the agency.

The National Labor Relations Board, similarly, stated that because of the sensitive nature of its duties, it never allows third parties to enter its formal Board proceedings, except as an amicus curiae. That will all change, of course, if this bill is enacted.

The Senate Commerce Committee also declared that "the authority which this bill would confer upon the Consumer Protection Agency, if enacted, would significantly impede the hamper effective regulation by this Commission by postponing finality of decision.
The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD, Mr. President, I know of no further legislative business that the leadership intends to call up today, and I know of no further executive business that the leadership intends to call up today.

EULOGIES OF FORMER SENATOR GUY M. GILLETTE, OF IOWA

The PRESIDING OFFICER. Under the previous order, the legislative business having been disposed of, there will now be a period of not to exceed 1½ hours for speeches eulogizing the late Senator Guy Gillette.

Mr. HUGHES. Mr. President, as it happened, Guy Gillette's wife was a native of my hometown. There are those who still serve on the floor of this authority who have the privilege of serving with Guy Gillette. One of those is present on the floor today in the person of the distinguished senior Senator from Vermont, a man who is certainly a warm and friendly of the entire Senate.

Mr. President, I first yield to him at this time.

Mr. AIKEN. Mr. President, Guy Gillette was a Member of the Senate when I arrived here in January of 1941. I lost no time in associating myself with him in his work, which was primarily agricultural.

I might say that for the first 2 or 3 years I was more closely associated with Guy Gillette than almost any other Member of this body.

As a member of the Agriculture Committee, I served with him in what was called the rubber committee, a committee which was seeking a way to produce rubber from domestic sources, particularly from milkweed, since our supply of natural rubber from other countries was being cut off by the war. It was our business to visit certain parts of this country—I believe we went to Canada also at one time—trying to figure out some way to produce more rubber here in our own country.

The efforts of this committee were very helpful temporarily, although synthetic rubber, like other synthetic materials, was eventually manufactured from petroleum.

Guy Gillette's first interest was agriculture, a subject which was of paramount importance in his home State of Iowa, and American agriculture today owes much to this great statesman.

I well recall his interest in the international field, where his differences with President Roosevelt were pronounced and where American agriculture played such a great part in restoring the war devastated countries.

He was sincerely devoted to American agriculture, to his home State of Iowa, and to his country.

Although we regret his passing, we are indeed glad that he had such a long and useful life, in which he accomplished so much for these United States of ours.

Mr. HUGHES. Mr. President, I want to express my deep appreciation to the leadership of the Senate for scheduling this time for eulogies of a great Senator and one of the most illustrious citizens ever to be produced by my native State of Iowa.

Guy Mark Gillette died on Saturday, March 3, at the age of 94, in his home town of Ida Grove, a warm, generous man who had many friends in Congress on both sides of the aisle, I know it would have made him happy that a number of his Senate friends and colleagues are expressing their esteem and friendship for him te-
day. His son Mark, the only immediate family member who survives, will cherish these words of eulogy.

We remember Guy Gillette as a tall, handsome, opinionated man, who looked and lived the part of the great Senator he was.

We remember him as a ruggedly independent spirit who did not hesitate to challenge the most powerful leaders if he thought they were wrong—as was the case when he stoutly opposed President Roosevelt over the packing of the Supreme Court.

We remember him as a public servant big enough to change his mind when he felt the national interest warranted such a change. A strong isolationist in the 1930’s, he became a devout internationalist in the 1940’s and alded in the establishment of the United Nations.

In this context, we particularly remember his dedicated involvement in the formation of the new nation of Israel.

We remember, perhaps best of all, that despite all of the distinctions he won in the course of his life, Guy Gillette remained a humble, unassuming, friendly person, who never lost his roots in the Iowa soil and his feeling for the people of his native State.

A farmer himself, he felt that his most valuable contributions in his public service career were in helping to meet the legitimate needs of the farmer—helping them to get power and lights for their farm, and to develop soybeans as a new cash crop.

What it adds up to is that Guy Gillette had that ideal balance we seek in a Congressman and a Senator—an ardent concern for the needs of his own State but, along with it, a wise and courageous concern for the national interest and for our role as a nation in the world community.

I knew Guy Gillette over a period of many years—first as a legendary hero in Iowa, later as a wise counselor and father-figure. His home town of Cherokee was near Ida Grove, where I was born and lived—the part of the great western slope of Iowa, in the valley of the Missouri River.

Mrs. Gillette, who preceded the Senator in death in 1956, originally practiced law in Cherokee for 17 years. He was also one of those responsible, along with other historians and thoughtful citizens, for the publication of the 15 volumes of the “Records of the War Crimes Trials Held in Nuremberg, Germany between 1946 and 1949 before American Military Tribunals”.

The records of these trials, and particularly the contemporaneous documents placed in evidence, disclosed many dimensions of the internal workings of Germany during the period of the Nazi dictatorship which were not disclosed, or only partially disclosed, during the earlier trial before the first international Military Tribunal at Nuremberg.

Since that time, during the 15 years that followed, the entire case was placed under heavy pressures to discontinue or curtail this publications project. Principal charges, cited were that it cast the economy and the supposed virtue of downsplaying or even forgetting some of the inhuman acts and atrocities which occurred in Germany under Hitler.

When this situation was called to the attention of Senator Guy Gillette, he immediately made pertinent inquiries and then actively intervened by a variety of communications to persuade the Pentagon and members of Congress that the Army should establish all of the planned 15 volumes. His efforts had a telling effect, and eventually the Government Printing Office published the 15 “Records of War Crimes Trials before the Nuremburg Military Tribunals”.

These volumes contain over 20,000 pages of materials available to historians, students of history, and thoughtful citizens. We owe Senator Gillette a debt because he would not allow this significant record—so crucial to students of history and to the general public.

I am sure that those colleagues who served with Senator Gillette remember him well as a powerful orator who spoke with conviction and generally without benefit of manuscript or notes. He was a down-to-earth person with a homespun sense of humor that enabled him to cut through the red tape of Washington and get its business done.
to accept political defeat philosophically as well as victory.

In Iowa, a predominantly Republican State throughout the Civil War, he was a powerful and effective campaigner. This was primarily because even those constituents who disagreed with him respected his integrity, his wisdom, and his consistent willingness to take a firm stand on politically sensitive issues.

As a member of the Senate Foreign Relations Committee, Senator Gillette worked closely with Cordell Hull and other prominent leaders of both parties. It is interesting to note that one of his intimate friends in Washington was the distinguished present minority leader of the Senate, Senator Scott.

The Cherokee Daily Times recalls:

In his later years he was active locally as a member of the Chamber of Commerce and Rotary Club, as Chairman of the Cherokee County Red Cross for three years, as member of the Cherokee Library Board and as a member of the Chamber's industrial committee. He worked as a director of the Cherokee State Bank.

In other words, retirement from the Senate and passing the leadership of 75 in no way diminished the man from Cherokee. Life, love of people, and commitment to public service.

In 1964, as Governor, I had the privilege of attending a community banquet in Guy Gillette's honor, one of the most memorable experiences of my years in public office.

As the Cherokee Daily Times recounts it:

Tributes came from President Lyndon Johnson, Senator John H. Chafee, Senator Chase Smith and Senator Henry Cabot Lodge.

The following year, Gillette was presented with a scroll of honor by the United Nations Association of Iowa.

In 1966, at the age of 87, Senator Gillette suffered a stroke and was hospitalized.

Now that strong heart is still, but the memory of this great American from Iowa's western slope who was, in appearance, character and comportment, the prototype of a towering great Senator will live on through the years.

Mr. President, the distinguished former Senator from Oregon, Mr. Wayne Morse, has written an eloquent personal tribute to the late Guy Gillette which I would like to read at this time:

Senator Guy Gillette, a dedicated public servant of the people of Iowa, was no slav to party regularity. Always a member of the Democratic Party, he often opposed Democratic Party legislative programs which he believed were not in the public interest. He survived the attempt to purge him from the Senate, after his vigorous opposition to President Roosevelt's proposal to pack the Supreme Court.

Although basically a New Dealer in political philosophy, Guy Gillette voted with a minority of Democrats in Congress in opposition to a few New Deal proposals, but always worked to improve them once they became law.

For some years prior to World War II he was more isolationist than internationalist, but his international outlook convinced him that his country could not live unto itself alone. He backed our entrance into the war, and offered the Gillette Resolution supporting the principles of the Atlantic Charter as advocated by President Roosevelt. Guy Gillette was one of the Senators selected to work with the State Department to draft the United Nations Charter.

Perhaps his most outstanding contributions was his labors in behalf of farmers, and his never-failing defense of civil and human rights. As chairman of the Senate, he was among the first in the Senate to challenge the Senatorial misconduct of Joe McCarthy.

Guy Gillette was courageous; he was intelligent; he was handsome, white haired. No Senator took his constitutional duties more seriously, yet he could look upon himself with a delightfully dry humor.

So it was with Senator Guy Gillette of Iowa, whose death on March 5 selected him to work with the State Department as a great Senator and as a great American.

Guy Gillette and I both entered the House of Representatives in 1913, when I was only 28 years of age.

In 1932. We served together in the House until his election to the Senate in 1936. We remembered that his career as Senator and in the years after.

He stood tall among the Senators of his time, a tall, distinguished, modest, dignified, conscientious, handsome, white haired. No Senator took his constitutional duties more seriously, yet he could look upon himself with a delightfully dry humor.

Some time after he had been retired from the Senate, he was approached by representatives of the Hollywood producer, about a part in the film version of "Advising and Consent." His comment on this conversation was as follows:

"When they phoned to me from Washington about a "speech-carrying" part in the movie scene in the film "Advising and Consent," they told me it would be just a small part and that there would be little or nothing to learn for a speaking part. That it was possible that as an advisor I would be "aye" or "no" of certain roll calls.

"I told them there was no harder job than to that intervention, headed by Guy Gillette, was never so preoccupied with world-shaking public questions that he could neglect the needs and interests of his fellow citizens at home.

I recall vividly that in 1944 a presidential directive had been issued canceling the plans for construction of 28 civilian airports in 17 States on the ground that critical materials were needed for the war effort.

Four of those airports were to be in my home State of West Virginia, at Martinsburg, Parkersburg, Wheeling, and Wiley Ford. These communities had already begun preparations. One community had moved a church out of the way and raised a savings fund of $7,000, a great deal of money in those days, on its share of the cost of building its airport. All these plans were jeopardized.

We founded a special committee of House and Senate Members to seek redress at the White House.

When I went down the roster of all the 95 Senators looking for one who could help us, I had the maximum impact upon the President. My selection was Guy Gillette, of Iowa. He accepted immediately.

We called on the President in his upstairs study at 8:30 in the evening. He received us before a cracking fireplace and asked us to present our case.

Following Senator Gillette's cogent introduction, each of us presented our arguments for why the construction of these 28 civilian airports was essential. President Roosevelt listened attentively throughout the 18 or 20 minutes we were privileged with. He did not interrupt and he did not ask any questions. At the end, he said, in effect:

"Mr. President, I have made your case. The order will be reversed tomorrow morning."

It is to that intervention, headed by Guy Gillette, that I am indebted for the construction of 28 civilian airports, and for the Glllette Resolution as a man of the wonderful things they began to benefit from civilian air service even before World War II ended.

His indomitable will and his unquestionable
spent during years of illness kept him not only alive but ever keenly interested in our country's affairs. He was a remarkable man of truly grand stature. He fought racial prejudice, 

saw the tragedy of Southeast Asia. April 5, 1954, not quite 20 years in the service of his country's affairs.

One remarkable selling point about the plight of the European Jewish community after the war.

Mr. HUGHES, Mr. President, my distinguished colleague from Iowa (Mr. CLARK) now wishes some time to eulogize Senator Gillette and I yield to him as much time as he desires.

Mr. CLARK. Mr. President, we are all here this afternoon to honor the memory of Guy Gillette. He had just a week in the same town where he was born 94 years ago—Cherokee, Iowa. He spent so many of those years in the service of his State and his country—as a farmer, an attorney, a veteran of the Iowa House, the U.S. House, and, finally, a Member of the U.S. Senate. For all but 4 of the years between 1933 and 1955, he represented the people of Iowa—first as a Congressman from what was the 9th Congressional District and then as a Senator.

There are others here today, like my distinguished colleague from Vermont, Senator AXEN, who served with him and knew him better. They will best be able to describe Senator Gillette and what he did in the Senate, but I can speak to what he stood for all those years. When I was growing up in Iowa, he represented the best in public officials and public service: integrity, tenacity, independence, courage. I remember him for those qualities.

He was a good Democrat, but he was not blinded by party loyalty. He opposed the National Recovery Administration program and President Roosevelt's proposal to "pack" the Supreme Court because he thought neither was in the best interests of the country. This earned him a place on President Roosevelt's so-called "purge list" in 1938. Despite that, he was reelected to the Senate.

Guy Gillette will be remembered for his vigorous and early support of the United Nations. In 1943, he introduced a resolution supporting the principles of the Atlantic Charter and recommending that the President negotiate a "postwar peace charter." That resolution led to his participation in the drafting of what would become the United Nations Charter.

In so many ways, he was ahead of his time. He fought racial prejudice, campaigned for election reform, and was a leader in efforts to create a World Refugee Board. He was particularly concerned about the plight of the European Jewish community after the war.

Like few others, Senator Gillette foresaw the tragedy of Southeast Asia. On April 5, 1954, not quite 20 years ago, he urged the United Nations to take up the Indochina question. He told the Senate:

"This is a time for plain speaking, and for a frank, honest, and sincere search for the best possible course for America to follow. Even though not a single American may have fired a shot in Indochina, America is deeply, dangerously, and perhaps inextricably involved in this area."

And 2 weeks later, Senator Gillette repeated the same message:

"If the war in Indochina at one time did not contribute to peace, then it may contribute to war and security, that time has long since passed. The war in Indochina has become the most critical problem before the United Nations, and the United Nations is a man of the soil, a man of common sense and decency. It is an honor to hold his old seat in the U.S. Senate."

His passing is a deep loss—for his family, for his friends and neighbors in Cherokee, for Iowa, and for the country. He will be missed.

Mr. HUGHES. Mr. President, it was in 1957 that I first made up my mind to run for the Senate. One of the first individuals I sought out to counsel with was the great Senator from North-West Iowa who lived 28 miles from my home. I wanted him to advise and counsel me on what I should do. At that time I had just changed my registration from the Republican Party to the Democratic Party and found myself in a sort of dilemma—disliked and detested by the local Republicans around my part of the State, and sort of unwanted by the young Democrats I had decided to join.

But in the midst of this dilemma, former Congressman and former Senator Guy Gillette made me feel very well. He discussed with me the great philosophy of his party, the trials and tribulations of the great ones, and agreed to endorse my campaign for the very first office that I ever sought. I had not sought him out for that purpose but he volunteered to attempt to try and break the ice for a relatively young man seeking public office for the very first time. He endorsed that campaign, and those that followed over the course of the years up to the time he was immobilized by a stroke.

He participated in dinners and functions all over the State of Iowa. He was sought out for advice and counsel by every Democratic candidate for every office, regardless of whether it was Senator of Agriculture, the State legislature, for the Senate, or for Governor—whatever it might be. He was our friend. He spoke for me, and raising dinners—not just the important ones at the State level, but sometimes at the precinct level, to help raise funds for the Democratic Party and continue the political process. He truly valued the party system in America.

But, more than that, he valued the individual conscience of every man, woman, and child, the dignity of the citizen of every class, and respect for all the citizens of the world.

It would be difficult for me to express my feelings when I first visited Guy Gillette. The excitement was in 1948. He was immobilized by a stroke. He was in bed, using exercise equipment, but unable to get out of bed, with a bright gleam in his eye reflecting that his brilliant mind was still functioning completely. At that time, I was deeply impressed that here was a man, even though in his late 80's, who was still contributing something of value, from a bed he knew he would never rise from again, still showing his affection for his State and Nation.

Since that time, as long as he was able, we exchanged occasional correspondence, although the last few times he did so freely, it was irregular and not very precise. He had reached the point where he was ready to leave this life but he accepted willingly the fact that his time was over. I think it is a tribute, again, to a great human being that he had the divine hope that we all share for an eternity in which we would find that better peace that most of us seek here on this earth. But he never saw the day when his purpose in life would be fulfilled. He was bright, he had a Halley's Comet voice, and his great energy to try to make a contribution to the betterment of the human race.

It was with a great deal of respect, love, and admiration that I spent the years in my public service that in the back of my memory. I always thought of this man who, though many times I disagreed with him, saw the light. I wanted the first Democrat from my State to come into this body since his last defeat in a public election, and I knew that I had to fill a large pair of shoes when I came to this body.

I am reminded by one of those who worked with Senator Gillette that Senator Gillette introduced a resolution in 1959 that brought into being the radio and press gallery. He was one of his battles to see that there was space at the moment of what was happening and being said here. I think it is a tribute, again, to a great Senator, a great man, that it is important, a decent human being, and indicates the value and esteem in which he is held by all who knew him in public and private life.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.
was to find new uses for agricultural surpluses, such as converting surpluses into rubber and alcohol and many other products. It was an idea that deserved much more attention and consideration than it was given.

Mr. President, I will always have pleasant memories of serving with Senator Guy Gillette—a wonderful friend and a great, great member of the most distinguished Member of this body.

I became acquainted with him personally after I came to the Senate in June 1954. He was then representing the great State of Iowa in the Senate and, as I recall, was defeated in the election that November.

I had learned to admire Senator Gillette long before I became acquainted with him personally. He was a man who carried his own sovereignty under his own hat. Although he was a good Democrat, he differed on certain issues with President Franklin D. Roosevelt and was one of the selected victims of a presidential purge on that account. The great Democrats of Iowa and the great people of Iowa displayed their fidelity to the independence of mind which Gillette had exhibited, and returned him to the Senate for, I believe, the last term he served.

After Senator Gillette was unsuccessful in his return to the Senate in 1954, he worked for a time as an aide to a subcommittee chaired by Senator Olin Johnston of South Carolina, and during that time I came to know him even better. It was during this period that he served in the Senate.

On one occasion he told Senator Johnson and myself that he thought there was one defect in the setup of Senate committees, and that was that there was no committee or subcommittee which was charged with the primary duty of studying the encroachment of one branch of the Government upon another. Mr. President, the Senate was then minority leader, Lyndon Johnson, and myself. He suggested to Senator Johnston and myself that there ought to be some committee set up to study the manner in which the doctrine of the separation of powers was being observed or violated.

In consequence of this conversation with me and Senator Johnston, a subcommittee was formed with the distinguished majority leader, Senator Mansfield, and the then distinguished minority leader, Senator Dirksen, in which I pointed out the observations which Senator Gillette had made to me and Senator Johnston on this subject. Both of them thought there was much validity in those suggestions. In consequence, they introduced a resolution to establish a subcommittee of the Senate Committee on the Judiciary to study the way in which the doctrine of the separation of the powers of Government at the Federal level was being observed.

After adoption of the resolution, I became the chairman of such a subcommittee, and this subcommittee for some years has been studying the encroachment of one branch of the Federal Government upon the jurisdiction of another. As a result of that, we have had a great deal of study done on some subjects which are of primary concern in this Senate at this time. One of those subjects that we have studied in detail is the impoundment issue. Another is the pocket veto issue. Another is the question of what we have come to know as executive privilege. The fact that this subcommittee has made these studies and has amassed a considerable amount of historical and other evidence related to these subjects can be traced to the foresight of former Senator Gillette, who in effect is the intellectual father of this particular subcommittee.

Mr. President, I am delighted at this time to read this letter from a distinguished former colleague of ours in this body, a man who was typical of what we have come to know as a person of vast ability and complete devotion to the system of government which the Constitution was ordained to establish.

This wonderful country is fortunate that he lived to the ripe age of 94 and that during a large portion of those 94 years he served the people of this Nation and the people of Iowa in the office of U.S. Senator. Mr. President, of all the orators who passed through this Senate, I think I would say that Senator Gillette had the noblest voice, and the tradition of his speech here today is the majestic figure of an old colleague, Guy Gillette.
passing of Senator Guy M. Gillette, the Nation has lost a great patriot whose long and distinguished public career has brought him a place of respect in the heart of every American.

The distinguished Senator from Iowa began service to his country when he enlisted in the Spanish-American War at the age of 19. He served as a captain in World War I and went on to become U.S. Representative in 1932 until 1936 and served as U.S. Senator for 14 years between 1936 and 1955. He was a long time advocate of the United Nations Charter. He helped the late Secretary of State Cordell Hull in preparing a tentative draft of the original United Nations Charter while serving as a member of the bipartisan Senate committee. It is with deep sorrow that the Congress mourns the passing of Senator Gillette.

Mr. HUMPHREY, Mr. President, I share the sorrow of my colleagues at the death of Senator Guy Gillette of Iowa. He was one of the most independent and articulate men ever to serve in the Senate. I had the privilege of serving with Senator Gillette on his second term in the Senate, and I remember that Guy Gillette always spoke his mind, whatever the issue.

As an outspoken Democrat from a Republican State, he did not desert his opinions just to be popular, and partly for this reason, Senator Gillette lost his bid for reelection in 1945. But 3 years later the people of Iowa decided that they liked their forthright spokesman back in the Senate, and returned him to office.

Guy Gillette would not give in to pressure, whether it came from too high or too low, the right or the left. Yet he opposed President Roosevelt when he disagreed with him, most notably on the President's bill to increase the size of the Supreme Court. Not without cause, he spoke up against the injustices and totalitarian aspects of the McCarthy era. He questioned Senator McCarthy's use of contributions to the Senator, but who ended up helping the United Nations Charter. He questioned Senator McCarthy's use of contributions to the Senator, but who ended up helping the United Nations. He was one of those who was early in consciousness of the dangers to our system implicit in what is occasionally a tendency toward slackness in Senate procedures.

Some Members will recall that in 1952 and 1953 the Senate had gotten into the habit of approving treaties in a more perfunctory manner. Despite the fact that action on treaties is one of the most important functions given to the Senate by the Constitution, during the year 1952 the Senate approved upon only five out of 25 treaties by a rollover vote, the 20 other having been approved by a voice vote.

When Senator Gillette in early 1952 found that the Greek-Turkish protocol had been approved by only six Senators on the floor, he demanded its reconsideration. Fortunately, the protocol had not yet been sent to the President by the unanimous-consent procedure which we now so often follow in order to avoid the requirement of the Senate rules that motions to reconsider are in order for 2 days of actual session after the vote. That protocol was recalled and passed by a rollover vote.

As a result of the position taken by Senator Gillette and others, on July 20, 1953, the acting Senate President, Senator Knowland, announced that the Majority Policy Committee, as a matter of operating procedure thereafter, would insist that before constitutional amendments, there would be a quorum call before any vote, and a request for a ye- and-nay vote. This is a small point in history, but significant in that it was a slight beginning in the preservation of the constitutional role of the Senate which I, for one, find constantly threatened by increasing assertion of power by the Executive, and by a tendency toward passiveness on our part.

Senator Gillette was a fine gentleman, as well as a great Senator. While he has not been among us for the many years since his retirement, he was one of those who contributed to the strength of our constitutional system.

Mr. SPARKMAN, Mr. President, I ask unanimous consent to have printed in the Record a statement by our former colleague Senator Lister Hill.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

WITHDRAWAL AND RELEASE OF CERTAIN EXECUTIVE SESSION TESTIMONY AND OTHER PAPERS

Mr. ERVIN. Mr. President, the resolution before which I am speaking is to permit the withdrawal and release to the U.S. Department of Justice of certain documents and executive session testimony submitted before the Senate Permanent Subcommittee on Investigations of the Committee on Government Opera-
tions. This resolution is in response to a request on behalf of the U.S. Department of Justice in connection with its prosecution of a criminal trial now pending within the United States District Court for the Southern District of Florida.

The criminal case is a direct result of an investigation made by the subcommittee's predecessor during the period of 1970-71. This inquiry examined the theft and conversion of stolen securities throughout the United States.

Mr. President, I ask unanimous consent that the resolution be immediately considered and agreed to.

The PRESIDING OFFICER. Is there objection to the request of the Senator from North Carolina?

There being no objection, the Senate proceeded to the consideration of the resolution (S. Res. 81), which was agreed to.

The preamble was agreed to. The resolution as agreed to, with its preamble, reads as follows:

S. Res. 81

A resolution to permit withdrawal and release of certain executive session testimony and other papers.

Whereas the case of United States of America v. Irving Devine, et al., Criminal Docket No. 72-733 is pending within the United States District Court for the Southern District of Florida; and

Whereas the Senate Permanent Subcommittee on Investigations has certain papers and transcriptions of executive session testimony which had been secured by members of said Subcommittee during the course of their duties as employees of the Senate; and

Whereas by the privileges of the Senate of the United States and by Rule XXX of the Standing Rules of the Senate no memorial or other paper presented to the Senate shall be withdrawn from its possession except by Resolution of the Senate; and

Whereas a representative of the Department of Justice has requested the release of certain papers and transcriptions of executive session testimony of Michael Raymond, a witness before said Subcommittee; therefore be it resolved,

Resolved, That the Permanent Subcommittee on Investigations may release the documents, memorials, papers and transcriptions of executive session testimony of said Michael Raymond to the Department of Justice for the use thereof in the above-stated case.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed a joint resolution (H.J. Res. 334) to provide for the designation of the second full calendar week in March 1973 as "National Employ the Older Worker Week," in which it requested the concurrence of the Senate.

NATIONAL EMPLOY THE OLDER WORKER WEEK

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Joint Resolution 334.

The PRESIDING OFFICER. The resolution was read. The Senate agreed to the resolution, with the exception of the name of the Senator from South Carolina.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the resolution be considered in the Senate.

The PRESIDING OFFICER. There being no objection, the Senate proceeded to consider the joint resolution.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the resolution be considered in the Senate.

The PRESIDING OFFICER. The resolution was agreed to.

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

SUPPORT FOR NATIONAL EMPLOY THE OLDER WORKER WEEK

I wholeheartedly support the resolution to authorize the President to designate the second full week in March as "National Employ the Older Worker Week.

As the Senate sponsor of this proposal I am especially gratified that this measure is cosponsored by Representative Middleaged and Older Individuals. Additionally, awards are presented to employers who demonstrate outstanding leadership in employing middle-aged and older workers.

Since 1969 the Legion has designated a particular week during each year to promote the employment of aged and aging Americans.

At this time national attention is focused on the advantages of hiring middle-aged and older individuals. Additionally, awards are presented to employers who demonstrate outstanding leadership in employing middle-aged and older workers.

These efforts, I strongly believe, have proved to be enormously successful in combating some of the false stereotypes about the effectiveness of older workers.

Quite clearly, educational efforts are essential to help inform the public about the many attributes and true capabilities of aged and aging Americans. As a group, middle-aged workers have many excellent qualities to be top notch employees. They have experience, stability, and dependability to perform well for the job.

A recent study by the New York Commission on Human Rights provides further compelling evidence about the effective performance of older workers. The Commission surveyed a sample of over 300 older employees who revealed that workers over age 55 performed their jobs "about equal to and sometimes noticeably better than younger workers."

Another advantage of this resolution is that it can provide greater national attention to create a more favorable climate for the employment of middle-aged and older workers.

Before concluding my remarks, Mr. President, I wish to commend the American Legion for its leadership in encouraging the hiring of middle-aged and older workers.

For these reasons, I reaffirm my strong support for the enactment of this measure.

Mr. CHURCH. Mr. President, I strongly support the passage of House Joint Resolution 334, which would authorize the President to designate the second full week in March as "National Employ the Older Worker Week.

An identical resolution—Senate Joint Resolution 49—has been sponsored by various other Members of the Senate Committee on Aging, of which I am chairman. This proposal, which was introduced on February 2 by Senator Randolph—the chair of the Committee on Aging's Subcommittee on Employment and Retirement Income—had been ordered reported earlier by the Federal Charters, Holidays and Celebrations Subcommittee of the Senate Judiciary Committee. However, no final action could be taken by the full committee, because of the hearings on the nomination of Patrick Gray to be the Director of the FBI.

The House has acted first on this resolution to permit the Senate to call up this measure directly from the desk and to act on it now.

At the outset, I wish to thank the chairmen of the Senate Judiciary Committee, Mr. Eastland; the majority leader, Mr. Mansfield; the chairman of the Federal Charters, Holidays and Celebrations Subcommittee, Mr. Muskie; and the minority leader, Mr. Byrd, for their splendid cooperation in permitting prompt action on this resolution.

Today many false stereotypes hinder the employment of middle-aged and older workers. These attitudes, unfortunately, are leading to a greater and potentially dangerous dependency ratio of nonworkers to workers.

During the past year alone nearly 800,000 persons aged 45 or older withdrew from the labor force, all too often involuntarily. On the other hand, nearly 2 million additional jobs were created for persons under age 45 during this same period.
No nation can ever hope to achieve its full potential if many of its experienced and skilful citizens are not allowed to participate. Much more can be gained, I strongly believe, by developing national policies which maximize job opportunities for mature workers.

Several studies have clearly demonstrated that it is in the employer's interest to employ older workers. During the past 14 years—since 1959—the Legion has been in the forefront in encouraging the employment of older workers.

And the primary purpose of this resolution is to build upon the American Legion's earlier successful efforts in this meritorious endeavor.

For these reasons I urge prompt approval of this resolution by the Congress and the White House.

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution. The motion to postpone the third reading (H.J. Res. 334) was ordered to a third reading, read the third time, and passed.

ORDER FOR ADJOURNMENT

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 tomorrow.

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

IN THE AIR FORCE

The following-named officers for promotion as a Reserve of the Air Force, under the appropriate provisions of Pub. L. 97, title 10, United States Code, as amended, and Public Law 92-129.

Lieutenant colonel to colonel

LINE OF THE AIR FORCE

Bays, Kenneth L.,
France, John L.,
Greene, Cecil W.,
Hutchinson, William H.,
Kelley, Charles D.,
Mahl, George J.,
Skinner, Charles R.,
Sosca, Louis J.,
Straub, Daniel L.,
Trotman, Ray K.,
Walsh, Harold V., Jr.,

CHAPLAIN CORPS

Neumann, Thomas J.,
Thilen, Thoral T.,

MEDICAL CORPS

Brown, Dewess H.,
Po, Robert, F.,
Whitehead, Leslie E.,

Major to lieutenant colonel

LINE OF THE AIR FORCE

Adams, Lewis R.,
Bankston, Charles G.,
Cantrell, Verlon G.,
Couch, Jesse M.,
Duffy, George H.,
Echevarria, Ramon L.,
Fordy, James L.,
Frank, Vernom P.,
Fucchi, Ralph J.,
Gorrell, Arnold D.,
Harris, Teddy L.,
Higley, Martin P.,
Hill, James R. M.,
Hiller, Walter, Jr.,
Hunter, Neil W.,
Johnston, Reginald L.,
Lawrence, Leonard E.,
Lee, Harold E.,
Mathews, Richard G.,
McIwaun, Teddy C.,
Montgomery, Charley A., Jr.,
Olsen, Ronald J.,
Petrillo, Edmund H.,
Rhodes, Duane L.,
Rowley, Clarence W.,
Sabbs, Frederick J.,
Sieg, Walter J.,
Smith, Richard M.,
Steinert, Donald L. F.,
Thelen, Donald J.,
Thomas Maxzeller L., Jr.,
Watson, James W.,
Wilson, Earther H.,

NURSE CORPS

Burns, John B.,
Gigax, John H.,
Ramey, Ralph, Jr.,
Shapiro, Allen H.,

MEDICAL SERVICE CORPS

Schethling, Theodore R.,

VETERINARY CORPS

Hines, Richard J., Jr.,
Kupper, James L.,

Packer, Cleveland, Jr.,

The following officers for appointment in the Reserve of the Air Force, in the grade indicated, Line of the Air Force, under the
provisions of sections 593, title 10, United States Code and Public Law 92-129.

Cady, Daniel C.  

To be Lieutenant Colonel

Ernst, William S.

Kershaw, Hyrum W.

Wason, Robert C.

The following officers for appointment in the Reserve of the Air Force (Medical Corps), in the grade of lieutenant colonel, under the provisions of section 593, title 10, United States Code and Public Law 92-129, with a view to designation as medical officers under the provisions of section 8076, title 10, United States Code.

Allenworth, William B.

Ashby, Richard H.

Feit, George H. III.

Moore, Patrick J.

The following officers for appointment as temporary officers in the U.S. Air Force (Medical Corps), in the grade of lieutenant colonel, under the provisions of section 5944 and 8452, United States Code and Public Law 92-129, with a view to designations of section 8076, title 10, United States Code.

Sanderson, James G.

Vila, Bobby M.

IN THE ARMY

The following-named persons for appointment in the Regular Army of the United States, as specified, under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be captain

Bacoum, Sam A.

Bishop, Lois E.

Mcmurphy, Sally A.

Pichtner, James M.

Hamper, Sandra L.

Harrison, Judith A.

Hofmann, John R. Jr.

Johnson, Valerie A.

Keeton, Thomas E.

Poinier, David T.

Quinn, Rose E.

Rettig, Frederick M.

Rowan, James H.

Stegen, Martha C.

Story, Terry A.

Steele, Charles D.

Zimmerman, Carol H.

To be first lieutenant

Archibald, Sally E.

Clark, William R.

Jelks, David A.

Stalbaum, Harriett F.

The following-named distinguished military students for appointment in the Regular Army of the United States, in the grade of second lieutenant, under provisions of title 10, United States Code, sections 3106, 3283, 3284, 3286, 3287, 3288, and 3290:

Abel, Stephen A.

Acree, Nathan E. Jr.

Adams, Richard A.

Adams, Larry C.

Addison, Gary R.

Addison, Michael D.

Adee, Daniel S.

Adelson, Maurice B.

Alexander, Robert E.

Anton, Ruth E.

Aston, Sammie A.

Ams, Richard A.

Archambeau, Frederick L.

Archual, Michael J.

Aspinall, Laurin J.

Austin, Charles

Barack, Steven P.

Bailey, Ralph C.

Baker, Charles B.

Balch, John W.

Bank, William C.

Bannister, Kimball B.

Barb, John M.

Barr, Dean B.

Bartell, Charles A.

Batt, John H.

Batt, Emmett L.

Batts, Joe R.

Baughn, Carl W.

Breneman, Charles F.

Beach, Harold A.

Bean, Thomas F.

Beard, William E.

Beaton, James B.

Beckett, Lewis W.

Beeson, Christopher

Bell, David J.

Bennett, Johnnie J.

Benjamin, Jonathan W.

Bergeron, Robert D.

Bethers, Bruce R.

Betty, Gerald R.

Bielamowicz, Thomas T.

Biggs, John D.

Bird, Graham D. Jr.

Birmingham, Phillip C.

Bisek, Eugene D.

Blackwell, Buddy J.

Bledsoe, Michael B.

Blevins, Robin L.

Boehnlein, Bruce F.

Bonnefield, James A.

Booher, Donald E.

Booher, Denise A.

Booher, Robert G.

Boucher, Donald W.

Bowen, John C.

Bowen, William F. Jr.

Bowers, Gregory L.

Bos, James H. Jr.

Boyer, Gary L.

Boyatt, Michael D.

Boyd, Gregory J.

Braf, Robert D.

Bradley, David L.

Brangenberg, Gerald A.

Breeden, William L.

Breeder, Charles D.

Breeden, William L.

Breuer, Paul G. Jr.

Brideland, Patrick J.

Bridge, William E.

Brinker, David A.

Brodeur, Steven P.

Bronfman, Bernard P.

Brown, Arvin H.

Brown, Charles R.

Brown, Herbert F.

Brown, Isaac H.

Brown, Timothy J.

Brownlow, Daniel P.

Brunski, John F.

Brunson, Kendrick W.

Buehler, David J.

Burakowski, Daniel G.

Burnford, David P.

Burgoine, Lawrence K.

Burke, John N.

Burt, Donald T.

Burns, Charles R.

Burt, Michael C.

Burton, Charles H.

Burton, Richard C. Jr.

Burton, Thomas L.

Butkus, Raymond T.

Byrne, Richard H.

Byron, Richard J.

Cady, James B.

Cain, Michael I.

Callowan, Michael B.

Camp, Kenneth A.

Campbell, Kevin M.

Campbell, Vincent W.

Cantlon, Scott E.

Cantu, Frank Jr.

Cardwell, Gerald D.

Carlino, Charles A.

Carlock, Robert C. Jr.

Carter, Don Jr.

Carpenter, Arlin D.

Carr, Steve D.

Carraway, Thomas F.

Carver, Bank C.

Cass, Steven L.

Cavin, William R.

Cereon, Joseph C.

Cervantes, Mario A.

Chalkley, James R.

Chandler, Maxwell H.

Chapman, Stephen W.

Chappelle, Kenneth T.

Chin, Tom M.

Chow, Kieron T.

Christensen, Dan R.

Christensen, James E.

Chirico, John E.

Clark, Alvin W.

Clark, Andre.

Cleland, Newell E.

Cleven, Ray D.

Close, Allen C.

Coe, William C.

Coffee, Carl C.

Coffman, Sammy L.

Cole, Charles G.

Conrad, Scott W.

Cooler, Ernest W. Jr.

Coombs, Willis E.

Cook, Thomas C.

Cooper, Robert W.

Corker, Murphy W. Jr.

Cortley, Harry L.

Cortney, Stanley N.

Cowan, Alexander R.

Cortez, Christopher A.

Cox, Jerel K.

Crabtree, Douglas A.

Crawford, William M.

Cribbs, Wayne S.

Cromwell, Scott L.

Crotty, Robert B.

Crump, Christopher D.

Cude, William B.

Cullen, Michael T.

Cummings, Michael G.

Curry, James H.

Curtis, James B.

Cusack, Timmon C.

Dabbling, Robert C.

Dady, Patrick S.

Danie, Bobby E.

David, Carl J.

Daniels, Steven H. Jr.

Darwin, Charles E.

Daschle, Carl E.

Davenport, Clyde E.

Davis, David F.

Davis, Garry E.

Davis, Gary R.

Dawkins, Reginald.

Dean, Mark R.

Deeter, Louis R.

Delgado, Dwight D.

Deningler, Grover H.

Denny, Craig K.

Derano, Antonio G.

Dever, Herman V.

Dial, Cortes E.

Dibb, Roger A.

Dickers, Larry M.

Dixon, Brian C.

Domasek, George W.

Downing, Eddie B.

Dreibus, John R.

Driggers, Robert G. Jr.

Durham, John D.

Eberhard, Chadwick M.

Edwards, James L.

Ehly, William E.

Elliott, Mark M.

Ellis, John W.

Ellis, Steven E.

Epperson, Steven H.

Estes, Stephen N.

Evans, Frederick M.

Evans, Richard L.

Exum, Titus H.

Fadler, Robert D.

Fairbanks, James W.

Panning, Reed B.

Farnell, John R.

Fay, Robert D.
The following named officers of the United States Navy for temporary promotion to the grade of captain in the staff corps, as indicated, subject to qualification therefor as provided by law:

**LINE**

Adams, Douglas Neal
Adler, Roy Walton
Ahlbrigt, John Douglas
Alexander, Richard Kenneth
Allender, George Roberts
Anckonie, Alex, III
Anderson, Donald Ralph
Arata, William Augustus, III
Askey, Henry Benjamin
Asturino, Gerald Paul
Barry, Thomas Eugene
Bartholomew, Thomas Charles
Bassett, Frank Eugene
Bayne, James LeRoy
Belcher, Samuel Abraham, III
Bellay, Daniel John
Berg, Robert Peter
Bergondy, Paul John
Bernet, Karl Robert
Bishop, Jack Dill
Bitoff, John William
Blackstone, David L
Bliss, John Robert
Brake, Robert Leroy
Branch, Nathan Charles
Bridgman, Walter Eimer, Jr.
Brocks, Robert Kenneth
Brown, Frank Herbert
Bruce Malvin Davidson
Bull, Lyle Franklin
Burns, Robert Edward
Caldwell, Robert Kinnard
Carson, Aubrey Weaver
Chapple, Michael William
Chrisman, John Aubrey, Jr.
Clardy, Herman Stacy, Jr.
Clark, Charles Wiggles, Jr.
Clark, Jeremy Carew
Clement, Frank John
Comly, Samuel Pancost, III
Conley, Thomas Hugh, Jr.
Cooper, Grant Alexander
Cossett, Larry Addison
Covarrubias, Republic
Cowdrell, David Thomas
Cox, David Barker
Coyne, George Kermit, Jr.
Court, Don straight
Cranes, Hugh Roy
Creighton, George C., III
Curry, James Delos
Dalke, Robert Alan
Daines, Shane Patrick
Davis, Walter Jackson, Jr.
Depayser, Robert Boyd
Dickson, David Bruce
Dittirk, John James
Dugan, Dale W.
Dougherty, Thomas Ford, Jr.
Duffey, Russell Gilbert
Earley, William Layton
Eddleman, Harold Eugene
Edwards, Scott
Edwards, Scott
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Edwards, Scott
Eggert, Robert C.
Egan, Walter E.
Eiff, Robert G.
Eikes, Ernest A.
Eline, Robert L.
Elliott, Robert C.
Espinosa, Jose A.
Espy, John F., III
Eyer, John N.
Eyster, John M.
Eyring, John N., Jr.
Fains, John N.
Fahy, John M.
Fahnstock, John M.
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JUDGE ADVOCATE GENERAL'S CORPS

Donato, Don Jr.

DENTAL CORPS

Ackley, George William, Jr.
Bell, Walter Craig
Benn, Barry
Bungardner, Willie Alva
Canal, John Wesley
Copeland, Richard Allen
Drake, David Lavery
Hodes, Leonard Franklin
Kawashima, Zitsuo
Kepley, Benjamin Franklin
Lamarche, Robert Guy
Lusk, Samuel Stowell
Mach, Joseph Steven
Mohn, Richard Walter
Odfield, Ronald Earl
Regan, Paul Francis
Sabadus, Clyde Lass
Salmon, Thomas Newton
Sorallite, Donald Lawrence
Smith, Cameron Mufford
Stout, William Andrew
Streicher, Carl William

MEDICAL SERVICE CORPS

Brown, Charles Robert
Cassel, Wilfred Ignacio
Comfort, Gerald George, Sr.
Hodges, Richard Claxton
Law, Malcolm Kenyon
Smith, Fred Elwood

NURSES CORPS

Dudley, Julia Barnes
Ottosen, John
Sisk, Elizabeth Anne
The following named officers of the U.S. Navy for temporary promotion to the grade of lieutenant commander in the line and staff corps, are, by law, qualified therefor as provided by law:

LINE

Acree, Paul Gene
Albers, Robert John
Amerau, Harold Francis, Jr.
Amidon, Ronald Edwin
Anderson, Lewis Ray
Anderson, Allan Walker
Anderson, Jerold French
Anderson, Jimmy Duke
Andrews, Edward Keith
Austin, Marshall Harlan, Jr.
Auenthem, Charles Francis
Bailey, Robert Peter
Baker, Garrett Elbert
Baker, Ronald Boyd
Ball, Geoge Arnold
Ball, Robert Harold
Ball, Robert Lee
Ballew, Robert Douglas
Ballew, William Chadwick
Barry, John Lewis
Bartman, Carl Newton
Bass, Julius Preston, Jr.
Baumann, Carl Vincent
Baxley, Warren Candler, Jr.
Bays, Robert
Beard, Eugene Douglas
Becker, Alfred Edward
Beeler, Garland Robert
Beery, James Robert
Beeson, Thomas Franklin
Benintende, Bob
Benason, Ray Wallace
Beougher, Rolland Ben
Best, Jimmie Merril
Billings, Richard Arthur
Binford, Benjamin James
Bird, Ronald Stanley
Bishop, Joe Nelson
Blades, Peter David
Blox, Paul Stanley
Bogart, Lee
Bond, James Leonard
Bontrop, Paul Nicholas, Jr.
Booth, Wayne Huston
Booth, Alfred
Bourbonnais, Charles Robert
Bowden, Peter Klaus
Boyer, James Thomas
Bosch, Robert David
Bradner, Charles Rawles
Brady, Bruce Milo
Branco, Robert John
Brenton, Gerald Arthur
Breen, William James, III.
Brenner, William Rush, Jr.
Brenton, George Wilbert, III.
Bright, Charles Norman
Brodt, Roger William
Brown, Robert Lee
Buchoz, Albert August, Jr.
Buchoz, Marvin John
Buchoz, Roger Coleman
Burcham, William Richard
Burgess, Larry Lee
Burke, James Lawrence
Burke, Richard Leon
Burlingame, Anson H., Jr.
Bushong, Robert Lee
Butler, Joseph Malcolm
Butters, Thomas Harold
Butters, Alvin Lavern, Jr.
Byerly, James Hampton, Jr.
Byron, Roger Walter
Cain, William Michael
Callahan, Edwin
Callaway, Leigh Lawrence
Calles, Lee Roy
Campbell, Archibald George
Caplinger, Robert Lee
Carpenter, Nicholas Mallory
Carpenter, Melvin R., III
Carroll, Charles Neil
Carter, Lee Scott
Carter, Major Leonard
Cashman, David Matthew
Catlin, Carl Victor
Cavanaugh, Francis Patrick
Chaparral, Francis James
Chalifant, Donald Kenneth
Chancellor, Robert Oren
Chapman, Paul Thomas
Chenery, Robert Lucas
Childs, Jack Manning
Christian, Dennis Howard
Clisek, Peter John
Clancy, James Patrick
Clark, Donald Brielle
Clark, John William
Clark, Ralph Belmont, Jr.
Clark, Ronald Woodrow
Clark, Terrel Irvin
Clay, Henry W., Leonard, III
Clisek, Gerard Poster
Clifford, Donald Wayne
Coalson, Ronald Roger
Cobb, Harold Norman
Cole, Ronald Arthur
Coleman, Randy J.,
Collins, John Patrick, Jr.
Colyar, Robert William
Conder, Robert Aubrey
Conner, John Edward
Connor, Ernie Eugene
Cook, Gary Newton
Coutler, James Richard
Cowell, Neil
Cox, Norman Otha
Creager, Hugh Under
Creasy, Allen John
Croll, William Howard
Crooks, David Robert
Crosen, William Joseph
Crowe, Otis
Crump, David Allen
Cully, John David
Curran, William Francis, Jr.
Curtins, Edward Barnes
Daly, Daniel Anthony
Dammer, George Howard
Damron, John Richard, Jr.
Daniel, Johnny Hale
Dannerth, Richard Carl
Dassler, Frederick W., Jr.
Davenport, Wortham David
Davis, Dickey Parrish
Davis, Donald John
Davis, Thomas Anthony
Davis, Thomas Kevin, Jr.
Dawson, Richard Wesley
Deaton, James Paul
Debenport, David Rogers
Deda, Donald James
Deer, Robert
Degree, Donald James
Destriox, Lawrence E., Jr.
Dickson, Paul Bevis
Diley, James
Dixon, Max Harry
Doctor, Michael Stewart
Dobcht, Richard David
Dolgor, Barry Lee
Donath, Robert Milton
Donandelger, Paul William
Doroshenko, More
Dow, John Irvin
Drumm, R. David
Duerrmay, Stephen Paul
Dumas, James Walter
Dupont, Francis William, Jr.
Durham, William Bucker
Durr, Donald Gordon
Duskin, George Harley
Dutrow, R. David
Ebanks, Clifford Richard, Jr.
Dyck, Harry Milton, Jr.
Dyer, Robert Deane
Dynes, James Henry
Eccott, George
Echlin, Delos Eugene
Eichmann, Thurman Copeland
Eidsen, Thomas Fred
Ehlers, Robert Lee, Jr.
Erickson, William John
Erickson, William John Burchard, Jr.
Et al, Roland Byerly, Jr.
Ewing, William David
Farley, John Jerome, Jr.
Farrell, Richard Joseph
Fast, Richard Edwin
Faul, James Edward
Favaro, Joseph Dominic
Filling, Ronald Louis
Fink, Ralph, III
Finn, Michael, III
Fish, Edmund Lee
Fish, Kenneth Leroy
Flint, Charles Gerard
Folsum, Benjamin Franklin, Jr.
Foote, Louis Leonard
Ford, George Thomas
Forrester, George Steven
Fox, James Charles, Jr.
Francin, Vincent Michael
Franke, Robert Howard
Freise, Robert William
French, Stanley Lee
Fusco, Charles, Jr.
Gallik, Ervin Kenneth Earl
Gastar, Stanley Douglas
Gebhard, Laurence Philbert
Gibson, John Lloyd
Giffen, Eugene Riley
Gilbert, Emmerich, Jr.
Gilbert, Elmer James
Giles, Grosvenor Skip
Gillette, John Braxton, Jr.
Gilmore, Richard Delano
Gladding, Steele
Gleason, David Alan
Goodin, William Franklin
Gordon, Kenneth Elwood, Jr.
Gorden, William
Goselin, Richard Leon
Graham, Charles Irvin
Granger, Francis Patrick
Gray, William Neil
Greene, Robert Michael
Greenwell, William Manly
Griggs, Charles Carson
Grubau, Gene Calvin
Guenter, Michael Lyle
Guyn, William Eugene
Gunn, Lee Fredric
Hakse, Karl Martin
Hagerup, Jack Edward
Haley, William James
Hamilton, Stephen Howard
Hand, James Michael
Harding, William
Hardt, Lorry Michael
Hargis, Richard Anthony
Harper, Stephen Kent
Harrell, Joe Wayne
Harrell, James Douglas
Harrison, Robert Wesley
Hausmann, Gerald Leo
Hawkins, Vaughan Austin
Hawley, Joseph Peck, Jr.
Hayden, William Buford
Haines, Richard David
Becker, Dennis Daniel, Jr.
Held, Billy Lee
Helseth, Ulis Dean
Henry, George Albert
Hepner, Bruce William
Hertzler, Charles Miller
Hickman, Donald Patrick
Hill, Theom, Drummond, Jr.
Hilzer, Ralph Conrad, Jr.
Hinds, Howard Huntington, Jr.
Hinkle, Harold James
Hockey, Edmund Richard
Hogan, John Benedict, Jr.
Hobert, Warren Lee
Holian, James William
Hollingsworth, Donald Lloyd
Honey, Lowell Ray, Jr.
Hope, Robert Edward
Hoskins, Samuel Britton
Hough, Howard Arthur
House, Lewis Clifford, Jr.
Howze, Otis William, Jr.
Hubbard, Edward Briggs, Jr.
Huddle, Robert Roland
Huff, Gerald Lewis, Jr.
Hurley, George Edward, Jr.
Hussak, Stephen Bruce
Hyde, Joseph Gere
Jackson, Lesley Jerry
Jackson, Richard Alan
Jeffers, Barry Newman
Jogin, Stephen
Johnson, Robert Sharrow
Jones, Raymond David
Jordan, David Lee
Jubal, Clarence Henry
Jukoski, Michael Joseph
Julian, James Allen
Kampf, Robert, III
Karlsch, Manfred
Kearley, John Albert
Keller, David Franklin, Jr.
Keller, Paul Parker
Kelley, John Haran
Kelly, George William
Kemmerer, Frank Edward
Kennedy, James Conway, Jr.
King, Harold Warren
Kislaw, Howard McDonald, Jr.
Kirkpatrick, Howard David
Kirkwood, Kenneth Melvin
Klaas, Jack Ulrich
Klopsteinen, Timothy David
Kodalen, Kenneth Cameron
Kohler, Robert, Wilder
Koito, Ralph Nicholas
Kott, James Richard
Kozain, William
Kraemmer, Donald Paul
Krause, Lawrence Charles
Krieger, David Harry
Krieger, Harry Rudolph
Krumstrup, Raymond Robert
Kuhn, Frank Rudolph
Kudlak, Dennis Reginald
Ladd, Edward Harrison, III
Ladek, Kenneth Eugene
Lamoureux, George Joseph
Lance, Dorothy Frances
Larson, Garry Lee
Lawler, Charles Montgomery, Jr.
Lawrence, William Robert
Leboeuf, Lovence Adam, Jr.
Ledbetter, Douglas Eugene
Lee, Howard Frank
Lehman, Harry
Lehmann, Charles Edward
Leiland, George Clark
Leo, Don Garrett
Lewis, Ronald Bruce
Lewis, Ronald Patterson
Lindmark, Bruce Willard
Lint, Lawrence D., Jr.
Littleton, Martin Wilson, III
Livermore, Leroy Walter
Linnons, George Walter
Longacre, Duane Maclyn
Longshore, Jeffrey Scott
Lonnond, Leonard Walter
Lopez, Thomas Joseph
Loughmiller, James Michael
Low, Julian Bobbins
Ludwig, Carl Lexi
Luecke, John Michael
Lull, Thomas Elwood
Lupon, William Lloyd
MacMichael, John Lee
Madison, William Ross
Magnus, Royal Stapleton
Mahood, James Norton
Martin, Kenneth Mark
Martin, Theodore Joseph
Martinez, Carlos Manuel
Maslowski, James Irwin
Matthews, John Edward
Matison, James Lee
Mauger, Peter James
McCarthy, Richard Joseph
McCurt, Melvin, Jr.
McConagha, David Leigh
McConkey, Robert Franklin, III
McDaniel, Charles Harold
McDermott, Michael James, III
MeClure, John S., Jr.
McGrath, Loyd B., Jr.
McGrath, William Lee
McGraw, James Patrick
McWhirter, Michael Reed
Mellin, William Francis, Jr.
Meyer, James Roger
Mitlim, Lonzo Oliver
Miller, Dennis Lee
Miller, Donald Charles
Mills, Clifford Childers
Millward, John Emery
Mitchell, Thomas Arthur
Midmore, Stephen Victor
Montgomery, David James
Morris, Richard Lee
Morel, Ronald William
Morgan, Edward Lee
Morgan, Paul R.
Morris, Roy Anthony, Jr.
Moser, Ronald Bryan
Moshier, Richard Lee
Moogas, Jack Wilbur
Morey, James Francis
Murphy, Richard Pullman, Jr.
Murphy, Lawrence Timothy
Myrick, James Albert
Nash, John Thornton
Nelson, Barron Craig
Nelson, Bruce Emerson
Nelson, Jerome Allen
Nemec, Martin Joseph, Jr.
Noes, Robert B.
Norton, William Griffin
Norris, Lewis Harold
Norwood, Richard Leon
Odie, Billy Gay
Oehlenschlager, John Gary
Ohlander, Dennis R.
Olson, James Duane, II
O'Neill, David Lynn
O'Rourke, William George
Oesterle, Ebby
Owen, Harry Clinton, III
Farek, Robert Dennis
Peale, Gordon B.
Parks, James
Park, Carl Sheldon, Jr.
Parrish, Keith Lee
The following named Regular officers of the U.S. Navy, for temporary promotion to the grade of commander in the line and staff corps, as indicated, pursuant to title 10, United States Code, section 5787, subject to qualification therefor as provided by law:

LINE

Gillen, Robert F.
Heinrich, John T.
Porter, Ethan O.
Rothschild, Robert E.

SUPPLY CORPS

Smith, Billy G.

The following named Regular officers of the U.S. Navy, for temporary promotion to the grade of captain in the Supply Corps of the Navy subject to qualification therefor as provided by law:

LINE

Adams, Carol A.
Burman, Rita M.
Sheppard, Beverly F.

SUPPLY CORPS

McMorrow, Janice R.

The following named women officers of the U.S. Navy, for permanent promotion to the grade of lieutenant commander in the line and staff corps, as indicated, subject to qualification therefor as provided by law:

LINE

Bell, Barbara F.
Cook, Dixie C.
Currie, Louise B.
Francisco, Donna L.
Frederick, Margaret A.
Gregory, Barbara L.
Hanna, Beverly J.
Hansen, Kathleen

SUPPLY CORPS

McWhorter, Paula
Olsen, Linnea M.

Lt. Comdrs. John R. Miller and Roger M. Keithly, Jr., U.S. Navy, for transfer to and appointment in the Judge Advocate General's Corps in the permanent grade of lieutenant and the temporary grade of lieutenant commander.

The following named officers of the U.S. Navy for transfer to and appointment in the Judge Advocate General's Corps in the permanent grade of lieutenant (junior grade) and the temporary grade of lieutenant:

Babington, William R., Jr.
Banks, Stephen A.
Grant, Harold E.
Griffith, Michael A.
Kerr, Gerald L., II
Miszak, Peter E.
Nolta, Franklin L.
Penzold, Robert E., Jr.

The following named officers for transfer and appointment in the Supply Corps in the permanent grade of lieutenant (junior grade) and the temporary grade of lieutenant:

Dow William C.
Rawlings, David G.
Minton, David S.
Wenrich, George F.

The following named Regular officers for transfer and appointment in the Supply Corps in the permanent grade of ensign:

Colls, John
Gibert, George B.
Hinton, James R., Jr.

Lt. Noel T. Bird, Medical Service Corps, U.S. Navy, for transfer to and appointment in the line of the Navy, not restricted in the performance of duty, in the permanent grade of lieutenant (junior grade) and the temporary grade of lieutenant:

Cmndr. James A. Buckley, Supply Corps, U.S. Navy, for temporary promotion to the grade of lieutenant in the Supply Corps, subject to qualification therefor as provided by law.

Lt. Gerald E. Mate, Supply Corps, U.S. Navy, for temporary promotion to the grade of lieutenant in the Supply Corps, subject to qualification therefor as provided by law.

Lt. Comdr. William D. Craver, Supply Corps, U.S. Navy, for temporary promotion to the grade of lieutenant commander in the Medical Corps subject to qualification therefor as provided by law.

The following named officers of the U.S. Navy for permanent promotion to the grade of lieutenant (junior grade) in the line and staff corps, as indicated, subject to qualification therefor as provided by law:

LINE

George, Hugo C.
Olsen, Charles A.
Koenig, John W.
Tiedemann, Hollie J.

SUPPLY CORPS

Birks, Leroy C.
Johnson, Edward M., Jr.

CIVIL ENGINEER CORPS

Currie, Wayne L.

Lt. James P. Vannell, U.S. Navy, for permanent promotion to the grade of lieutenant (junior grade) in the Supply Corps.

The following named women officers of the U.S. Navy for permanent promotion to the grade of lieutenant (junior grade) in the line and staff corps, as indicated, subject to qualification therefor as provided by law:

LINE

Gilmer, Franklin B.
Kennish, James R.
Hope, Douglas D.
Biewart, Malcolm W.
Montville, Arthur R.
Selfridge, Harry E.

SUPPLY CORPS

Johnson, Darold L.

CONFIRMATIONS

Executive nominations confirmed by the Senate, March 12, 1973:

DEPARTMENT OF AGRICULTURE

Robert W. Long, of California, to be an Assistant Secretary of Agriculture.

FEDERAL AVIATION ADMINISTRATION

Alexander P. Butterfield, of California, to be Administrator of the Federal Aviation Administration.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

To be Administrator

Dennis Pepe

To be lieutenant (junior grade)
Kent P. Dolan

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)