United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

SENATE—*Monday, March 26, 1973*

The Senate met at 12 o'clock meridian and was called to order by Hon. JAMES ABOUREZK, a Senator from the State of South Dakota.

PRAYER

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

Almighty God, who has given us this good land for our heritage, grant to the people clean hands and pure hearts worthy of a nation whose trust is in Thee. Spare us from careless manners, compromising conduct, impure thoughts, unbrotherly ways, and unloving attitudes. In the penitential days of Lent make us honest in repentence and eager to accept Thy forgiveness and renewing grace. Make us new that we may be the peacemakers who are called the children of God and the pure in heart who see God.

We pray in the name of Thy Son. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 26, 1973.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

REPORT OF A COMMITTEE SUBMITTED DURING AJOURNMENT

Under authority of the order of the Senate of March 22, 1973, Mr. KENNEDY, from the Committee on Labor and Public Welfare, reported favorably, with an amendment, on March 23, 1973, the bill (S. 1136) to extend the expiring authorities in the Public Health Service Act and the Community Mental Health Centers Act, and submitted a report (No. 93-87) thereon, which was printed.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, March 22, 1973, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

(The nominations received today are printed at the end of 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 following bill and joint resolutions, in which it requested the concurrence of the Senate:

H.R. 5445. An act to extend the Clean Air Act, as amended, for 1 year;

H.J. Res. 5. Joint resolution requesting the President to issue a proclamation designating the week of April 23, 1973, as "Nicolaus Copernicus Week" marking the quinquecentennial of his birth;

H.J. Res. 210. Joint resolution asking the President of the United States to declare the fourth Saturday of September 1973 "National Hunting and Fishing Day";

H.J. Res. 275. Joint resolution to authorize the President to issue a proclamation designating the month of May 1973 as "National Arthritis Month"; and

H.J. Res. 289. Joint resolution to authorize the President to proclaim the last Friday of April 1973 as "National Arbor Day."

HOUSE JOINT RESOLUTIONS REFERRED

The following joint resolutions were severally read twice by their titles and referred to the Committee on the Judiciary:

H.J. Res. 210. Joint resolution asking the President of the United States to declare the fourth Saturday of September 1973, "National Hunting and Fishing Day";

H.J. Res. 275. Joint resolution to authorize the President to issue a proclamation designating the month of May 1973, as "National Arthritis Month"; and

H.J. Res. 289. Joint resolution to authorize the President to proclaim the last Friday of April 1973, as "National Arbor Day".

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 3298) to restore the rural water and sewer grant program under the Consolidated Farm and Rural Development Act.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. ABOUREZK).

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ATLANTIC UNION DELEGATION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 83, Senate Joint Resolution 21.

The ACTING PRESIDENT pro tempore. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

S.J. Res. 21, to create an Atlantic Union Delegation.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution (S.J. Res. 21) was considered, or-

dered to be engrossed for a third reading, read the third time, and passed.

The preamble was agree to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 21

Whereas a more perfect union of the Atlantic community consistent with the Charter of the United Nations gives promise of strengthening common defense, while cutting its cost, providing a stable currency for world trade, facilitating commerce of all kinds, enhancing the welfare of the people of the member nations, and increasing their capacity to aid the people of developing nations: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) The Congress hereby creates an Atlantic Union delegation, composed of eighteen eminent citizens, and authorized to organize and participate in a convention made up of similar delegations from such North Atlantic Treaty parliamentary democracies as desire to join in the enterprise, and other parliamentary democracies the convention may invite, to explore the possibility of agreement on:

(a) a declaration that the goal of their peoples is to transform their present relation into a more effective unity based on Federal principles;

(b) a timetable for the transition by stages to this goal; and

(c) a commission to facilitate advancement toward such stages.

(2) The convention's recommendations shall be submitted to the Congress.

(3) Not more than half of the delegation's members shall be from one political party.

(4) (a) Six of the delegates shall be appointed by the Speaker of the House of Representatives, after consultation with the House Committee on Foreign Affairs and the leadership, six by the President of the Senate, after consultation with the Senate Committee on Foreign Relations and the leadership, and six by the President of the United States.

(b) Vacancies shall not affect its powers and shall be filled in the same manner as the original selection.

(c) The delegation shall elect a Chairman and Vice Chairman from among its members.

(d) All members of the delegation shall be free from official instructions, and free to speak and vote individually in the convention.

(5) To promote the purposes set forth in section (1), the delegation is hereby authorized—

(a) to seek to arrange an international convention and such other meetings and conferences as it may deem necessary;

(b) to employ and fix the compensation of such temporary professional and clerical staff as it deems necessary: *Provided,* That the number shall not exceed ten: *And provided further,* That compensation shall not exceed the maximum rates authorized for committees of the Congress; and

(c) to pay not in excess of $100,000 toward such expenses as may be involved as a consequence of holding any meetings or conferences authorized by subparagraph (a) above.

(6) Members of the delegation, who shall serve without compensation, shall be reimbursed for, or shall be furnished, travel, subsistence, and other necessary expenses incurred by them in the performance of their duties under this joint resolution, upon vouchers approved by the Chairman of said delegation.

(7) Not to exceed $200,000 is hereby authorized to be appropriated to the Department of State to carry out the purposes of this resolution, payments to be made upon vouchers approved by the Chairman of the delegation subject to the laws, rules, and regulations applicable to the obligation and expenditure of appropriated funds. The delegation shall make semiannual reports to Congress accounting for all expenditures and such other information as it deems appropriate.

(8) The delegation shall cease to exist at the expiration of the three-year period beginning on the date of the approval of this resolution.

VISIT TO THE SENATE BY A DELEGATION OF PARLIAMENTARIANS FROM THE UNITED MEXICAN STATES

Mr. MANSFIELD. Mr. President, as the Senate is aware—as Congress is aware—since 1961, the Parliamentarians from the Congress of the United Mexican States and the Congress of the United States have been meeting on a yearly basis. In May of this year, we will meet for the 13th Mexican-United States Interparliamentary Conference at Guanajuato, Mexico.

We have with us in the Chamber today a number of distinguished Mexicans whom I should like to introduce at this time.

We have, first of all, the distinguished Ambassador from the United Mexican States, Jose Juan de Olloqui.

We have the distinguished Minister from the United Mexican States, Minister Julian Saenz.

We have the two cochairmen of the Mexican Parliamentary Delegation in the persons of Senator Victor Manzanilla, and the President of the Mexican Delegation, Diputado Marcos Manuel Suarez.

They are accompanied by Licenciado Daniel Magana, the Official Mayor of the Camara de Diputados.

They are all in the Chamber now and we are delighted to meet with them. We are happy that they saw fit to come to Washington to discuss with Representative JAMES C. WRIGHT, JR., of Texas, and me the forthcoming Conference; to discuss the details which can be covered and to indicate further that there are vital interests between our two great Republics and that these interests, while they coincide in many instances, in others they are different and cause some difficulties.

It is because of these mutual interests and concerns that we have met from time to time to try to understand one another better, to thrash out our differences, and to try to find solutions to those things which come between us.

I am happy to say that the Mexico-United States Interparlimentary Group down through the years has played a very important part, in my opinion, not as much through legislation, because we are not empowered to legislate on the basis of these meetings, but through a recognition of the problems. Of course, the outstanding settlement was the settlement of Chamizal.

Mr. SCOTT of Pennsylvania. Mr. President, to our colleagues, the distinguished Members of the Congress of Mexico, and to our friend the Ambassador from Mexico, my warm welcome.

Mr. DOMENICI addressed the delegation in Spanish and later supplied the following English translation of his remarks:

My name is PETE DOMENICI. I am a U.S. Senator from the State of New Mexico. In behalf of the sovereign State of New Mexico, its neighbors and in behalf of the U.S. Senate, I welcome you here. I do not speak Spanish fluently but I understand, and I hope you will consider my office as your headquarters for there are those from New Mexico in my office who speak your language and understand you well. Thank you for joining us and thanks for the friendly relationship that exists between your great country and ours.

Mr. MANSFIELD. Mr. President, I appreciate the remarks of my colleague, and I ask that Ambassador Olloqui, Minister Saenz, Deputy Suarez, Senator Manzanilla, and Liciendado Magana rise, so that we can pay our respects. [Applause, Senators rising.]

APPOINTMENT BY THE VICE PRESIDENT

The ACTING PRESIDENT pro tempore. The Chair, on behalf of the Vice President, and pursuant to Public Law 91–510, appoints the Senator from North Carolina (Mr. HELMS) to the Joint Committee on Congressional Operations in lieu of the Senator from Connecticut (Mr. WEICKER), who has resigned.

ORDER OF BUSINESS

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

THE RESTORATION OF FISCAL SANITY IN FEDERAL SPENDING

Mr. HELMS. Mr. President, I have been made privy to some remarks to be made later today by the distinguished Senator from Michigan (Mr. GRIFFIN). In advance of his making those remarks, I commend him for a fine statement in support of efforts to restore fiscal sanity in Federal spending. Indeed, the Senator is correct in warning Senators that the American people will render a harsh verdict on those who, in the days and weeks ahead, continue to cast votes which unquestionably churn up a new spiral of inflation.

For Senators who may be unaware of it, I would like to call attention to a poll conducted last month by Lou Harris. By a margin of 59 to 28 percent, the people agree that "President Nixon is right in saying that inflation cannot be controlled unless Federal spending is cut to the bone." An earlier Harris poll found that 74 percent of the people believe Federal spending is the greatest single cause of inflation.

Obviously, Mr. President, the people know where the responsibility lies. They know that it is up to this Congress to hold the line on spending. The Harris

poll, in February, indicated that the public thinks, 51 to 37 percent, "Congress is wrong in opposing the President's spending program and should cooperate more with him." Senators should be mindful, in casting their votes this spring, that this same poll found the public giving Congress negative marks for its performance by a margin of 45 to 38 percent, while giving President Nixon positive marks for his first 4 years in office by 59 to 37 percent.

Mr. President, the American people are sick and tired of extravagant, wasteful Federal spending. They are sick and tired of seeing their tax dollars being squandered by the legions of Federal bureaucrats who administer those ineffective and other worldly programs which have been so heedlessly enacted over the years. And the people are sick and tired of their representatives in Congress who cling to the old bureaucracy-building philosophy of spend, spend, spend.

I said that the American people are going to render a harsh verdict on these Members. And I believe it follows, as the Senator from Michigan has often indicated, that the penalty they impose may very well be banishment from the Halls of Congress.

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

Mr. HELMS. I am delighted to yield to the distinguished Senator from Wyoming.

Mr. HANSEN. Mr. President, in the current debate over the President's budget proposals, we continue to hear that military goals are being favored over human needs, despite the fact that this is patently untrue. Let us look at the record over the past decade.

The 1964 budget allotted $53.5 billion, or 45 percent, to defense purposes, with $34.5 billion, or 29 percent, to human needs. This administration's 1974 budget reverses that ratio. It would apportion approximately $81 billion, or 30 percent, to defense, with $125.5 billion, or 46.7 percent, to human needs. Furthermore, whereas the 1964 budget devoted 8.8 percent of our gross national product to defense and only 5.6 percent to human needs, in the 1974 budget 6.2 percent of the GNP is designated for defense and more than 9 percent for human needs.

These are the hard figures, and they correctly reflect the fact that military programs are not being favored over domestic social programs—that, actually, if there is favoritism in this budget, it is for domestic social programs at the expense of defense spending. And what of this defense budget? I believe that it pares defense spending down to the bare minimum. The fat has been cut away, and only the muscle is left. As the distinguished and knowledgeable junior Senator from Washington has often reminded us, we must retain our perspective in viewing the Nation's military needs. In our disillusionment over the war in Vietnam, in our general desire for relief from the tensions of the cold war, we must remain alert to the importance of national defense. We must recognize that the new era of diplomatic achievement which was opened to us last year has depended and will continue to depend upon negotiation from a position of strength.

Mr. President, I believe that this debate over the budget could be conducted in a more constructive vein if the true relationship between defense spending and spending for human needs were recognized and acknowledged. I urge that we abandon inflammatory rhetoric, which is belied in the budget itself, and devote ourselves to a positive consideration of the Nation's total needs—which certainly include the need for fiscal responsibility and restraint and the necessity of preserving an adequate defense capability.

Mr. President, I wish to compliment the distinguished junior Senator from North Carolina for calling attention to the fact that later in the day the distinguished minority leader will speak with respect to the budget considerations.

I hope that all Americans, as they consider the great urgency of cutting down on spending so as more nearly to approach a balanced budget, will not overlook the fact that the President has very wisely reordered the priorities in order to reflect the fact that the hostilities in Southeast Asia have essentially come to an end and has properly focused attention on spending dollars on the needs of highest national priority.

I commend my distinguished colleague from North Carolina for his leadership, and I thank him for giving me an opportunity to say a word.

Mr. HELMS. I thank the generous Senator for his comment.

I should like to pose a question to the Senator. In his contacts with the people of his State, has his experience been somewhat the same as mine, the very gratifying experience of discovering that the people—in my case, the people of North Carolina—are fully aware that what is needed in this country is a return to fiscal sanity by their Federal Government?

Mr. HANSEN. Mr. President, I suspect that the sentiment in my State, the Equality State, is very similar to that of the sentiment in the State of the Senator from North Carolina. I am certain that the people in Wyoming, as nearly as I can interpret their feeling from reading the newspapers and answering letters addressed to my office, have a very clear understanding of what causes inflation and what makes prices push upward. They are realists, as I know the people in North Carolina are realists. They want to see that we get a handle on spending, that we approach fiscal sanity, and that they thereby will be the recipients of all the myriad advantages that admittedly will come from a more even financial course, so as to insure the kind of balance that must undergird the progress that is in store for us if we can get this budget more nearly back in balance.

Mr. HELMS. Mr. President, I was in my home State of North Carolina this past Saturday evening, in the far eastern part, which, as the distinguished Senator is aware, has an agricultural economy. Most of the people at this meeting—they numbered some 400—are farmers or are engaged in farm-related occupations.

After the meeting was over, I spent an hour or more hearing them tell me that they understand what the President and some Members of Congress are trying to do in reducing the Federal budget. They do not like the idea of giving up any of their farm programs, but their attitude almost unanimously was, "If you are going to cut across-the-board it is all right to cut me, too, but do not single out farmers."

My pledge to the farmers of my State is that insofar as the junior Senator from North Carolina is concerned the farmers are not going to be singled out. I am convinced from frequent meetings with the Secretary of Agriculture that this is not going to happen, this is not the intent of the administration and, furthermore, if the Senate and the House would simply sit down with the administration and seek a common ground on the farm program and on other programs, then the best interests of all Americans will be served.

ORDER OF BUSINESS

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

THE CONFRONTATION BETWEEN THE PRESIDENT AND CONGRESS

Mr. DOMENICI. Mr. President, I wish to join with my distinguished freshman colleague, the Senator from North Carolina, and our distinguished minority whip, the Senator from Michigan, to talk for a few moments to my fellow Senators about the confrontation which I think is taking place today between the President of the United States and Congress.

I would start by saying that a few short weeks ago I did not think I would come to this historic hall and so quickly stand in criticism of those who serve with me. But in a spirit of offering my views to my fellow Senators, let me start by saying that I do not think we need to confront the President, but rather that we had better confront the issue. It seems to me that we are giving a great deal of lip service to the problem of exercising fiscal responsibility, but what we are really saying is, "We do not think you ought to take our power away, Mr. President; we think the power to determine priorities and the power of the purse strings is ours." That is the confrontation that we bring to the administration today.

The American people do not want to be part of that confrontation because they do not care who has the power, but, indeed, they do care about results toward solving the problem of inflation which is robbing their pocketbooks and rendering productivity, which makes the American dream come true, almost a sham.

I would call it the futility of inflation. They are saying to us loud and clear, "We are not interested in your struggle

for power; we are interested in performance. If you have the power, Congress, take it and use it."

The American people say to us, "A few short months ago in December you said, congressional leaders, that we should not spend more than $250 billion this year. You said it in the Senate and the Members of Congress said it in the House," say the American people. "Although you have agreed that that is what you should spend, you proceed to appropriate $265 billion, and then you cannot agree, you and those in the House, on how to cut it by $15 billion. So the President proceeds to cut, to impound, and to change some programs that you Senators and Representatives passed and you do not like it."

Yes, I join with those who say we do not like it because it is our responsibility to determine how funds should be spent; our President should not have to impound to get us down to the $250 billion mark that we ourselves said should be our spending ceiling.

On the other hand, let me repeat, the American people want us to confront the issue; they do not want us to confront the President. They are not interested in the power struggle of constitutional dimensions between this Congress and our President over the power to impound and the power of the purse strings. But the American people are interested in stopping the cycle of inflation.

There are Americans taking second jobs, sending their wives to work, and yet at the end of the year they add up their new earnings and they are no further ahead, but perhaps further in debt than when the year began; they are not any more able to pay for the things they need for their children and their families and their homes than if they had not taken second jobs and worked overtime. They are saying loud and clear to us that this is our problem and they are saying to us that they do not want excuses, they want performance.

I ask my fellow Senators, those who campaigned in their own behalf and those who campaigned for others, if any of them campaigned for more inflation or higher taxes. I am certain none of them did. The facts of the matter are that their conduct here in the Senate would indicate that they do not think they can stop inflation and they think it will be enough to have a confrontation with the President rather than a confrontation with the issue.

The American people are aware that we are conducting business as usual. They are aware it was this business as usual that put us in the position we are in today, and they did not expect that this new Congress, with many new faces, and with many old faces who recognized the same problems, would conduct business as usual. They expected us to reform our budgetary practices and to do it quickly. They will not accept a confrontation with the President as a solution to a head-on collision with the issues of inflation, with the issue of ever-growing Federal programs that have high motives and which do little for the people that they are intended to help. I think we all know that the spirit of productivity is necessary for America to retain its economic vitality, and this spirit of productivity will remain alive only so long as it is real.

When it becomes a hoax, Americans will stop producing, they will stop working; they will look to others to care for them.

I submit that when we hear the Japanese and the Europeans talk of our economy as if they are also wondering whether it is real or whether it is a paper tiger, their observations of concern about our economy are accurate, and I think our observations of our economy and the productive quality of collective America are real.

I think it is going to take courage on the part of myself and my fellow Senators to confront the issue of inflation as it is affected by excessive Federal spending, and I think we are going to have to have exceptional courage if we are going to cut programs and if we are going to do a better job with our Federal programs; and it is not going to suffice to attack the Executive, who, because we are in default, has sought one way.

Unless we find a way, the American public will not look with favor upon us, and, more importantly, American history will not look well upon us, for we will be serious contributors to an American economy that was once vital and robust, but which is now very, very delicate.

My closing comments have to do with the period that we are going through, which I think is a period of transition—the transition from an old way of doing business to a new way of doing business. I think the impoundments and the cutting of programs and the new budgetary approach put new strains on all of us, because we are going through the process of finding a better way. I submit it is our responsibility to substitute accommodation for confrontation, and I submit that if we are willing to accommodate, the Chief Executive of this country will respond. But I believe that there are those among us who think this is a partisan issue, and confrontation brings clamor and commotion; but I truly believe that the American people expect accommodation. They expect some change on our part, some give and take.

I submit, fellow Senators, that if we give the administration that opportunity, we will pass through this transition into a new era of fiscal responsibility, and indeed Americans of today and the years to come will be the benefactors.

If we use this period of transition as a coverup of the need for change, the need for consolidation of American poverty programs and domestic programs, and if we use it as an excuse for reform because indeed we will be satisfying ourselves with a lot of noise and clamor, then I submit the American economy will suffer, perhaps irreparably, and the spirit of the American people to work and to try to take care of themselves will get paler, and that burden will lie heavily on our collective shoulders.

Courage should be our motto, and reform our goal. Most certainly, confrontation is easier, but in this instance I believe its rewards are minimal and selfish, and certainly not in the best interests of all Americans.

Thank you, Mr. President.

Mr. GRIFFIN. Mr. President, I wish to commend and congratulate the distinguished Senator from North Carolina (Mr. HELMS) and the distinguished Senator from New Mexico (Mr. DOMENICI) who have made very eloquent statements today.

While the two Senators who preceded me are freshmen, they are also fresh from the political hustings, having been recently elected in their States. It is obvious, I suggest, that they are very wise in terms of knowing what the people think, and how the people perceive the great debate now going on in the Halls of Congress.

ORDER OF BUSINESS

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

THE DEBATE OVER FEDERAL SPENDING

Mr. GRIFFIN. Mr. President, the current debate over Federal spending is truly a historic debate. It is historic, not because of a constitutional crisis, as many assert, but because the outcome is so important to the strength and future of the United States as leader of the free world.

During his first term, President Nixon took some historic initiatives in the area of foreign policy, initiatives which have revitalized American foreign policy and made it realistic and viable in the 1970's. Now, at the outset of his second term, the President has proposed some sweeping reforms here at home. He seeks to reorganize the executive branch to make Government more responsive—responsive to the people and to the demands of the future.

He seeks to phase out some tired, wasteful, and ineffective programs of the 1960's—and to replace those programs with a streamlined revenue sharing approach that shifts power to levels of government where the problems and the people are.

Most important, the President seeks to hold down Federal spending, so as to bring it more nearly in line with Federal revenues.

As he did in the international field, President Nixon is providing bold, imaginative initiatives on the domestic front. And Congress is challenged as never before—not for power—but to demonstrate an equal measure of responsibility.

Make no mistake about it, the American tax payers are watching closely to see what the response of Congress will be.

More and more, there is understanding among the people throughout the country that votes in Congress for the same old programs are really votes for more inflation or higher taxes, or both.

Ironically, observers overseas sometimes can be more objective and dispassionate in assessing action and inaction of the United States than we can do our-

selves. Recently the London Economist noted that Congress:

> Has no mechanism for setting an overall budget target, its total expenditures simply being an aggregate of the cost of programs approved on a piecemeal basis. No effort is being made to relate expenditure to revenue . . . and no consideration is being given to the question of spending priorities.

Foreign observers have good reason to watch what the Congress does. They know that a new round of inflation in the United States will have far-reaching international implications. More inflation, generated by deficit spending, would further undermine confidence in the dollar. It would make our products less and less competitive in world markets, and it could precipitate still another international monetary crisis.

We can no longer afford to have American export prices rising faster than those of our competitors in the world market. The crunch has come, and now it is up to Congress, the elected representatives of the people, to impose some self-discipline upon and within the United States. We can no longer afford the philosophy of spend and elect, without regard for the economic health of the Nation.

If the spend and elect philosophy was good politics in the past, I suggest to political pragmatists that a new day is here. The American taxpayers who are watching Congress know that massive new Federal spending will mean more inflation or higher taxes. And they do not want either one.

Like those who spoke before me, I am convinced that a new day is at hand. And those in Congress who fail to recognize it will not only fail their country in its hour of need, but they may soon become part of the political past themselves.

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

Mr. GRIFFIN. Mr. President, I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, it seems to me that there is a real risk involved in the confrontation in which we now find ourselves. It seems that without the confrontation we go back to the middle of last year when there was a great feeling in the Congress about reforming Federal domestic programs, consolidating them and making them current, whether they be called revenue sharing or block grant programs. There was a sort of spirit of reform.

It seems to me that this confrontation could very well cover up that issue and we could go into next year kind of forgetful of reform, thinking the whole issue was the battle of the budget and impounding that we have just gone through.

Does the Senator have any feeling about that matter in light of my feelings?

Mr. GRIFFIN. Mr. President, I certainly agree with the analysis of the distinguished Senator. He perceives very well the difference between the views of the people and the views of some within the Congress who are focusing intently on the struggle for constitutional power as between the executive and legislative branches.

The people, as the Senator from New Mexico has so eloquently pointed out, are more concerned about the result—the outcome—in terms of the Nation and its good.

Those who get lost in the academic arguments about constitutional powers fail to see that the time for reform is ripe that the people are demanding a reordering of priorities, and that the President has his finger on the pulse of the Nation.

This is not a matter of partisan politics. For the most part, the people do not care about party blame or credit. They are concerned about results and what will happen to the country.

In this particular situation, I believe the President deserves more support than he is getting from the Congress, because he is right in what he seeks to do for the country.

Mr. DOMENICI. Mr. President, would the Senator yield for one further comment?

Mr. GRIFFIN. I yield.

Mr. DOMENICI. Mr. President, I wholeheartedly agree with the Senator from Michigan.

For about a month between my election and my arrival in Washington, I traveled over my State because I wanted to discuss the Federal programs that pertained to the schools. I had the school people meet with me on the problems as they pertained to the cities. I also met with the mayors and councils in each community.

I can say to the Senator that every single elected and appointive leader said that he does not want so many strings attached to the Federal programs. One school man said that he kept 12 different sets of books because they are each audited differently.

My concern is that I have come here committed to trying to do a better job of putting the money where the problems are, in the communities that have to administer them, rather than here. However, I wonder, in the process of fighting this battle of impoundment, if there are not those who will forget that there is a great need for reform and for improvement. Even if we admit that some of the impoundments are wrong and even if we admit that some of the effects of the executive approach are not what we want, we certainly do not think that winning that battle will solve the problems.

I think we could win the battle of impoundment and get the programs that have been curtailed reinstated and the contracts with the HEW overturned, perhaps because they were not then in accordance with the Constitution. However, even if that were to happen, I do not think we would have done a better job with the domestic programs, those on which we are trying so hard.

Mr. GRIFFIN. Mr. President, the Senator makes an excellent point.

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

Mr. GRIFFIN. Mr. President, I yield to the distinguished Senator from North Carolina.

Mr. HELMS. Mr. President, I commend the distinguished minority whip, the Senator from Michigan (Mr. GRIFFIN) for his budgetary analyses.

I want to comment on one point made here. There is certainly no partisanship about any of the comments that I have made or may make about the Federal budget. As a matter of fact, I am the first Republican to be elected from the State of North Carolina in the 20th century.

It is evident to me that I received more than twice as many votes as there are registered Republicans in my State. I have to tip my hat to the Democrats from North Carolina who, like all the rest, are concerned about the rising tide of inflation.

I have noticed here that every day the word "impound" is referred to. I received a letter from an old high school English teacher of mine who suggests that we look up the meaning of the word "impound" and ask ourselves whether it is possible for the President of the United States to impound something that does not exist.

What my old high school teacher is pointing out is that the Congress is striving to create a credit card government. I think she is quite accurate when she says that perhaps the word we should use is "save" rather than "impound."

Furthermore, I would say that if we look at the enormous Federal debt already run up that represents money borrowed and spent by Congress and by various administrations, the interest on the money already borrowed and spent is $40,000 a minute, which comes to over $666 a second.

I think that that in itself is cause for alarm.

Mr. GRIFFIN. Mr. President, I thank the Senator from North Carolina and the Senator from New Mexico for the excellent contributions they have made to this colloquy.

Mr. President, I yield back the remainder of my time and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Would the Senator withhold his request?

Mr. GRIFFIN. Mr. President, I withhold my request.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time the Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized for not to exceed 15 minutes.

DEDICATION OF THE LAUREL RIDGE CONSERVATION EDUCATION CENTER

Mr. HARRY F. BYRD, JR. Mr. President, on March 16 the National Wildlife Federation dedicated its Laurel Ridge Conservation Education Center in Fairfax County, Va. Fairfax County, incidentally, is the largest political subdivision in Virginia. It has a population of some 450,000 persons.

Mr. President, it was a high privilege for me to attend and an honor to welcome those assembled, including the gracious First Lady, Mrs. Richard Nixon, to the Commonwealth of Virginia.

The dramatic growth of the National Wildlife Federation over the last decade dictated the need for expansion to Laurel Ridge. In 1961, President John F. Kennedy dedicated the Federation's main building at 1412 16th Street NW., Washington, D.C. At that time it appeared that the space there would prove adequate for years to come. This was clearly not the case.

I was impressed by what I observed at Laurel Ridge. The center is encompassed by 20 acres of gentle rolling, wooded land. The structure is designed to blend in with its natural surroundings. The facilities will greatly enhance the educational programs of this national conservation organization, the largest private federation of its type in the world.

I was even more impressed by the vision of the National Wildlife Federation. This building project, conceived almost a decade ago, was financed entirely by private funds. Through memberships and private donations, the $2.25 million necessary to finish the project was raised.

I think this type of private effort is commendable.

And I am proud that the National Wildlife Federation chose Virginia as a home for this conservation education center. Although the plan is still in the design stage, 17 of the 20 acres will eventually have nature trails and educational facilities which will serve as a national prototype of conservation education.

As a fitting tribute to the work of the Federation, Mrs. Nixon read the proclamation signed by the President on March 16, 1973, designating March 18 through 24, 1973, as "National Wildlife Week."

I know I join my fellow Virginians and the Nation in saluting the President, the First Lady and the National Wildlife Federation during the week of national recognition for the bounties of our national wildlife.

Mr. President, I ask unanimous consent that the program from the dedication ceremonies be printed in the RECORD in its entirety, showing the creed of the National Wildlife Federation, its distinguished directors and officers and the history of the organization. I ask unanimous consent also that the President's Proclamation No. 4200 be printed in the RECORD.

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

BUILDING DEDICATION—NATIONAL WILDLIFE FEDERATION

(Kennedy dedicated 1961)

LAUREL RIDGE CONSERVATION EDUCATION CENTER

The National Wildlife Federation Creed . . .

I pledge myself, as a responsible human, to assume my share of man's stewardship of our natural resources.

I will use my share with gratitude, without greed or waste.

I will respect the rights of others and abide by the law.

I will support the sound management of the resources we use, the restoration of the resources we have despoiled, and the safekeeping of significant resources for posterity.

I will never forget that life and beauty, wealth and progress, depend on how wisely man uses these gifts . . . the soil, the water, the air, the minerals, the plant life, and the wildlife.

The Officers, Directors and Trustees of National Wildlife Federation and National Wildlife Federation Endowment, Inc., welcomes you to the dedication of the Laurel Ridge Conservation Education Center.

Federation President—N. A. Winter, Jr.; Endowment President—Judge Louis D. McGregor.

Vice Presidents: Walter L. Mims; Homer C. Luick; G. Ray Arnett.

Federation Directors

Region 1, Lester B. Smith—At-Large.

Region, 2, Edmund H. Harvey—Dr. James H. Shaeffer.

Region 3, F. Bartow Culp—Judge Louis D. McGregor.

Region 4, Charles D. Kelley—Stewart L. Udall.

Region 5, Frederick R. Scroggin—M. A. Wright.

Region 6, O. Dwight Gallimore—Dr. Donald J. Zinn.

Region 7, Paul H. Wendler—Dr. Claude Moore.

Region 8, Walter S. McIlhenny—Courtney Burton.

Region 9, Everett R. Brue—Joseph D. Hughes.

Region 10, Fred A. Gross, Jr.—Robert Stack.

Region 11, A. W. "Bud" Boddy—Maynard P. Venema.

Region 12, C. Clifton Young—Turner W. Battle.

Region 13, Ernest E. Day—Trustee Dr. Greer Ricketson.

Federation Executive Vice President—Thomas L. Kimball.

Federation Treasurer—John Bain.

Endowment Executive Secretary—J. A. Brownridge.

Program

Dedication of National Wildlife Federation's Laurel Ridge Conservation Education Center, 8925 Leesburg Pike, Viennia, Virginia, March 16, 1973, 11:00 a.m.

Master of Ceremonies—N. A. Winter, Jr., NWF President.

Invocation—Thomas L. Kimball, NWF Executive Vice President.

Welcome to Virginia—Senator HARRY F. BYRD, JR.

History of Federation—Judge Louis D. MacGregor.

Address—John C. Whitaker, Under Secretary of the Interior.

Address—Earl L. Butz, Secretary of Agriculture.

Dedication of the Center—Mrs. Richard Nixon.

Presentation of Colors—U.S. Marine Color Guard Unit.

The National Anthem—U.S. Marine Band.

ABOUT THE FEDERATION

We have come a long way since those early days of 1936 when the National Wildlife Federation was founded during the first North American Wildlife Conference called by President Franklin Delano Roosevelt. The early days were plagued with problems that at times seemed to be almost insurmountable. Money was scarce, concern for the environment was negligible and the conservation crises were building rapidly.

During the next few years, problems multiplied to such an extent that only the truly dedicated stuck to the ship when it seemed that the Federation must founder and sink into oblivion. Those hardy pioneers did persevere, however, and after many years of struggle the National Wildlife Federation took its place as a powerful and effective voice speaking in the cause of conservation. We were among the first organizations to express concern about the deteriorating condition of our total environment: water pollution, air pollution, pesticides and all the many other activities that adversely affect our plant and animal eco-systems.

Having recognized early that man must learn to live in harmony with nature, the leadership of the N.W.F. has consistently supported proper land planning with increasing attention focused in preserving the aesthetic, fish, wildlife, and outdoor recreation values in a developing, industrialized, mechanized and computerized nation.

We are committed to the philosophy that we should not permit any species within our national surroundings, be it flora or fauna, to become endangered or extinct, that total protection and surplus harvest are essential tools of the natural scientist, to be used with great wisdom in providing optimum numbers, variety, and bounty of nature for all to enjoy.

It has become Federation policy and the source of its strength to listen to all voices on all sides of every issue. Through its carefully reasoned approach to complex and difficult environmental problems, the Federation has gained the respect of millions of people, both those who have supported our position and those opposed. Out of this respect has grown the organization we see today, fully capable of acting as spokesman for 3,500,000 people, representing the greatest natural resource cross-section of "grass roots America." The educational services rendered the unprecedented public interest in conserving the natural environment is greater than ever before in history. Evidence of the growth of interest and awareness of the work of the National Wildlife Federation is the building we dedicate today, first step in launching the action program of the National Wildlife Federation's Laurel Ridge Conservation Education Center.

Here we have room to service the rapidly expanding demand for knowledge and information about wildlife and ecology. Here we have room to expand into a total wildlife and environmental educational organization that is capable of providing the space for workshops, training sessions, lectures, film and slide shows, nature walks, and demonstration areas.

Yes, it is a far cry from the organization that took its first faltering steps in 1936 to be the healthy, growing organization of today. Our services cut across every facet of wildlife and environmental interest, our staff is active in every corner of the country and the world. Our current leadership, as those of the past, are fully committed to educational service and the dissemination of knowledge to all those who ask. An enlightened citizenry can provide the decisions, policies, and action that will ensure the quality of living we all seek.

We welcome you here today as evidence of your interest and your support in all of these activities and we are grateful for your continuing interest and support of our programs.

Sincerely,

N. A. WINTER, JR.,
President.

PROCLAMATION 4200

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

Americans carved a nation out of the wilderness. Now we must preserve the wilderness for the Nation.

The theme of this year's National Wildlife Week is: "Discover Wildlife—it's Too Good To Miss." In a greater sense, Americans are rediscovering the natural animal world around them. Our concern for the fate of wild animals has increased. We have come to realize that the development of the human habitat has occurred at great cost to another kind of habitat. And we are seeking more effective ways to prevent and enhance our wilderness areas.

All men need refuges for their spirit. The wilderness invokes contemplation and provides recreation, and the animal wildlife of America provides a fascinating dimension to our natural heritage which we know must

be preserved for future generations to enjoy.

Now, therefore, I, Richard Nixon, President of the United States of America, do hereby designate the week beginning March 18, 1973, as National Wildlife Week.

I ask all citizens to renew their efforts to preserve and enhance our natural environment, especially those areas now inhabited by our natural wildlife. Because the need is still great for better tools with which to do the job, I also urge the Congress once again to act promptly on my proposal to strengthen protection for hundreds of endangered species.

In Witness Whereof, I have hereunto set my hand this sixteenth day of March, in the year of our Lord nineteen hundred seventy-three, and of the Independence of the United States of America that one hundred ninety-seventh.

RICHARD NIXON.

QUORUM CALL

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum, the time to be taken out of the time allotted to the Senator from Virginia.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

GOLD REVALUATION TO FORMALLY DEVALUE THE DOLLAR

Mr. HARRY F. BYRD, JR. Mr. President, sometime this week the Senate will consider legislation to revalue the Nation's gold supply. In another way of expressing it, the Senate will consider legislation to formally devalue the dollar.

When Under Secretary of the Treasury Paul Volcker appeared before the Senate Committee on Finance, he stated that the executive branch had taken radical action in regard to the American dollar. I had a short dialog with him on that subject.

As a prelude to the Senate debate which will begin the latter part of the week on dollar devaluation, I think it appropriate to read into the RECORD today a few questions which I put to Mr. Volcker in this regard, and Secretary Volcker's replies. I am reading now from pages 25 and 26 of the hearings before the Senate Committee on Finance, March 7, 1973:

Senator BYRD. Now you said in your dialog with Senator Hansen, that you found it necessary to take radical action. Would you indicate the radical action to which you referred?

Mr. VOLCKER. Well, we devalued the dollar twice and had a major exchange rate realignment in the last 14 months twice. I consider that radical action.

* * * * *

Senator BYRD. And it is, in your judgment, radical action to devalue the dollar twice in 14 months?

Mr. VOLCKER. It is indeed and this is nothing I look forward to repeating at all. It is radical action.

Those were the comments of the Under Secretary of the Treasury, Mr. Paul A. Volcker.

The reason that I have not opposed the radical action, formal devaluation of the dollar, is that it is merely formally doing what already has taken place: namely, there has been a deterioration in the value of the dollar. The dollar is less valuable, and it seems to be becoming increasingly less valuable each few months. It gets back, I am convinced, to the smashing government deficits that the Federal Government has been running.

The deficit during the current fiscal year will be the largest the Nation has ever had with the exception of World War II when we had 12 million men under arms and when the United States was fighting one war in Europe and another in the Pacific.

Mr. President, a few moments ago I said that the dollar was worth less. That is two words. Earlier I asked that that be stricken because I noted in the comments I made last week that it was published in the CONGRESSIONAL RECORD as one word; namely, worthless.

What I said last week was that the dollar was worth less—two words.

I do not imply that the dollar is worthless. Of course, it is not. But I do say that is is worth less.

After today, I shall try not to use that expression because it is susceptible to misuse particularly when the typesetters put those two words together instead of spacing them out.

But the dollar has become less valuable. It has become less valuable, in my judgment, because of the policies of the Federal Government in running these smashing Government deficits.

VACATING OF ORDER FOR SENATOR ROBERT C. BYRD TO SPEAK TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may vacate the time that was allotted to me under the order.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

Is there further morning business?

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.

ORDER FOR SENATORS FANNIN AND GRIFFIN TO BE RECOGNIZED TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow after the two leaders or their designees have been recognized under the standing order, the distinguished Senator from Arizona (Mr. FANNIN) be recognized for not to exceed 15 minutes; and that he be followed by the distinguished Senator from Michigan (Mr. GRIFFIN) for not to exceed 15 minutes.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The 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.

EXECUTIVE SESSION

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

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

Mr. MANSFIELD. Mr. President, for the information of the Senate five nominations were reported by the Committee on Foreign Relations. Four of them were reported approximately 10 days ago. The last one was reported on Friday. Unfortunately, I forgot to ask unanimous consent for the Senate to receive reports, nominations, messages, and the like over the weekend. Therefore, they are not on the calendar. However Senators on both sides of the aisle have been contacted—those who are in town—to see if there were any objections. There were no objections. The nominations will be taken up today and they will be taken up separately.

The PRESIDING OFFICER. The first nomination will be stated.

COMMODITY CREDIT CORPORATION

The legislative clerk read the nomination of Robert W. Long, of California, to be a member of the Board of Directors.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Clayton Yeutter, of Nebraska, to be a member of the Board of Directors.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. AIR FORCE

The legislative clerk read the nomination of Lt. Gen. James V. Edmundson to be lieutenant general.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. ARMY

The legislative clerk read the nomination of Lt. Gen. William Joseph McCaffrey, to be lieutenant general.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Maj. Gen. Gilbert Hume Woodward, to be lieutenant general.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. NAVY

The legislative clerk read the nomination of Vice Adm. James F. Calvert to be vice admiral.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. MARINE CORPS

The legislative clerk proceeded to read sundry nominations in the U.S. Marine Corps.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

SELECTIVE SERVICE SYSTEM

The legislative clerk read the nomination of Byron V. Pepitone, of Virginia, to be Director of Selective Service.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

The legislative clerk proceeded to read sundry nominations in the Air Force and in the Army, placed on the Secretary's desk.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

ACTION

The legislative clerk read the nomination of Michael P. Balzano, Jr., of Virginia, to be Director of ACTION.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the confirmation of the nomination of Michael P. Balzano, Jr., of Virginia, be temporarily deferred only because I have forgotten to request that the Committee on Labor and Public Welfare be contacted to see if it is all right to bring up the nomination today.

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

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

Mr. MANSFIELD. I yield.

Mr. ROBERT C. BYRD. Mr. President, I do not think that the majority leader should have to take all of the burden for having forgotten to make the request. I usually do that. I believe it was my shortcoming rather than his.

Mr. MANSFIELD. I understand the Committee on Labor and Public Welfare has not had its hearings on the nomination of Mr. Balzano. So I ask, without prejudice, that confirmation of this nomination be withheld for the time being until this nomination, which was referred jointly, and which has been reported by the Committee on Foreign Relations unanimously, is considered by the Committee on Labor and Public Welfare.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. MANSFIELD. Mr. President, to reiterate, the deferral of the nomination of Michael P. Balzano, Jr., is without prejudice, because it was agreed that the Committee on Labor and Public Welfare would have a hearing. That commitment must be honored.

DEPARTMENT OF STATE

The legislative clerk proceeded to read the nomination of V. John Krehbiel, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Finland.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of William B. Macomber, Jr., of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Turkey.

Mr. MANSFIELD. Mr. President, I wish to say that I think that the nomination of Secretary Macomber to be Ambassador to Turkey is one of the best choices made by this administration and one of the best choices that could be made by any administration. The nomination was reported by the Committee on Foreign Relations by a vote of 17 to 0, which indicates the high regard in which Mr. Macomber is held.

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

Mr. MANSFIELD. I yield.

Mr. MATHIAS. Mr. President, I shall not detain the Senate but I wish to join the distinguished majority leader in saying that I think Secretary Macomber, who has discharged so many very delicate missions for the United States over a long period of time, is one of the finest diplomats this country has. His assignment to the very important and sensitive post in Turkey is appropriate. I know he will discharge that duty with the same distinction that he has given to other duties on behalf of this country over a long period of time.

Mr. MANSFIELD. Yes, indeed. He is a man of great integrity, patriotism, dedication, and understanding. A better choice could not be made.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Eugene Paul Kopp, of Virginia, to be Deputy Director of the U.S. Information Agency.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Marshall Green, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Australia.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Dr. Ruth Lewis Farkas, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Luxembourg.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

SUNDRY NOMINATIONS ON THE SECRETARY'S DESK

The legislative clerk proceeded to read the nominations of Robert A. Blake, of California, and sundry other persons, for appointment and promotion in the Foreign and Diplomatic Service.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

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

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

LEGISLATIVE SESSION

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

The motion was agreed to, and the Senate resumed the consideration of legislative business.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

REPORT ON FINAL DETERMINATION IN CLAIM OF THE CREEK NATION

A letter from the Chairman, Indian Claims Commission, transmitting, pursuant to law, a report on final determination in Docket No. 273, the Creek Nation, plaintiff, against the United States of America, defendant (with accompanying papers). Referred to the Committee on Appropriations.

LIST OF CONTRACT AWARD DATES, DEPARTMENT OF DEFENSE

A letter from the Acting Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, a list of contract award dates for the period March 15–June 15, 1973 (with an accompanying report). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION FROM DEPARTMENT OF THE ARMY

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend title 37, United States Code, to authorize travel and transportation allowances to certain members of the uniformed services stationed outside the United States for dependents' schooling, and for other purposes (with an accompanying paper). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION FROM DEPARTMENT OF THE NAVY

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend section 5064 of title 10, United States Code, to remove the requirement that the Director and the Assistant Director of the Budget and Reports be officers in the line of the Navy (with an accompanying paper). Referred to the Committee on Armed Services.

REPORT OF DEPARTMENT OF DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Acting Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report of Department of Defense Procurement from Small and Other Business Firms, for July-December 1972 (with an accompanying report). Referred to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION FROM OFFICE OF MANAGEMENT AND BUDGET

A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a draft of proposed legislation to provide authority to expedite procedures for consideration and approval of projects drawing upon more than one Federal assistance program, to simplify requirements for operation of those projects, and for other purposes (with an accompanying paper). Referred to the Committee on Government Operations.

PROPOSED GRANT TO DESERT RESEARCH INSTITUTE

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed grant to Desert Research Institute, Boulder City, Nev., for a research project entitled "Mineral Recovery from Geothermal Brines" (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

REPORT ON THE COLORADO RIVER BASIN PROJECT

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a report of the Colorado River Basin project, for the fiscal year ended June 30, 1972 (with an accompanying report). Referred to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION FROM DEPARTMENT OF THE INTERIOR

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to amend section 2 of the act of June 30, 1954, as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to authorize the Secretary of the Interior to transfer franchise fees received from certain concession operations at Glen Canyon National Recreation Area, in the States of Arizona and Utah, and for other purposes (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

REPORT OF NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE

A letter from the Chairman, National Commission on Marihuana and Drug Abuse, transmitting, pursuant to law, a report of that Commission (with an accompanying report). Referred to the Committee on the Judiciary.

PROPOSED LEGISLATION FROM THE SECRETARY OF THE TREASURY

A letter from the Acting Secretary of the Treasury, transmitting a draft of proposed legislation to grant relief to payees and special indorsees of fraudulently negotiated checks drawn on designated depositaries of the United States by extending the availability of the check forgery insurance fund, and for other purposes (with accompanying papers). Referred to the Committee on the Judiciary.

PROPOSED LEGISLATION FROM THE ATTORNEY GENERAL

A letter from the Attorney General, transmitting a draft of proposed legislation to reform, revise, and codify the substantive criminal law of the United States; to make conforming amendments to title 18 and other titles of the United States Code; and for other purposes (with an accompanying paper). Referred to the Committee on the Judiciary.

DOCUMENT ENTITLED "COMPLIANCE, ENFORCEMENT, AND REPORTING IN 1972 UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT"

A letter from the Office of Legislative Affairs, Department of Labor, transmitting, for the information of the Senate, a document entitled "Compliance, Enforcement, and Reporting in 1972 Under the Labor-Management Reporting and Disclosure Act" (with an accompanying document). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION FROM DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Acting Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to extend the authorization of appropriations for certain programs for the education of the handicapped, and for other purposes (with an accompanying paper). Referred to the Committee on Labor and Public Welfare.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution of the House of Representatives of the State of Montana. Referred to the Committee on Interior and Insular Affairs:

"RESOLUTION

"Requesting the U.S. Senate and the U.S. House of Representatives to implement fully by statute the multiple use concept on Federal lands

"Whereas, the continuing increase in population of the United States, the increase in leisure time available to the public because of shorter work weeks, longer vacations and earlier retirement, and the steady increase in disposable income have combined to produce a vast growth of interest and participation in outdoor recreation by United States citizens, and indications are that this growth will continue at an accelerated rate in the future, and

"Whereas, varieties of outdoor recreation such as hunting, fishing, rockhunting, snowmobiling, backpacking, trail-riding, etc. at present and projected rates require that large expanses of land be available for such recreation, and

"Whereas, the increasing pursuit of such outdoor recreation on private lands has produced increasing animosity and resentment on the part of the owners of these private lands with resulting closure and posting of private lands to the public, and since this trend is obviously fated to continue to the point where very little private land will not be closed, and

"Whereas, the United States government holds title to large areas of grazing and forest land, especially in western states such as Montana, which are administered by the forest service and the Bureau of Land Management, and which under the multiple use concept are also available for recreational use, and

"Whereas, a large number of citizens, particularly in the western states, knowing that through their government they own these lands and consider that their free and untrammeled use of these federal lands is an historic, intrinsic and most valuable part of the American way of life, and

"Whereas, large areas of these federal lands are not directly adjacent to a public road or other public land and are accessible to the public only if the owners of adjoining or surrounding private lands allow trespass across their holdings, and

"Whereas, in the case of such secluded or de facto sequestered public lands in many instances the private landowners do not permit trespass and the public is being denied access, and whereas the number of such cases will continue to increase as friction between the public and the landowners grows, and

"Whereas, the trend to consolidation of ranch lands into larger units owned by corporations or more powerful individuals will undoubtedly exacerbate this situation, and

"Whereas, in many cases the property owner denying the public access to public lands is himself using these public lands for grazing as a permittee at an extremely favorable monetary cost as compared to rates on private land, and

"Whereas, the public must have access to these public lands in order to use them, and whereas ownership, use and access are inseparable by all rules of logic and equity, and

"Whereas, outdoor recreation, both by residents of Montana and tourists and visitors is an important source of income and is basically essential to fiscal stability and welfare of the state of Montana.

"Now, therefore, be it resolved by the House of Representatives of the State of Montana: That the Congress of the United States establish the following provisions by statute:

"(1) In the case of all federal lands used for grazing for forestry totaling six hundred forty (640) or more contiguous or adjacent acres, to which access to the public from public road or other public land is not possible because of intervening or surrounding private land owned directly or indirectly by the holder of grazing permit on public lands, the granting of future grazing permits shall require that as a condition of such permit the permittee shall grant, for the period of such permit, a right-of-way for vehicular traffic across his private lands to the public lands.

"This right-of-way need be no more than a trail used by the permittee himself, or twenty (20) foot wide lane along or near a fence line over terrain passable to a vehicle. At the discretion of the owner of the private land, the access trail or right-of-way may be posted with signs provided by the agency supervising the public lands indicating that it is an access route only, and that trespassing, hunting and shooting are prohibited on the private lands bordering the right-of-way and violations will be punished according to applicable state laws.

"The provisions above would also apply to federal land which is being used by a state grazing district or other organization or group of landowners.

"In the case of public lands surrounded by lands owned by a nonpermit holder, a lane twenty (20) feet wide passable to vehicles along or near section lines from the nearest public land or right-of-way would be condemned through eminent domain right.

"(2) In view of the obvious increasing need for public land for public recreation in the future, no federal land consisting of more than three hundred twenty (320) contiguous acres used for grazing or forestry should be allowed to pass from federal ownership by sale to any nongovernmental purchase except:

"(a) in connection with and as a part of the purchase of similar land of equal or greater value for recreation and grazing or forestry;

"(b) in connection with and as a part of public-private land exchanges or previously arranged purchase agreements intended to consolidate federal lands into larger blocks for more efficient use and administration;

"(c) in the case of lands that through location near urban areas, or because of utility for commercial or industrial use, have appreciated much above their value for agricultural or recreational use, provided that the monetary proceeds from such sale are earmarked for use to purchase replacement agricultural-forestry-recreational land.

"Be it further resolved, that a copy of this resolution be sent to the secretary of the United States Senate, the speaker of the United States House of Representatives, and to all of the Montana congressional delegation."

A resolution of the House of Representatives of the State of Montana. Referred to the Committee on the Judiciary:

"RESOLUTION

"Requesting the Congress of the United States to adopt an amendment to the U.S. Constitution which will reinstate the right of the States to protect the right of an unborn human being to life and offer the constitutional amendment to the States for ratification

"Whereas, the tradition of Montana law from its earliest statutes has been to provide legal protection to the fundamental rights of all human beings, including the right to life, and

"Whereas, the recent decisions of the United States Supreme Court has interpreted this protection to be contrary to the United States Constitution insofar as these decisions affect the right to life of unborn humans, and

"Whereas, Montana's traditions on behalf of human life and the protection of our human environment can best be continued only through appropriate constitutional protection.

"Now, therefore, be it resolved by the House of Representatives of the State of Montana: That the Congress of the United States is hereby urged and requested to adopt a constitutional amendment which will guarantee the right of the States to enact or preserve laws which protect the right to life of unborn human beings, and

"Be it further resolved, that copies of this resolution be forwarded to the Montana congressional delegation, the Secretary of the United States Senate, the Clerk of the United States House of Representatives, and the President of the United States."

A resolution of the House of Representatives of the State of Montana. Referred to the Committee on Labor and Public Welfare:

"RESOLUTION

"Beseeching the President of the United States, the Secretary of Health, Education and Welfare, and the Congress of the United States to protect and preserve the effectiveness and integrity of the regional medical programs

"Whereas, regional medical programs serving the people of Montana are fulfilling previously unmet rural health care needs, and

"Whereas, these programs are administered and managed at the local level with local nongovernmental personnel responsible to the regional advisory council, and the regional advisory council, as well as task force and/or committee members involved are donating their time on a voluntary basis to solve health problems at a local level, and

"Whereas, these programs build on existing strength and work with the private sector of health professionals to assist them in improving the quality and quantity of health care closer to the patient's home, and have become the most effective local force to assist the existing system to improve health care, and

"Whereas, these programs have contributed significantly to improvement of health care throughout Montana by demonstration of more effective rural health care arrangements; by assistance to community planning and health care needs to hospitals and health care personnel in raising the quality of health care; by training new types of health manpower and improving the skills of existing health care practitioners and the understanding of health care consumers through public education activities, and

"Whereas, these programs in Montana have demonstrated a marked ability to improve health care in undeserved and rural areas by support and training of health workers by assisting in the development of intensive coronary care units, oral cancer clinics, and consumer education projects, diabetes management and stroke rehabilitation, heart-kidney prevention, early recognition of cancer and other health problems, and

"Whereas, the regional medical programs in Montana have effectively cooperated with each other, state health agencies, comprehensive health planning, voluntary health organizations, and public as well as private, education institutions to provide assistance and consultation and establish cooperative arrangements in the regions.

"Now, therefore, be it resolved by the House of Representatives of the State of Montana: That the president of the United States, the secretary of health, education and welfare, and the congress of the United States are requested to provide sufficient funding for the fiscal year 1973 to permit continuation of the effective regional medical programs in Montana, and

"Be it further resolved, that the legislature of the state of Montana calls upon the congress of the United States to pass appropriate legislation extending authority for the regional medical programs on a continuing basis and appropriating sufficient funds for the fiscal year 1974, and

"Be it further resolved, that the legislature of the state of Montana calls upon the congressional delegation from the state of Montana to work avidly for the implementation of this resolution, and

"Be it further resolved, that copies of this resolution be sent to the president of the United States, the secretary of health, education and welfare, to the senate and house of representatives of the United States and to the senators and representatives representing the state of Montana in the United States Congress."

REPORT ENTITLED "PATENTS, TRADEMARKS, AND COPYRIGHTS"—REPORT OF A COMMITTEE (S. REPT. NO. 93-88)

Mr. McCLELLAN, from the Committee on the Judiciary, pursuant to Senate Resolution 245, 92d Congress, second session, submitted a report entitled "Patents, Trademarks, and Copyrights," which was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Eugene Paul Kopp, of Virginia, to be Deputy Director of the U.S. Information Agency;

Marshall Green, of the District of Columbia, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary to Australia;

William B. Macomber, Jr., of New York, to be Ambassador Extraordinary and Plenipotentiary to Turkey;

V. John Krehbiel, of California, to be Ambassador Extraordinary and Plenipotentiary to Finland;

Dr. Ruth Lewis Farkas, of New York, to be Ambassador Extraordinary and Plenipotentiary to Luxembourg; and

Michael P. Balzano, Jr., of Virginia, to be Director of Action.

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

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Robert O. Blake, of California, and sundry other persons, for appointment and promotion in the Foreign and Diplomatic Service.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. PEARSON:

S. 1356. A bill for the relief of Linda She Li. Referred to the Committee on the Judiciary.

By Mr. MANSFIELD:

S. 1357. A bill for the relief of Mary Red Head. Referred to the Committee on the Judiciary.

By Mr. MANSFIELD (for himself and Mr. METCALF):

S. 1358. A bill to authorize the Secretary of the Interior to construct, operate, and maintain the Marias-Milk unit of the Pick-Sloan Missouri Basin program in Montana, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. McCLELLAN:

S. 1359. A bill to amend section 9 of title 17 of the United States Code. Referred to the Committee on the Judiciary.

S. 1360. A bill to amend title 35 and title 17 of the United States Code to provide a remedy for postal interruptions in patent, trademark, and copyright cases. Referred to the Committee on the Judiciary.

S. 1361. A bill for the general revision of the copyright law, title 17 of the United States Code, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. McCLELLAN (for himself and Mr. SCOTT of Pennsylvania):

S. 1362. A bill to amend the act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. HUMPHREY:

S. 1363. A bill to transfer the functions of the Passport Office to a new agency of the Department of State to be known as the U.S. Passport Service, to establish a Passport Service Fund to finance the operations of the U.S. Passport Service, and for other purposes. Referred to the Committee on Foreign Relations.

S. 1364. A bill to amend the Elementary and Secondary Education Act of 1965 to provide a program of grants to States for the development of child abuse and neglect prevention programs in the areas of treatment, training, case reporting, public education, and information gathering and referral.

Referred to the Committee on Labor and Public Welfare.

By Mr. STEVENS:

S. 1365. A bill to amend the act prohibiting certain fishing in U.S. waters in order to revise the penalty for violating the provisions of such act. Referred to the Committee on Commerce.

S. 1366. A bill to amend the Fishermen's Protective Act of 1967 in order to provide certain protection for U.S. fishermen and fish resources. Referred to the Committee on Commerce.

By Mr. CHURCH:

S. 1367. A bill relating to the income tax treatment of charitable contributions of copyrights, artistic compositions, or a collection of papers. Referred to the Committee on Finance.

By Mr. CASE:

S. 1368. A bill to prohibit the use for public works projects of any lands designated for use for parks, for recreational purposes, or for the preservation of its natural values unless such lands are replaced by lands of like kind. Referred to the Committee on Interior and Insular Affairs.

By Mr. JAVITS (for himself and Mr. BUCKLEY):

S. 1369. A bill to reestablish and extend the program whereby payments in lieu of taxes may be made with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments. Referred to the Committee on Government Operations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCLELLAN:

S. 1359. A bill to amend section 9 of title 17 of the United States Code. Referred to the Committee on the Judiciary.

AMENDMENT TO COPYRIGHT ACT

Mr. McCLELLAN. Mr. President, as chairman of the Subcommittee on Patents, Trademarks, and Copyrights I introduce, for appropriate reference, a bill to amend section 9 of title 17 of the United States Code.

On February 27, the United Nations Educational, Scientific, and Cultural Organization announced the decision of the Government of the Union of Soviet Socialist Republics to adhere to the Universal Copyright Convention. The action of the Soviet Government was initially welcomed as a long-overdue acceptance of its responsibility toward the authors and other creators of works distributed and performed in the Soviet Union. The American intellectual community applauded the Soviet decision, because it will require the Soviet Union to extend to foreign nationals the same rights enjoyed by Soviet authors, including the payment of royalties.

Unfortunately, it now appears that the Soviet Government may contemplate using its adherence the Universal Copyright Convention as a tool to tighten its control over the circulation of literature which does not meet with Communist approval. On February 21, the Supreme Soviet adopted a decree amending the Soviet copyright law in connection with that country's adherence to the Copyright Convention. According to an Associated Press dispatch from Moscow the law "could sharply restrict publication in the West of works by Russian authors considered anti-Soviet." The news reports indicate that the new Soviet law apparently is designed to permit that country to prevent publication abroad of anti-Soviet works by bringing suits for infringement of United States or other copyrights, against publishers in foreign countries who issue these works. Presumably the Soviet Union under its domestic statute would claim proprietary rights in the United States or other foreign copyrights in the works of these authors.

The Authors League of America has expressed their serious concern at these developments and requested me to sponsor the bill which I am introducing today. A major objective of the international copyright community, and our domestic legislation, must be the protection of the rights of authors. The right to decide whether his work may be published in any country belongs to the author, or his heirs, or to the publisher or other person to whom he voluntarily has chosen to assign rights in the work. To assure that this fundamental right is preserved to the author, this legislation would amend section 9 of the U.S. Copyright Act to provide that a U.S. copyright secured to citizens of foreign nations shall vest in the author of the work, his executors or administrators, or his voluntary assigns. For the purposes of U.S. copyright law any such copyright shall be deemed to remain the property of the author regardless of any law of a foreign state which proports to divest the author or other persons of the U.S. copyright in his work. My bill further provides that no action for infringement of such copyright may be maintained by any nation claiming rights in such copyright by virtue of such foreign statute.

Before this legislation is processed by the Congress it will obviously be desirable to secure clarification of the intentions of the Soviet Government. I will also be interested in receiving the comments of the Department of State concerning the fears expressed by the Authors League, and others.

I ask unanimous consent that there be printed in the RECORD several editorials and articles from the New York Times, the Miami Herald, and the Washington Post.

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

[From the New York Times, Mar. 21, 1973]

REVERSE COPYRIGHT

When the Soviet Union announced several weeks ago that it was joining the Universal Copyright Convention, two schools of thought emerged on what the action meant. Optimists saw the Moscow move as part of a broader Soviet trend toward normalization of international relations and consequent improvement in the general atmosphere among nations. Pessimists contended, however, that the move was aimed at the very reverse of normalization, that Moscow sought primarily to use the copyright law as an additional bludgeon against its dissident writers with the aim of preventing the publication abroad of manuscripts the Soviet regime considered hertical.

On the evidence available now, the gloomier view was right. The Soviet Government seems to count on using the world copyright law to turn its tight domestic censorship into effective international censorship. New Soviet legal regulations just made public pose the threat of putting, say, Aleksandr Solzhenitsyn, between two fires. If a future manuscript of his is published abroad, he can be proscuted if he accepts responsibility for its extralegal export. But, if he claims the work left the Soviet Union without his consent, Moscow may be able to proceed against foreign publishers, using the convention's provisions as a legal basis for trying to block publication.

Ironically, the preface to the Universal Copyright Convention declares that "a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding." The apparent Soviet scheme now is to pervert the Convention into an instrument to hinder such "wider dissemination." That contradiction alone should make it possible for lawyers to frustrate the apparent Soviet intent to acquire international censorship privileges.

[From the New York Times, Mar. 18, 1972]

MOSCOW AMENDS LAW ON COPYRIGHT—OUTFLOW OF DISSIDENT WRITING IS APPARENT TARGET

Moscow, March 17.—The Soviet Union has amended its copyright law in an evident attempt to curb the unauthorized outflow of dissident literature.

Legal changes associated with Moscow's impending adherence to the Universal Copyright Convention also exempt from payment of royalties the reproduction of any writings for nonprofit scientific and educational purposes.

This provision seems to clear the way for continued free translation of much scientific and technical material in both the Soviet Union and the United States, if nonprofit use can be demonstrated.

These were among the principal points that emerged this week when the Soviet authorities published the text of amendments to existing Soviet copyright legislation dating from 1961. The legislation is part of the Soviet civil code adopted in that year.

New provisions tightening official control over the use of a Soviet citizen's writings in foreign countries made it evident that the wish to halt the outflow of underground literature had been a main factor inducing the Soviet Union to join international copyright arrangements at this time.

EXPLANATION OF DECISION

The Government's intention to join the 1952 Geneva Copyright Convention was announced Feb. 27 by the United Nations Educational, Scientific and Cultural Organization and becomes effective May 27. Soviet spokesmen have officially explained their decision as in keeping with the current trend toward international relaxation of tensions.

Previously, by abstaining from membership in the Copyright Convention, the Soviet Union was able to translate foreign authors at will without assuming any obligation to pay royalties. Other countries had similar uncontrolled rights to the use of Soviet writings.

By joining the international convention, the Soviet Union undertook to extend to foreign authors the same rights enjoyed by Soviet authors, including the payment of royalties. At the same time, Moscow also would be able to enjoin foreign publishers from issuing unauthorized Soviet materials.

The new legislation curbing the outflow of literature without permission is evidently intended to prevent the publication abroad of such authors as the novelist Aleksandr I. Solzhenitsyn, whose work is deemed ideologically unacceptable in the Soviet Union.

The copyright amendments, adopted Feb. 21 by the Presidium of the Supreme Soviet, the nominal legislature, were published in the Presidium's Vedomosti, or Bulletin, dated

Feb. 28. The issue reached subscribers this week.

The new regulations appeared to open the way for prosecution of Soviet authors who knowingly bypassed official channels in sending their work abroad. If an author contends that the work found its way abroad without his consent, the Soviet Union may now be able to take action against foreign publishers under the convention in an effort to block publication.

A key provision relevant to the problem of dissident literature secures a copyright over any manuscript in the Soviet Union not only to the author and his heirs but also to any assignee, which could conceivably be a Soviet Government agency. This would have the effect of giving the Soviet authorities virtually complete control over unpublished manuscripts in this country.

Another important change in the copyright legislation is a new section covering authors' rights. It says: "The procedure by which an author, citizen of the U.S.S.R., can assign the right for the use of his work within the territory of a foreign state is established by Soviet legislation."

The detailed procedure is not defined, but would clearly involve official control over the assignment of rights to any foreign publisher.

PUBLISHERS' REACTION HERE

The American publisher of Mr. Solzhenitsyn's current best-selling novel, "August 1914," said yesterday that the reported Soviet measures might "lead or force" the author to leave the Soviet Union to have his work published abroad. And the chairman of the Association of American Publishers, Robert L. Bernstein, termed the measures "regrettable" and "depressing."

Mr. Solzhenitsyn's publisher, Roger W. Straut Jr., said in an interview, "It's historically true that when Russian policy dictates a relaxation of their posture outside the U.S.S.R., they then tighten inside, and this seems to follow that policy."

Mr. Straus is the president of Farrar, Strauss & Giroux, which has published six of Mr. Solzhenitsyn's works, including an earlier best-selling novel, "The Cancer Ward," which won the Nobel Prize for Literature.

Mr. Bernstein said he had called an emergency meeting of the association's 21-man board of directors to discuss the new measures. The meeting is to be held here Wednesday after the association confers with State Department officials, authors and civil rights groups.

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

CONCERN VOICED IN UNITED STATES AT SOVIET COPYRIGHT LAW

(By Anthony Astrachan)

NEW YORK.—A divided American publishing industry has made its first cautious response to what it calls "dismaying reports" that Soviet adherence to the Universal Copyright Convention "will be accompanied by repressive measures against Soviet authors."

The Soviets announced Feb. 27 that they would adhere to the international convention after centuries of ignoring western copyright practices under both czars and Bolsheviks. Last week they published a decree amending the domestic Soviet copyright law in connection with their adherence to the convention.

The decree makes it easier to punish dissident writers who send their works abroad. It does this by making the state the only legal channel for transmission abroad and by establishing three other provisions.

It extends copyright not only to published works but also to unpublished ones like the books of Aleksandr Solzhenitsyn, Nadezhda Mandelstam and scores of others that circulate in typed copies in the Soviet Union.

The decree also allows "compulsory purchase" by the state of a copyright from an author or his heirs. And it prevents translation for publication outside the Soviet Union without permission of the copyright holder.

In the past, samizdat (self-published) authors have contended that they did not authorize publication abroad, either because they genuinely had nothing to do with the transmission of a manuscript, or to protect themselves against state action.

If that happened under the new law, the Kremlin could theoretically sue the Western publisher of the work—though the Soviets almost never appear in a foreign court for any purpose.

Solzhenitsyn's American publisher—Roger Strauss, Jr., president of Farrar, Straus and Giroux—said he would continue to publish the Nobel prizewinner's work no matter what Soviet law might say—unless it put Solzhenitsyn's life, liberty or family in danger.

The sequel to "August 1914" is expected to be finished this year.

Other American publishers of samizdat authors took a similar line. But publishers who have made deals with Soviet state publishing houses said they would be in a real dilemma if confronted with a choice between those deals and a samizdat. They obviously leaned toward the state deals.

An emergency session of the board of directors of the Association of American Publishers Wednesday divided into two groups—one favoring a strong position and one that wanted more factual data before proceeding, according to industry sources.

After a 2½-hour meeting, they agreed unanimously on a compromise statement pledging "to take all steps which may be necessary at home or abroad to fulfill the commitments of American publishers and authors to the spirit of the Universal Copyright Convention."

Representatives of PEN and the Authors' League took part in the meeting and endorsed the statement.

The only steps that the statement specified were consultation with the State Department, members of Congress and other bodies and a request for clarification of the Soviet measures from Boris I. Stukalin. Stukalin is chairman of the U.S.S.R. state committee for publishing and headed a recent delegation of Soviet publishers to the United States.

Robert L. Bernstein, president of Random House and chairman of the publishers' association, added that the group would establish a permanent committee that would report monthly on the situation.

The publishers could, in fact, ask suspension of cultural exchanges that they had agreed on with the Soviet publishers; lobby against the exemption from the 30 per cent withholding tax on royalties that the Soviets are seeking under the U.S.-Soviet trade agreement; and lobby for an amendment to the U.S. copyright law that would prevent application of the Soviet measures here.

Their most effective measure, some observers suggested, would be to get members of Congress to do something comparable to Sen. Henry M. Jackson's proposal to deny the Soviets most-favored-nation status in trading as long as they make it difficult for Soviet Jews to emigrate to Israel.

[From the Miami Herald, Mar. 17, 1973]

LAW COULD BE BARRIER TO BOOKS—SOVIETS MODIFY COPYRIGHT PACT

MOSCOW.—A new Kremlin law could sharply restrict publication in the West of works by Russian authors considered anti-Soviet.

The law is Decree No. 138 of the Supreme Soviet, passed Feb. 21 but distributed this week in the legislative body's weekly bulletin of new legislation. It was signed by President Nikolai V. Podgorny.

The decree modifies Soviet law in connection with Moscow's announcement of Feb. 14 that it will become a party to the Universal Copyright Convention effective May 27.

The law seemed aimed at stopping publication abroad of "samizdat" works critical of the regime. Samizdat, which means self-published, circulate clandestinely in typewritten copies and many such works eventually reach the West published there.

Authors of "samizdat" have ranged from Nobel * * * to hundreds of obscure dissident Soviet citizens whose writing—evoke more political than literary interest.

The decree said the copyright pact, adopted in Geneva in 1952, will apply to "works first published on the territory of the U.S.S.R.—or, not published, but found on the territory of the U.S.S.R. in any objective form."

This seemed a clear reference to any work not officially published but circulated clandestinely.

If the manuscript were smuggled abroad and published under the name of a Soviet citizen, the secret police could presumably summon the author and confront him with the published work.

If he denied he authorized publication abroad, the Soviet Union could bring legal action against the Western publisher for violating the copyright convention. If the writer did authorize foreign publication, he could be prosecuted under Soviet law.

Solzhenitsyn, for example, has denied he authorized foreign publication of such best sellers as "The First Circle" and "Cancer Ward", both banned here. In such cases, the copyright pact would be a handy means of putting pressure on author or publisher.

The new law also specified that the Soviet Union would recognize a foreign copyright for a Soviet citizen only if the work were sent abroad "by a procedure established by legislation" of the U.S.S.R.

The new law added that this "procedure" is the only way a Soviet citizen can legally send a work abroad.

Soviet refusal to recognize a foreign copyright for a Russian author would deny him royalties earned from the book.

Boris I. Stukalin, chairman of the State Committee on Publishing, Printing and Book Distribution, said at a press conference March 9 that the "appropriate Soviet organization"—the state bank—would not transfer royalties from abroad unless the author had used official channels to send his work out of the country.

Under previous practice, an author banned here but published abroad could receive at least a cut of his foreign royalties by bank transfer. But the government charged a 13 per cent income tax plus a 35 per cent surcharge for converting the hard currency into ruble certificates.

By Mr. McCLELLAN:

S. 1360. A bill to amend title 35 and title 17 of the United States Code to provide a remedy for postal interruptions in patent, trademark, and copyright cases. Referred to the Committee on the Judiciary.

Mr. McCLELLAN, Mr. President, as chairman of the Subcommittee on Patents, Trademarks, and Copyrights, I introduce, for appropriate reference, a bill to amend title 35 and title 17 of the United States Code to provide a remedy for postal interruptions in patent, trademark, and copyright cases.

During the 92d Congress, at the request of the Department of Commerce, I introduced S. 4028 to grant relief from delays in the postal service in patent and trademark cases. The patent and trademark laws of the United States contain

certain time periods, during which specified actions must be taken by patent and trademark applicants and owners or by their attorneys or agents. Failure to take a required action within the statutory time period generally results in a forfeiture of some or all of the patent or trademark rights involved. There has occurred in the past, and may well occur in the future, disruptions of postal service because of labor disputes or exceptional circumstances, such as floods, riots, and so forth. The purpose of this legislation is to permit the Commissioner of Patents to provide relief from injury sustained by patent and trademark applicants when there is an interruption in regular postal service.

Subsequent to the introduction of S. 4028, I was requested to include in the bill appropriate provisions covering disruption or suspension of postal or other services in copyright cases. Such language has been added to the bill which I am introducing today. This additional language has been approved by the Copyright Office.

Favorable action on this bill would relieve the Congress and the executive branch of the time-consuming process of considering the merits of individual private bills for relief in the event of an interruption of postal service.

By Mr. McCLELLAN:

S. 1361. A bill for the general revision of the copyright law, title 17 of the United States Code, and for other purposes. Referred to the Committee on the Judiciary.

Mr. McCLELLAN. Mr. President, as chairman of the Subcommittee on Patents, Trademarks and Copyrights, I introduce, for appropriate reference, a bill for the general revision of the copyright law, title 17 of the United States Code, and for other purposes. Title I of this legislation provides for the general revision of the copyright law, title II establishes the National Commission on New Technological Uses of Copyrighted Works, and title III provides for the protection of ornamental designs of useful articles.

Other than for necessary technical amendments relating to the effective dates of various provisions, the bill is identical to S. 644 of the 92d Congress. That bill, other than for minor amendments, is identical to the bill reported by the subcommittee in December 1969.

As is by now well known, any significant progress on general revision of the copyright law has been effectively precluded in recent years by the multifaceted cable television issue. A major section of the revision bill relates to the resolution of the copyright status of the cable television industry. Progress on the revision bill had to await the adoption by the Federal Communications Commission of a new cable television regulatory scheme. These rules became effective during 1972.

Section 111 of the legislation approved by the subcommittee contains a comprehensive resolution of the CATV question, including both regulatory and copyright matters. The subcommittee adopted such a comprehensive provision in response to the recommendations of the then Chairman of the Federal Communications Commission. When Mr. Dean Burch became Chairman of the FCC he consulted the subcommittee concerning the development of coordinated procedures by the Congress and the Commission to facilitate a resolution of the CATV issue, and to permit the orderly development of the cable industry. Under the effective leadership of Chairman Burch substantial progress has been achieved in creating a constructive cable television policy for this Nation. The regulations adopted by the Commission are generally consistent with the recommendations made by the subcommittee in section 111 of the copyright bill. It is therefore anticipated that when the subcommittee processes the revision bill, it will eliminate those provisions of a regulatory nature that were the subject of the recent FCC rulemaking proceedings.

The subcommittee determined that the public interest justified, and practical realities required, the granting in certain circumstances of a compulsory license to perform copyrighted works. The subcommittee approved such licenses as part of the cable television, mechanical royalty, jukebox royalty, and performance royalty sections of the revision bill. With respect to each of those issues the subcommittee decided that the Congress would determine the initial royalty rate, and that a Copyright Royalty Tribunal would be established for the purpose of making periodic review and adjustment of the rates.

It has been proposed that special treatment should be accorded the cable television royalty issue. The principal justification for this position is a private agreement developed by Dr. Clay T. Whitehead, Director of the Office of Telecommunications Policy. The Whitehead agreement has been generally interpretated as seeking to eliminate the Congress from any role in determining cable television royalty rates. Even though public law places copyright affairs exclusively in the legislative branch, neither the Copyright Office of the Library of Congress, nor the House or Senate subcommittees having jurisdiction in copyright matters, were represented at Dr. Whitehead's meetings.

Another major issue in the revision legislation that requires brief comment at the present time is the photocopying of copyrighted works. There has recently been an organized letter-writing campaign by presidents of universities and others in support of a substitute photocopying section of the revision bill. Certain of these letters reflect an incomplete and somewhat distorted understanding of the decisions taken by the subcommittee. For example, Dr. Jerome B. Wiesner, president of the Massachusetts Institute of Technology, has written me that the subcommittee position:

> Seems likely to result in the imposition of a fee or a delay whenever a student or scholar wants to copy part of a copyrighted work in order to facilitate his study or research.

This is grossly inaccurate. The bill approved by the subcommittee, together with the draft of the report on that legislation, has made adequate and reasonable provision for the needs of research and scholarship.

Dr. Wiesner says the payment of any copyright fees would "constitute a regressive tax on education and research to give a windfall to publishers." Authors, publishers, librarians, and educators share many common goals. It is still to be hoped that a satisfactory accommodation can be achieved, and that the discussions currently in progress will result in the presentation of recommendations to the subcommittee with the endorsement of both the copyright and academic communities.

Prior to the suspension of action on the revision bill, the subcommittee conducted 17 days of hearings during which there was testimony by 149 witnesses. Subsequent to the hearings a number of public and staff meetings have been held on issues involved in this legislation. The subcommittee has also requested on a number of occasions supplementary written statements on specified issues.

The subcommittee has now received several requests to conduct additional hearings because of events which have transpired since the original action by the subcommittee on this legislation. My personal view is that additional hearings are unlikely to produce any significant new information. There is also the possibility that public hearings would tend to polarize positions on some issues where efforts to secure accommodations are still in progress. Despite these reservations the subcommittee will reopen the hearings to hear supplementary presentations on selected issues where there have been significant developments since the previous action of the subcommittee. The subcommittee will allocate equal time on these issues to the principal spokesmen for the various points of view. These issues include:

First. Library photocopying—sections 107 and 108 of the bill.

Second. The proposed amendment of the ad hoc committee—of educational organizations and institutions—on copyright law revision, relating to a general exemption for education purposes.

Third. The cable television royalty schedule.

Fourth. The application of the compulsory license provisions of the cable television section 111 to the carriage of sporting events by cable television systems.

Fifth. The proposed exemption for the making of copies of tapes of religious broadcasts—section 112(c) of the bill.

Since efforts to achieve a resolution of certain of these issues are continuing, it would not be feasible to conduct hearings at the present time. I shall follow the progress of the current discussions, and review the situation at a later date. When it would serve a constructive purpose, I shall schedule the hearings as soon as my other legislative responsibilities permit.

By Mr. McCLELLAN (for himself and Mr. SCOTT of Pennsylvania):

S. 1362. A bill to amend the act to provide for the registration and protection of trademarks used in commerce, to carry

out the provisions of certain international conventions, and for other purposes. Referred to the Committee on the Judiciary.

Mr. McCLELLAN. Mr. President, as chairman of the Subcommittee on Patents, Trademarks, and Copyrights, I introduce, for appropriate reference, on behalf of myself and Mr. SCOTT of Pennsylvania, a bill to amend the act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes. This legislation is known as the proposed Unfair Competition Act of 1973.

The bill would establish a uniform body of Federal unfair competition law by creating a Federal statutory tort of unfair competition affecting interstate commerce, and by establishing Federal jurisdiction over such tort claims within the framework of the Trademark Act of 1964. The crux of the bill proposes a new section 43(a) of the Trademark Act including in three subsections those torts generally acknowledged to give rise to the major part of the law of unfair competition. In a fourth subsection, provision is made for the Federal courts to deal with other acts which constitute unfair competition because of misrepresentation or misappropriation of goods or services.

The bill provides that all of the remedies set forth in the Trademark Act for infringement of trademarks would be available in respect to acts of unfair competition. However, the bill would not affect remedies which are otherwise available or preempt the jurisdiction of any State in cases of unfair competition.

Most of the provisions in the bill which Senator SCOTT and I are introducing today are identical to S. 647 of the 92d Congress. The bill, however, does incorporate several amendments which have been suggested by the National Coordinating Committee which has been established to seek the passage of this legislation. The purposes of the principal amendments are:

First. To clarify the intent of the legislation to establish a Federal cause of action for unfair competition in meritorious product simulation cases of a type as to which relief has been barred under State law by virtue of certain decisions of the U.S. Supreme Court.

Second. To clarify that the misrepresentation or disparagement of another person's goods, and so forth, which is proscribed by this bill relates to "a false or misleading representation or omission of material information."

Third. To clarify that the legislation is not intended to broaden the presently existing common law in respect to the protection of trade secrets or confidential information.

Fourth. To clarify the discretionary authority of Federal courts to require proof of intent to injure, and so forth, in awarding monetary relief "subject to the principles of equity" under section 35.

By Mr. HUMPHREY:

S. 1363. A bill to transfer the functions of the Passport Office to a new agency of the Department of State to be known as the U.S. Passport Service, to establish a Passport Service Fund to finance the operations of the U.S. Passport Service, and for other purposes. Referred to the Committee on Foreign Relations.

A U.S. PASSPORT SERVICE WITHIN THE STATE DEPARTMENT

Mr. HUMPHREY. Mr. President, I introduce legislation to solve a problem of growing proportions. I am referring to the problem of providing quick, economical, and efficient passport service to the growing number of American travelers.

Americans enjoy a higher standard of living than any other people in the world. This has enabled many of our citizens to take advantage of the opportunity to travel. Moreover, special travel packages, chartered tours, and student fares are making foreign travel available to more people than ever before. Approximately 7 million Americans, by one means or another, traveled outside the United States last year.

Mr. President, the Passport Office is not equipped to handle the increased demand for passports. Every spring the Passport Office faces a huge influx of applications for passports. This service along with the many other significant and important work functions, studies and projects are directly related to the processing and issuance of passports make efficient service difficult, if not impossible.

In fiscal year 1972 the Passport Office issued a total of over 2½ million passports. This volume of passports represents an increase in workload of 12.7 percent over the passports issued the previous year. Personnel utilization increased by 12 percent in fiscal year 1972 from 702 man-years utilized in fiscal year 1971 to 786 man-years utilized in fiscal year 1972.

There have been great increases during the past year in services requiring many man-hours to process. For example, the man-hours required to service locator and status cards in the files rose by 15 percent.

To some of these increasing demands the State Department has expanded a program under which post offices across the country will accept passport applications from Americans intending to travel abroad. At this time over 600 post offices throughout the United States are now processing passport applications.

The State Department began this program in 1970 despite the problems the Postal Service was experiencing. It seems increasingly clear that the Postal Service is unable to provide quick and efficient mail service let alone passport service. The Senate Post Office and Civil Service Committee is now conducting an investigation of the poor quality of postal service.

The State Department has offered other stop-gap solutions to passport problems. Night shifts were established in Boston, Philadelphia, and San Francisco passport agencies. A further solution to the problem offered by the State Department was to propose that in the future passports be issued to persons applying all over the country through three centralized plants located in low-rent areas on a regional basis.

Both of these plans proved to be totally unrealistic. Instead of bringing passport services closer to the people, the State Department solutions worked in the opposite direction. For example, to make their night shift idea work the State Department ordered the Passport Office to shift applications willy-nilly from one agency to another and many times to a third. Such a procedure was bound to produce inordinate delays in the issuance of passports.

Mr. President, it is time that the Congress stepped into this mess and offered a long range, practical solution to this problem. Back in 1956 when I was on the Government Operations Committee, I had a great deal to do with modernizing and updating the operation of the Passport Office. Modern machines and techniques were introduced to provide the kind of service that the American citizen wanted and deserved. It is obvious that this kind of service is no longer possible under the present system.

The bill I am introducing today will, I believe, restore fast and efficient service to the Passport Office. It is not too different from the bill I offered in 1956. The most important provisions are similar to those found in S. 3340 which I introduced then.

Section 1 of the bill creates within the Department of State a "U.S. Passport Service," which would be comparable to the Immigration and Naturalization Service of the Department of Justice. It would be responsible to the Secretary of State. This status is commensurate with the growing importance of the service it performs to the American public.

Another section gives the Director of the Passport Service the authority to establish passport agencies or passport service offices wherever the needs of the public require and whenever they will be self-sustaining. By self-sustaining I mean that the revenue they bring in, in fees, will equal or exceed the cost of their operation. This provides a reasonable check on the proliferation of passport agencies which some people in the State Department and elsewhere seem to fear.

The most important provision of this new bill is almost identical to a similar provision in S. 3340. It would establish for the Passport Service what is called a revolving fund. In simple terms this means that the Service would be permitted to use a portion of the revenue it returns to the Treasury each year to modernize its methods, to establish the new agencies, and generally to provide more and better service to the American public.

This provision would not permit unbridled spending by the Service. The bill provides for elaborate accounting procedures, annual audits by GAO with reports furnished to the President and Congress, and the annual submission of a business-type budget. These procedures offer a very firm system of checks and balances which will provide ample opportunities for scrutiny by both the executive branches of the Government of every penny that is spent by the Service.

And finally, the bill I propose today would increase the execution and passport fees presently set by law to $10 and $15, respectively. It has long been my belief that not only should this service of-

fered by the Federal Government be self-sustaining, but also that where local and State governments assist the Federal Government in its endeavors they should be fully compensated for their services.

Approximately half of the passport applications filed annually in the United States are executed before Federal and State clerks of court.

Mr. President, a Passport Office designed to meet the demands of 1956 will not meet the demands of 1976. It is estimated that 4 million passports will be issued in 1976. In order to meet this demand we need legislation which offers reasonable yet significant changes in the Passport Office. The bill I have presented today will provide American citizens with the kind of convenient, efficient, and economical service for which they pay, and to which they are entitled.

By Mr. HUMPHREY:

S. 1364. A bill to amend the Elementary and Secondary Education Act of 1965 to provide a program of grants to States for the development of child abuse and neglect prevention programs in the areas of treatment, training, case reporting, public education, and information gathering and referral. Referred to the Committee on Labor and Public Welfare.

NATIONAL CHILD ABUSE PREVENTION ACT OF 1973

Mr. HUMPHREY. Mr. President, I am today introducing the National Child Abuse Prevention Act of 1973. This legislation broadens and strengthens the efforts of Federal, State, and local governments to develop child abuse, child neglect treatment and prevention programs.

Mr. President, it may come as a surprise and shock to many of us to realize that the highest number of deaths among children are child abuse related. Some authorities place the number of child abuse related deaths to around 700 a year, and about 50,000 to 200,000 children suffer serious physical abuse each year.

In a recent letter to me, Jule M. Sugarman, the Administrator of the New York Cities Human Resources Administration said:

> In our view the problems of child maltreatment in New York City have reached extraordinary proportions. Through October, nine thousand children have been reported as allegedly neglected and abused, with the 1972 annual total likely to reach ten or eleven thousand. Reported instances of suspected maltreatment resulting in child fatalities have averaged one per week with the actual incidence perhaps as high as 125 for New York City alone.

It is for this reason that I have joined with Congressman MARIO BIAGGI from New York in sponsoring this new legislation.

The National Child Abuse Prevention Act of 1973 would amend the Elementary and Secondary Education Act by adding a separate new title on child abuse.

This title provides for an authorization of $60 million of grants over a period of 3 years. Any State wishing to qualify for a portion of these funds must submit to the Secretary of HEW a comprehensive plan for child abuse treatment and prevention which includes:

Adequate reporting laws—either on the books or pending in the legislature—which meet the standards specified in this bill;

Programs designed to train professionals in the appropriate techniques of child abuse treatment and prevention;

Public education projects which would serve to inform citizens of the high incidence of child abuse and neglect, as well as indicating the procedures for reporting suspected cases of maltreatment to the appropriate social service and law enforcement officials;

The establishment of a central registry to coordinate on a statewide level all information relating to convictions and other court actions within that jurisdiction.

The bill also creates a National Child Abuse Data Bank within HEW. This central agency will receive and evaluate confidential reports from every State in the Nation, with a view toward determining the actual incidence of abuse and neglect throughout the country and those trends in treatment and prevention which could serve as a rational basis for developing program standards and criteria in the future.

Mr. President, my colleague from Minnesota, Senator MONDALE, has just introduced a comprehensive child abuse bill. I joined in cosponsorship of that legislation. I would hope that when my colleague holds hearings on his legislation that he would also consider the legislation I am sponsoring today.

Mr. President, I ask unanimous consent that two articles on child abuse, written by Dr. Vincent Fontana, an authority on child abuse prevention and treatment, and the text of the National Child Abuse Prevention Act of 1973, be printed in the RECORD.

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

CHILD ABUSE—A SOCIAL DISEASE

(By Vincent J. Fontana, M.D.)

It has been estimated that at least 700 children are killed every year in this country by their parents or surrogates. Last year the New York Central Registry reported 54 deaths, attributable to suspected parental maltreatment. The Medical Examiner's office reported 48 child homicides of which 50% did not appear in the Registry. Furthermore, 150 children's deaths were attributed to a party other than the parent, bringing the total number of deaths due to probable abuse up to approximately 200 in New York City, alone. And this figure is most likely a good reflection of true incidence.

Thousands of other children are permanently injured, both physically and mentally, in New York City in 1971 there was more than a 500% increase in reported cases of abuse and neglect within the period 1966–1970. The New York Times, February 14, 1972 reported that this year's cases will be close to 7,000, an increase in 3,000 over 1971.

While there is reason to believe that the increase in part may be a reflection of article 10 of the Family Court Act which broadened the definition of those officials mandated to report abuse, the very high estimate is certainly cause for deep concern—especially since a large number of cases go unreported at all. In a recent survey in Rochester, for example, it was estimated that 10% of all traumas in children between infancy and 14 appearing in the emergency room of Rochester General Hospital were due to abuse, another 10% to neglect. That is 20% of all traumas admitted to the emergency room fell into the category of maltreated children.

Violence is a social disease, of epidemic and endemic proportions, which is becoming more entrenched in our population. The future of our society and the entire fabric of our civilization rests on what can be done to avoid violence. Child abuse, a symptom of the violence running rampant in our communities results in social disorganization and disintegration. This generation's battered children, if they survive, will be the next generation's battering parents. Recent published reports suggest that hard core criminals and murderers in our society were formerly battered and abused as children. Hence, child abuse is not only a time limited phenomenon, to be seen as an age-specific social problem, but it is a dynamic phenomenon, both the cause and effect of a cyclical pattern of violence, indirectly reflected in all other statistics on crime.

The list of known injuries suffered by children at the hands of one or both parents has included parents throwing, shooting, stabbing, burning, drowning, suffocating, biting, sexually violating, and deliberately disfiguring their own infants and children. By far, the greater number of injuries resulted from beatings with various kinds of implements and instruments. In addition to bare fists, the more common instruments here included straps, electric cords, TV aerials, ropes, rubber hoses, sticks, spoons, pool cues, bottles, baseball bats, and chair legs. Some children have been strangled or suffocated with pillows held over their mouths, or plastic bags thrown over their heads. A number have drowned in bathtubs.

This disease of child abuse and neglect if not properly managed, leads to critical consequences. One out of every 2 battered children dies after being returned to his parents. Most authorities have agreed that the mortality rate of such children released after treatment is as high as 50%. If the case is not suspected and reported and if the community follow-up is not initiated or if the child is returned home, recurrent injuries and admissions to hospitals are frequently encountered, the child often arriving dead in the emergency room. In addition, a large percentage of children became lame, mentally retarded, blind, or show other evidences of permanent physical damage.

Of the 10,920 murders in this country in 1966, 1 in every 22 involved a child killed by his own parents. Dr. Resnick of Cleveland, Ohio, told the American Psychiatric Association that his investigation of child murderers, which included 88 mothers and 43 fathers, indicated that the killing of children could have been motivated by an altruistic crime in order to relieve the victim of suffering by an acutely psychotic parent under the influence of drugs. Parents also were noted to have unwanted children with extramarital difficulties and financial pressures and a spouse revenge attitude in abusing, neglecting, and often killing the unwanted child was also present.

Strong considerations should be given to the thesis that treating the syndrome of the battered child may be a means of preventing, not only possible permanent physical injury, death of the child, and psychological damage, but may also be a means of breaking the "violence breeds violence" cycle. The most important aspect of this entire disease and a fact that must be faced up to is that these children that have been abused and neglected and who survive physically will have emotional and psychological crippling which is passed on to succeeding generations with a sense of rejection and violence.

In a recent publication, Richard H. Hanson, a lawyer, wrote in the American Bar

Association Journal: "So much has been written about the 'battered child syndrome', that an observer might conclude that either nothing is being done about it or that everything that can be done has been done. The law in this area is still in its genesis regardless of the volume of printed words on the subject." He emphasizes: "Doctors, Social Workers, and Lawyers can take justifiable pride in the passage of child abuse laws in every state of the union, but the difficulties that remain in terms of education for diagnosis, more effective reporting and investigation, follow-up checks on the child, and family therapy cannot be minimized. Whether we get much further depends upon pursuing the intradisciplinary approach with ingenuity and persistence."

Paulsen in a study of the legal protections against child abuse expressed concern with the reporting laws: "Reporting is of course not enough. After the report is made, something has to happen. A multi-disciplinary network of protection needs to be developed in each community to implement the good intentions of the law. The legislatures which require reporting but do not provide the means for further protective action delude themselves and neglect children." Paulsen continued: "No law can be better than its implementation and its implementation can be no better than the resources permit." We feel that this is an important statement relating directly to the core of the problem of child abuse legislation in this country.

Certainly in the last decade, the most pressing problem of child abuse has been recognized by society by the passage of these child abuse laws in every state of the United States. However, a reluctance on the part of the physician, traditional yielding to parental authority by the courts, over-lapping of investigation by social service agencies, inadequate training of social workers and allied personnel in the field of child abuse, and very poor communication between the various disciplines responsible for protecting the abused child has resulted in the lack of protection for the abused and neglected child and has given an opportunity to the battering parents to continue these vicious actions.

Only through cooperative planning between the various agencies that are responsible for child protection can the child be properly cared for and the parents rehabilitated. These decisions must be made, not only to protect the child but also to help the parents. These decisions should be made with a cooperate effort on the part of the physician, social agencies, and the courts of the community. Protection of the child, the protection of parental rights should be the ultimate aim of all of these various disciplines. The physicians, the hospital administrators, social workers, and legal advisors should all have specific guidelines to direct them in delineating responsibility in the management of child abuse and neglect cases. These decisions are most important and cannot be left to personal feelings and bias of either physician, social worker, or judge. All humans are victims of making errors when encountering difficult decisions which in this grave disease may be responsible for the future welfare of a child who is injured again and oftentimes killed. The future of the abused child, in turn, is dependent on the education and enlightment of all people concerned with child care, upholding the laws of the various states, and finding means of reporting that will make protection of the child and subsequent investigations of child abuse more realistic and more efficient. Further progress can only be made in the prevention of this disease by proper interdisciplinary, cooperative educational programs, delineating responsibilities of the specific disciplines involved and a realistic follow-up of the cases with the subsequent determination of the effectiveness of a program by ultimate analysis of conclusions and decisions.

Community and personal involvement by all people will bring us closer to eradicating this social disease. The New York Child Abuse Law mandates that Physicians, Surgeons, Dentists, Osteopaths, Podiatrists, Optometrists, Chiropractors, Residents, Interns, Registered Nurses, Hospital Personnel, School Officials, Social Service Personnel, Medical Examiners, Coroners, and Christian Science Practitioners report all suspected cases of child abuse and neglect.

I would like to conclude this with a statement in a recent commentary in the medical journal, Pediatrics—"The death of a child may be a biologic event but pediatricians know better than most men that its etiology, prevention and treatment often fit more easily into a conceptual framework based on human behavior, environment, or society. It would seem, therefore, a single child's death, whether by public or private neglect, or by a fire or an air raid, in London or Vietnam, is always a finite biological event whose social significance must concern the pediatrician. Methods to prevent or treat the underlying social pathology impinge upon moral and ethical value systems in the power structures of human societies."

THE MALTREATMENT SYNDROME IN CHILDREN

(By Vincent J. Fontana, M.D.)

It is difficult to accept the fact that in our society today inhuman cruelty to children appears to be rapidly increasing and that the perpetrators of these crimes are, for the most part, not strangers but the parents themselves.

Only in the past decade has there been an apparent awareness of "battered" children. Kempe, in his report in 1962, gave results of a nationwide survey of hospitals and law enforcement agencies indicating a high incidence of battered children in a 1-year period. A total of 749 children were reported as being maltreated; of this number 78 died and 14 suffered permanent brain damage. In New York City alone in 1969, a total of 2,169 suspected child abuse cases were reported to the State Department of Social Services in New York City: 120% increase over the 1968 total of 987. The true incidence of this disease is unknown since only a fraction of the total number of neglected and abused children are recognized or come for medical attention.

The term "battered child syndrome" has served its purpose in the identification of a child who has been excessively abused and seriously battered. Unfortunately, it does not fully describe the true nature of this pediatric life-threatening condition. An all encompassing term that could be more appropriately applied is that of the "maltreatment syndrome in children." A maltreated child often presents with no obvious signs of being battered but with multiple minor physical evidences of emotional, and at times, nutritional deprivation, neglect, and abuse. In these cases, the diagnostic ability of the physician and other paramedical personnel can prevent the more severe injuries of inflicted trauma that are the significant causes of childhood deaths.

The maltreated child is often taken to the hospital or private physician with a history of "failure to thrive," malnutrition, poor skin hygiene, irritability, a repressed personality, and other signs of obvious neglect. The more severely abused children have been seen in the emergency rooms of hospitals with external evidences of body trauma, bruises, abrasions, cuts, lacerations, burns, soft tissue swellings, and hematomas. Inability to move certain extremities because of dislocations and bone fractures associated with neurologic signs of intracranial damage are additional signs of inflicted trauma. Abdominal signs and symptoms may also be present. Signs and symptoms pointing to the maltreatment syndrome of children, therefore, range from the simple undernourished infant with poor skin hygiene, irritability (often reported as "failure to thrive") to the "battered child"—the last phase of the maltreatment spectrum.

Diagnosis of the maltreatment syndrome is dependent on a precise history, physical examination, x-rays of long bones and skull, and social service investigation. The history related by the parents is often at variance with the clinical picture and physical findings noted on examination of the child. Physical examination, x-rays of long bones and skull, and high index of suspicion on the part of the physician will assist him in his evaluation and differential diagnosis.

Maltreatment of children by parental abuse or neglect may occur at any age with an increase of incidence in children under 3 years of age. One parent, more often the mother, is the active batterer and the other parent passively accepts the battering. The average age of the mother who inflicts the abuse on her children has been reported to be about 26 years, the average age of the father is 30 years. The battered child is usually the victim of emotionally crippled parents. The battering parent appears to react to his own child as a result of past personal experiences of loneliness, lack of protection, unwantedness, and lack of love. Some of these mothers have been raised by several foster parents during their own childhood. Divorce, alcoholism, unemployment, financial distress, perversions, and drug addiction play leading roles as "triggers" causing the potentially abusing parent to inflict abuse on his or her own children. The problem of child abuse does not seem to be limited to any particular economic, social, or intellectual level, race, or religion.

This disease, if not properly managed, leads to critical consequences. It is estimated that 1 out of every 2 "battered" children dies after being returned to his parents. Many of these battered children, if they survive and approach adolescence, begin to show signs of psychologic and emotional disturbances reported as irreversible in most cases. Karl Menninger believed that every criminal was an unloved and maltreated child. There has been expressed concern that the probable future tendency of abused children is to become the murderers and perpetrators of crimes and violence in our society.

Efforts have been made throughout the country to protect the abused or battered child by the enactment of child abuse laws in every state of the nation. Fundamentally these child abuse laws are only the first step in the protection of the abused and neglected child. It is what happens after the reporting that is of utmost importance. A multidisciplinary network of protection needs to be developed in each community to implement the good intention of these child abuse laws. The physician's duty is not only to report the cases of child abuse but also to initiate steps to prevent further maltreatment. He must become intimately involved in the social and legal actions taken to protect the child and assist, if necessary, in the treatment of the parents.

PHYSICIAN'S INDEX OF SUSPICION

History

Parents often relate a story that is at variance with clinical findings.

Multiple visits to various hospitals.

Familial discord or financial stress.

Reluctance of parents to give information.

Physical examination

Signs of general neglect, poor skin hygiene, malnutrition, withdrawal, irritability, repressed personality.

Bruises, abrasions, soft tissue swellings, hematomas, old-healed lesions.

Evidences of dislocation or fractures of the extremities.

Radiologic manifestations

Subperiosteal hematomas
Epiphyseal separations
Periosteal shearing
Metaphyseal fragmentation
Previously healed periosteal reactions
"Squaring" of the metaphysis

Differential diagnosis

Scurvy and rickets.
Infantile cortical hyperostosis.
Syphilis of infancy.
Osteogenesis imperfecta.
Accidental trauma.

PREVENTIVE MEASURES

Medical

Awareness of the problem and the diagnostic criteria.

Consider physical abuse in differential diagnosis of suspected cases.

Report suspected cases to child protective agencies or law enforcement bureaus or both.

Medical education of the graduate, postgraduate, and practicing physician.

Fulfillment of the physician's medical, moral, and legal responsibilities in the management of maltreated children.

Social

Recognition of the problem by society.

Community cooperation for better child protection.

Support of child protective agencies:

Sufficient funds.

Administrative structure with authority.

Persistent and precise complete social service investigation in suspected cases of child abuse.

Family life, education, and rehabilitation of parental delinquents.

Cooperative efforts of all social agencies in combatting the problem of maltreatment in children.

Legal

Protection of parents by the courts when presented with invalid evidences.

Protection of child by laws making it mandatory for a physician to report cases of maltreatment in children.

Protection of the physician by legislation which would prevent possible damage suits by the parties involved in any court action.

S. 1364

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Elementary and Secondary Education Act of 1965 is amended by adding at the conclusion thereof a new title, to be referred to as the "National Child Abuse Prevention Act of 1973":

"TITLE X—CHILD ABUSE

"SEC. 1001. The Secretary of Health, Education, and Welfare (hereinafter referred to as the 'Secretary') is authorized to make grants to designated State agencies for the purpose of assisting the States and their political subdivisions in developing and carrying out child abuse and neglect treatment and prevention programs as provided in this title.

"SEC. 1002. For purposes of this Title—

"(1) the term 'State' means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam; and

"(2) the term 'designated State agency' means an agency or instrumentality of a State which has been designated by the chief executive of such State as responsible for carrying out this Title in such State, and which has the legal and administrative powers necessary to develop, submit, and carry out (itself or through arrangements with other public or private agencies and instrumentalities) a State child abuse prevention plan: and

"(3) the term 'child abuse' has such meaning as may be given it by or under applicable State or local laws; except that in any case it shall include the physical or mental injury, severe abuse, or maltreatment or a child under the age of eighteen by a person who is responsible for the child's care and protection or who is a member of the child's household, occurring under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary.

"SEC. 1003. (a) There are authorized to be appropriated such sums, not exceeding $60,000,000 in the aggregate, as may be necessary to carry out this Act. There are authorized to be appropriated $20,000,000 for the fiscal year beginning July 1, 1973 and $20,000,000 for each of the two succeeding fiscal years.

"(b) Sums made available under subsection (a) shall be used by the Secretary for making grants to designated State agencies which have submitted, and had approved by the Secretary, State child abuse prevention plans fulfilling the conditions of section 1004.

"(c) The Secretary may allocate the sums made available under subsection (a) among the several States on the basis of their respective need for assistance in preventing and otherwise dealing with child abuse and their respective ability to utilize such assistance effectively.

"SEC. 1004. In order for the designated State agency of a State to qualify for assistance under this Title, such State must have in effect a child abuse prevention plan which embodies a program for effectively treating and preventing child abuse and neglect in the State. Such child abuse and neglect treatment and prevention plan shall not be limited to the following criteria and standards but will be required to:

"(1) demonstrate (A) that there are in effect throughout the State adequate State or local child abuse laws and related laws providing for the care and welfare of children, or that the State has initiated and is carrying out a legislative program designed to place adequate child abuse laws and related laws in effect throughout the State, and (B) that such laws are being or will be effectively enforced:

"(2) provide (under the child abuse laws referred to in paragraph (1) or otherwise) for the reporting of instances of child abuse, and for effectively dealing therewith through appropriate subsequent action and proceedings, in a manner complying with all of the conditions and requirements of section 1005;

"(3) demonstrate that there are in effect throughout the State, in connection with the enforcement of the laws referred to in paragraph (1) and the conduct of the activities described in paragraph (2), such administrative procedures, such personnel trained in child abuse and neglect treatment or prevention, such training procedures, such institutional and other facilities (public and private), such provisions for obtaining any required State, local and private funds, and such related programs and services as may be necessary or appropriate to assure that the State and its political subdivisions (through the program embodied in the plan and otherwise, with Federal funds made available under this Title) will be able to deal effectively with (and will in fact deal effectively with) child abuse and neglect in the State;

"(4) provide that the designated State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

"(5) provide for dissemination of information to the general public with respect to the problems of child abuse and neglect, and the facilities and methods available to combat child abuse and neglect; and

"(6) contain such other provisions as the Secretary may require to insure that the plan and the program embodied therein will to the maximum extent feasible achieve the objective of preventing or eliminating child abuse.

"SEC. 1005. (a)(1) As a condition of the approval of any State child abuse and neglect treatment and prevention plan, such plan shall provide for and require the reporting of cases of child abuse or neglect occurring in the State, with appropriate proceedings and other activities to deal with cases of child abuse or neglect so reported in the manner specified in this section.

"(2) In any case in which a doctor, nurse, schoolteacher, social worker, welfare worker, medical examiner, or coroner finds or has reason to suspect, on the basis of a child's physical or mental condition or on the basis of other evidence, that such child is or has been the victim of (or is threatened with) child abuse, he shall promptly submit a full report thereof to the police, social service administration, or judicial authority designated in the State plan.

"(3) Any doctor, nurse, schoolteacher, social worker, welfare worker, medical examiner, or coroner who knowingly and willfully fails to report a case of child abuse or suspected child abuse as required by subsection (a) shall be guilty of a misdemeanor.

"(4) Any doctor, nurse, schoolteacher, social worker, welfare worker, medical examiner, or coroner who in good faith submits a report under subsection (a) or participates in the making of such a report shall have immunity from any civil or criminal liability which might otherwise be incurred or imposed on account of his submitting or participating in the making of such report.

"(b)(1) If the individual making a report with respect to any child under subsection (a) determines that an emergency is involved, he may (subject to paragraph (2) hold the child in temporary custody of another person or agency, pending action based on such report, in order to protect the child's health and welfare and prevent further abuse.

"(2) Unless applicable State or local law specifically provides otherwise, no child shall be held in or transferred to temporary custody under paragraph (1) except under an order issued by a court of competent jurisdiction pursuant to a petition filed by the individual making such report. Any such order shall include a finding by the court that the person or agency in whose custody the child would be placed is competent to care for such child during whatever period is specified in the order.

"(3) Any report made under subsection (a), and any petition filed or order issued under paragraph (2) of this subsection, with respect to a child who is alleged to be the victim of child abuse, may include and apply to any other child or children living in the same household and under the same care if it is shown that such other child or children may be or become the victim of similar abuse.

"(c)(1) The police, social service administration, or judicial authority to which a report of child abuse or suspected child abuse is submitted under subsection (a) shall promptly investigate the matters involved and, if it determines that child abuse has probably occurred or is threatened, shall take the necessary steps to bring the matter before a court of competent jurisdiction for appropriate action in order to protect the child's health and welfare, and prevent further abuse of the child. The court shall have power to appoint one or more legal representatives for the child, consider in evidence the results of any medical examinations (including color photographs showing the in-

juries received), require psychiatric examinations of the parents or other persons charged with the abuse, and expedite any appeal which may be filed by the child's legal representative.

"SEC. 1006. The police, social service administration, or judicial authority to which a report of child abuse or suspected child abuse is submitted as described in section 1005(a) shall immediately refer such report to the designated State agency, which (after depositing a copy in its files in the interest of developing and maintaining a coordinated and accessible central registry for use in carrying out its child abuse and neglect treatment prevention program) shall in turn submit such report to the Secretary for use by the Social and Rehabilitation Service in the Department of Health, Education, and Welfare. The information contained in all such reports so submitted to the Secretary shall be kept strictly confidential within the Department of Health, Education, and Welfare, but summaries which cannot result in the identification of individuals with particular cases shall be prepared and published in order to inform interested persons with respect to national trends.

"SEC. 1007. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this title.

By Mr. STEVENS:

S. 1365. A bill to amend the act prohibiting certain fishing in U.S. waters in order to revise the penalty for violating the provisions of such act. Referred to the Committee on Commerce.

Mr. STEVENS. Mr. President, I am today introducing a bill which would amend subsection (b) of 16 U.S.C. 1082, the so-called Bartlett Act, to require that all fish on board any vessel apprehended fishing in American territorial waters be forfeited. Under the current law, only fish actually taken within our territorial waters need be confiscated.

The present statute does, indeed, provide a rebuttable presumption that all fish on board were in fact taken within our territorial waters. However, my bill replaces that rebuttable presumption with a conclusive presumption that they were so taken.

It is clear both from the statutory language and from the legislative history of section 1082(b) that fish can be ordered forfeited even though the vessel itself is not confiscated.

Mr. President, this bill is necessary in light of the present situation facing our coastal fishermen. Time after time, the same nations have been caught fishing well within the contiguous zone. Only last year, two Russian fishing vessels, the 362-foot *Lamut* and the 278-foot *Kolyvan* were caught fishing along with a number of other Russian fishing craft only 9.4 miles off St. Matthew Island in the Bering Sea, and well within the contiguous fishery zone. This well-publicized incident resulted in a classic sea chase which was only terminated by the threat of force. Even the presence of an armed Coast Guard boarding party on the bridge of the Soviet vessels was not sufficient to stem their flight. Such intrusions into American territorial waters and the contiguous fishery conservation zone must be dealt with harshly.

Last year when I first introduced this bill as S. 3299, I submitted a list of some 26 vessels apprehended in our contiguous fishery zone. I am not again going to burden the RECORD with this extensive list, but I refer the committee to my previous remarks. Although penalties have been increased, because of the continuing nature of the violations by these same nations, it is clear that the need for this amendment to the Bartlett Act remains.

At the same time I introduced the bill, I also included letters from U.S. attorneys from all parts of the United States detailing the value of the fish on board those vessels caught in their portion of the contiguous zone. Since that list was printed, I have received a letter from Mr. G. Kent Edwards, U.S. attorney for the district of Alaska. This is my home State and is the district in the United States in which by far the majority of the violations have occurred. His office has been charged with the prosecution of most of these offenders. Because this letter is, I believe, extremely illuminating, I would like to insert it in the CONGRESSIONAL RECORD to further explain the need for this bill.

I would like to note that S. 1365 specifically provides that the monetary value of the fish may be forfeited in lieu of the fish themselves. In order to insure that there is no question but that the forfeiture of the monetary value rather than the fish is to be at the discretion of the offending vessel's owner, this bill has been amended.

I request that the bill be printed in its entirety in the CONGRESSIONAL RECORD and followed immediately by Mr. Edwards' letter.

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

S. 1365

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 2 of the Act entitled "An Act to prohibit fishing in the territorial waters of the United States and in certain other areas by vessels other than vessels of the United States and by persons in charge of such vessels", approved May 20, 1964, as amended (16 U.S.C. 1082(b)), is amended by striking out all of such subsection following "subject to forfeiture and all fish" and inserting in lieu thereof "aboard such vessel or the monetary value thereof shall be forfeited; the election to forfeit the monetary value rather than the fish themselves shall be made by the United States Government."

U.S. ATTORNEY,
DISTRICT OF ALASKA AT ANCHORAGE,
March 13, 1972.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR TED: As near as I can determine there has been only one case in this district wherein the entire catch aboard a foreign vessel was forfeited for violation of our fishery laws. That case involved the Canadian vessel *All Star* on August 9, 1971. Although the entire catch was forfeited, due to mercury content, a large percentage of the fish had to be destroyed and the government recognized only $2,482.64 from the sale of the remainder.

Another forfeiture occurred in a case involving a violation of our International Pacific Halibut Convention regulations by the American vessel *Auk*. Enclosed is a copy of our memorandum to the Department of Justice outlining the disposition of this case.

It appears that forfeiture of cargo is normally not sought in these cases for several reasons, the primary one being the practical question of disposal. It must be remembered that normally the cargos in question consist of bottom fish for which there is little or no market in the United States. Even in those cases where the catch might be marketable, one must face the difficult problem of how to get it there. The cost of unloading and transporting it becomes not only expensive but sometimes impractical. This is particularly true when the vessels are being held in a port along the Aleutian Chain. It is true even when a portion of the cargo consists of canned fish as was the case with the Russian factory ship *Lamut*. We have found that such cans are not vacuum sealed and that there is reason to believe that the conditions under which the fish are processed and the lack of the vacuum sealing would probably prohibit marketing of the product in the United States for failure to meet FDA standards. In view of these facts, forfeiture of a catch would normally require its subsequent destruction. Yet even destruction is not an easy task since normally there is no readily available means of taking the catch out to sea for dumping. Certainly the Coast Guard is not equipped for such duty, and such services are usually not available near the area where the foreign vessels are normally moored. Consequently, disposal of the catch would be quite costly and burdensome to the government. Thus, in the past, the effort has been to try and obtain the same impact of economic loss through the government's monetary demand in settlement af its claims against the vessel, cargo and ship's master. Certainly the cases listed below are reflective of such an attempt.

You have also requested information regarding the estimated value of fish aboard each of the vessels involved in a fishery violation. A search of our files reveals that in only a few of those cases were notations made as to the estimated value of fish aboard the vessels in question. Those files containing such information reflect the following:

Vessel	Estimated cargo value	Civil and criminal penalty
Japanese Akebono Maru	$33,000	$33,000
Japanese Kaki Maru	2,000	35,000
Japanese Kiyo Maru	78,000	45,000
Russian Voldoloz	6,500	50,000
Japanese Kyusho Maru	108,000	115,000
Total	227,500	275,000

As you can expect, such estimates of cargo value are really no more than very rough guesses. According to my understanding, such information is usually not available because of the impracticality of obtaining an inventory of the cargo holds. For instance in the case of the Japanese longliner *Kyusho Maru No. 5* in November of 1971 efforts were made by the government to determine the approximate cost of inventorying the entire cargo. It appeared that such action would probably run as much as $12,000. Since the ship was moored in a Southeast port rather than at one of the remote Aleution ports, it can be assumed that such costs would be substantially higher in most cases.

None of the above is intended to indicate that this office would hesitate to push for the forfeiture of a catch or the inventorying of the holds under appropriate circumstances. We are intent in dealing firmly with such violations and believe that the results obtained during my tenure as United States Attorney are indicative of that fact. The statistics certainly reveal a steady increase in the amounts received by the government during that time with a dramatic rise having occurred in the last two cases (the $115,000 received from the Japanese and the quarter of a million recovery from the Russians).

If I can be of further assistance to you on this or any other matter, do not hesitate to contact me.

Sincerely,

G. KENT EDWARDS,
U.S. Attorney.

By Mr. STEVENS:

S. 1366. A bill to amend the Fishermen's Protective Act of 1967 in order to provide certain protection for U.S. fishermen and fish resources. Referred to the Committee on Commerce.

Mr. STEVENS. Mr. President, on December 23, 1971, President Nixon approved legislation (Public Law 92–219, 85 Stat. 786) which added section 8 to the Fishermen's Protective Act of 1967. This law prohibits the importation of fish or fish products from countries engaging in certain illegal activities.

This act, as passed, differs to a certain extent from S. 2191 as I introduced it. For example, S. 2191 required the Secretary of Commerce to make certification directly to the Secretary of the Treasury who would then be required to prohibit the importation without granting the President discretion as he saw fit.

Upon subsequent examination of the subject, the committees, both House and since, in their collective wisdom came to the conclusion that it would indeed be best for the President to have the discretion to make the final decision in this important matter of international consequence. As the hearings and deliberations on this legislation progressed, I, too, was persuaded that the President of the United States must have the discretion to act wisely as he sees fit.

However, there was another substantial difference between S. 2191 and H.R. 3304, the companion House bill. S. 2191, my bill, expanded the acts constituting grounds for certification by the Secretary of Commerce to include:

First, conducting fishing operations in the territorial waters or the contiguous fisheries zone of the United States;

Second, destroying equipment owned by U.S. fishermen;

Third, engaging in any other activity which endangers U.S. fish resources.

These three grounds are, of course, in addition to the present basis for such a certification—conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program.

Because H.R. 3304 was of such importance that action was immediately required, it was deemed best, and I did not protest, to provide immediate sanctions for foreign nationals violating international fishery conservation programs. I, therefore, did not at that time press for the inclusion of the additional three grounds for certification and importation prohibition. Because H.R. 3304 is now public law and we have implemented a program to deal with these countries which callously disregard international fish conservation programs, I should like to reintroduce the essence of these additional grounds for prohibition as contained in S. 2191. I am doing so in order that Congress may consider the necessity of inclusion of these additional grounds for certification and prohibition.

I made it a regular practice last year to place in the CONGRESSIONAL RECORD figures indicating the number of foreign fishing vessels off of my State of Alaska alone. These figures change almost weekly, but at this point, I ask unanimous consent that exhibit 1, a table of foreign fishing vessels seized between March 1967 and November 1971, for violation of American territorial waters off all U.S. coasts, be inserted in the CONGRESSIONAL RECORD at the end of my statement.

The difficulties encountered by fishermen whose gear has been totally destroyed by foreign nationals, is also well documented. In 1971, two of Alaska's most valuable and modern fishing vessels were completely stripped of their gear by Soviet trawlers off the Alaska coastline. These vessels, the *Viking King* and the *Viking Queen* and another vessel, the *M/V Endeavor*, were the subjects of considerable Soviet harassment prior to their disablement. I am attaching as exhibit 2 several of the letters I received from the owners and from the Departments of State, Commerce, and Transportation on the subject. These letters graphically illustrate not only the occurrences in the Bering Sea on March 3, 1971, and the extent of the damage suffered by all three vessels, but more importantly, the total inability of the United States to deal with the Soviet fleet.

As the attached correspondence indicates, the United States was able to exert no legal compulsion against the offenders because the incident occurred in a fish sanctuary in international waters and because our present laws permit no unilateral recourse. The loss of this gear required both vessels to travel to Seattle to be reoutfitted. Such repairs could only be effected after a long delay. The financial loss fell not only on the vessel owners themselves, but also upon their fishermen employees and on those who were depending upon the processing and transportation of the catch for a substantial portion of their yearly income. Fortunately, the Soviet Union agreed to negotiate concerning reimbursement of the vessel owners. However any reimbursement at all in these cases is extremely problematical and difficult. I commend the Soviet Union for their negotiation offer. However, I believe this incident does demonstrate the need for strict laws to prevent the recurrence of just such incidents.

In October 1971, I received a letter from Mr. Ed Fuglvog, a trawler captain from Petersburg, Alaska. This letter is one of the most amazing I have received in my entire public career. It indicates in detail with attached charts an amazing destruction of gear that he personally experienced at the hands of Russian trawlers. He even enclosed a piece of Russian trawl web which one of his bottom halibut hooks brought up near the scene of his gear destruction. This web clearly indicates that not only was the Russian fleet destroying American fishing gear in the area, but that it was also trawling for halibut and other bottom fish in violation of good fish conservation practices.

Unfortunately, there is no way to reproduce the net itself, the most graphic evidence, in the CONGRESSIONAL RECORD, however, it, along with the original letter, is available in my office files for any of my colleagues and their staffs who might wish to view this evidence. I have attached a copy of Captain Fuglvog's letter exhibit 3.

Unfortunately, these two cases are not the only examples of destruction of American fishing gear by foreign fleets. To indicate the extent of the problem, I have attached a table indicating the total damage to U.S. fishing gear by foreign fishing vessels off Alaska in 1970. This I have identified as exhibit 4.

Other types of illegal fishing activity also present serious problems and should serve as grounds for prohibition. Such activities include harassment of American fishermen and illegal and unsportsmanlike fishing activities wherever they occur and which may or may not be specifically prohibited or destructive of fishing equipment. Additional activities in this category would include the violation of foreign fish-licensing laws resulting in the depletion of U.S. fish resources.

Mr. President, these serious problems will not solve themselves. Although for many years we have been party to numerous fish conservation conventions, most such treaties require enforcement by the violator's home country. Such nations have usually been notoriously lax in prosecuting their own citizens. There are, however, several means by which we can protect our own fish resources. The first is by the enactment of tougher treaties—treaties giving coastal nations control over their own fish resources and providing enforcement authority in the coastal state wherein the violation occurred rather than in the violator's home country. I have pressed for such action by the U.S. delegation to the law of the seas conference and am considering legislation on this subject.

The second step we must take is to increase our surveillance and protective activities off our own coast. I receive weekly reports from the Coast Guard on this subject. For example, last February 23, off Alaska alone, 100 Russian fishing vessels and 55 Japanese fishing vessels were spotted. These were not in U.S. territorial waters and there was no allegation that any of them were fishing illegally or in contravention of any international treaty. However, the need for enforcement remains. These vessels were spread out from the Bering Sea to the Canadian border. Of the total number 155, 101 were in the Bering Sea and the rest were in the Gulf of Alaska and the North Pacific. To patrol the Bering Sea, an area of 873,000 square miles, the Coast Guard allocated one ship and several aircraft. South of the Aleutians, the Coast Guard has allocated another vessel and a few additional planes. These few vessels and aircraft patrol an area with a coastline

greater than that of the entire contiguous United States and have jurisdiction over fish resources at least equal to those in the remaining 49 States combined, Exhibits 5 and 6 depict respectively the summaries of U.S. Coast Guard vessel fisheries patrols off Alaska in 1970 and U.S. aerial fisheries patrols off Alaska for the same year. These tables indicate the need for additional patrol and surveillance commitments to protect Alaskan fisheries.

A third solution is the one to which this bill is addressed—the stiffening of penalties for those nations committing illegal fishing practices. Public Law 92–219 provides the muscle to act under the situations covered—the violation of a multinational fish conservation program. I have used it as a legal basis to request the Secretary of Commerce to take appropriate action. On February 6, I requested the Secretary of Commerce to suspend Japanese imports and seize the fish products currently held in storage in the United States because the fish were undersized. In response, I received a letter from the Department of Commerce under date February 21. I would like to attach copies of both of these letters in the RECORD as exhibit 7. The problems of proof in this area are great.

However, in those situations, the United States must have the ability to act. Public Law 92–219 gave this country the ability to act in certain situations. This legislation I am introducing today will permit us to act in other cases. The physical difficulties of apprehending and prosecuting the violators make even more necessary these amendments to Section 8 of Fisherman's Protective Act.

Mr. President, I believe this bill is of the utmost importance and request that my colleagues review my statement carefully as well as the exhibits attached to it. I request unanimous consent that the text of the bill be printed in its entirety in the CONGRESSIONAL RECORD at this point and followed by the several numbered exhibits.

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

S. 1366

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 8(a) of the Fishermen's Protective Act of 1967, as amended (68 Stat. 883, as amended; 82 Stat. 729, 85 Stat. 786, and 86 Stat. 1182) is further amended to read as follows: "When the Secretary of Commerce determines that nationals of a foreign country are, directly or indirectly (1) conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, (2) conducting fishing operations which are prohibited in the Act entitled 'An Act to prohibit fishing in the territorial waters of the United States and in cerain other areas by vessels other than vessels of the United States and by persons in charge of such vessels', approved May 20, 1964 (16 U.S.C. 1081 et seq.), (3) destroying equipment owned by the United States fishermen, or (4) engaging in any other activity which endangers United States fish resources, the Secretary of Commerce shall certify such fact to the President."

EXHIBIT 1

Date	Name of vessel	Nationality	Territory seizure made	Monetary penalties	Violation in—
Mar. 2, 1967	SRTM 8-413	U.S.S.R.	Alaska	$5,000	Territorial sea.
Mar. 22, 1967	SRTM 8-457	do	do	10,000	CFZ.
July 16, 1967	Tenyo Maru No. 3.	Japan	do	5,000	Territorial sea.
Aug. 3, 1967	SRTM 8-457	U.S.SR	do	20,000	CFZ.
June 3, 1969	Zenpo Maru	Japan	do	5,500	CFZ.
Do	Koai Maru	do	do	3,500	CFZ.
Sept. 22, 1969	Matsuei Maru	do	do	10,000	CFZ.
May 3, 1970	2 long-liners	Canada	do	5,000	Territorial sea.
June 27, 1970	Akebono Maru	Japan	do	30,000	CFZ.
July 2, 1970	Conrad	West Germany.	Massachusetts.	20,000	CFZ.
Aug. 18, 1970	Kaki Maru	Japan	Alaska	35,000	CFZ.
Aug. 20, 1970	Kiyo Maru No. 18	do	do	45,000	CFZ.
Sept. 17, 1970	Clipper II	Canada	do	5,000	Territorial sea.
Sept. 27, 1970	Kyoyo Maru	Japan	do	50,000	CFZ.
Feb. 10, 1971	SRTM 8-484	U.S.S.R.	do	50,000	CFZ.
Feb. 24, 1971	Lambda 54 Lambda 102 Lambda 91 Sondero 25 Lambda 91 Sondero 25	Cuba	Florida	25,000	CFZ.
July–August 1971	3 trawlers	Canada	Washington	1,500	Territorial sea.
July 9, 1971	All Star	do	Alaska	3,800	Do.
Aug. 18, 1971	Vodolaz	U.S.S.R.	do	50,000	CFZ.
Nov. 6, 1971	Ryusho Maru No. 5.	Japan	do	115,000	CFZ.

EXHIBIT 2

PETERSBURG FISHERIES, INC.,
Petersburg, Alaska, March 4, 1971.

Hon. TED STEVENS,
Senate Office Building,
Washington, D.C.

DEAR TED: We have been having one hell of a problem in the eastern Bering Sea this past week. Our two crab boats, *Viking Queen* and *Viking King,* have been fishing north of Unimak Island since January 15th. The weather has been absolutely terrible and they have fished a total of seven days the first month they were out there. None the less our fellows have kept struggling and have been picking up a few crab.

Last Saturday a Russian fleet of four stern trawlers moved in the "pot sanctuary" area and started dragging right where our gear was. As of last night, March 4th, our two boats had lost a total of twenty-four crab traps with a value of approximately $10,000. Yesterday they reported one fleet of ten Russians and a mother ship and another fleet of seventeen Russians and a third fleet of ten Japanese plus a mother ship, all north of Unimak Island approximately 20 to 30 miles off shore.

The Coast Guard cutter *"Sorrel"* was in the area on Saturday and then, for some reason of prior scheduling, went south of the peninsula and headed for Kodiak or Cordova. Immediately the foreign fleets moved into the area, which they are bound by international treaty to stay out of, and started dragging up our crab traps. The first part of the week, March 1st and 2nd, there was a tremendous storm up there so our boats had to find shelter in the Unimak Pass area but on Wednesday, the 3rd of March, they returned to the grounds and found this great concentration of foreign gear.

Finally on Wednesday, March 3rd, the Coast Guard got a plane to the area and was able to fly over the foreign fleets and photograph them in action. I understand that there will be a cutter back in this area by this weekend and hopefully this will resolve the problem. Not, however, our terrific gear losses.

I do not know how many other boats are fishing in the area but I do know that Carl Moses's boat the *Oceanic* suffered gear losses and another boat, the *Flood Tide* is reported to have lost 15 pots this week.

I think this points out several things, Ted. One is that the foreigners are not overly concerned with international agreements if they do not think they will get caught. The second is that we do not have sufficient surveillance in this area to assure that they abide by their agreements.

I feel that we should have a Coast Guard cutter stationed in Unalaska year around. Unalaska is now one of our major fishing ports. The nearest cutters to that area presently are in Adak and Kodiak which leaves a tremendously large unprotected area, not only from surveillance but also from the search and rescue viewpoint. There are probably a hundred boats fishing in this area in the winter months, including the Sand Point crab fleet, the Squaw Harbor shrimp fleet and the King Cove-False Pass crab fleet as well as Dutch Harbor and Unalaska.

I have been working closely with Ernie on this problem this week and he has been most helpful. Unfortunately Bud Weburg was replaced last Monday and Harold Hanson has not had very much experience in this field, in addition Harry Reetze, of the N.M.F.S., has been away from Juneau so we were not able to work directly with him.

I have been working with Lew Willians to get some good press coverage on this deplorable situation and hope, with your help, to bring the whole problem into focus.

It is a tough enough job to keep a fishing fleet working in the Bering Sea in the winter time without having the additional threat of being trampled by foreign fishermen on our shores.

I would appreciate anything you can do.

Very truly yours,

BOB THORSTENSON.

PETERSBURG FISHERIES, INC.,
Seattle, Wash., April 2, 1971.

Senator TED STEVENS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENS: In connection with the recent violation by the Soviet vessel CPT 4538, our vessels the M/V "Viking King" and the M/V "Viking Queen" lost respectively 35 and 5 King crab pots.

We therefore enclose our invoice for 40 pots at $426.16 or a total of $17,046.40.

We also feel that we are entitled to charge for lost fishing effort, which we are including in our invoice.

Very truly yours,

RICHARD C. KELLY,
Controller.

INVOICE

Soviet Vessel CPT 4538,
Embassy of the U.S.S.R.,
Washington, D.C.

King Crab Pots costing as follows:	
7 x 7 pot	$165.00
Buoys 2 at $10.50	21.00
Buoy 1	6.00
33 fathoms nylon line at $1.00	33.00
100 fathoms poly-prop. line at $.82	82.00
4 fathoms poly. prop. line at $1.27	5.08
1 bait decanter	.66
Labor for rigging pot	22.50
Shipping cost—Suttle to Dutch Harbor	90.00
Total	426.10
40 pots at $426.16	17,046.40

Lost catch for the above pots March 22 to May 1, 1971 (scheduled departure of Viking King for Seattle. The vessel is returning to Seattle due to the gear shortage).

Present average of remaining pots is 25 legal King Crab per pot.

Pots are hauled every third day.

Average weight per crab is six pounds.

Pots are emptied and rebaited on the average of every third day.

39 remaining days divided by 3 equals *13 pot haulings.*

40 pots x 25 King Crab x 6 pounds x 13 hauling equals *78,000 lbs. King Crab lost.*

78,000 lbs. King Crab at 21¢ per lb. (current price) equals *$16,380.00.*

Total Invoice, $33,426.40.

Make check payable to Petersburg Fisheries, Inc. Fishermen's Terminal, Seattle, Wash. 98119.

PAN-ALASKA FISHERIES, INC.,
Monroe, Wash., March 24, 1971.

Hon. Senator TED STEVENS,
Senator from the State of Alaska,
Juneau, Alaska.

SIR: As you are no doubt aware, we have been having serious problems with the flagrant violations of the Japanese and Russians in the negotiations pot-sanctuary area in the Alaska Bering Sea.

Two days, ago, one of our vessels, the M/V Endeavor, lost 42 king crab pots that were dragged off of their original locations by these foreign vessels. These pots have a value in excess of $350.00 per pot, which made this this vessel sustain a loss of over $14,000.00.

Other vessels, such as the Viking King, Viking Queen and Sea Spray, have had similar experiences in the last three weeks which have been protested but have not seemed to produce results on the trawling operations in this area. Major concessions were given in the negotiations with the Russians to restrict the crab quota in the Bering Sea, raising the size limitations and prohibiting trawling operation in the pot-operations in this area. Major concessions were given in the negotiations with the Russians to restrict the crab quota in the Bering Sea, raising the size limitations and prohibiting trawling operations in the pot-sanctuary area, but needless to say, the concessions that were given to them such as, calling at U.S. Ports for refueling, supplying and R & R have been one-sided as they have not stopped and obviously, do not intend to stop fishing with the illegal gear in this area. We as the largest packer or King Crab have whole-heartedly supported the Alaska Department of Fish and Game in all the conservation methods recently taken, such as (quotas, pot limits, registration area, and Season.)

Now, we find ourselves having to take necessary steps to protect the King Crab Fishing Industry being abused by these international violations.

This has got to stop. If we can't have protective measures, such as Coast Guard Surveillance of these areas, then these fishermen should be reimbursed for their pot losses. It seems to us that protection of one's resources is equally as important as protecting one's Country.

I can only impress on you, that we need all the help possible and all the pressures brought to bear on stopping this problem, or the individual companies and fishermen will be forced to revert back to taking the matter into their own hands in protection of their property, which could lead to serious consequences.

May I please hear from you on behalf of Pan-Alaska Fisheries, Inc. and also, as President of Northwest Fisheries Association, which represents all the major fish processors in Alaska, Washington and Oregon.

Sincerely,

RONALD JENSEN.
President.

DEPARTMENT OF STATE,
Washington, D.C., March 19, 1971.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: The Secretary has asked me to reply to your letter of March 4 regarding fishing by foreign vessels in a sanctuary area north of Cape Sarichef on Unimak Island, Alaska.

The areas in question is that area of the southeastern Bering Sea described in paragraph 3 of the Appendix to the Agreement of February 12, 1971 between the United States and the Soviet Union relating to fishing for king and tanner crab. In that area, "Unless otherwise agreed by the two Governments, only pots may be used to capture king crabs and tanner crabs for commercial purposes and no trawling may be conducted for other species . . ." This area, commonly known for obvious reasons as the "crab pot sanctuary", is depicted in the small chart attached, it being understood that the sanctuary includes only the waters seaward of the 12-mile fishery limit. The provisions of the February 12 Agreement regarding this sanctuary are the same as those of the previous Agreement between the two Governments on the subject, that of January 31, 1969.

On February 27, a Coast Guard air patrol, acting on a report from the American fishing vessel *Viking Queen,* observed four Soviet vessels trawling in the sanctuary area. Message blocks were dropped advising these vessels that they were operating in violation of the Agreement. The message blocks were not retrieved but the Soviet trawlers brought aboard their gear and got under way. A Coast Guard surface vessel was on the scene the following day but detected no further violations.

On March 3 a Coast Guard air patrol observed nine Soviet trawlers fishing in the sanctuary. Again message blocks were dropped to all vessels observed in violation. During the operation three of the nine vessels attempted to obscure their identification, as had one of the vessels at the time of the observation on February 27. Coast Guard surface vessels in the area during this period informed two Soviet transport ships of the provisions of the Agreement and the violations observed.

On receipt of this information, the Department called in an officer of the Soviet Embassy on March 5 to protest these violations of the Agreement. We have had no specific response so far to our representations on the subject, but there have been no reported observations of violations since those of March 3.

The provisions of the Agreement are enforced by each Government against its own nationals and vessels; no authority is provided for enforcement against nationals and vessels of the other country. In view of this, and since the area in question is part of the high seas beyond United States jurisdiction, the Coast Guard had no authority to seize the offending vessels.

We understand that the *Viking Queen* and perhaps other vessels have reported losses of fishing gear resulting from these trawling operations and that affidavits on this are in preparation. The Department will, of course, give careful consideration to any such documents with a view to such further action as may be appropriate.

I hope the foregoing will be helpful. If there is any further information we can provide, please let me know.

Sincerely,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

DEPARTMENT OF STATE,
Washington, D.C., April 1, 1971.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: The Secretary has asked me to reply to your letter of March 22 regarding the continuing problem of violations by Soviet trawlers of the so-called "pot sanctuary" area north of Unimak Island. I refer also to my letter of March 19 on this subject.

On March 19, pursuant to our earlier approach of March 5, we gave the Soviet Embassy a tabulation of such sightings up to that date. The Soviet representatives informed us that the information they had received from Moscow was to the effect that investigation has disclosed no evidence of violations by Soviet vessels. We pointed out that in view of the officially confirmed reports available to us this was obviously an unsatisfactory response.

On March 24 following two additional reports of sightings of Soviet vessels trawling in the area, we again protested this matter to the Soviet Embassy in vigorous terms. Simultaneously, the Regional Director in Juneau of the National Marine Fisheries Service, Mr. Harry Rietze, was attempting to establish communications with the Soviet fleet commander with a view to arranging a meeting of the two to discuss this problem. We understand that the Soviet fleet commander has now responded and has said that he would advise Mr. Rietze shortly concerning the proposal for a meeting. The Agreements between the United States and the Soviet Union contain provisions for such meetings between local representatives for the solution of various kinds of problems.

With respect to Japanese activities, we have informed the Japanese Embassy of sightings of Japanese vessels trawling in this area. Such activities by Japanese vessels are not a violation of the Agreements with the United States. However, the Japanese Government has in the past informed us that as a domestic measure it continues to prohibit trawling by its nationals and vessels, in a larger area of the southeastern Bering Sea which encompasses the "sanctuary" area. Thus, trawling by Japanese vessels is a violation only of Japanese Government regulations, although it is obviously a matter of concern to us and we seek to bring such incidents to the attention of the Japanese authorities.

The Japanese have the same rights, of course, as American fishermen to get crab pots in this sanctuary area for the purpose of taking king or tanner crab, and we have reports that Japanese vessels are in fact engaged in this activity at the present time. It is possible, therefore, that some of the reports of Japanese vessels in the area may reflect entirely legitimate activities under the Agreements.

We trust that the latest representations and the communications between United States and Soviet local authorities will lead to a speedy solution of this problem. Mean-

while, we intend to take all practicable steps to correct the situation.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

DEPARTMENT OF COMMERCE,
Washington, D.C., April 13, 1971.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: Thank you for your letter regarding Soviet trawling in areas of the Bering Sea closed to fishing with mobile gear by a U.S.-Soviet agreement renewed February 12, 1971.

On March 31, 1971, a meeting took place between the Commander of the Soviet fleet in the Bering Sea, and officials of the U.S. Coast Guard and the National Marine Fisheries Service. The U.S. Delegation included Robert McVey, Associate Regional Director, National Marine Fisheries Service, Juneau, Alaska, and Commander Schneider, Chief, Intelligence and Law Enforcement Division, 17th Coast Guard District.

Mr. McVey presented written and photographic documentation of Soviet violations in the pot sanctuary area in the eastern Bering Sea. The Soviet fleet Commander said it had been his understanding that the agreement establishing the pot sanctuary area had expired January 31, 1971. He claimed that the renewal of the agreement on February 12, 1971, was not reported to the fleet on the fishing grounds until March 6, 1971. He indicated he would investigate all violations reported after March 6, 1971, and penalize the masters of any vessels involved.

He also indicated that the Soviet fleet in the eastern Bering Sea had been removed to an area west of 170° W., which is beyond the pot sanctuary area. He gave assurances that there would be no further violations of the sanctuary during 1971 and 1972 while the present agreement is in effect.

We are very concerned about the incidents that took place before the meeting with the Soviet fleet Commander was arranged. We will continue to work closely with the U.S. Coast Guard and the Department of State in efforts to insure that compliance with the agreement is maintained in the future.

Sincerely,

WILLIAM M. TERRY,
(Acting for Philip M. Roedel, Director).

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., April 22, 1971.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR TED: This is in response to your letters of March 11 and 22, 1971 concerning sightings of foreign vessels in the Unimak Island crab pot sanctuary.

As you are aware, the US-USSR King Crab Agreement of February 12, 1971 provides that no trawling may be conducted for any species in a described area north of Unimak Island and lying seaward of the nine mile fisheries zone contiguous to the territorial sea of the United States. This Agreement also specifies that each government will apply the measures of the Agreement to its nationals and vessels. Therefore, since the sanctuary in question is considered by the United States to be a high seas area, and the Agreement does not provide for coastal state enforcement, the Coast Guard's role in this regard is to conduct surveillance of the area, investigate reports of non-compliance and collect information to support appropriate action through diplomatic channels.

Since February 27 the date the *Viking Queen* reported foreign trawlers dragging in the crab pot sanctuary, Coast Guard vessels and aircraft have patrolled the area almost continuously. Message blocks dropped from aircraft, informing Soviet trawlers that they were in violation of the Agreement, have been ignored. Therefore, it appears that this increased presence of Coast Guard forces has had no deterring effect and that the present patrol effort provides sufficient information for diplomatic protest, the only means of censure in this situation.

However, Coast Guard and National Marine Fisheries Service representatives did arrange for a meeting with the Soviet fleet commander. During this meeting, held on April 2, the fleet commander gave a verbal, personal and a written guarantee that there will be no further violations of the crab pot sanctuary for the duration of the Agreement.

Japanese trawling in the halibut nursery grounds north of Unimak Island is a matter of concern to the United States but, again, since this fishing is in an area which the U.S. government recognizes as high seas the Coast Guard has no authority to restrict these operating. However, the Japanese Government has enacted domestic regulations which prohibit trawling in this area and, again, the Coast Guard's role is to conduct surveillance of the area, investigate reports of non-compliance and collect information to support diplomatic protest.

The matter of assigning additional Coast Guard resources to the Aleutian area is, of course, one which must be weighed against overall requirements for the deployment of resources. This is an area of continual review but, although units from other Pacific Districts are regularly assigned to supplement Alaska patrol during periods of the greatest foreign fishing activity no redeployment of a high endurance cutter or reassignment of resources from other areas is anticipated.

I hope that this information will be of help. If you find the need for any additional information, do not hesitate to ask.

EXHIBIT 3

PEETERSBURG, ALASKA,
October 20, 1971.

Hon. THEODORE F. STEVENS,
U.S. Senate,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENS: The afternoon of the 24th of September we were in the process of setting our halibut gear consisting of 4 sets with 13 skates in each set. We were setting in depths from 100 fathoms to 90 fathoms and was midway through the 2nd set when we noticed some large boats ahead of us. Upon determining that they were part of a foreign trawl fleet we turned a a right angle to the starboard for 5 minutes and then made the same move again so that we were headed in the opposite direction. We continued in this direction with the remainder of our gear hoping we would be at a safe distance from the foreign trawlers.

We placed a blinking buoylight on the last end of the last set and then dropped the anchor nearby. About 0230 the next morning we awoke to begin hauling our gear back. We were surprised and concerned when we discovered we were surrounded by boats for there were lights all around us. Daylight does not appear until approximately 0700. There were boats moving by us at slow speeds, apparently towing their nets as there was activity on the decks.

We hauled one set back, 13 skates, and there was very little fish of any kind caught. The previous trip in the same area yielded considerable halibut plus assorted species such as gray cod, black cod and turbot. There was about 250 pounds of halibut or close to 20 pounds per skate average which is considered extremely poor. This average held up for the remaining gear that was hauled during the day.

The next set was very much the same, except that we hauled back only 10 full skates and half of another. Three and one-half skates were lost, plus one 45 lb. anchor, 150 fathoms of buoyline, one bag and flagpole. The next end of the third set should have been close by but was not where it should have been.

We had to run to the other extreme end and haul from there and back. The entire set was hauled back without incident. During this time Russian trawlers were towing from the deep part of the edge and up towards shallower water. The next set had eleven and one half skates left on it, a loss of 2½ skates plus 1 anchor, 150 fathoms of buoyline, one bag and one flagpole.

We conducted an extensive search for our missing gear with no sightings of any flags. Altogether we lost five skates of gear, 300 fathoms of buoyline, two 45 lb. anchors, 5 fathoms of ⅝" galvanized chain, two 75" buoy bags and 2 flagpoles for a total value of $764.50. In addition we were not able to use as much gear during the trip. We had 40,600 pounds and hauled 699 skates averaging 58.1 lbs. per skate and we could have more if we had our full string during the trip. We had some spare gear with us that we used to replace what was lost. However, if we had no losses we could have hauled a total of 728 skates and at a 58.1 lb. average would have given us a total of 1685 pounds more. At 39¢ per pound, which we received for our fish, would have meant an additional $657. Therefore, our total loss considering gear and fish would come to approximately $1,421.50.

When it was apparent that our gear was lost we were able to read numbers on three of the boats and these were recorded in the logbook. It is not known which boat was involved in our gear because of the distance between our ends and the various trawlers. There were at least seven Russian ships in sight most of the time. The name and number of one ship was the Ternery, no. 0987. The other two were 06981 and T6–1935.

The entries in the logbook includes the loran readings IL6 and IL7 at each end of each set. When all the gear was in I notified the Coast Guard in Kodiak and gave them the loran reading IL6–3291, IL7–2788 as the position where our gear was lost. I also stated the value of the gear lost as approximately $1,000.

We were forced to leave this area and move somewhere else. We felt we were being escorted away from the area as ship number T6–1935 moved along with us for a considerable distance.

Information constantly given to the fisherman indicates that the foreign trawlers are towing their gear above the bottom for perch, thus not tampering with bottom fish. The obvious decrease in fish caught plus the fact we had a portion of trawl web brought up on one of our hooks near where one of our ends had parted clearly shows that trawls are bouncing along the bottom and scooping up everything in its path.

The efforts of the International Harbor Commission becomes more meaningless as a regulatory body because we cannot control the areas foreign fleets operate. We are no longer operating on a sustained yield basis but on successive seasons of diminishing returns and it will become worse before it ever improves. The very slow growth rate of halibut means that it will be years before the younger fish can replace those that have been caught by foreign fleets. With the effort on pollock in the Bering Sea and the high mortality rate of the hundreds of thousands immature halibut caught in their foreign trawls they are destroying entire yearly quotas had they been allowed to mature. What is there to look forward to?

We would appreciate any effort you make that will lead to the recovery of our loss.

Sincerely,

ED FUGLVOG,
Captain, MIV Symphony.

P.S.—I have pictures of several of the vessels that were in the area which will be sent to you as soon as they have been developed.

EXHIBIT 4

TABLE 13.—DAMAGE TO U.S. FISHING GEAR BY FOREIGN FISHING VESSELS, 1970

Date	Reported by—	Alleged offender	Location	Losses and remarks
Crab gear:				
Feb. 28	Glen E. Evans, F/V seliet	Soviet freezer-trawler SRTM 8426 and 4 unidentified freezer-trawlers.	Chiniak Gully off Kodiak, 57–32N. 151–37W.	8 pots lost, 1 buoy marker damaged. Observed the SRTM 8426 trawl through crab pot string. Severed and damaged buoys surfaced behind the Soviet trawler.
Mar. 5	Oscar Joos, F/V Mordic	2 unidentified Soviet freezer-trawlers	20 miles north northeast of Ugak Island and 15 miles off Cape Chiniak.	2 pots lost. Observed Soviet vessels fishing within ½ mile of where missing pots should have been.
Apr. 18	Gilbert J. Johnson, F/V Beluga	Soviet freezer-trawlers Sargassa, SRTM 8451 and 1 unidentified.	Chiniak Gully off Kodiak, 57–28N. 151–35W.	6 pots lost. Observed subject vessels trawling very near the Beluga's gear. Coast Guard helicopter with NMFS Agent sent to investigate found 7 Soviet freezer-trawlers in area of loss.
Apr. 23–30	do	Unknown (believed to be Soviet trawlers).	do	19 pots lost. No foreign vessels seen in area during subject period but Soviet trawlers caused earlier losses in same area.
Apr. 8–27	James R. Fogle, F/V Invincible	do	do	9 pots lost. On Apr. 8 unidentified Soviet trawlers were seen fishing very near the Invincible's gear.
Apr. 26	William K. Kukahiko, F/V Aleutian Queen.	3 unidentified foreign trawlers	Eastern Bering Sea, 56–15N. 161–51W.	3 pots lost. Observed 3 trawlers fishing near his pot gear. The trawlers moved off when approached. Found Japanese tangle net entangled in 1 of his crab pots.
Apr. 29	Malcolm S. McDonald, F/V Pacific Fisher.	Unidentified Japanese vessels of Shikishima Maru fleet.	Eastern Bering Sea, 55–51N. 165–21W.	5 pots lost. Several unidentified Japanese fishing vessels and the factory ship Shikishima Maru seen in area of pot gear.
May 1	do	Unidentified Soviet trawlers	Eastern Bering Sea, 56–12N. 161–51W.	3 pots lost. Observed Soviet trawler fishing in area of pot gear.
Halibut gear: Mar. 29	Dale M. Samuelsen, F/V Eclipse	Japanese stern trawler Akebono Maru No. 15.	Central Bering Sea, 57–00N. 173–30W.	12 skates and associated gear valued at $1,220 lost. Subject vessel trawled through Eclipse's longline gear five times. Attempts by Eclipse to indicate the presence of her gear were not understood or were ignored.

EXHIBIT 5

TABLE 5.—SUMMARY OF U.S.-VESSEL FISHERIES PATROLS, 1970

U.S. patrol vessels			Number of sightings of foreign vessels				
Name	Period of patrol	Miles patrolled	Japanese	Soviet	South Korean	Canadian	Total sightings
Storis	Jan. 5–Dec. 18	25,084	277	267	25	0	569
Confidence	Feb. 2–Dec. 4	11,988	75	35	22	3	135
Resolute	Apr. 2–May 22	7,191	134	51	0	0	185
Bittersweet	May 4–6 and Oct. 27–30	1,438	4	0	0	0	4
Yocona	May 17–July 15	7,160	85	5	3	2	95
Ironwood	June 14–July 5	3,712	7	0	37	5	49
Venturous	July 15–Aug. 27	8,102	137	1	0	8	146
Citrus	Aug. 6–14	1,053	0	1	0	0	1
Sweetbrier	Sept. 15–18	1,116	3	0	0	4	7
Clover	Sept. 20–22	768	1	0	0	1	2
Balsam	Sept. 21–29	1,399	19	11	2	0	32
Total		69,011	742	371	89	23	1,225

EXHIBIT 6

TABLE 6.—SUMMARY OF U.S. AERIAL FISHERIES PATROLS, 1970

	Number of patrols	Hours flown	Miles patrolled	Number of foreign ships sighted				Total sightings
				Japanese	Soviet	South Korean	Canadian	
Kodiak Air Station	109	732.4	137,993	1,883	935	37	28	2,883
Annette Air Station	78	378.1	52,736	187	0	0	5	192
Total	187	1,110.5	190,729	2,070	935	37	28	3,075

EXHIBIT 7

FEBRUARY 6, 1973.

Hon. FREDERICK B. DENT,
Secretary of Commerce, Department of Commerce, Washington, D.C.

DEAR MR. SECRETARY: I am informed that Japanese fishermen have taken substantial amounts of halibut from the area of the Bering Sea east of the abstention line. The information I have received indicates that the Japanese have taken this halibut with trawling gear in areas designated for hook and line fishing only. Also, the information indicates that the Japanese have fished this area throughout the year when the area was officially open for halibut fishing only 21 days.

Imports of halibut filets from the Japanese indicate that the size of the fish being taken by the Japanese is also in violation of the International Convention for the High Seas Fisheries of the North Pacific Ocean.

From the information I have received the Japanese exported to this country over 19,000,000 pounds of halibut in the first eleven months of 1972. Yet, the amount of halibut that they report being taken from west of the abstention line plus their reported catches east of the line indicate that it would be impossible for them to have exported this amount of halibut to this country.

I call upon you to utilize the authority of the amendments to the Fishermen's Protective Act (PL 92–219) by suspending imports from Japan and seizing the import filets which are currently in storage in Seattle as having been taken in violation of the International Convention for the High Seas Fisheries of the North Pacific Ocean.

Cordially,

TED STEVENS,
U.S. Senator.

U.S. DEPARTMENT OF COMMERCE,
Rockville, Md., February 21, 1973.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: This is in response to your letter of February 6, 1973, regarding the alleged illegal fishery for halibut conducted by the Japanese.

Information from a Japanese trade source indicates that Japanese land-based trawlers did, in fact, retain halibut taken incidentally to other species in the eastern Bering Sea in contravention of the conservation recommendations of the International North Pacific Fisheries Commission (INPFC).

The Japanese fish the eastern Bering Sea (east of 175° W. longitude) throughout the year primarily for pollock and other ground fishes. However, they have agreed to an INPFC recommendation that halibut taken incidentally with trawl gear be discarded. They can fish halibut in the eastern Bering during the halibut season with longline gear but must observe the 26-inch size limit recommended by INPFC. The INPFC presently does not exercise authority over fisheries conducted west of 175° W., longitude, and in this area Japanese fishermen are free to fish for halibut with trawl gear.

Representatives of the halibut industry called to our attention the fact that sublegal halibut were being imported into the United States from Japan. The Pacific Fisheries Products Technology Center of the National Marine Fisheries Service, located in

Seattle, which examined some fillets identified as halibut from Japan, has concluded that: (1) the fillets came from true halibut, and (2) they were from undersized fish. In view of the limited sampling, the Center is planning to conduct further tests to verify their preliminary findings. However, there is no way of identifying the origin of these fish, as to whether they came from the grounds east of 175° W. longitude or west of that meridian.

With respect to the statement in the third paragraph of your letter, this needs some clarification. A total of 19 million pounds of halibut was not imported into the United States during the first 11 months of 1972. The actual amount of halibut imported totalled 14.5 million pounds, consisting of dressed fish and fillets. The 19 million pounds represented an estimate of the equivalent quantity of dressed fish after mathematically converting pounds of fillets into pounds of dressed fish.

Japan has annually submitted to the INPFC data on halibut landings for its mothership trawl and longline/gillnet fisheries. The data show that in 1971 Japan landed 12,580 metric tons (27.7 million pounds) of dressed halibut from the Bering Sea west of 175°W. longitude. They show no halibut catches east of 175°W. longitude. Data for 1972 are not presently available but should become available in the fall of 1973 at the next annual meeting of INPFC. Please note that the Japanese data submitted to INPFC only show the catch of halibut made by the mothership trawl and longline/gillnet fisheries. They do not include data from the land-based fishery.

The retention of land-based trawl caught halibut by Japanese vessels east of 175°W. longitude was brought to the attention of the Government of Japan at the November 1972 meeting of the INPEC held in Vancouver, British Columbia. The Japanese officials assured us that they would seek to control this problem.

We hope this clarifies the situation in the Japanese fishery. We are currently studying further the implications of all aspects of this matter, including your suggestion concerning the amendments to the Fishermen's Protective Act (P.L. 92–219), and will keep you informed of any developments.

Sincerely,

ROBERT M. WHITE,
Administrator.

By Mr. CHURCH:

S. 1367. A bill relating to the income tax treatment of charitable contributions of copyrights, artistic compositions, or a collection of papers. Referred to the Committee on Finance.

CHARITABLE CONTRIBUTIONS EQUITY FOR GIFTS BY AUTHORS AND ARTISTS OF THEIR OWN PROPERTY

Mr. CHURCH. Mr. President, the legislation which I introduce today is similar in intent, though not in language, to S. 1212, which I introduced during the last session of the Congress. Changes have been made in the text of the bill which I introduced last year to rectify a serious technical flaw in the legislation which would have granted tax benefits beyond the scope intended.

This bill is designed to change the Tax Reform Act of 1969's inadvertent mistreatment of authors and artists under the tax law.

As some Members will recall, it was during the consideration of the 1969 Tax Reform Act that it came to light that some political figures, both Democratic and Republican, would reap large tax benefits by donating their public papers. It was the feeling of the Congress that, inasmuch as the taxpayers had once underwritten the making of these papers, they should not again be asked to subsidize them, via the tax code, when they were given away by a public officeholder at the conclusion of his career.

In an attempt to solve that problem, Congress changed the tax law. However, in so doing, Congress swung too broad an axe. It not only eliminated the deduction allowable for the donation of public papers by politicians, but eliminated the deduction, based on fair market value, which had previously been granted to authors and artists.

The result has been that acquisitions by libraries, museums, and art galleries have been seriously harmed. All my amendment would do is to partially reinstate the tax treatment given to authors and artists prior to the passage of the Tax Reform Act of 1969 for up to 50 percent of the fair market value of their works. The amendment makes it clear that this tax advantage will not be granted to public officials.

The intent of the Congress will thus be carried out, and the oversight in the original act in part, at least, corrected.

Since the situation has not altered since I introduced my earlier legislation, I ask unanimous consent that my remarks in support of the change in the law which appeared in the CONGRESSIONAL RECORD at the time I originally introduced similar legislation, together with the supportive material which I presented at that time, appear at this point in the RECORD.

I further request that the text of my new bill, together with an in-depth study which was done by Mr. Mike Wetherell of my staff on the background of this problem and the need for a change in the law appear at this point in the RECORD.

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

GIFTS TO LIBRARIES INCENTIVE ACT

Mr. CHURCH. Mr. President, I introduce for appropriate reference a bill to amend section 170(e) of the Internal Revenue Code. This bill will equate the incentive to donate certain income property to specified nonprofit and governmental institutions with the incentive to sell those materials on the open market. Even though this bill will modify the restrictions contained in section 170(e), it does not weaken the reform purpose of the 1969 Tax Reform Act, and in some cases the restrictions in this bill strengthen that purpose.

Congress created an unfortunate hardship for its own Library when it enacted the Tax Reform Act of 1969. Through changes in section 1221(3) and in coordination with 170 (e), that act eliminated one of the Library's most important incentives to donations of materials that the donor had created. That incentive was the right of the donor to deduct from his gross income the market value of his own original materials when given to a nonprofit institution. At this moment, the donor may deduct only the base value of those materials—the cost of their creation—and not their fair market value. Thus, it is much more profitable for authors, composers, and artists to sell their original works than to donate them. As a result, the ability of the Library of Congress to acquire original collections has diminished greatly. I believe this bill will furnish a solution without any untoward consequences.

The problem was brought to my attention by Archibald MacLeish, former Librarian of Congress, who wrote me that—

"The principal glory of the Library is its Manuscript Division and one of the great achievements of the Manuscript Division has been its acquisition of American literary manuscripts and related correspondence. Writers, public men and others were encouraged by the Internal Revenue Code as it stood prior to 1969 to give materials of this kind to the Library and its collections made significant gains. In 1969, however, the Tax Reform Act of that year * * * (made a) distinction between donors who themselves *created* literary and historic documents and others who *collected* them. The collector, commercial or academic or whatever, received tax advantages if he gave the materials to a library; the creator did not."

Therefore, Mr. President, in the form of this bill I would like to see Congress take corrective action which will enable our own Library, and her sister institutions, to enjoy at least an equal chance, along with private collectors, to obtain original manuscripts of great historical and cultural value.

The severity of the impact of the 1969 change is startling, particularly when one examines figures furnished to me by officials of the Library of Congress. In 1967, 1968, and 1969 the Manuscript Division of the Library received an average of 313,926 manuscript pieces.[1] In 1970, only 69,803 pieces were received and many of these were of negligible value. The Manuscript Division is not alone in suffering the impact of the law's change. Indeed, the Music Division of the Library reports a decline in the number of donors from an average of 36 in the 3 fiscal years prior to the law's change, to only six in the first fiscal year after the law went into effect. One extremely important collection denied to the Music Division has received recent public attention. Because of the change in the law, Igor Stravinsky has been forced to place his manuscript collection, valued at $3.5 million, on the open market when, prior to the change, he could have donated it to the Library and not been penalized financially. The plight of Mr. Stravinsky, and this entire problem, is discussed in an article by Irving Lowens which appeared in the January 24, 1971, edition of the Saturday Star. I shall ask unanimous consent to place this article, and one by John J. Kominski which appeared in manuscripts, in the RECORD following my remarks.

TAX REFORM: A "HALF AX" EFFECT ON MANUSCRIPT CONTRIBUTIONS

(By John J. Kominski, General Counsel, Library of Congress)

Among other changes it made in the Internal Revenue Code, the Tax Reform Act of 1969 amended Section 1221(3) by providing that letters, memoranda, and similar property (or collections thereof) *are not to be treated as capital assets* if they are held by the taxpayer whose personal efforts created the property or for whom it was prepared or by a person who received the property as a gift from the one who created it. Accordingly, these materials are treated as ordinary income property. In addition, the Act gave new treatment, in Sections 170(b) and (e), to the amount allowed as a charitable deduction by making donations of such ordinary income property deductible only as to basis and not as to appreciation.

These two changes, perhaps more than any others, went a long way toward deferring gifts of manuscript materials to public institutions, such as the Library of Congress (which opposed these changes), or other

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[1] When the 1969 Act became effective in July of 1960, by far the greatest number of donations in that year came before the effective date.

organizations eligible for charitable treatment.

The wording of both House and Senate bills raised an immediate clamor among the literary world, and the Library of Congress felt the full impact of the growing concern among writers and composers. Attorneys, accountants, authors . . . all wanted to discuss the changes, to get the Library's views, to express doubts, resignation, and worst of all, disinterest in making future gifts. It was a reaction the Library expected, and although the Library hoped it would not be the case with all such donors, it conceded that it would most certainly be the case with those motivated in part by tax advantages.

The first seven months following passage of the Act pretty much tell the story. While other institutions have expressed a belief that changes in the law would not severely reduce private gifts, the Library felt otherwise. *Not a single new gift of a manuscript collection has been received by the Library since January 1970.* Some donors who had already established rather large collections were resigned to continue adding to them, but there were others in the same status who stopped contributing altogether. Furthermore, some authors felt the urge to express to the Library their resentment about the legislation in such creative terms that those letters, alone, may be said to have added immeasurably to the Library's collections.

More important than levity at this time, however, is an examination of just what changes in the Internal Revenue Code have brought about this reaction from authors and what those changes mean to the collector of manuscript materials.

It should be understood, at the onset, that a major purpose of the Act was to equalize the benefit of cash contributions and contributions of property which had increased in value, such as manuscripts. Under the old law, contributions of appreciated property could garner greater advantages to the donor than could a cash contribution. The old law allowed a deduction in the amount of the fair market value of the donated property at the time of the contribution and no tax became due on the appreciated value. Thus, the Congress considered that changes were necessary as a matter of equity if nothing else.

Basically, the concern of authors results from two changes made in the Internal Revenue Code with respect to gifts of appreciated tangible personal property: (1) the allowable amount of a charitable contribution of such property now depends on the character of that property; the amount may be appreciably lower for ordinary income property than for capital gain property, and (2) the term "ordinary income property", as initially stated, now includes "letters or memoranda," held either by the preparer of the person for whom such property was prepared.

On the other hand, the collector or inheritor of manuscript materials need not be so concerned. Materials which are ordinary income property in the hands of the creator-author, in most cases may become capital gain property in the hands of the collector or inheritor, and these latter individuals need only concern themselves with the particular nature of the donee charity or the use to which that institution will put donations of these materials. We shall consider the major and most drastic change first.

Prior to enactment of the changes, all donors of literary property (authors as well as collectors) could declare as a charitable deduction the fair market of the literary property at the time of the gift. No longer is that always true. The prospective donor must now consider the status of the property (ordinary income property or capital gain property) because of his relationship to it.

If the property, while in the donor's hands, is ordinary income property (as in the case of the author himself), the deduction is severely limited to cost basis alone. This rule is applicable *in all cases,* and the type of charitable recipient has no bearing on the amount of the allowable charitable deduction. Therefore, when the composer, artist, or author donates his original work, or the works of others *given to him,*[1] including letters received, the amount of his deduction may be little more than the cost of the paper and ink or the canvas and paint. It is important to note that these rules apply to contribution of ordinary income property made after December 31, 1969, with one exception: the effective date for contributions of letters, memoranda, or similar property prepared for or by the donor is July 25, 1969.

If the property is a capital gain property (as it would be in the hands of a collector), the deduction may be as much as the fair market value at the time of the contributions, i.e., the basis (cost) to the donor plus the appreciated value while he has held it. With respect to gifts of capital gain property, however, there are certain limitations on the allowable deductions. We shall consider these limitations next.

When a taxpayer donates tangible personal property which is not used by the donee charity directly in its exempt functions, the amount of the deduction for each donation of capital gain property is computed by subtracting 50 percent (62½ percent if a corporate donor) of the amount of the gain (that would have been long term capital gain had the donor sold the property) for the fair market value of the property at the time of the contribution. By way of example:

"Donor gives an eligible library a replica of a bronze French cannon (non-operative) 75mm. World War I vintage. For some reason, the library accepts this gift. The donor is a collector of artillery art pieces, and in his hands the cannon may be considered a capital gain property. However, it is not the type of material that particular library would collect or directly make use of. Donor is limited to a deduction of the cost to him of acquiring the art piece plus one-half the value said object has appreciated while in his possession."

On the other hand, if such property is *used* by the donee charity toward its exempt functions, it would appear that the donor will get the full fair market value as the amount of allowable deduction; consider:

"Donor is a collector of literary manuscripts. He wishes to donate some of these materials to an eligible library as well as several letters and memoranda which he has *inherited* from a deceased relative. Both types of property are considered capital gain property in his hands and both are materials which the library usually collects and directly uses. Assuming he proceeds with the gifts as planned, donor may deduct the full fair market value of these materials at the time of the gift."

The ceiling on *gifts of cash* was raised by the Act to 50 percent of an individual donor's adjusted gross income (it says at 5 percent for corporate donors) where the charity so qualifies, such as public charities (like the Library of Congress) and certain foundations. *However, gifts of capital gain property to qualifying charities remain subject to a deduction ceiling of 30 percent of an individual donor's adjusted gross income.* At present the only method by which the taxpayer may deduct contributions of appreciated property under the 50 percent maximum deduction ceiling is if he elects to take the unrealized appreciation in value into account for tax purposes—that is, "reduce the amount of the contribution".

[1] As used here, "gift" would not include inherited property. Inherited property is capital gain property. Thus, a widow of an author may get the full tax advantage if she *inherits* the manuscript material.

An individual taxpayer may still carry over excess capital gain property deductions to his next five years, and the carryover retains its 30 percent status for purposes of computing the allowable charitable contributions deductions in these carryover years.

There are many other considerations that should concern a prospective donor of manuscript materials, all of which give immediate credence to the recommendation that the donor should seek professional advice about his own particular situation and the status of the institution to which he intends to make a gift. For example, some manuscript materials ordinarily thought of as capital gain property may, because of the short period they have been held (less than six months), be considered ordinary income property. On the other hand, some manuscript materials may be used in a donor's trade or business; in which case, only that portion of the gain (if the property is sold at its fair market value at the date of contribution) which is subject to depreciation recapture rules would be considered ordinary income property, and any gain above this amount is treated as capital gain property.

At this point it should be clear that of two groups of prospective donors, collectors and authors, only the latter has experienced more acutely the "Congressional axe". In summary, then, the Tax Reform Act of 1969 has left us with three methods of treating charitable contributions:

1. *Cash contributions.* The new law now permits deductions of up to 50 percent of the donor's adjusted gross income, but gradually phases out the little-used "unlimited charitable deduction" provisions. This change should serve to increase cash contributions.

2. *Appreciated property of the ordinary income type.* The Act has created drastic change in this area; contributions of ordinary income property (such as literary property, including letters and memoranda) by creators are greatly discouraged. Early statistics appear to confirm this conclusion.

3. *Appreciated property of the capital gain type.* The new legislation has continued favorable treatment in this area; philanthropic inducement still permits a donor to deduct gifts of such property at their fair market value without recognizing any gain for tax purposes. There are two limitations; (1) to get the full fair market value, the donee charity must be able to use the gift directly in relation to its tax exempt purposes, and (2) the ceiling on such gifts is 30 percent of the donor's adjusted gross income. With respect to this latter limitation, however, a special option permits a donor to deduct gifts of such property up to 50 percent of his adjusted gross income if he reduces the value of his gift by one-half (½ of the appreciated portion. *Caveat:* if a taxpayer exercises this option, all deductions involving appreciated property for that year, including deductions carried forward from earlier years, must be similarly reduced. A donor may prefer this alternative when a gift property has a substantial fair market, but that part of the value which is appreciation is small.

Music: Why Tax Reform Should Be Reformed

(By Irving Lowens)

A few month ago, Igor Stravinsky's original manuscripts and personal papers were put up for sale on the open market. The price tag was $3.5 million, and considering their importance, anyone buying them would be getting a bargain.

These days, it costs $25 million per mile or more to build a superhighway. Are the thousands of items offered by Stravinsky, including the manuscripts of compositions which altered the entire history of 20th century music, worth less than one-fifth of a mile of concrete?

The Stravinsky papers have not yet been sold as of this writing. If you want to snap them up, Lew D. Feldman (30 East 62 Street, New York 10021) will be glad to accept your $3.5 million.

Meanwhile, the Library of Congress, to whom Stravinsky had been presenting his papers from year to year, sits on the sidelines biting its fingernails and hoping that some rich and civic-minded collector will buy them and donate them to the Library as a gift. The Library doesn't have $3.5 million with which to buy the papers, in which the Soviet Union reportedly has shown a lively interests.

The appearance of the Stravinsky papers on the open market seems to have been a direct result of certain strange provisions of the Tax Reform Act of 1969. Formerly, donors of literary properties (authors and composers as well as collectors) could declare as a charitable deduction the fair market value of the literary property at the time of the gift.

In other words, if Stravinsky gave to the Library of Congress as a gift his own manuscripts which would bring $3.5 million if sold, he could claim a deduction of that amount on his income tax return.

This is no longer true.

According to Section 1221(3) of the Internal Revenue Code, such things as music manuscripts, literary manuscripts, letters, memoranda and similar property, when still in the hands of the person whose personal efforts created the property, are no longer entitled to this treatment. If a composer wants to give them away to a library, law holds that these properties cannot be considered capital assets. They must be considered ordinary income properties, and as such, their value is established on a cost basis.

Thus, Stravinsky's original manuscripts in his hands are worth little more than the cost of paper and ink, regardless of their fair market value.

Ironically, exactly the same materials are considered capital assets when they are in the hands of a collector. This means that their value is established on the basis of the market. Thus, the collector giving the Stravinsky materials to the Library of Congress as a gift could legitimately claim a $3.5 million tax deduction, if that is what he paid for them; Stravinsky himself could claim nothing.

The Tax Reform Act, signed by President Nixon in December, 1969, was made retroactive to July 26, 1969. It was the intent of the amendments discussed here to make it impossible for former presidents (and especially Lyndon Johnson) and politicians to claim large income tax deductions by making gifts of their personal papers to presidential libraries.

The proponents of the Tax Reform Act had no special animus towards authors and composers, to say nothing of libraries, but the result of their work has been to penalize creators and to wreak havoc with acquisitions policies in scholarly institutions.

The Library of Congress formerly leaned heavily upon the tax advantage provisions of the old law in building up its magnificent collections of manuscript papers. Suddenly, their source of supply was shut off. Writing in July of last year, John J. Kominski, General Counsel of the Library, stated that "not a single new gift of a manuscript collection has been received by the Library since January, 1970."

The same story is being repeated in libraries across the country; the tax revision is looming as a major disaster.

Every January, a report on notable music acquisitions during the previous fiscal year (which runs from July through June) is printed in the "Quarterly Journal" of the Library of Congress. At first glance, the 1971 report, written by Edward N. Waters of the music division, looks very similar to that of 1970. But there is an ominous reference, in the second sentence, to the fact that "patterns of growth differed somewhat from the previous year," and a close reading of the section devoted to manuscripts of living composers shows how.

Discounting original manuscripts added to the collection as the result of commissions from the Coolidge and Koussevitzky Foundations (their legal status is still unclear), the division received as gifts manuscripts from only eight composers—Richard Adler, Radle Britain, Aaron Copland, Robert Evett, Don Gillis, Robert Parris, Igor Stravinsky and Edwin John Stringham—between July 1, 1969 and June 30, 1970. Several of these gifts were received before July 26, 1969.

Compare this to the Waters report on the previous year's acquisitions in the January 1970 "Quarterly Journal" and the change becomes painfully clear.

Between July 1, 1969 and June 30, 1969, the music division received gifts of manuscripts from 28 composers—Hugh Aitken, William Bergsma, Elliott Carter, Aaron Copland, Paul Creston, Alvin-Etler, Robert Evett, Johan Franco, Edmund Haines, Howard Hanson, Roy Harris, Alan Hovhaness, Karel Husa, Ulysses Kay, Meyer Kupferman, Ezra Laderman, Benjamin Lees, Nikolai Lopatnikoff, Teo Marcero, Peter Mennin, Robert Merrill, Darius Milhaud, Vincent Persichetti, David Raksin, Gardner Read, William Schuman, Robert Starer and Igor Stravinsky.

Perhaps even more alarming than the drastically curtailed list of donations during the first full years the Tax Reform Act was in effect is the degree to which the Library's search for new and important collections of papers and manuscripts has been hobbled.

When the Library does find a prospective donor whose papers it feels are important enough to warrant inclusion in the national collections, it is very careful to advise him that gift at this time of materials of his own creation may not benefit him taxwise. A copy of the General Counsel's "Memorandum on the Tax Reform Act of 1969" is furnished with the suggestion that he may want to discuss the matter with his accountant or lawyer.

Currently, the Library is urging prospective donors to consider placing their papers in the collections on a deposit basis. This means that the owner would retain legal title to them while, at the same time, they would be made available for research purposes.

It does not require much imagination to see this as a holding action until the problem caused by the new provisions of the Internal Revenue Code has been solved.

As serious as is the situation in the music division, it appears to be worse in the manuscripts division. The Tax Reform Act of 1969 strikes directly at many of that division's donors.

"The effects of the law have been damaging to the acquisition program of the manuscript division," stated Mary C. Lethbridge, the Library's information officer. "In 1969 several important collections were here on deposit pending the results of tax reform. When the provisions of the law were made known one playright withdrew his papers immediately. An actor also withdrew material on deposit, although some of his papers remain as earlier gifts to the Library. A poet requested the return of his deposited materials but was persuaded at last to let them remain on deposit. A novelist wrote an angry letter of protest, implying that his periodic gifts to the Library were at an end.

"Although the collections cited are in the arts where self-creation of valuable material is more obvious, the chief loss was a political-judicial collection for which a gift in 1969–70 had been planned.

"In 1970 there have been virtually no gifts of self-created material, although material has been received on deposit. Such deposits have come from long-term donors. No deposits of material for which there was no prior history of negotiation and/or earlier gift occurred. For example, one earlier donor deposited extremely valuable material in 1970 but gave nothing. A woman prominent in the theater gave only the segment of her papers identifiable as inherited; the remainder is on deposit."

The music division, too, has had its withdrawals of materials on deposits. It too has had its angry letters of protests. It too has received no deposits of material for which there was no prior history of negotiation.

No one in the Library is optimistic about future acquisitions of gift of manuscripts and personal papers belonging to live creators until the cost basis for tax deductions, established by the Tax Reform Act of 1969, can be returned to the fair market value basis of earlier years.

The ill-considered amendments to Section 1221 (3) of the Internal Revenue Code damage both creators and institutions of learning. If Stravinsky is to reap any financial benefit from his own manuscripts, he is forced to sell them. If the Library of Congress is to have such national treasures in its collections, it is forced to buy them. Neither of the principals involved does this willingly; the country as a whole losses because of the situation.

The National Music Library Association holds its annual meeting in Washington at the Dodge Hotel beginning next Wednesday. I hope that many of the librarians assembled here, whose institutions have been hurt just as much as the Library of Congress by the new tax provisions, will take advantage of their presence in the Nation's Capital to let their representatives in the Congress know their feelings in this matter.

S. 1367

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 170(e) of the Internal Revenue Code of 1954 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF COPYRIGHTS, PAPERS, ETC.—In the case of a charitable contribution of a copyright, a literary, musical, or artistic composition, a letter of memorandum, or similar property by a taxpayer described in paragraph (3) of section 1221 to an organization described in clause (ii), (v), or (vi) of subsection (b)(1)(A) the reduction under subparagraph (A) of paragraph (1) shall be only one-half of the amount computed under such subparagraph (without regard to this paragraph) but only if the taxpayer receives from the donee a written statement that (A) the donated property represents material of historical or artistic significance and (B) the use by the donee will be related to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)(2)(B)). This paragraph shall not apply to letters and other papers collected by a public official during his term of office."

(b) The amendment made by this Act shall be applicable to charitable contributions made after the date of the enactment of this Act.

TAX TREATMENT OF DONOR-CREATORS UNDER THE TAX REFORM ACT OF 1969: THE CASE FOR REFORM

(By Mike Wetherell)

One of the major changes in the tax law accomplished by the Tax Reform Act of 1969[1] was in the field of charitable contributions.[2] One of the more interesting changes in the

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charitable contributions field was the new tax treatment afforded to "a copyright, a literary, musical or artistic composition, a letter or memorandum or similar property" held by the creator of such property [3] or "in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced." [4] Little has been written in legal journals regarding this particular aspect of the Tax Reform Act of 1969.[5]

This paper will deal with this area of the Act and with its effect upon the creator-donor. It will also deal with the effect of the new provisions of the code upon charitable organizations which are especially interested in receiving donor created contributions: our libraries, museums and art galleries. In addition, it will pose several possible alternatives to the tax treatment currently afforded the donor-creator as a result of the 1969 changes in the tax code.

A BRIEF HISTORY OF THE TAX REFORM ACT OF 1969

"In 1967 155 individuals or couples with incomes in excess of $200,000 paid no federal income tax. Of that group, 21 had incomes exceeding $1 million." [6] That statistical fact was released by Secretary of the Treasury Joseph Barr as he was about to leave that post with the outgoing Johnson Administration following the election of 1968.

Following close behind Secretary Barr's revelation was a report compiled by the Treasury Department in the last years of the Johnson Administration [7] which explained that the no-tax-on-high-income phenomena was largely the result of the use of one or more of four tax provisions in the Internal Revenue Code.[8] One of the areas singled out was the tax treatment of gifts of appreciated property to charity.

This concern over the tax treatment of charitable contributions of appreciated property was carried over when, in April of 1969, the Nixon Administration sent its tax reform proposals to Congress.[9]

The proposals of both the Johnson [10] and Nixon [11] Administrations addressed themselves to the problem of the tax benefit that was derived from the contribution of ordinary income or short term capital gain property to charity. The studies pointed out that contributions of property of this nature granted the taxpayer a double advantage: (1) he was not taxed on the ordinary income earned with respect to the property when it is given to charity and, (2) the contributor received a tax deduction for the full fair market value of the property he contributed.[12]

Both the Johnson and Nixon Administration Treasury Departments recommended similar though not identical solutions to the problem.[13]

The House Ways and Means Committee agreed with the methods proposed by both the Johnson and Nixon Administrations in the treatment of gifts of ordinary income property or short term capital gain property to charity.[14] However, the House Ways and Means Committee went a step further. The bill reported by the Committee eliminated the deduction of appreciation in value for all tangible personal property, not just ordinary income and short term capital gains property.[15] The House bill also incorporated language which changed the definition of a capital asset to specifically exclude "a letter or memorandum, or similar property" [16] thus subjecting such property to the same tax treatment which had been accorded to copyrights and "literary, musical or artistic composition(s)" [17] under the Code.

When the Tax Reform Act [18] came before the Senate Finance Committee, the treatment of gifts of appreciated property to charity was discussed at length. Senator Jacob Javits of New York, in his testimony, pointed out:

"I am also concerned about the proposed treatment of gifts of appreciated property. This represents . . . one of the major inducements for gifts of valuable works of art and literature to our libraries, universities and museums. Frequently these provisions are the very reason why such works become available to the public rather than remaining in private collections where they can be enjoyed by only a few." [19]

Dr. Ernest L. Wilkinson, the President of Brigham Young University, expressed his opposition to the provisions of the House-passed bill as it affected contributions of manuscripts and art objects by stating:

". . . the Bill not only forces the undesirable Hobson's choice, upon the donor who gives appreciated real or intangible 'capital gain' property in the future interest form, it requires the same bad choice for a present gift of tangible personal property which has appreciated in value. This would effectively eliminate gifts of valuable books to universities and college libraries and it would eliminate gifts of valuable art objects to museums supported by such institutions . . ." [20]

In addition, the President of the American Association of Museums [21] and the President of the Association of Art Museum Directors [22] testified that the elimination of the tax advantage for contributors of art objects would have serious and detrimental effects upon their members. It was also pointed out that one of the most serious problems involved in tax deductions for this type of gift, that of valuation, had been overcome successfully by Internal Revenue Service endorsement of the Advisory Panel on the Valuation of Works of Art to the IRS. That panel of highly respected experts in the art world had proven to be instrumental in bringing under control the problem of determining just what a contributed work was worth for tax deduction purposes.[23]

The bill as reported out by the Senate Finance Committee made changes in the House treatment of gifts of appreciated property to charity.[24] The Senate returned to the recommendation set forth in the Nixon Administration tax reform proposals.[25] The Senate version provided that to the extent gifts of property which had appreciated in value would be treated as ordinary income or short term capital gain, if the property were sold, the charitable deduction would be reduced by the full amount of the appreciation in value. The Committee pointed out that examples of this type of property would be "letters, memorandums, etc., given by the person who prepared them (or by the person for whom they were prepared)." [26] The Senate Committee also reinstated the tax deduction on the appreciated value of tangible personal property not donated by the creator.[27] In so doing, the Committee made a rather strong statement of its policy regarding the tax treatment of donations to charity of works of art, paintings and books not produced by the donor:

"The Committee considers it appropriate to treat gifts of tangible personal property (such as paintings, art objects and books not produced by the donor) to public charities and schools similarly to gifts of intangible personal property and real property . . ." [28]

The Tax Reform Act of 1969, as finally enacted, carried over the Senate view of how to treat gifts of appreciated property which, if sold, would result in ordinary income (no deduction for the appreciated value) [29] and the allowance for the deduction of the full appreciation in value, with certain specified exceptions for gifts of tangible personal property produced by one other than the donor.[30]

The difference in treatment experienced by the creator-donor in comparison to other contributors of appreciated property in this situation is obvious. If an artist has a painting valued at $500, he has three choices: (1) he can keep the painting; (2) he can sell it at its $500 value; or (3) he can donate the painting to charity.

If he keeps the painting, he is taking the same risk you do if you were to buy it as an investment. He may feel he can get more than $500 and, like any man holding property which he expects to rise in value, wait until he feels the price is right before selling. If he sells the painting, he receives an immediate $500 of ordinary income upon which he must pay regular income tax rates as any wage earner does. If he gives the painting to a charity he can deduct the cost [32] of his paint and canvas or other materials from his income tax as a charitable contribution. The last choice gives him nowhere near the return he might expect in the case of the first two alternatives. In short, the financial impetus for him to contribute his painting, or in the case of an author, his manuscripts, to a charity is much smaller under the Tax Reform Act than it was under the prior law.[33]

On the other hand, if someone should purchase the painting at a price of $500 and it increases in value to $900, the third party can contribute the painting to an art museum and receive a $900 tax deduction. The deduction that the third party can gain is totally denied the artist even though the identical piece of property is involved in both transactions.[34]

In summation, the current status of the tax law as it affects the creator-donor is:

1. Section 170(e) of the Internal Revenue Code requires that any charitable contribution deduction claimed must be reduced by the sum of "the amount of gain which would not have been long term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution . . ." [35]

2. Section 1221 of the Internal Revenue Code specifically exempts from the definition of Capital Asset (and thus prohibits capital gains treatment of) "a copyright, a literary, musical or artistic composition, a letter or memorandum, or similar property held by—(A) a taxpayer whose personal efforts created such property (B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or (C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from sale or exchange, in whole or in part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B)." [36]

3. Section 170(e) is keyed to the Capital Asset definition section. The result of exempting the materials included in Section 1221 (3) (A), (B) and (C) from the definition of a capital asset is to make income derived from their sale ordinary income and thus contributions of such material can be deducted as a charitable contribution only to the extent of the donor's basis in the property. No appreciation factor is allowed to be deducted.

THE EFFECT OF THE TAX REFORM ACT OF 1969 ON DONATIONS OF DONOR CREATED PROPERTY

Quite often, the dire effects predicted by those who oppose changes in the tax law do not materialize. The taxpayers affected seem to adjust remarkably well and business seems to carry on, if not as usual, at least tolerably well. Unfortunately, this has not been the case with donations of gifts by authors, artists, and public figures of their manuscripts, paintings, and papers respectively. From the evidence that I have been able to gather it appears that the dire warnings given regarding donations from these individuals to art galleries, museums, libraries and other charitable institutions

Footnotes at end of article.

were prophetic and that the effect feared by those who opposed the change appears to be materializing.

A news story in the Washington, D.C., Sunday Star, stated that as of January 24, 1971, the General Counsel of the Library of Congress had noted that "not a single new gift of a manuscript collection has been received by the Library since January 1970." [37]

The main thrust of the article by Irving Lowens was the tremendous loss suffered by the Library of Congress and the nation's musical heritage, when the late Igor Stravinsky placed his musical papers and manuscripts up for sale on the open market for a reported price of $3.5 million. In the past Stravinsky had made gifts of his papers to the Library of Congress and taken the fair market value of the papers as a deduction against his income tax.[38]

Lowens maintained that the loss of the papers to the Library of Congress was probably "a direct result of certain strange provisions of the Tax Reform Act of 1969."[39]

In addition, Lowens stated, "The same story is being repeated in libraries across the country; the tax revision is looming as a major disaster." The evidence would seem to bear Mr. Lowens' gloomy prediction out. The Library of Congress information officer was quoted as saying "The effects of the law have been damaging to the acquisition program of the manuscript . . . ." [40] In 1970 there have been virtually no gifts of self-created material, although such material has been received on deposit. Such deposits have come from long-term donors. No deposits of material for which there was no prior history of negotiation and/or earlier gift occurred." Some individuals who had left material at the Library, intending to donate them later, withdrew the material.[41]

However, some humor did prevail even in the aura of disaster. As the general counsel of the Library of Congress put it, "some authors felt the urge to express to the Library their resentment about the legislation in such creative terms that those letters, alone, may be said to have added immeasurably to the Library's collection." [42] The general counsel, however, made it quite clear that to his mind the effects upon donations to museums, libraries, art galleries and other charities had been serious under the law, ". . . contributions of ordinary income property (such as literary property, including letters and memoranda) by creators are greatly discouraged. Early statistics appear to confirm this conclusion." [43]

A chart prepared by the general counsel for the Library of Congress dramatically illustrates the detrimental effect that has resulted from the change in the law. The chart traces gifts of musical and other manuscripts to the Library of Congress before and after passage of the Tax Reform Act of 1969.

Donations of self-generated manuscripts

Donations by year, 1965–1970

Music Division: Because of the nature of these gifts, emphasis is placed not only on the number of self-created musical manuscripts given but the number of donors as well.

Fiscal Year 1965–1966, 2 donors, 94 music mss.

Fiscal Year 1966–1967, 35 donors, 371 music mss.

Fiscal Year 1967–1968, 37 donors, 174 music mss.

Fiscal Year 1968–1969, 36 donors, 280 music mss.

Fiscal Year 1969–1970*, 6 donors, 62 music mss.

Manuscript Division: Although the number of donors is usually unaffected, many donors give one or two or just a few manuscripts; therefore, the emphasis in this area must be placed on the number of pieces which usually evidence larger collections.

Calendar 1967, 34 donors, 177,347 mss.

Calendar 1968**, 43 donors, 180,804 mss.

Calendar 1969, 39 donors, 283,528 mss.

Calendar 1970** 34 donors, 69,803 mss.

(The above information is based on statistics compiled by the Music Division and the Manuscript Division in cooperation with the Library's Exchange and Gift Division.)

(Explanations are supplied by Counsel.)

JOHN J. KOMINSKI,
General Counsel.

The Library of Congress has been by no means the only institution to suffer from the changes in the tax law. In a memorandum circulated by the University of Oregon Library, located in Eugene, Oregon, the Librarian stated, "Gifts of manuscripts and art created by an author, composer or artist himself have been drastically reduced by the Tax Reform Act signed into law in December 1969."

A prominent artist informed the Bureau of Reclamation of the Department of the Interior which was gathering art for a major showing that he could not contribute to the show,

"A new law, whereby art collectors and speculators are privileged to such benefits (the fair market value deduction) and the creators of this wealth are denied, (sic) also the U.S. government suffers, the Institutions, Libraries, museums, Universities, and etc. Who profits by this unjust law? . . . You will find that other artists will turn you down also . . ."

Arizona State University's Librarian Karl B. Johnson noted, "There have been no author-donation of manuscripts to our manuscript collection since the passage of the above act."

The evidence indicates that serious damage may be done to our nation's art, museum and library system by restricting the right of artists and authors to contribute their paintings and papers to appropriate institutions and claim as a deduction the fair market value of these materials as they could prior to the enactment of the Tax Reform Act of 1969.

WHY WAS THE LAW APPLYING TO GIFTS GIVEN BY THE CREATOR CHANGED?

We have already seen in the brief history of the passage of the Tax Reform Act of 1969 that there was a great deal of concern expressed in the recommendations of the Treasury prepared by both the Johnson and Nixon Administrations over the tax treatment of gifts of appreciated property to charity. It is also clear that one of the reasons that appeared later were the revelations in the Wall Street Journal that prominent political figures, including former President Johnson and former Vice President Humphrey, were reaping or planned to reap tax benefits under the law.

Where prominent public figures are involved in the use of tax benefits considerations of a political nature cannot help but enter the picture. (Note, for instance, the recent concern over the fact that Governor Reagan of California took advantage of tax deductions which resulted in his paying no California income taxes.) There can be no doubt that in the case of this area of the law political considerations entered into the final treatment of gifts of ordinary income property to charity.

In addition, there was a tremendous amount of indignation expressed by Members of Congress over the fact that by making a gift of appreciated property to charity an individual could receive more "income" than if he were to sell the property and pay taxes on his gain. This concern was expressed in the Johnson Treasury Department recommendations,[44] in the Nixon Treasury recommendations,[45] in the House report on the bill,[46] in the Senate report [47] and in the final analysis of the Tax Reform Act as prepared by the staff of the Joint Committee on Internal Revenue Taxation.[48]

As the staff of the Joint Committee put it in its *General Explanation of the Tax Reform Act of 1969*:

"General Reasons for Change—The combined effect of not taxing the appreciation in value and at the same time allowing a charitable contributions deduction for the fair market value of the property given produced tax benefits significantly greater than those available with respect to cash contributions . . . As a result in some cases it was possible for a taxpayer to realize a greater profit by making a gift of appreciated property than by selling the property, paying the tax on the gain, and keeping the proceeds." [49]

To cure this defect the law provided that ordinary income type property which was donated to charity by the creator could not be deducted to the extent of its appreciation in value.[50] But at the same time the law allowed a full deduction where the property was donated by someone other than the creator to a charity if the donation was related to the charitable donee's purpose. Even where the gift is made to a qualifying charity which would not use the material for its regular operations but would sell it for needed funds the non-creator donor can take a deduction of up to 50% of the appreciation in the value of the property.[51]

Certainly with regard to the artist the Congress has admirably fulfilled its hopes. He can no longer donate property which he has created and receive benefits greater than if he had sold it and paid taxes. The same is true of the author or certain holders of letters and memoranda with market value. However, with respect to the collector or speculator in these items the same tax benefit exists.

Thus the same type of property receives different tax treatment, based not upon the nature of the property but upon the status of the person who holds it. That in itself is not an inherently inequitable concept. For instance, the treatment of a painting held by the artist who created it as ordinary income property [52] rather than granting it capital gains status would seem to be fair inasmuch as the sale of the property will obviously be "ordinary income" of the clearest kind to the artist.[53] That classification has been made in the Code for some time.[54]

But while such an argument can be made for treatment of property of the creator as ordinary income for determining the rate of taxation applicable, is the same argument valid when applied to the charitable contributions section of the Code? When we discuss a charitable contribution deduction we are discussing an incentive to give to charity property which will be of assistance to the charity. It would seem that the guiding principle then should be the value of the gift to charity as determined by the fair market value standard and not the secondary value of the property involved to the donor as determined by his relationship to it. In the case of the treatment of the property as ordinary income, we are quite properly dealing with the relationship of the holder to the property. But it would seem that in the charitable contribution field the Code's concern should be the relationship of the property to the charity. Once it has been determined that our tax laws will be drawn so as to allow tax deductions for gifts to charity based upon fair market value, or some percentage thereof,[55] is it wise to superimpose upon that structure the distinction between ordinary income and long and short term capital gains which has its origin in another section of the tax code, drawn with an entirely different tax policy in mind? Since it has been determined that it is the nation's policy to promote gifts to charity, and since it has been determined that the gifts shall be

Footnotes at end of article.

valued at fair market value,[58] it would certainly seem to follow that any gift to charity should be so valued, regardless of the status of the donor.

PROBLEMS IN THE VALUATION OF ART OBJECTS, MANUSCRIPTS AND MEMORANDA

One of the reasons which the House Ways and Means Committee gave for its rather drastic treatment of donations of art objects, manuscripts and memoranda was that this class of property was extremely difficult to value. The Committee stated that there was evidence of significant overvaluation for tax purposes and felt that it was best for the entire deduction structure in this field to be eliminated.[57]

Art objects are difficult to appraise.[58] Even experts with long experience in the field can disagree on the value of a painting, and a painting determined at one time to be valueless can easily increase in value with the passage of time or the increased recognition of the artist.[59]

However, at the very time Congress was considering the tax reform legislation, significant gains were being made by the Internal Revenue Service in solving the problem of the determination of value, for tax purposes, of art objects when, in February of 1968, the IRS formed the Art Advisory Panel to the Commissioner of Internal Revenue.[60]

The Standard of value which governs appraisal of art objects and similar property donated to charity is "fair market value." Fair market value, as defined by Section 1.170–1c(1) of the Income Tax Regulations is

". . the price at which property could change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. . ."

The standard of fair market value in appraising the value of gifts to charity seems eminently reasonable. Certainly some cash value must be placed upon objects which are claimed as a tax deduction and the value of the object in the marketplace would seem to be the logical standard.

However, determining the value of an art object on the open market is not as easy as one may think. For instance, how do you determine the price the "Mona Lisa" would bring at today's art prices? Is not each art object, in itself, unique by its very nature? Is the historical value of a painting by a great master properly a part of "fair market value?" [61] What other standards of value may properly be applied as part of fair market value? [62]

The problem of valuation of art objects is obviously a real one. It is not terribly difficult to visualize a harassed Internal Revenue Service employee attempting to determine the value of Aunt Bessie's still life which her great-nephew has decided to donate to the local historical society so it will not clutter his attic, and who has claimed at the same time a charitable deduction of $500. Prior to the formation of the Art Advisory Panel to the Commissioner of Internal Revenue the valuation problem on art objects had been especially troublesome.

However, the Art Advisory Panel has provided an independent source, accepted by contributors and the IRS, whose valuations of art objects provide a guidepost both for the IRS and for the contributors of artistic creations. In 1969 alone the Art Advisory Panel examined 500 art objects which involved deductions claimed by 21 individuals and reduced total claimed valuation for the gifts from $20 million to $15 million—a savings to the taxpayer of $5 million and untold savings in litigation which might otherwise had to have been carried out by the government.[63]

As of August 27, 1971, no one has successfully challenged a valuation rendered by the panel.[64] Some of the reductions made by the panel have been drastic.[65] In one case, a claimed deduction of $500,000 for contributed paintings was reduced to under $10,000. In another a claimed deduction of $100,000 for the donation of two paintings was reduced to $5,000. The panel has received wide praise for its work.[66]

It would appear on the basis of the panel's performance that the problem of valuation of gifts of art has been largely solved. Unfortunately, the same cannot be said for contributions of manuscripts, papers, letters and memoranda.

SPECIAL PROBLEMS INVOLVED IN VALUATION OF MANUSCRIPTS, PAPERS, LETTERS AND MEMORANDA

When you move from valuation of art objects to the valuation of manuscripts, papers, letters and memoranda, the valuation problem faced with regard to art objects still exists inasmuch as the setting of a fair market value is concerned. Beyond that similarity, however, the problems of setting value become considerably different.

One problem is quantity. The papers of a President can number in the millions, a successful author may have cartons of papers, as can a president of General Motors or other prominent figures.

Quite understandably, papers which may be extremely important to a future scholar and thus of interest to a library seeking to build collections of papers of prominent individuals may have little or no interest to a private collector. This makes market value extremely difficult to determine. As the head of the appraisal section of the Internal Revenue Service described the problem:

"Too often, I observe Appraisers or historians equating intrinsic values with the harsher economic term "market value" as required under the federal tax code . . . the simple fact remains that property does not always bring the price it should intrinsically. Under the law we can only be concerned with what the property would bring in terms of dollars in the open market place . . . it seems unrealistic and unreasonable to presume that the value of literary papers for tax donation purposes is considerably higher than the market prices actually paid for comparable papers, based on their intrinsic historical importance . . . what a library or educational institution might pay for a collection of papers in the ideal or unreal world of unlimited institutional budgets, is of less significance as an indication of value than the real world of budgetary limitations and the prices actually being paid for collections of papers." [67]

It is noteworthy that Mr. Ruhue is careful in his remarks to address himself to the fair market value of collections. Another problem is also evident. For instance, a handwritten letter by President Kennedy may be worth $500 to a private collector. But a Presidential Library may have several thousand handwritten letters and memoranda. Could one maintain that the fair market value of such a collection held in the library is a simple multiple of the fair market value of the individual papers sold on the open market to collectors? Could not the argument be made that if the library were to sell the papers it held in the open market that the value in the marketplace of such material would drop to perhaps $100 per letter, or $1.00, or less? Do the libraries by holding certain collections in fact have a considerable influence over what is fair market value with regard to papers and memoranda to a much greater extent than an art museum could possibly influence the price of an individual artist's works?

Is fair market value, in fact, a viable standard when we talk of charitable contributions of letters, papers and memoranda in collection form? Or is the problem really one not of the concept of fair market value as a standard but of the weighing of the various factors which comprise a paper or collection's fair market value?

But regardless of the problems of valuation, a valuation must be made. Even though the guideposts are few and the value speculative, the Congress has determined that in cases where such papers are not contributed by the creator their appreciated value is properly taken as a charitable deduction. Perhaps the literary world would do well to look to the art world's example.[68]

If the Art Advisory Panel is any indication, the formation of such a panel for the purpose of appraising papers or collections of papers would seem to be an invaluable asset and an economical addition to the valuation procedure.[69]

In any event, it would certainly seem that if one accepts the concept of the charitable deduction for papers, memoranda and collections contributed by those other than the creator; and if he accepts the concept that the purpose of the contribution is to promote charitable giving; then he cannot properly assert the valuation problem as a bar to granting the deduction to the donor-creator.

SHOULD THE LAW BE CHANGED?

It is obvious from what has been pointed out earlier that serious problems are developing for libraries, museums and other charitable institutions as a result of the changes made by the Tax Reform Act of 1969. It is equally obvious that authors, artists and creators, or holders of papers created for them which have historical significance, are inequitably treated in comparison with other holders of such property where the charitable contribution deduction is concerned. What then, if anything, can be done to cure these inequities?

First of all, it must be admitted that there is a difference between the individual who purchases a painting and then contributes it to charity and the man who creates the painting and contributes it to charity. Whereas the "basis" of the artist or author in the work is his paint and materials or the pen and ink respectively, the basis of the purchaser is what he has paid for the painting or manuscript. The purchaser makes more of a cash investment in the property.

However, an author or artist, it is clear, puts more into a work than just paint and pen and ink. How do you value his talent, time and creativity for tax purposes? Even though these are intangible additions to the work, there is no doubt in my view that our tax law should in some way recognize that an artist's or author's "basis" in his work is far more than paint and ink.

At the current time, there are several proposals for revising the revisions made by the Tax Reform Act of 1969 with reference to the tax treatment of gifts of appreciated property by creator-donors.[70]

The proposals fall into two broad categories: (1) reinstatement of the prior law, or (2) allowance for a deduction based upon some percentage of the fair market value of the gift.[71] In addition, one proposal, S.1212, introduced by Senator Frank Church of Idaho, would restrict the deduction for letters, memoranda, and collections to deny a deduction to "any letter, memorandum, or similar property which was written, prepared, or produced, by or for an individual while he has held an office under the government of the United States or of any state or political subdivision thereof, and which was related to, or arose out of, the performance of the duties of such office." [72] Thus the Church bill contains the same opposition to allowing political figures a tax deduction which was first expressed with regard to this class of creator-donor in the proposal of former Senator John Williams of Delaware.[73]

Either approach would improve the tax

Footnotes at end of article.

status of the creator-donor.[74] Hopefully, such a change would reverse the current trend away from the contribution of donor-created gifts to charity.

One proposal which involves the percentage-of-market-value deduction concept would tie that percentage to the income of the donor-creator on a sliding scale. Depending upon the formulas used, such an approach would certainly seem to be feasible; however, there is a question as to how successful it would be in generating gifts to charity of the nature which charitable institutions could utilize. As I have pointed out before, the purpose of this section of the Code seems to be to promote gifts to charitable institutions of the nature they would find of assistance in their operations.

If the income figure were set too low, the tax deduction would not be allowed to many prominent men, and is it not the paper of prominent men which our libraries and museums so greatly desire for their collections? If the income level were high, the proposal would appear to defeat its own purpose in restricting the tax advantages of charitable giving to those with high incomes. Perhaps the contradictions within the Code are not made any clearer than in this proposal. On the one hand it attempts to generate this type of gift to charity and on the other it places a restriction upon such gifts based upon the income of the donor, not upon the need of the charity, which, it would appear, was the need the Congress wanted to serve in allowing the charitable contribution originally.[75]

What then of simply reinstating the deduction as it existed prior to reform? This approach certainly has a great deal of appeal. If one accepts the argument that the major purpose of the charitable deduction is to promote gifts to charity, this would certainly be the most logical approach. It has the advantage of making tax treatment equal for both the creator-donor and the third party donor.[76] However, regardless of my personal feeling that this should be the sole purpose of this section of the Code, the Congress has dictated that the position of the donor shall also be a factor in this area of the law.[77]

Under Section 170(e) as keyed to Section 1221(3), the Congress has expressed its view that the relationship of the donor to the property should be taken into account in determining the amount of deduction which the donor may take. It would appear, therefore, that unless the Congress was willing to rescind this Congressional policy with regard to this section of the law, total reinstatement of the prior law would be extremely difficult to achieve. It would involve not only allowing the deduction, but a change of Congressional policy to the effect that the relationship of the donor to the property shall no longer have a bearing in determining the value of the gift for tax deduction purposes. It is not unthinkable that the Congress would make such a change in the law, but it does appear that this approach might have a more difficult time than some form of percentage reinstatement which would still recognize the relationship but not in such a drastic way.

An approach which allows a percentage of fair market value as a deduction, but does not at the same time tie that percentage to the income of the donor, would seem to be the better view. This maintains the determination of the Congress that the creator-donor is a special class of contributor while at the same time it does not restrict the higher income creator from contributing his creations to charity, and in this respect it still fulfills, though to a lesser degree, the intent of the charitable contributions section by making desirable materials available to museums, libraries, art galleries and the like.[78]

BY WAY OF SUMMING UP

In summation, the following points appear to be most evident to this writer:

(1) The Tax Reform Act of 1969 is causing serious and detrimental problems because of its treatment of contributions of donor-created property to charitable institutions. Especially hard-hit are libraries, museums and art galleries.

(2) Inasmuch as Congress has determined that gifts of appreciated property may be deducted to the extent of their fair market value from income for income tax purposes, there appears to be no reason to treat this class of appreciated property in the especially harsh manner provided in the Tax Reform Act of 1969.

(3) There are acceptable alternatives to current laws which would maintain the general intent which the Congress has expressed should govern the tax treatment of gifts to charitable institutions and, at the same time, not discourage donor-created gifts to charity.

(4) The best approach to revising the law would appear to be allowing a charitable deduction to the donor-creator, based upon a reasonable percentage of the fair market value of his gift separate from any considerations of his other income except insomuch as that income affects his contributions' base.[79]

FOOTNOTES

*Tax Reform Act, 1969, in effect.

**Tax Reform Act, 1969, in effect. The figure for 1969 could be misleading until one is informed that the majority of these gifts were received in the first six months of 1969 when the changes made by the Act were not yet in effect.

[1] P.L. 91–172, 83 Stat. 487, Amending the Internal Revenue Code of 1954.

[2] Pertinent articles in legal journals include "Charitable Contributions Under the Tax Reform Act of 1969" J. M. Skilling, Jr., *The Practical Lawyer* 16:41 February 1970; "Papers on Tax Reform Act by ABA National Institute Lecturers." *The Tax Lawyer*, Bulletin of the Section of Taxation of the American Bar Association, 23:431 Spring 1970; "Summary of the Tax Reform Act of 1969," Stanley Weiss, *The Business Lawyer*, 25:973 April 1970; "Summary of the Tax Reform Act of 1969," S. J. Machtinger, *Journal of the Beverly Hills Bar Association*, 4:20 March 1970; "The Charitable Deduction," John Y. Taggart, *Tax Law Review*, 26:63 November 1970; "Charitable Scene in Relation to the Tax Reform Act of 1969," M. R. Fremont-Smith, *Real Property Probate and Trust Journal*, 5:393 Fall 1970; "The Tax Reform Act and the Charitable Contribution," *University of San Francisco Law Review*, 5:153 October 1970; "Charitable Contributions Under the 1969 Tax Reform Act: A Checklist of the New Rules," Hans P. Olsen, *Law Notes*, 6:125 July 1970; "1969 Tax Reform Act: A Conference," *New York University Institute on Federal Taxation*, 28:1 1970 (Supp); "Tax Reform Act of 1969: Its Effect on . . . Charitable Contribution," J. H. Myers, J. W. Quiggle, *Fordham Law Review*, 39:185 December 1970. (For a discussion of the law prior to the Tax Reform Act of 1969 by the same authors, see "Tax Aspects of Charitable Contributions and Bequests by Individuals," James W. Quiggle and John Holt Myers, *Fordham Law Reviews*, 28:579, Winter 1959–60.); (See also for a discussion of the prior law, "Charitable Gifts of Appreciated Property," T. P. Glassmoyer, *New York University Institute on Federal Taxation*, 20:243, 1962.)

A vast amount of material has also been published in newspapers, trade publications, and popular magazines on the Tax Reform Act before, during and after its enactment. Materials used in this paper include: "Can Museums Survive Tax Reform?" T. B. Hess, *Art News*, 68:27 October 1969; "Art and Taxes," *Newsweek*, 74:75 September 1, 1969; "Of Gifts and Taxes," *Time* 94–47 August 29, 1969; "How to Make Millions and Not Pay a Cent (in Taxes)," *Newsweek*, 73:69 February 24, 1969; "Why Some Rich People Pay Little or No Tax," *U.S. News and World Report*, 66:73 Feb. 3, 1969; "Tax Reform: The Time Is Now," Joseph W. Barr, *Saturday Review*, 52:22 March 22, 1969; "What Is the Impact of Those Tax Breaks?" *Business Week*, p. 62, February 1, 1969; "Tax Reform," G. Krettek and E. O. Looke, *American Library Association Bulletin*, 63:1240 October 1, 1969; "Tax Reform Dangers Hit by ALA Washington," *Library Journal*, 94:3950 November 1, 1969; "Tax Break for Artists: New Law in Ireland," R. Gelatt, *Saturday Review*, 52:28 November 15, 1969; "Notes and Comment: Offers By Libraries to Promote Future Works and Private Papers by Living Authors," *New Yorker*, 46:19–20 July 25, 1970; "How Best to Support Artists," C. Cutler, *Art in America*, 59:47 January 1971; "First in War, First in Space, and Last in Support of the Arts," D. Preiss, *American Artist*, 35:5 April 1971; "1969 Tax Reform Act Hurting Libraries," *Library Journal*, 96:1553 May 1971; "Tax Reform a 'Half-Axe' Effect on Manuscript Contributions," John J. Kominski, *Manuscripts*, p. 242, Fall 1970; "Music: Why Tax Reform Should Be Reformed," Irving Lowens, *The Sunday Washington, D.C. Star*, p. C–8, January 24, 1971; "Arts Agencies Urge Artists' Tax Reform," Press Release of the North American Assembly of State and Provincial Arts Agencies, Released Washington, D.C. May 23, 1971. "Politicians' Loophole: Many Officeholders Cut Taxes by Donating Files to Various Institutions—Congressmen, Senators Use Device; Humphrey Gives Papers to Historical Society—Determining Value Is Tricky," Jerry Landauer, *Wall Street Journal*, p. 1, May 22, 1969; "Tax Loophole for Legislators," Editorial, *The Washington Post*, July 27, 1969; "Hoving Sees Peril in Tax on Art Gifts," Richard F. Shepard, *The New York Times*, p. 14, August 8, 1969; "IRS to Weigh Claimed Values of Art Gifts," Murray Seeger, *The Washington Post*, p. D–5, March 4, 1969; "Making It More Costly To Give Paintings Away," Paul Richard, *The Washington Post*, p. D–7, August 13, 1969; "Tax Reform: What It Means to You; Changes Proposed in Gift Deductions," *The National Observer*, p. 10, October 20, 1969.

There is also a great deal of material available in Congressional publications: *Tax Reform Studies and Proposals: U S. Treasury Department*. Jointly printed by the House Ways and Means Committee and the Senate Finance Committee, Feb. 5, 1969 in three parts, 91st Congress, First Session; *Tax Reform Proposals Contained in the Message from the President of April 21, 1969 and Presented by Representatives of the Treasury Department to the (House) Ways and Means Committee*, Printed by the House Ways and Means Committee, Tuesday, April 22, 1969, 91st Congress, First Session; *Tax Reform, 1969*, Hearings before the Committee, First Session, in 15 volumes; *Tax Reform Act of 1969*, House Report 91–413, in two parts, August 2, 1969; *Summary of H.R. 13270, The Tax Reform Act of 1969* (as passed by the House of Representatives), prepared by the staffs of the Joint Committee on Internal Revenue Taxation and the Committee on Finance, August 8, 1969, 91st Congress, First Session; *Tax Reform Act of 1969*, Hearings Before the Committee on H.R. 13270 to Reform the Income Tax Laws, in 7 volumes; *Tax Reform Act of 1969*, Compilation of Decisions Reached in Executive Session, Committee on Finance, United States Senate, Oct. 31, 1969, 91st Congress, First Session; *Summary of H.R. 13270: Tax Reform Act of 1969* as reported by the Committee on Finance, November 18, 1969, Prepared by the staff of the Joint Committee on Internal Revenue Taxation for the use of the Committee on Finance, No. 91–552, November 21, 1969, 91st Congress, First Session; *Tax Reform Act of 1969*, Conference Report No.

91–782, Dec. 21, 1969, 91st Congress, First Session; *General Explanation of the Tax Reform Act of 1969*, H.R. 13270, 91st Congress, Public Law 91–172, prepared by the staff of the Joint Committee on Internal Revenue Taxation, December 3, 1970.

[3] I.R.C. Section 1221 (3) (A).

[4] I.R.C. Section 1221(3) (B).

[5] A survey of legal writing in preparation for this paper revealed only one article devoted exclusively to this area of the law. Even that article was more in the nature of a brief report than a close analysis. "Artists Seek to Reinstate Prior Law for Gifts," *Taxwise Giving*, May 1971, p. 7.

[6] "Why Some People Pay Little or No Tax," *U.S. News and World Report*, 66:73 February 3, 1969.

[7] *Tax Reform Studies and Proposals: U.S. Treasury Department*, Joint Publication of the Committeee on Ways and Means of the House of Representatives and the Committee on Finance of the U.S. Senate. 91st Congress, First Session, February 5, 1969, in 3 parts.

[8] *Tax Reform Studies and Proposals: U.S. Treasury Department*, February 5, 1969, Part 1, Page 14. The four reasons given were:

(1) The exclusion of one-half of the taxpayer's net long term capital gains, with the alternative of taxation of the entire gain at a maximum rate of 25 per cent.

(2) The exclusion of interest received on State and local government bonds.

(3) The exclusion resulting from percentage depletion in excess of the capital invested in the ownership of minerals and other natural resources.

(4) The exclusion of the appreciation on charitable gifts of appreciated property such as stocks, to the extent that this appreciation is taken as a deduction.

[9] *Tax Reform Proposals Contained in the Message of the President of April 21, 1969 and Presented by Representatives of the Treasury Department to the Committee on Ways and Means*, Printed by the House Ways and Means Committee, Tuesday April 22, 1969, 91st Congress, First Session, pp. 72–73.

[10] *Tax Reform Studies*, part 2, pp. 178–179, 187.

[11] *Tax Reform Proposals*, p. 177.

[12] *Tax Reform Studies*, part 2, pp. 178–179, 187. *Tax Reform Proposals*, p. 177.

[13] "To prevent this unwarranted tax benefit it is recommended that, in cases of this type, the amount of ordinary income or short-term capital gain which would have resulted if the property had been sold at fair market value be included in taxable income subject to a charitable contribution deduction equal to the fair market value of the property." *Tax Reform Studies*, part 2, p. 180.

The Nixon Administration proposal read: "To prevent this unwarranted tax benefit it is recommended that Section 170 be amended to provide that the allowable charitable deduction be reduced by the amount of ordinary income or net short term capital gain that would have resulted if the property had been sold at its fair market value rather than being donated to charity." *Tax Reform Proposals*, p. 178.

[14] The House bill allowed the contributor to elect between the two approaches. He could either add his gain or income to his income and then take the deduction, or he could reduce his deduction by the amount of the gain or income he would have received had the property been sold at fair market value. *H.R. 13270*, Section 201(c) and (d), 91st Congress, First Session.

[15] *H.R. 13270*, Section 2012(c) and (d), 91st Congress, First Session.

The reason given in the House Report for this drastic change in treatment is noteworthy since it appears to impute a triple motive: 1) the large appreciation factor in gifts of art; 2) the difficulty of valuation; 3) the especially large appreciation factor when the creator donated the object.

"All charitable gifts of art, collections of papers and other forms of tangible personal property are to be subject to the treatment provided by the bill, regardless of the type of charitable organization receiving the gift . . . Works of art, such as paintings, are one of the types of items which frequently are given to charities, and in which there often is a substantial amount of appreciation. The large amount of appreciation in many cases arises from the fact that the work of art is a product of the donor's own efforts (as are collections of papers in many cases). Works of art are very difficult to value and it appears likely that in some cases they may have been overvalued for purposes of determining the charitable contributions deduction."

See *House Report 91–143*, 91st Congress, First Session, Part 1 at page 55.

[16] *H.R. 13270*, Section 513. 91st Congress, First Session.

[17] I.R.C. Section 1221(3). This change cannot be appreciated without some background on the political climate surrounding this special category of property. The House Ways and Means Committee completed its hearings on tax reform on April 24, 1969. I have been able to find no reference in those hearings alluding to any proposed change in the law relating to the tax treatment of gifts of letters and memoranda to charitable institutions. However, on May 22, 1969, the *Wall Street Journal* carried a front page news item entitled "Politicans' Loophole: Many Officeholders Cut Taxes by Donating Files to Various Institutions—Congressmen, Senators Use Device; Humphrey Gives Papers to Historical Society—Determining Value Is Tricky," which was written by Jerry Landauer. It detailed certain advantages realized by public figures who contributed papers and memoranda to various tax-exempt organizations and made use of the charitable deduction received to offset their income from other sources and reduce their tax liability. Since this property was not specifically exempted from the definition of capital assets, these taxpayers could, if they chose, sell their papers and have the income from the sale treated as capital gains rather than ordinary income.

The *Journal* article mentioned tax breaks either taken or contemplated by such prominent officials and political figures as former Vice President Hubert Humphrey, Bill Miller, the Vice Presidential running mate of Senator Barry Goldwater in 1964, former President Lyndon Johnson, Supreme Court Justice William O. Douglas and others from both political parties.

On July 23, 1969, former Senator John Williams of Delaware introduced Senate bill 2683 which would have specifically eliminated this deduction for papers contributed by persons employed by local, state, or federal governments, which were produced while they were so employed. (Congressional Record, vol. 115, pt. 15, p. 20461.)

Unlike the Williams proposal, the House bill treated all such memoranda and letters the same regardless of whether or not created by the person while he was employed by a governmental body at the local, state or Federal level. (Compare S. 2683, 91st Congress, First Session, and H.R. 13270, Section 201(c) and (d) and Section 513.) Since the House Committee heard no testimony on this subject, one must assume that the provision was added by the Committee after the hearings as a result of the *Journal* article and the public feeling against politicians making use of this provision of the Code. Since the House Committee had already determined that all holders of tangible personal property should be denied their previous right to deduct appreciation in value up to full market value of a gift, it is understandable that the Williams proposal to restrict the deduction only for public officials was dropped. It was simply no longer necessary under the House version of the bill since all parties who donated such property were denied the deduction.

[18] *Tax Reform Act of 1969*, Hearings before the Committee on Finance, United States Senate, 91st Congress, First Session, pp. 526, 569–571, 792–797, 998, 999, 1015, 1224, 1225, 1274, 1332, 1353, 1362, 1363, 1584, 1702, 1703, 2019, 2023, 2035, 2041–2045, 2064–2066, 2069, 2072, 2073, 2078, 2079, 2081, 2085, 2089, 2093, 2121, 2125, 2126, 2129, 2134, 2137, 2147–2150, 2153, 2154, 2164, 2165, 2168–2170, 2178, 2181–2183, 2186–2190, 2192–2205, 2210, 2220–2225, 2232, 2237–2247, 2250, 2263, 2264, 2266, 2267, 2269, 2270, 2495–2498, 2500, 2502–2508, 2513, 2514, 2517–2523, 2526–2528, 2531–2537, 2544–2546, 2549, 2556–2558, 2563–2566, 2568–2572, 2575–2578, 2581–2585, 2594–2597, 2600–2603, 2608–2611, 2616–2619, 2624–2631, 2634–2638, 2646–2648, 2651–2653, 2659, 3329, 3339, 3447, 4694, 4713, 4714, 4788, 5098, 5099, 5169, 5170, 5212, 5265, 5709, 5710, 5764, 5765, 6037–6041, 6193, 6194, 6269, 6274, 6275, 6278, 6279, 6426, 6427, 6429.

[19] Senate Hearings, Volume 3, p. 2035.

[20] Senate Hearings, p. 2063.

[21] Senate Hearings, p. 2137.

[22] Senate Hearings, p. 2140.

[23] Senate Hearings, p. 2144.

[24] *Tax Reform Act of 1969*, Senate Report No. 91–552, November 1969, 91st Congress, First Session, pp. 81–82. H.R. 13270 as reported in Senate. Section 201(a).

[25] *Tax Reform Proposals*, p. 178.

[26] Senate Report, p. 81. It is interesting to note that the Senate Report specifically alludes to letters and memoranda contributions, but makes only a secondary reference to "(paintings, art objects, and books not created by the donor)." It is also interesting to speculate on why the Committee continued the exemption from the capital assets definition of a "letter or memorandum or similar property" which was held by the taxpayer for whom the property "was prepared or produced." Does this mean the papers held by a "creator-donor" that were prepared for him by his staff? If so, the language is obviously too broad for it would encompass the person who received a letter from taxpayer A as well. Is this a holdover from the concept of a public official's donations contained in the Williams proposal on the theory that the taxpayers have subsidized the creation of the property once and should not be required to once again subsidize the property in the form of a contribution? Why is a letter created by taxpayer A and sent to taxpayer B any different than a painting created at the request of taxpayer C and painted by taxpayer D? Why, since the Senator had rejected the House approach denying the deduction to all holders of tangible personal property, did it leave this particular restriction in the bill? Could it have been an oversight?

[27] H.R. 13270, as reported to the Senate, Section 201(a).

[28] Senate Report, p. 82.

[29] I.R.C. Section 170(a) (1) (A).

[30] *General Explanation of the Tax Reform Act of 1969*, H.R. 13270, 91st Congress, Public Law 91–172, prepared by the staff of the Joint Committee on Internal Revenue Taxation. December 3, 1970. p. 78. I.R.C. Section 170(e) (1) (A).

[31] A fourth option, it should be pointed out, is available under Section 1011(b) of the Code. This is the so-called bargain sale. Prior to the Tax Reform Act this was a popular charitable contribution mechanism. The holder of appreciated property sold it to charity at his basis and took the value of the appreciation as a deduction. Thus, A with a painting with a fair market value of $10,000, for which he paid $5,000, would sell that property to charity B for $5,000. No gain would be recognized on the $5,000 he received and he received a $5,000 deduction for

the difference between the price paid and the fair market value.

The Tax Reform Act has changed that treatment. Under the new Section 1011(b), the contributor must allocate his basis between the portion sold and the portion donated. For example, in the case above, one-half of the $5,000 basis must be allocated to the part sold and one-half to the portion contributed. As far as the tax law is concerned, two transactions have taken place: 1) a sale for $5,000 of property with a basis of $2,500, and 2) a contribution of $5,000 with a $2,500 basis. Thus, in this example, $2,500 would be recognized as a gain for tax purposes when the bargain sale of the $10,000 painting takes place.

Could the artist or author under this provision of the Code get more favorable tax treatment by making a bargain sale to charity and then take a deduction for appreciation in value which is denied him for an outright donation under 170(e)?

The new proposed regulation issued by the Treasury Department on April 30, 1971, would seem to foreclose this possibility. See Section 1.170–A–(c)(2) examples 5 and 6. The Treasury takes the position that no appreciation occurs for purposes of a bargain sale in this case and since that is the case there is no appreciation to be allocated under 1011(b).

[32] It should be pointed out that the definition of cost is not without some difficulty. For instance, if the artist travels to France to create a painting, is the trip a part of his cost? Could it be deducted as part of his basis in the painting? If a sculptor must travel to Italy to choose marble for a statue, is the trip part of his cost or only the purchase price of the marble he selects? If an author travels in a country to write a book about it, are his travel expenses part of the cost of the literary composition he may later try to contribute to charity? Can the author properly claim the trip as part of creating the original manuscript, or must some type of allocation be made to the numbers of copies of books that may be sold?

[33] For a good brief description of the effects of Section 170(e), note "The Charitable Deduction," John Y. Taggart, *Tax Law Review* 26:63 November 1970, p. 107, "How Does Section 170(e) Work?"

[34] Here it would be well to note that even though the property is properly treated as ordinary income property to the creator, the reasons for treatment of property as capital gains or ordinary income should have no bearing on the contribution question. In the one case the Code is attempting to separate two classes of property for the purpose of levying a tax. In the case of the charitable contribution the Code is attempting to give an incentive to holders of certain desirable property of use of charity to give that property to charity. It would appear that there is no logical reason for treating the two types of property differently for contribution purposes after the decision to allow the deduction for such gifts is made. The two purposes are entirely different and relate to different policies within the Code.

[35] I.R.C. Section 170(e)(1)(A).

[36] I.R.C. Section 1221(3) (A), (B) and (C).

[37] "Music: Why Tax Reform Should Be Reformed," Irving Lowens, *The Sunday Star*, January 24, 1971, p. C–8.

[38] *Ibid.* As of August 25, 1971, the papers still had not been sold.

[39] *Ibid.*

[40] The manuscripts acquisition program of the Library of Congress is a large one. In a brochure entitled "Literary Papers and Manuscripts: Their Place in the National Collections" prepared by the Reference Department of the Manuscripts Division of the Library, it is stated "It is fair to say that virtually every person who has significantly influenced American life is represented in some way in the Manuscript Division of the Library of Congress." *The Quarterly Journal* of the Library of Congress, Volume 27/1970 indicates in its survey of recent acquisitions by the Library (pp. 357–75) that the vast majority of acquisitions are by gift as opposed to purchase. Purchases of the Library are generally restricted to papers of deceased parties and such purchases are generally made from funds which were themselves gifts to the Library as opposed to other revenue sources. Some papers may be purchased at times by the Government, however, and then deposited with the Library.

[41] *Ibid.* The individuals were not identified.

[42] "Tax Reform: A Half-Axe Effect on Manuscript Contributions," John J. Kominski, General Counsel, Library of Congress, *Manuscripts*, Fall 1970, p. 243.

[43] *Ibid.*, p. 246. In addition, the Annual Report of the Library of Congress, at page 6, stated:

"Effects of the Tax Reform Act of 1969, predicted by many libraries, are already being felt by the Library of Congress. Under the Act, personal papers—correspondence, speeches, diaries, manuscripts, compositions, and the like—are treated as ordinary income property and not as capital assets, if they are held by the one who created them, by the one for whom they were created, or by the one who has received them as a gift from the creator. In addition, the tax deduction allowed the donor of such ordinary income property is severely limited. As a result, many authors, composers, artists and public figures who formerly enriched the libraries of the Nation with gifts of their papers have either discontinued their gifts, deferred them, or deposited rather than donated their papers, pending a possible change in the law. As this report points out, however, some donors who have already established substantial collections of their papers in the Library of Congress have continued to add to them. On the other hand, it is significant that not one new gift of a manuscript collection was received by the Library from January 1970 to the close of the fiscal year. The Library's great collections of papers of statesmen, scientists, authors, musicians, artists, educators, and other figures form the raw material from which our history is reconstructed, strengthened, and embellished. The Tax Reform Act threatens to cut off the supply of that material and could well result in impoverishing our national heritage.

[44] *Tax Reform Studies*, 91st Congress, First Session, February 5, 1969, Part 2, p. 187.

[45] *Tax Reform Proposals*, 91st Congress, First Session, April 22, 1969, p. 177.

[46] House Report No. 91–413, Part 1, p. 53.

[47] Senate Report No. 91–552, p. 81.

[48] *General Explanation of the Tax Reform Act of 1969*, December 5, 1970. Prepared by the Staff of the Joint Committee on Internal Revenue Taxation, p. 78.

[49] *General Explanation*, p. 77–78. It should be noted that this possibility of a greater actual gain on a "gift": as opposed to a sale and payment of tax was based upon a highly specilized example. The example used was:

". . . a married taxpayer filing a joint return with $95,000 of income after allowing for deductions and personal exemptions is in the 60% marginal tax bracket and would have an after tax net income of $52,820. If this individual sells an asset valued at $15,000 which would produce $12,000 of income taxable at ordinary income rate, his taxable income rate would be increased to $107,000, and after payment of his tax, he would be left with $60,480 of after tax income. On the other hand, by donating the asset to charity, he pays no tax on the $12,000 income and also deducts the full $15,000 value of the gift from his other income, thereby reducing his taxable income to $80,000. After payment of Federal income tax, he would be left with $61,660. Thus, under present law, by donating the asset to charity rather than selling the asset, the taxpayer makes $1,180, the amount by which he improved his after tax position."

The example obviously rests on a high appreciation element and a high income level. One wonders in practical terms how often the abuse could occur. However, the important fact is that the Congress was obviously influenced strongly by the possible occurrence to take some action to prevent it, not that the possibility of the occurrence was remote. Query also whether the abuse is now even more hypothetical in view of the 50% maximum tax now allowable on earned income under Section *1348* of the I.R.C. which removes the 60% marginal tax bracket used in the example.

[50] I.R.C. Section 170(e)(1)(A).

[51] I.R.C. Section 170(e)(1)(B).

[52] I.R.C. Section 1221(3)(A).

[53] Some countries do not seem to feel the same necessity for treating artists in the same manner as other taxpayers with regard to income received from the sale of their creations. Ireland, for example, in its *Finance Act of 1969*, at the same time the United States was creating a significant economic problem for its artists and writers, granted a total exemption from income taxes for income derived from artistic works. Creative materials such as books or other writings, a play, a musical composition, a painting, picture or sculpture qualify for the no income tax status. See "Tax Break for Artists: New Law in Ireland," Roland Gelatt, *Saturday Review* 52:28 November 15, 1969.

[54] House Report 91–413. 91st Congress, First Session, Part I, pp. 148–149. The rationale for the distinction is discussed at some length by the Committee at this point in reference to the reasons for the change in treatment of papers and memoranda.

[55] The policy of allowing deductions against income for charitable contributions by individuals has been a part of the income tax law since 1917 (now I.R.C. Section 170). Estate tax deductions for bequests to charity were granted in 1918 (I.R.C. Section 2055). Gift tax deductions have been allowed since 1932 (I.R.C. Section 2522) and corporations have been allowed to take a deduction since 1935 (I.R.C. Section 170). "Federal Tax Support of Charities and Other Exempt Organizations: The Need for a National Policy," Lawrence M. Stone, *1968 So. California Tax Institute* 33, Note 15.

Of course, there are those who argue that there should be no deduction whatsoever for such contributions and a discussion of that topic could be made in some detail. Suffice it to say for the purposes of this paper that those advocates, until now, have been unsuccessful in eliminating the charitable contributions deduction.

[56] I.R.C. Section 170(e)(1)(A).

[57] House Report, Part 1, p. 55.

[58] Mr. Karl Ruhue, Chief of the Appraisal Section of the Income Tax Division for the International Revenue Service, suggested a set of broad rules for determining value "particularly for literary and art objects":

(1) A clear statement of the premise or concept of value with the appraiser's definition of that value;

(2) A notation of the effection valuation date;

(3) An accurate description of the object, in detail, with its history or provenance, including record of sales, exhibitions, etc.;

(4) Proof of authentication;

(5) An assessment of its historical value for exhibition purposes; for research purposes, etc.;

(6) Fully developed and detailed basis upon which value is placed:

(a) Sales record of other comparable material of like kind and quality at or near the valuation date;

(b) Factors and relevant conditions of the existing market for the valuation date.

(7) Complete statement of the appraiser's

particular qualifications for determining the value of the particular property;

(8) In the case of paintings or art objects, a photograph by a competent commercial photographer to show the object at its most revealing and artistic advantage."

"Valuation for Federal Tax Purposes," Karl Ruhue, *Antique Bookman,* November 1968.

[59] For a fascinating and readable account of how even the best experts in the art world can be duped by a clever con man and his associates, a book dealing with the exploits of Elmyr de Hory, probably the greatest art forger of all time, makes interesting reading. It is said that his paintings, had they not been exposed, would have a current market value of over $60 million. *Fake,* Clifford Irving, McGraw Hill, New York, 1968.

[60] The current members of the Panel are:

Dr. Richard F. Brown, Director, Kimbell Foundation, Fort Forth, Texas.

Mr. Charles E. Buckley, Director, City Art Museum, St. Louis, Missouri.

Mr. Bartlett M. Hayes, Director, American Academy, Rome, Italy.

Dr. Sherman E. Lee, Director, Cleveland Museum of Art, Cleveland, Ohio.

Mr. William S. Lieberman, Director, Drawings and Prints, Museum of Modern Art, New York, New York.

Mr. Anthony M. Clark, Director, Minneapolis Institute of Arts, Minneapolis, Minnesota.

Dr. Perry B. Colt, Chief Curator (Ret.), National Gallery of Art, Washington, D.C.

Mr. Charles C. Cunningham, Director, Art Institute of Chicago, Chicago, Illinois.

Mr. Kenneth Donahue, Director, Los Angeles County Museum of Art, Los Angeles, California.

Mr. Louis Goldenberg, Art Dealer, Wildenstein and Co., New York, New York.

Dr. George H. Hamilton, Professor, Williams College, Williamstown, Massachusetts.

Professor Charles F. Montgomery, University of Delaware, Newark, Delaware.

Mr. Frank Perls, Art Dealer, Perls Gallery, Beverly Hills, California.

Mrs. Esther W. Robles, Art Dealer, Esther Robles Gallery, Los Angeles, California.

Mr. Alexandre P. Rosenberg, Art Dealer, Paul Rosenberg & Co., New York, New York.

Mr. Theodore Rousseau, Vice Director, Metropolitan Museum of Art, New York, New York.

Dr. Merrill C. Rueppel, Director, Dallas Museum of Fine Arts, Dallas, Texas.

Mr. Eugene V. Thaw, Art Dealer, E. V. Thaw Co., New York, New York.

Past members of the panel have been:

Mr. Edward R. Lubin, Dealer, E. R. Lubin, Inc., New York, New York.

Mr. A. Hyatt Mayor, President, Hispanic Society of America, New York, New York.

Mr. Allan McNab, Art Consultant, La Point, Wisconsin.

Professor Charles Seymour, Jr., Yale University, New Haven, Connecticut.

Mr. Gordon Mackintosh Smith, Director, Albright-Knox Art Gallery, Buffalo, New York.

[61] Mr. Ruhue's remarks at note 58 supra. would seem to indicate that historical value can be a factor in the determination of fair market value.

[62] For instance, is the "intrinsic value" of an object of any use in determining its fair market value? It may be difficult for the Director of an art museum to speak in terms of the money value of a painting. He may use such terms as "invaluable" to describe an acquisition. Perhaps in terms of adding to the gallery's collection, of in adding to the know collection of paintings of a master (as where a previously unknown painting is uncovered), the acquisition is, indeed, "invaluable to the art world, but that factor would seem to have little bearing on the hard reality of the tax law which demands some money value be placed on the object at issue. Also see note 58 supra, and Revenue Procedure 66–49, Reprinted from the Internal Revenue Bulletin 1966–48 of November 28, 1966, which states at Section 2.02:

"As to the measure of proof in determining the fair market value, all factors bearing on value are relevant including, where pertinent, the cost, or selling price of the item, sales of comparable properties, cost of reproduction, opinion evidence and appraisals. Fair market value depends on value in the market and not on intrinsic worth." Query if the statement above is not inherently inconsistent. If the IRS is going to say all factors bearing on value are relevant, how may it then, in the same breath, say intrinsic value is not. The IRS may recognize its own problem inasmuch as Revenue Procedure 66–49 does not take the trouble to define the term "intrinsic value."

[63] "IRS Panel to Weigh Claimed Values of Arts Gifts," Murray Seeger, *The Washington Post,* March 4, 1969, p. D–5.

[64] "IRS Panel," *Post.*

[65] Although the panel has made significant reductions in the valuation of gifts for deduction purposes, it does not make advisory rulings. This would seem to be in line with IRS policy in this field. Mr. Ruhue, in his article in the *Antique Bookman,* supra. note 58 above, puts it in these terms:

"The Service will not approve valuations in advance of the filing of a tax return nor will they imply de facto recognition to an appraiser or appraisal group as to unquestioned advance acceptance of value determinations."

[66] "IRS Panel," *Post.*

[67] "Literary Papers and Tax Contribution Deductions," Speech by Karl Ruhue, Chief, Appraisal Section, Income Tax Division, IRS, before the American Society of Archivists, Madison, Wisconsin, October 1969.

[68] Indeed the indications are that they already have. The Appraisal Division of the Internal Revenue Service informed me in a telephone conversation that a meeting had been held in 1970 with representatives of the American Library Association to discuss the possibility of a panel similar to the Art Advisory Panel for the purpose of valuing papers, manuscripts, memoranda and collections of such materials.

[69] However, one may properly ask if such a panel could really determine values based upon the fair market value standard. Perhaps a purist might feel their valuations too speculative in light of the fact that the "market" for such collections is difficult to determine and that, as a result, the panel could not possibly make objective determinations. But is there any real alternative that would be more equitable to both the taxpayer and the government?

[70] The proposlas are 1) reinstatement of the prior law, an approach suggested by the Associated Council of the Arts (See "Art Agencies Urge Artists Tax Reform," a press release issued May 23, 1971 in Washington, D.C. by the Associated Council of the Arts); 2) reinstate the deduction up to 50% of the fair market value, except in the case of certain contributions by certain public officials, (see remarks of Senator Frank Church in the CONGRESSIONAL RECORD, vol. 117, pt. 5, pp. 6314–6317, on introduction of S. 1212); 3) reinstatement of the full deduction and changing the Code to treat this type of material as a capital asset upon sale (See H.R. 843, 92nd Congress, First Session, introduced by Representative Edward Koch of New York); 4) reinstatement of a percentage deduction based on fair market value but tying the percentage to the income of the donor on a sliding scale which would reduce the percentage deduction allowed as income increased.

[71] See note 70 above.

[72] S. 1212, 92nd Congress, First Session, Section (3)(B).

[73] See note 17 above.

[74] The most benefit to the creator-donor would result from acceptance of H.R. 843. Not only would the creator be allowed the full market value as a charitable contribution, he would be allowed to sell his creation on the market and pay tax on the proceeds at capital gains as opposed to ordinary income rates. Query whether this is wise. Would not allowing the creator-donor the advantage of capital gains treatment on sale accomplish just the opposite of what the charitable contribution envisions? Would it not mean that his economic advantage upon sale would be far greater than his economic benefit from a tax deduction for a contribution? Would not the tendency be to sell rather than donate if capital gains treatment were allowed on the proceeds of the sale? Indeed, if one accepts the idea that capital gains treatment was designed to stimulate investment in property, would not allowing the treatment for this class of property be inconsistent with the intent of this section of the Code? Is not a painting created by an artist created so he can realize income on the sale of a clearly ordinary nature as opposed to an investment in a property which may be later sold to realize a gain of a capital gains nature?

[75] For instance, under this approach might it not be argued that the Library of Congress still would have lost the Stravinsky collection? Would not an art gallery want its collection rounded out by the addition of an Andred Wyeth painting as opposed to the first attempts of an unknown artist in the low income category? Are we trying to add to the collections of our libraries, museums and similar institutions or grant a subsidy via the tax code to low income artists and writers?

[76] Query, however, if the treatment really is the same. For instance, given the fact that the collector donor's property is subject to capital gains taxation rates and the property of the creator-donor is subject to ordinary income tax rates, can it not be argued that the net impact upon tax collections is less when giving the full fair market deduction to the collector donor inasmuch as his income from the property would only have been taxable at capital gains rates whereas the donor-creator stands to gain a greater advantage for, if his property were to be sold, he would pay at ordinary income tax rates.

[77] I.R.C. Section 170(e).

[78] The legislation which takes this approach, however, is S. 1212 and, as pointed out earlier, it contains a provision restricting the deduction for certain public officials. It is certainly fair to ask why a political figure or public official, whose papers may be of the very nature which libraries and museums may well desire the most should be denied the same incentive to give as other creator-donors. Put another way, if our goal is to give incentives to give for the benefit of the charitable institution, is it fair to deny the incentive to the type of gift which they may be most desirous of obtaining? Another fact to consider, however, is that these papers have already been subsidized once by the taxpayer and have their value by virtue of the creator's public office. Is it fair to ask the tax structure once again to subsidize the material created?

[79] I.R.C. Section 170(b)(1)b(D).

By Mr. CASE:

S. 1368. A bill to prohibit the use for public works projects of any lands designated for use for parks, for recreational purposes, or for the preservation of its natural values unless such lands are replaced by lands of like kind. Referred to the Committee on Interior and Insular Affairs.

PARK LAND PROTECTION ACT

Mr. CASE. Mr. President, I introduce for appropriate reference a bill designed to insure that the steady advance of urbanization in this country does not overrun the present and future needs for parks, recreational areas, wildlife refuges and other open space.

Titled "The Park Land Protection Act," my bill will require replacement of any land that had been used for recreational purposes or the protection of its natural values if it is diverted to use in connection with a public works project that involves Federal financing. This means, as my bill says, replacement by land "comparable in value, quality and quantity."

Current law prohibits the taking of parks, wildlife refuges and recreation areas for highways unless the Secretary of Transportation finds there is no feasible and prudent alternative to the use of such land for a road. But there is nothing in the law to require replacement of the land if the Secretary finds there is no alternative to using it for a road.

My bill fills this gap, not only in regard to highways but to all public works projects using Federal funds.

The "replacement in kind" provision of my bill would apply both where a Federal agency seeks to utilize lands under Federal control and where the Federal Government assists the States, or their political subdivisions, in financing projects which involve the use of parks or open spaces under State or local jurisdiction.

In addition, it would require that offers of replacement must be made to the owners of private land that is being used for park or scenic purposes, for wildlife sanctuaries, or for protection of its natural values.

Should controversy arise over whether the replacement lands are of like kind, the dispute would be submitted to a "Park and Recreational Replacement Lands Review Commission," which would be established by my bill. This Commission would be composed of nine members appointed by the President—four from the executive branch of the Federal Government and five private individuals with recognized competence in real estate or conservation matters.

Several years ago, when I first introduced the original version of my Park Land Protection Act, I devoted a large portion of my remarks to pointing up the need to protect land to meet the Nation's recreational needs. Since then, I believe this need has become self-evident and accepted by the vast majority.

Many examples of the need for the bill could be cited but one should suffice at this time.

East Brunswick, N.J., recently dropped plans to develop a new park despite the fact that there was $119,550 in Federal and State funds available for acquisition of the 65-acre tract.

One of the reasons cited for failure to take the opportunity to develop the park was that the Army Corps of Engineers has proposed a dam project nearby and the park land may be flooded by the Corps of Engineers project, even though that project is at least 10 years away.

If there had been assurance that the park land would have to be replaced if its use was destroyed by the dam project, the decision might have been different.

What still is needed is a legal mechanism to provide this protection. This is the purpose of my bill.

It will say simply that our national store of recreational land and open space must be preserved and that any land that is used for any public works project must be replaced by land "comparable in value, quantity and quality."

In my view, this is a step that is overdue.

It is a step that would complement any action Congress may take this year on land use planning.

Obviously, the best land use plans can be upset by unforeseen demands for land for public works projects. But there must be some assurance that these demands are not met at the expense of meeting the need for recreational and open space areas. Our store of these lands must not be depleted to meet the need for public works projects.

Therefore, I believe my bill should be considered in connection with land use planning legislation and I urge that it be referred to the Senate Interior Committee for that purpose.

By Mr. JAVITS (for himself and Mr. BUCKLEY):

S. 1369. A bill to reestablish and extend the program whereby payments in lieu of taxes may be made with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments. Referred to the Committee on Government Operations.

Mr. JAVITS. Mr. President, on behalf of the junior Senator from New York (Mr. BUCKLEY) and myself, I introduce a bill concerning the transfer of real property having a taxable status from the Reconstruction Finance Corporation or any of its subsidiaries to another Government department.

I ask unanimous consent that a list of former RFC plants in inventory, together with the bill itself, be printed at this point in the RECORD.

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

FORMER RFC PLANTS IN INVENTORY [1]

Air Force Plant No. 43, Stratford, Connecticut.

Air Force Plant No. 13, Wichita, Kansas.

Air Force Plant No. 50, Halethrope, Maryland.

Air Force Plant No. 28, Everett, Massachusetts.

Air Force Plant No. 63, Grafton, Massachusetts.[2]

Air Force Plant No. 29, West Lynn, Massachusetts.

Air Force Plant No. 59, Johnson City, New York.[2]

Air Force Plant No. 36, Evandale, Ohio.

Air Force Plant No. 27, Toledo, Ohio.[2]

Burlington Army Ammunition Plant, Burlington, New Jersey.

Tarheel Army Missile Plant, Burlington, North Carolina.

Riverbank Army Ammunition Plant, Stanislaus County, California.

Gateway Army Ammunition Plant, St. Louis, Missouri.

Saginaw Army Aircraft Plant, Saginaw, Texas.

Remington Rand Plant, St. Paul, Minnesota.

Naval Weapons Industrial Reserve Plant, Columbus, Ohio.

Naval Weapons Industrial Reserve Plant (LTV), Dallas, Texas.

Naval Air Turbine Test Station, Trenton, New Jersey.

GSA Administration Building (FOB), Kansas City, Missouri (GSA Inventory).

Mergenthaler Building (FOB), New York, New York (GSA Inventory).

National Lead Company (Portion), Tahawus, New York (GSA Inventory).[2 3]

FOOTNOTES

[1] All properties originally in DoD inventory unless otherwise noted. Of the properties in GSA inventory, the two designated "FOB" have been converted from industrial use to Federal office building use.

[2] Designates buildings reported excess to GSA and currently under disposal action.

[3] Agreement reached with National Lead Co. for sale of this property and an explanatory statement outlining proposed sale has been submitted to Congressional Committees on Government Operations. At the request of the Senate Committee, GSA is deferring the sale indefinitely. Deferral requested because of environmental concern expressed by State of New York.

S. 1369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress recognizes the transfer of real property having a taxable status from the Reconstruction Finance Corporation or any of its subsidiaries to another Government department has often operated to remove such property from the tax rolls of States and local taxing authorities, thereby creating an undue and unexpected burden upon such States and local taxing authorities, and causing disruption of their operations. It is the purpose of this Act to furnish temporary measures of relief for such States and local taxing authorities by providing that payments in lieu of taxes shall be made with respect to real property so transferred on or after January 1, 1946.

SEC. 2. As used in this Act—

(a) The term "State" means each of the several States of the United States.

(b) The term "real property" means (1) any interest in land, and (2) any improvement made thereon prior to any transfer thereof occurring on or after January 1, 1946, from the Reconstruction Finance Corporation to any other Government department, if for the purpose of taxation such interest or improvement is characterized as real property under the applicable law of the State in which such land is located.

(c) The term "local taxing authority" means any county or municipality, and any subdivision of any State, county, or municipality, which is authorized by law to levy and collect taxes upon real property.

(d) The terms "real property tax" and "real property taxes" do not include any special assessment levied upon real property after the date of a transfer of such real property occurring on or after January 1, 1946, from the Reconstruction Finance Corporation to any other Government department.

(e) The term "Government department" means any department, agency, or instrumentality of the United States, except the Reconstruction Finance Corporation.

(f) The term "transfer" means—

(1) a transfer of custody and control of, or accountability for the care and handling of, any real property, or

(2) a transfer of legal title to any real property.

(g) The term "Reconstruction Finance Corporation" includes all subsidiaries of the Reconstruction Finance Corporation.

SEC. 3. Where real property has been transferred on or after January 1, 1946, from the Reconstruction Finance Corporation to any Government department, and the title to such real property has been held by the United States continuously since such transfer, then on each date occurring on or after January 1, 1971, and prior to January 1, 1975, on which real property taxes levied by any State or local taxing authority with respect to any period become due, the Government department which has custody and control of such real property shall pay to the appropriate State and local taxing authorities an amount equal to the amount of the real property tax which would be payable to each such State or local taxing authority on such date if legal title to such real property has been held by a private citizen on such date and during all periods to which such date relates.

SEC. 4. (a) The failure of any Government department to make, or to make timely payment of, any payment authorized by section 3 of this Act shall not subject—

(1) any Government department, or any person who is a subsequent purchaser of any real property from any Government department, to the payment of any penalty or penalty interest, or to any payment in lieu of any penalty or penalty interest; or

(2) any real estate or other property or property right to any lien, attachment, foreclosure, garnishment, or other legal proceding.

(b) No payment shall be made under section 3 of this Act with respect to any real property of any of the following categories:

(1) Real property taxable by any State or local taxing authority under any provision of law, or with respect to which any payment in lieu of taxes is payable under any other provision of law.

(2) Real property used or held primarily for any purpose for which real property owned by any private citizen would be exempt from real property tax under the constitution or laws of the State in which the property is situated.

(3) Real property used or held primarily for the rendition of service to or on behalf of the local public, including (but not limited to) the following categories of real property; courthouses; post offices and other property used for purposes incidental to postal operations; and federally owned airports maintained and operated by the Civil Aeronautics Administration.

(4) Office buildings and facilities which are an integral part of, or are used for purposes incidental to the use made of, any properties described in paragraph (1), (2), or (3) of this subsection.

(c) Nothing contained in this Act shall establish any liability of any Government department for the payment of any payment in lieu of taxes with respect to any real property for any period before January 1, 1971, or after December 31, 1974.

SEC. 5. This Act shall take effect as of January 1, 1971.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 368

At the request of Mr. STAFFORD, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 368, the Uniformed Services Special Pay Act of 1973.

S. 471

At the request of Mr. CHURCH, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of S. 471, a bill to encourage State and local governments to reform their real property tax systems so as to decrease the real property tax burden of low- and moderate-income individuals who have attained age 65.

S. 548

At the request of Mr. HUMPHREY, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 548, a bill to provide price support for milk at not less than 85 per centum of the parity price therefor.

S. 631

At the request of Mr. CHURCH, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of S. 631, a bill to amend the Social Security Act to provide for the coverage of certain drugs under part A of the health insurance program established by title XVIII of such act.

S. 632

At the request of Mr. CHURCH, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of S. 632, a bill to amend title II of the Social Security Act to increase the amount which individuals may earn without suffering deductions from benefits on account of excess earnings, and for other purposes.

S. 633

At the request of Mr. CHURCH, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of S. 633, a bill to authorize the Secretary of Labor to make grants for the conduct of older Americans home-repair projects, and for other purposes.

S. 874

At the request of Mr. WILLIAMS, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of S. 874, the Gifted and Talented Children's Educational Assistance Act.

S. 993

At the request of Mr. MONDALE, the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maine (Mr. HATHAWAY), the Senator from Wisconsin (Mr. PROXMIRE), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of S. 993, authorizing the issuance of right-of-way permits in the State of Alaska for certain purposes.

S. 1007

At the request of Mr. PEARSON, the Senator from Montana (Mr. MANSFIELD), the Senator from New York (Mr. JAVITS), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. DOLE), and the Senator from Tennessee (Mr. BROCK) were added as cosponsors of S. 1007, to provide for increased foreign commerce involving small businesses.

SENATE CONCURRENT RESOLUTION 18—SUBMISSION OF A CONCURRENT RESOLUTION EXPRESSING OPPOSITION TO CERTAIN MEASURES FOR THE CURTAILMENT OF BENEFITS UNDER THE MEDICARE AND MEDICAID PROGRAMS

(Referred to the Committee on Finance.)

SENATE MAJORITY OPPOSES MEDICARE, MEDICAID CUTS

Mr. MONDALE. Mr. President, I am proud to act on behalf of a bipartisan majority of my colleagues in the Senate—in introducing a concurrent resolution rejecting cuts in medicare and medicaid benefits proposed in the budget submitted by the President last January 29.

The President has said that he will submit legislation to Congress making the following changes in medicare and medicaid programs:

Increase the charge to patients for the first day of hospitalization from $72 to the full hospital charge.

Require the patient to pay 10 percent of actual hospital costs between the first and 61st days—now free under medicare.

Require those covered under part B of medicare to pay the first $85 of bills for physicians' services—instead of the first $60—and 25 percent of everything above that—instead of 20 percent.

Eliminate "low priority" medicaid services—including dental care for adults.

Under the present law, older Americans covered by medicare are assured that a stay in the hospital—even one as long as 60 days—will cost them no more than $72. But under the administration proposals a 3-week stay would cost a minimum of $200, and a stay of 60 days a minimum of $500. These figures are based on the 1972 average daily hospital service charge of $70 a day. But in many States—such as my own State of Minnesota, where daily hospital charges may run as high as $500—the budget proposals would place an even greater and absolutely intolerable burden on medicare patients.

We all agree on the need for economy. But we can spare this additional burden on those least able to pay. There is enough fat in the budget—in Pentagon waste, in extravagant space programs, in continued special tax benefits for powerful interests—to make up the difference many times over.

With a majority of the Senate on record against the administration's proposed cutbacks, 23 million older Americans will not have to spend weeks and months waiting in fear to see what Congress will do with these proposals—which would increase their out-of-pocket costs for health care by over $1 billion in 1974.

Mr. President, I ask unanimous consent that a copy of the concurrent resolution may appear at this point in the RECORD, together with an excellent article by Jonathan Spivak from last Friday's Wall Street Journal discussing the administration's medicare proposals.

There being no objection, the concurrent resolution and article were ordered to be printed in the RECORD, as follows:

S. CON. RES. 18

Whereas, in the National Budget proposed for the fiscal year ending June 30, 1975, the amount of expenditures allocated for the Medicare and Medicaid programs for such year is predicated upon the enactment into law of amendments to titles XVIII and XIX of the Social Security Act which would have the effect of—

(1) increasing the amount of the deductible, which is applicable (under part A of such title XVIII) with respect to the first day of inpatient hospital services received by a patient, to an amount equal to the average per diem cost of inpatient hospital services;

(2) imposing a coinsurance amount, with respect to inpatient hospital services (under part A of such title XVIII) received after the first day a patient receives such services and prior to the 61st day he receives such services, equal to 10 per centum of the actual costs imposed for such services;

(3) reducing coverage for physicians' services (under part B of such title XVIII) by increasing the deductible applicable thereto from $60 to $85, and by increasing the patient's share of such costs, above the deductible, from 20 per centum to 25 per centum; and

(4) eliminating (under such title XIX) Federal financial participation with respect to costs, incurred under a State plan approved under such title, attributable to the provision of certain low-priority services (including dental care) to adults: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that no such amendments be enacted.

SHOULD OLD FOLKS PAY MORE FOR MEDICARE? WOULD THAT CURB THE MISUSE OF SERVICES?

(By Jonathan Spivak)

WASHINGTON. Mary W., 75 years old, entered Washington Hospital Center here last November with diabetes and cancer. Though her seven-day stay cost $903.35, she paid only $72; medicare took care of the rest.

But, under a Nixon administration proposal she would have to pay nearly twice as much, or $152.13, for the same care.

That is a fair sample of the dollar-and-cents effect of one of President Nixon's most hotly disputed economy plans—one that proposes the elderly foot more of their health bills while the government pay less. The biggest change: Starting next January, the aged would have to pay 10% of their hospital bills. Their contributions now total far less than that. And though a few medicare beneficiaries would gain by the change, many would find their pocketbook burden doubled.

Against these presidential intentions, the elderly and their liberal friends in Washington are employing strong language. "Savage cutbacks proposed for the medicare health insurance program . . . represent a shameful repudiation of a pledge made to older Americans by the President," charges Nelson Cruikshank, 70, president of the National Council of Senior Citizens.

But Nixon spokesmen, denying any breach of promise, are pouring forth soothing reassurances. Caspar Weinberger, Health, Education and Welfare Secretary, says: "We believe that the medicare reforms . . . won't invoke financial hardship on the program's beneficiaries."

EMOTIONAL DEBATE

In the often emotional debate, serious economic issues are being thrashed out. The administration, backed by congressional conservatives, believes the rapid escalation of medicare costs must be halted. The proposed changes would mean a cut of 10%, saving an estimated $1.3 billion annually at the start and much more later on.

The advocates of the cutback argue, too, that the tightening-up would eliminate wasteful use of health services, make physicians more cost-conscious and tie medicare patients' payments closer to the actual cost of care.

"It seems clear that someone with a pension or even Social Security income can and should pay a small percentage of his income if he is going to stay in a hospital bed that is going to cost other people as much as $50 to $100 a day," insists Nixon aide John Ehrlichman.

Critics complain that the changes would impose a financial burden on the aged, prevent them from getting necessary medical care, produce a medicare fund surplus without passing the savings along to taxpaying workers and do nothing to solve the problem of rising medical costs. One Democrat, Sen. Edmund Muskie of Maine, even suggests "this plan could in fact increase costs for all concerned—the elderly, the government and the health industry.

The critics do concede one point: Charges paid by patients would be more closely related to actual hospital costs. Currently the aged must pay the national average cost for their first day of hospital care, regardless of what the hopsital charges and what the illness is. They, then get 59 days of free hospitalization. For the 30 days following they pay 25% of the average daily cost and for the 60 days following that they pay 50%. This arrangement plainly puts a burden on patients who are more seriously ill and stay in the hospital longer, and it ignores wide cost variation among individual institutions in different parts of the country.

Instead, the administration approach would have patients pay the actual charges for the first day of care. These range from $15 in small hospitals to $100 in big-city institutions. The national average is $72 a day. After the first day, patients would pay 10% of all hospital charges.

Some patients, particularly the 1% hospitalized for more than 60 days, would have money by the change. But most patients would pay more than at present, since the average hospital stay for medicare beneficiaries is only about 12 days. Secretary Weinberger concedes that the patient's payment for the average stay would rise to $189 from $84.

Other burdens for medicare beneficiaries would also rise. Under the program's separate coverage of doctor bills, patients would have to pay a higher "deductible" amount before the government would start shelling out. These payments would increase in the future by the same percentage that Social Security benefits rose.

COUNTING ON MEDICARE

The savings resulting from the proposed changes would permit a reduction of 6% to 7% in the payroll tax that finances medicare and would allow a cut of 30 cents from the $6.30 monthly premium for doctor-bill coverage. But the administration isn't proposing such adjustment. Instead, it is counting on the medicare cutbacks to help reduce the budget deficit.

Nixon men argue, moreover, that reducing medicare outlays would allow them to maintain spending for other health programs. But Congress likes to look on medicare and Social Security as a separate compartment of the budget and balance the tax revenue taken in and the benefits handed out.

Beyond that, Congress simply doesn't like the notion of curtailing basic benefits that so many voters count on. And this is one Nixon economy plan that would clearly require legislation to enact. Last year a much milder proposal to increase patients' hospital payments came to grief in the Senate Finance Committee. This year's tougher plan seems sure to meet even stiffer resistance, as Secretary Weinberger's stalwarts themselves concede. "There's a one-in-twenty chance to get the legislation," one HEW official says.

The clashing assessments of the Nixon proposal spring partly from conflicting views of medicare priorities. To those who see lowering of financial barriers to medical care as the overriding aim, any increase in payments to the elderly is a step backward. Certainly when medicare was adopted in 1965, Congress was more intent on increasing the aged's access to health care than on holding down the cost.

"The whole principle of medicare was that the elderly weren't getting the care they need because they couldn't afford to pay for it," insists Bert Seidman, Social Security director for the AFL–CIO.

To those more concerned about costs, the view is different. Since 1965 the price of medical care has skyrocketed, and the government has already imposed limits on physicians' fees and the length of hospital stays it will pay for. The proportion of the aged's total health expense covered by medicare has fallen to 42% from a peak of 45% in 1969. And by some estimates, the new Nixon plan would reduce the share to 35%.

Those eying medicare costs look also at the elderly's income and find it has risen sharply. Since 1965 Social Security benefits have increased 70%. The administration argues this rise should permit an increase of 70%, to $85 from $50, in the payment that a patient must make for doctor bills before the government pays. Thus, the aged wouldn't be any worse off financially under this part of the program than when it started in 1966, the economizers reason.

The proposed increase in patients' payments for hospital care is defended on the broad ground of promoting economy and efficiency in health care. Proponents contend that making patients share in the cost would deter needless treatment and increase price competition in the medical marketplace.

STOP-AND-LOOK ATTITUDE

Imposing a 10% patient payment for hospital care would act as "a reminder that these resources aren't free, and for a fair fraction of the aged it's probably a meaningful enough amount," Martin Feldstein, a Harvard economist, says.

"It achieves a stop-and-look attitude: Do I need to be in the hospital an extra day? Do I need this test?" argues Peter Fox, a HEW health expert.

Mr. Fox and colleagues contend that patients facing larger bills would seek to be admitted to lower-priced hospitals, to avoid costly tests and to shorten lengthy hospital stays. Admittedly the decisions are made by doctors, but proponents reason that patient pressure would make the medical men more cost-conscious and would minimize intervention by Washington. "My personal preference is to let doctors and patients make the decision, not the federal government," says Stuart Altman, a deputy assistant secretary at HEW.

There is little doubt that increasing charges to patients decreases their use of medical care. When a 25% patient payment was imposed by a Palo Alto, Calif., medical clinic, use by Stanford University employes covered by a university health plan dropped 24%. Studies of other health plans show similar effects. "If you put in a big enough financial barrier, you will have a diminution in use," concludes Howard West, director of the Social Security administration's division of health insurance studies.

Unfortunately, it is difficult to determine whether essential or nonessential medical services are cut back in such cases. Statistics are sparse and subject to differing interpretations. Moreover, there isn't any agreement on what is a proper amount of care for the aged or any other population group. Medicare enthusiasts tend to measure progress in dollars spent, but dollar amounts can't express the quality of care.

When medicare began paying the bills for the elderly, their use of health services jumped 25%. At the same time, use of health services by younger people fell, presumably because medical-care costs were vaulting.

But since 1969, hospitalization rates for the elderly have declined, the average length of stay has dropped sharply under pressure from medicare managers. "I don't see any evidence there is overutilization or underutilization now," says Herman Somers, a Princeton University health insurance specialist.

The idea of making the medical marketplace more responsive to price competition is appealing, but skeptics detect several drawbacks. How hard-headed can a worried, impoverished and medically unsophisticated patient be? Does a sick person want his doctor to skimp on the costs of his medical care?

Moreover, there are many of the aged who can hardly become more cost-conscious because of the administration's proposal. Some are so poor that medical-welfare programs take care of any payments they incur that medicare doesn't cover. Others are wealthy enough to buy supplementary private insurance to fill medicare's gaps. The existence of these groups weakens the case for the cutbacks.

The underlying question of how much individual patients should pay for their health care is an issue sure to arise in any future broad national health insurance program. Congress is already considering possibilities that range in generosity from an AFL–CIO proposal for paying the full cost of most care to an American Medical Association plan for providing limited financial help to low-income patients. The medicare outcome will show which way politics points.

AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF STATE—AMENDMENTS

AMENDMENT NO. 55

(Ordered to be printed, and referred to the Committee on Foreign Relations.)

Mr. BAKER. Mr. President, for myself and Senators CASE, MAGNUSON, and MUSKIE, I send to the desk for appropriate referral an amendment to S. 1248, the State Department authorization bill, to create the Bureau of International Environmental Affairs in the Department of State.

The bureau would be headed by an Assistant Secretary of State and would combine the responsibilities and resources of the office of the Special Assistant to the Secretary for Fisheries, Wildlife, and Ocean Affairs and the Office of Environmental Affairs in the Bureau of International Scientific and Technological Affairs.

The functions of the Bureau would be as follows:

First. To formulate and implement policies and proposals for international environmental programs, including of course, fisheries, wildlife, and ocean affairs;

Second. To advise the Secretary of State in the consideration of environmental factors in the formulation of foreign policy;

Third. To represent the Department in international negotiations in the area of environmental affairs;

Fourth. To seek advice from and provide guidance to domestic environmental interests on activities affecting international relatons; and

Fifth. To insure effective coordination of policy responsibilities between the Department of State and other departments and agencies of the Federal Government in the field of international environmental affairs.

In order that the bureau might be created without displacing other unrelated offices within the Department, I have recommended a slight increase in funds for the "administration of foreign affairs" as requested in the authorization. Such an increase should provide the necessary salary for the Assistant Secretary, as well as adequate funds for increasing the expertise of the Department in the area of international environmental affairs.

Mr. President, I make this recommendation after having served on the official U.S. delegation to the 1972 United Nations Conference on the Human Environment, and before that as Chairman of the Secretary of State's Advisory Committee on the Conference.

The U.S. contribution to that historic effort was second to none, but throughout my tenure as chairman of the Advisory Committee, I repeatedly recognized the need for better coordination and cooperation, not only within the Department of State, but within the executive branch as a whole. Moreover, it is my judgment that U.S. participation in future international environmental endeavors can only be enhanced by coordinating and elevating these respective offices within the Department of State.

The conference held in Stockholm last summer was only a beginning, and much work remains to be done if we are to succeed in preserving and protecting the human environment we all must share. It is for this reason that I recommend the creation of this bureau.

Also essential to the success of environmental efforts is a better awareness of the problems which confront the nations of the world. Accordingly I have listed as one of the functions of the bureau, to seek advice from and provide guidance to domestic environmental interests on activities affecting international relations." The intent of that statement is to prompt the Department of State to honor a commitment Secretary Rogers made in his letter to the Advisory Committee upon receipt of our final report. That commitment was to consider the establishment of a "mechanism for continuing consultation in this area between the Government and the public." Since I have received no further notice of the Department's action in this regard, I feel compelled to remind them of the Secretary's letter and to urge that the bureau to be established by this amendment set, as one of its goals, broader consultation with members of the interested public.

If such consultation is carried out and the other steps recommended in my amendment are taken, I am convinced that the U.S. contribution to international environmental matters will more accurately reflect our capabilities in this field and the interest of the world will be better served.

I ask unanimous consent that the text of my amendment be included in the RECORD at this time.

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

AMENDMENT NO. 55

At the end of the bill, add a new section as follows:

BUREAU OF INTERNATIONAL ENVIRONMENTAL AFFAIRS

SEC. 106. (a) There is established within the Department of State a Bureau of International Environmental Affairs. The Bureau shall be headed by an Assistant Secretary of State designated by the Secretary of State.

(b) Under the general direction of the Secretary of State the Assistant Secretary of State so designated shall have the responsibility for, and there are transferred to the Assistant Secretary, the following functions within the Department of State:

(1) to formulate and implement policies and proposals for international environmental programs, including hereafter fisheries, wildlife, and ocean affairs;

(2) to advise the Secretary of State in the consideration of environmental factors in the formulation of foreign policy;

(3) to represent the Department in international negotiations in the area of environmental affairs;

(4) to seek advice from and provide guidance to domestic environmental interests on activities affecting international relations; and

(5) to insure effective coordination of policy responsibilities between the Department and other departments and agencies of the executive branch in the field of international environmental affairs.

The Office of the Special Assistant to the Secretary of State for Fisheries and Wildlife and Coordinator of Ocean Affairs, the Office of Environmental Affairs in the Bureau of International Scientific and Technological Affairs, and any other office or any bureau, division, section, or other organizational unit of the Department of State, all of whose functions are transferred under this section, shall thereupon cease to exist.

(c)(1) The first section of the Act of May 26, 1949, as amended (22 U.S.C. 2652), is amended by striking out "eleven" and inserting in lieu thereof "twelve."

(2) Section 5315(22) of title 5, United States Code, is amended by striking out "(11)" and inserting in lieu thereof "(12)."

On page 2, line 2, strike out "$282,565,000" and insert in lieu thereof "$282,715,000."

EXTENSION OF EXPIRING AUTHORITIES IN THE PUBLIC HEALTH SERVICE ACT AND THE COMMUNITY MENTAL HEALTH CENTERS ACT—AMENDMENTS

AMENDMENT NO. 56

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

TO AMEND S. 1136 TO PROTECT RELIGIOUS PRECEPTS IN MEDICAL CASES INVOLVING ABORTION AND STERILIZATION

Mr. CHURCH. Mr. President, tomorrow the Senate will begin consideration on S. 1136, to extend for 1 year the expiring authorities in the Public Health Service Act and the Community Mental Health Centers Act. I commend the Senate Labor and Public Welfare Committee for their prompt attention to the extension of these health programs. Included are such programs as the Hill-Burton hospital construction funds, the regional medical program, migrant health, allied health training and community mental health—all of which have enjoyed immense popularity and support in Idaho, a sparsely populated State

which cannot afford a school of medicine.

In Lewiston, Idaho, they find it hard to believe that the President has recommended the elimination of Hill-Burton funds for the reason that there is "no longer a shortage of hospital beds nationwide." At St. Joseph's Hospital, it is not uncommon to find patients utilizing beds in the hall. Vacancies are rare in the adult medical and surgical wards. There were hopes that St. Joseph's could expand and modernize through the use of Hill-Burton funds. But, to date, they have only a commitment for funds under this program if and when they become available for this much needed construction. Meanwhile, patients are juggled from room to room and often dismissed early to provide space for new arrivals. If Hill-Burton is not continued, there is little hope in this north Idaho community for adequate health facilities.

As we are all aware, the President has not requested the continuation of many of the programs included under S. 1136, and Secretary Weinberger has expressed his disapproval that Congress should choose to consider these programs in a lump-package bill. Without doubt, much could be gained by a congressional evaluation of each of the 44 programs involved and I know that Senator KENNEDY, in his capacity of chairman of the Senate Health Subcommittee, is most receptive to this idea. However, the President gave no warning of his proposal to eliminate ongoing programs and time does not permit adequate committee hearings before the June 30, 1973, expiration date. Therefore, I feel it compelling for the Senate to act favorably on this legislation, in order to insure that programs which are so vital to so many in each of our States may continue. One year should provide Congress with ample time to make a careful review of each program in question.

We are all familiar with the recent Supreme Court ruling in *Roe, et al.* v. *Wade*, District Attorney of Dallas County (41 U.S.L.W. 4213), that State laws which prohibit an abortion during the first 3 months of a woman's pregnancy are contrary to the due process clause of the 14th amendment to the Constitution and, therefore, invalid. Because of this decision, and the important role the Federal Government plays in medicine and medical care, I recently introduced Senate Joint Resolution 64 to protect physicians, health care personnel, hospitals, and similar health care institutions in the exercise of religious beliefs which proscribe the performance of abortions or sterilization procedures. In view of the germaneness of this resolution to S. 1136 which continues several hospital-related programs, I intend to offer it in the form of an amendment to S. 1136.

Freedom of religion is one of the great gifts of our land. Congress must never allow Federal funding to be used as an excuse for eroding freedom of religious practice by forcing abortions or sterilizations on church-affiliated institutions.

I ask unanimous consent that the text of this amendment be printed at this point in the RECORD together with the text of an article appearing in an Idaho newspaper concerning the abortion policy to be adopted by Latter-day Saints hospitals, a reprint from the Catholic publication, Commonweal, and newspaper accounts of another sterilization case currently before the Montana State courts, along with a synopsis of the Federal district case prepared by my staff.

A Supreme Court decision, of course, can neither be altered nor repealed by statute, since it rests upon the court's interpretation of the Constitution, the supreme law of the land; but Congress can and should fashion the law in such a manner that no Federal funding of hospitals, medical research, or medical care may be conditioned upon the violation of religious precepts. My amendment will safeguard the paramount right of church-affiliated hospitals to operate in conformity with their religious precepts.

I am certain each of us has in his State, hospital facilities which have been built, remodeled, enlarged, modernized, or equipped under the provisions of the Hill-Burton Act. Federal money made available for this purpose, has been extended on the condition that the hospitals shall comply with certain Federal regulations. These regulations need not be prescribed prior to the acceptance of the Federal grant or loan, but may be stipulated afterwards. Thus, hospitals which have in the past accepted Hill-Burton moneys could be made subject to Federal requirements that they perform abortions and sterilizations.

Already a case has arisen which should furnish us with ample grounds for legislative action. A Federal district court in Montana, in the case of Mike and Gloria Taylor against St. Vincent Hospital, has issued a temporary injunction compelling a Catholic hospital, contrary to Catholic beliefs, to allow its facilities to be used for a sterilization operation. The district court based its jurisdiction upon the fact that the hospital had received Hill-Burton funds.

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

AMENDMENT No. 56

At the end of the bill, insert the following new sections:

Section 6. It is hereby declared to be the policy of the Federal Government, in the administration of all Federal programs that religious beliefs which proscribe the performance of abortions or sterilization procedures (or limit the circumstances under which abortions or sterilizations may be performed) shall be respected.

Section 7. Any provision of law, regulation, contract or other agreement to the contrary notwithstanding, on and after the enactment of the Act, there shall not be imposed, applied, enforced, in or in connection with the administration of any program established or financed totally or in part by the Federal Government which provides or assists in paying for health care services for individuals or assists hospitals or other health care institutions, any requirement, condition, or limitation, which would result in causing or attempting to cause, or obligate, any physician, other health care personnel, or any hospital or other health care institution, to perform, assist in the performance, or make facilities or personnel available for or to assist in the performance, of any abortion or sterilization procedure on any individual, if the performance of such abortion or sterilization procedure on such individual would be contrary to the religious beliefs of such physician or other health care personnel, or of the person or group sponsoring or administering such hospital or other institution.

ABORTION: NEXT ROUND

Among predictable developments following the January 22 Supreme Cout decision striking down restrictive abortion laws in the United States were juridical problems for medical personnel and institutions with religious and ethical objections to easy and indiscriminate abortions. These developments have not been long in coming. A bill in the Oregon Legislature would require Catholic hospitals to admit patients for abortion operations; Wisconsin is faced with a measure threatening the license of a doctor or nurse who refused to perform an abortion; and Senator Frank Church told Congress of a federal district court action in Montana which compelled a Catholic hospital in Billings to allow its facilities to be used for a sterilization operation—quite a different medical procedure from an abortion, to be sure, but still contrary to traditional Catholic morality codes. What is significant in the latter instance is that the sterilization operation was ordered on legal grounds some would use to force reluctant hospitals to perform abortion services: it was the recipient of public funds under the Hill-Burton Act.

Thousands of hospitals throughout the country have been built, remodeled, enlarged modernized or equipped under the provisions of the Hill-Burton Act, including a substantial number of the 718 Catholic general hospitals, institutions which last year treated more than 23 million patients. Equally large numbers of these hospitals have received funds for research and other projects under government-sponsored National Institutes of Health programs, a detail which could increase the legal jeopardy of these institutions should a precedent be established whereby courts or legislatures made receipt of public funds a determinant in what public services a medical institution performed. Hospitals that received Hill-Burton funds would seem to be particularly vulnerable, since these funds are extended on conditions which, surprisingly, need not be prescribed by the government prior to acceptance of the grant or loan. It is noted, for instance, that the requirement on hospitals funded through the Hill-Burton Act to provide set amounts of care for charity patients is a condition laid on most hospitals *after* they had obtained federal money. There is certainly nothing objectionable about that condition. However, its post-factum application points up the vulnerability of hospitals that have received Hill-Burton funds to government disposition and government mandate.

Legislative action to protect hospitals from provision of law of government regulation requiring them to perform services that violate religious precepts, such as abortion and sterilization, has been initiated by Senator Frank Church of Idaho. Church's measure—Senate Joint Resolution 64—would also protect the religious and ethical beliefs of doctors, nurses and health-care personnel, as these relate to their professional practices. The measure has been referred to the Senate Committee on Labor and Public Welfare, and public hearings are expected later in the spring, perhaps before the Subcommittee on Health headed by Senator Edward Kennedy.

Interestingly enough, the resolution is attracting supporters across a broad ideological spectrum, including liberals like Proxmire and Biden and conservatives like Eastland and Byrd. Some are attracted by the basic anti-abortion features of the resolution, but some also see it safeguarding religious freedoms and civil rights and perhaps heading off efforts in the direction of a Constitutional

amendment, a move which many on both sides of the abortion issue fear would protract divisiveness over abortion in state after state over many years.

Senator Church's resolution would provide protections for hospitals and medical personnel that are vital. At the same time, opponents of the abortion decision must be looking ahead. Difficult questions will inevitably be raised with respect to the exclusivity of policy in institutions and among health-care people that Senator Church's resolution would protect. Specifically, are religious and ethical policies to be applied the same in areas where Catholic hospitals are the only ones for miles around, as they would be in populous areas where broader choices prevail for those seeking an abortion or sterilization? And if they are to be so applied, are Catholics then open to charges of imposing a moral ethic on the society of a particular geographical area? Further, is it reasonable to abolish all maternity and obstetrical services in Catholic hospitals in order to counter the possibility of abortions being performed there, as is under consideration in the Diocese of Great Falls, Montana? These are the kinds of questions that will be raised. Answers will be needed soon—and they must be more nuanced than those thus far forthcoming.

[From the Twin Falls (Idaho) Times- News, Mar. 2, 1973]

LDS Continue No Abortion

Salt Lake City.—Hospitals operating under the Health Services Corp. of the Church of Jesus Christ of Latter-day Saints continue to follow a no-abortion policy despite a late-January Supreme Court ruling that the decision on abortion is solely that of a woman and her doctor.

"We are opposed to doing abortions in our hospitals," said Dr. James O. Mason, commissioner of the Health Services Corp.

"The Church opposes abortion and counsels its members not to submit to abortion except when the life of the mother is seriously threatened," he said.

Mason said he could see future problems with the no-abortion stand.

"In an area where there is only one hospital, we see that we might have problems come up," he said. "A woman may feel her rights are being violated because she can't get an abortion anywhere else, and the local hospital refuses to give one."

Sen. Frank Church, D-Idaho, has already introduced legislation to prohibit the federal government from requiring religious hospitals to perform abortions if contrary to their faith.

At St. Benedicts Hospital in Ogden, Mother Henrita Osendorf took a stand similar to Mason's.

"We will absolutely not permit abortions to be performed in our hospitals," she said. "We do let a doctor perform one if the pregnancy endangers the mother's life."

"The Order of St. Benedicts takes the unequivocal stand to respect life," she added.

A national survey indicated that most hospitals are proceeding with caution in taking steps to implement the Supreme Court's decision, and a few are keeping their ban on abortions, Mason said.

He said the ruling "doesn't force a person to do an abortion or force an institution to do something against its standards."

Mason added that "freedom of conscience provides us the opportunity to make by-laws forbidding abortions."

Mason said the Mormon Church "with its position of trying to obey the laws, wants good laws. It is very tragic that we even have this type of a problem come up."

Essentially, the Supreme Court ruling of Jan. 22 means that a woman can ask her doctor for an abortion and can seek a doctor willing to perform it. The decision does not say that it grants the right to abortion on demand, Mason said. Doctors are not compelled to oblige a woman who happens to request an abortion.

Sterilization Upsets Catholic Hospitals: Eliminating Obstetrics Considered

Great Falls.—A court order directing a Roman Catholic hospital to allow its facilities to be used for a sterlization operation could cause some Catholic hospitals to do away with obstretrical and related services, a church leader said Wednesday.

The comment came from the Most Rev. Eldon B. Schuster, Great Falls, bishop of the diocese in which the Holy Rosary Hospital of Miles City is located.

The order against Holy Rosary, he said, has placed the church in a difficult position. Asked if Catholic hospitals might consider abolishing their maternity and obstetrical services if the ruling is applied to other Catholic institutions, the bishop replied, "Yes, in fact we're considering that now."

The order was issued Tuesday in Billings by State District Court Judge Charles B. Sande in response to a suit filed by Mr. and Mrs. Richard Kransky of Miles City. A federal judge dismissed the case last week on the grounds that no federal issue was involved.

The hospital bowed to the order by permitting Mrs. Kransky, 22, to be sterilized Wednesday simultaneously with the birth of a daughter, delivered by Caesarean section.

Bishop Schuster emphasized that while the hospital complied with the court order, the church did not condone the legal decision.

"We do feel," he said, "that civil law does not dictate our moral beliefs and it seems to me that court action involving the moral code of a sectarian hospital is an infringement" The bishop explained that the Catholic Church holds basically that sterilization is not permitted if it is purely for purposes of contraception.

The Kranskys and their lawyer had argued among other things that Holy Rosary Hospital was the only medical institution reasonably available for performance of the operation in that it is the only hospital in the area with the necessary facilities.

Bishop Schuster said the decision points to a need for the church to examine the services offered by its hospital, particularly in areas where there are no other hospitals.

"If we can't uphold our own moral values, we will have to reassess our services," he commented.

Although the suit was filed as a class action for the purpose of applying to all women under similar circumstances, Judge Sande's ruling applied only to Mrs. Kransky.

She has a 4-year-old son. A second child died two days after birth. Both were delivered by Caesarean section.

Holy Rosary Hospital is owned by the Presentation Sisters of Aberdeen, S.D., and is operated under authority delegated to an 11-member board of directors, which includes seven nuns and four lay persons.

A basic question in the case is whether the hospital is essentially a public institution. Billings lawyer Robert L. Stephens, Jr. of the American Civil Liberties Union argued for the Kranskys that the hospital is performing basically a public function and enjoys tax advantages granted to nonprofit institutions by the state.

The hospital's attorneys argued, however, that the hospital could not be forced to violate its religious principles and that it is a private institution not supported in any way by public money.

Also a plaintiff in the suit was Mrs. Kransky's physician, who claimed he was being denied the right to practice "acceptable obstetrical methods based entirely on religious and not upon valid medical reasons."

Although Judge Sande signed a temporary restraining order preventing the hospital from refusing Mrs. Kransky's request for the operation, he reserved ruling on the merits of the case and said it may be a matter for scrutiny by the state supreme court.

A similar suit is pending in federal district court in Billings against St. Vincent's Hospital, also a Roman Catholic Institution.

A major difference in the two cases is that St. Vincent's receives federal Hill-Burton funds.

Bishop Schuster said he is not aware of any similar cases in the United States.

David W. Patton, administrator of Holy Rosary Hospital, said that as a Catholic institution the hospital is operated in accordance with the church's ethical standards.

"We will have to study all of the ramifications of this case before deciding on what further action to take," he commented.

Sterilization To Be Appealed

Billings, Mont.—The attorney involved in legal action aimed at forcing Catholic hospitals to allow sterilization operations said Tuesday he plans to appeal an adverse ruling to a higher court.

Robert L. Stephens Jr., Billings, commented on a summary judgment issued last week by State District Court Judge C. B. Sande which allows Holy Rosary Hospital of Miles City to continue its policy of forbidding sterilization operations for contraceptive purposes.

The judge had issued a temporary order earlier which forced the hospital to allow its facilities to be used for a sterilization operation on one woman.

Stephens, an American Civil Liberties Union attorney, said his planned appeal might not be filed until a somewhat related suit now pending before the state supreme court is settled.

That suit, Stephens said, involves a physician's right to practice accepted medical procedures. He said the action was brought against St. Vincent's Hospital of Billings and is aimed at forcing the hospital to allow physicians to deliver babies by use of a method which involves the father being present in the delivery room.

"We are thinking of possibly asking to join in that appeal," Stephens said.

Stephens also is the plaintiff's attorney in a suit pending in federal district court which seeks to prohibit St. Vincent's hospital in Billings from refusing to allow sterilization operations.

Two weeks ago The Most Rev. Bishop Eldon B. Schuster of Great Falls said Catholic hospitals might have to discontinue obstetrical services if forced by the courts to permit sterilization operations purely for purposes of contraception.

The Billings chapter of the ACLU contends the policies of Catholic hospitals, often the only medical facilities in a community, have denied non-Catholics of a right to reasonable and accepted medical services.

Mike and Gloria Taylor Versus St. Vincent Hospital

Facts:

1. The St. Vincent Hospital was the only hospital in Billings that provided maternity care and intensive fetal care.

2. Under its policies, St. Vincent Hospital would permit surgical sterilization only in cases of pathological disorders or to correct pathological disorders, and then only as an incident of corrective measures.

3. Gloria Taylor was a borderline diabetic. Previously she had a history of difficult pregnancies. In addition, she had prior major surgery for the female organs.

4. Gloria Taylor delivered a baby by caesarean, and then sought to be sterilized.

5. St. Vincent Hospital provided a procedure for the transfer to another hospital.

6. However, the plaintiff established that this procedure would create complications.

Action: Injunctive relief to prevent hospital from refusing to perform the sterlization.

Jurisdictional Basis: Suit was brought in the Federal District Court because the St. Vincent Hospital received funds under the Hill-Burton Act.

Decision: Temporary injunction to prevent the hospital from refusing Mrs. Taylor's request for a sterlization.

ADDITIONAL STATEMENTS

RESPONSE BY SENATOR HUGHES TO THE PRESIDENT'S MESSAGE ON CRIME AND DRUGS

Mr. MANSFIELD. Mr. President, on March 17, Senator HAROLD HUGHES, of Iowa, responded to the President's message on crime and drugs on behalf of the majority in Congress. Senator HUGHES' statement was outstanding. Not only did he respond effectively to the President on the question of crime and drug abuse but he raised additional questions concerning aspects of crime and criminal justice that the administration chose not to address.

Notably, Senator HUGHES referred to the need in the area of correctional reform, the reform of penal institutions so as to transform them from crime-breeding facilities into institutions that serve to rehabilitate criminals and eliminate crime. He noted, too, the need to recognize at long last the victims of violence in our criminal justice system. In this regard there is presently on the Senate Calendar the Omnibus Crime Victim proposal, a measure that will undoubtedly be passed this week by the Senate.

I commend Senator HUGHES' statement on crime and drug abuse to the Senate and to the attention of the American people. It was truly an outstanding address. I ask unanimous consent that it be printed at this point in the RECORD.

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

RADIO MESSAGE BY SENATOR HAROLD E. HUGHES

WASHINGTON, D.C., March 17, 1973.—One of the great tragedies of our time is that law-abiding citizens of this great land are spellbound from day-to-day by the fear of crime and violence.

It doesn't have to be this way.

Don't tell me that this powerful and affluent nation that has so recently poured $150 billion on a marathon, undeclared war in Indochona can't mount an effective national program against illicit drugs and make its streets and homes and marketplaces safe for its citizens.

What is needed is a national commitment like the commitment we made a decade ago to put men on the moon. But a half-commitment won't do.

In his recent message to Congress on Crime and Drugs, President Nixon claims credit for his Administration for making what he terms "dramatic progress" against a crime wave that he says had "threatened to become uncontrollable" prior to his taking office.

When he speaks of "dramatic progress" in these areas, we must wonder what country he is talking about.

If anyone believes that things are looking up under this Administration on the drug and crime front, I suggest that some evening soon, he take a walk, alone and without benefit of protection, on the streets of any of our great cities, preferably in the poverty districts.

For any observer with eyes in his head, the evidence will be there. And he stands, I might add, an excellent chance of getting mugged as well as enlightened.

It is ironic that statistics of the FBI, the great law enforcement agency for many years impregnably non-political but now politicized by this Administration, are used to support Mr. Nixon's claims of progress.

The statistics, as usual, cut more than one way.

The President states with pride that the rate of growth of serious crime has slowed—to one percent in the first nine months of 1972. He overlooks the shocking fact that the incidence of violent crime is now over 33 percent above 1968. Whatever the rate of growth, the overall rate of crime is still unacceptably high, and FBI figures reveal persisting increases in violent street crime in cities ranging from New York to Denver. Crime in the suburbs is also escalating now at a startling rate.

I have found no convincing evidence to support the Administration's claims that the illicit drug smuggling into this country, particularly from Southeast Asia, has been appreciably diminished. The heroin addict population in the country has doubled since this Administration came into power and other forms of drug abuse have increased. I am sorry to say it, but our national effort to control dangerous drugs in the United States has a long way to go.

Mr. Nixon says his Administration draws the line on dangerous drugs this side of marijuana. In response to this debatable point, I can only ask: How about giving the Administration's full support to the Federal effort to control the abuse of the drug that accounts for more damage in terms of death, human misery and economic loss than all other dangerous drugs put together—alcohol—and the one addiction we really do know how to treat and control, alcoholism?

It is obvious that in dealing with a problem as massive and complex as crime in the United States, cooperation between the Democratically controlled Congress and the President is desirable, if not essential. We have, I believe, a foundation of agreement on which to build.

We agree that the control of the illicit drug traffic and other serious crimes in this country is a top priority of the nation.

We agree that law-abiding citizens in this country have a right to live in security from crime and that it is a mission of government to protect them from uncontrolled lawlessness.

I know of no responsible member of either political party who takes a "permissive attitude" on crime. The simple truth of the matter is that everyone hates crime.

The question is *what to do about it in terms of realistic, practical problem-solving?*

To me, the saddest part about Mr. Nixon's message was that it was primarily an appeal to the public fear of crime rather than a reasonable, tough-minded approach to solving a very complex social problem.

So far as the concrete proposals in his message are concerned, they represent a long voyage into the night of the past—a regression to punishments and sentencing methods that have long since been professionally discredited, so far as deterring criminal acts or correcting criminal tendencies are concerned.

What Mr. Nixon has proposed is a revision of the entire Federal criminal code along lines that would drastically increase the harshness of penalties and would limit the discretion of judges in imposing sentences.

This all goes into the face of professional judgment and world experience. Any qualified penologist will tell you that it is not the severity of the sentence that deters crime but the swiftness and certainty of the punishment.

For the good of all, it is the protection of society we must rationally seek in our criminal justice system, not public vengeance against those who commit crimes.

I, for one, believe that the President's call for a restoration of the death penalty is a simplistic and illusory way to sidestep the real problems of deterrence and corrections. Whether or not you believe, as I do, that the death penalty is wrong on moral grounds as a violation of the sixth commandment, the overwhelming weight of evidence is that it is not effective as a deterrent. Moreover, if the death penalty is mandated for some crimes, juries will be less likely to convict than where some discretion is granted, and kidnappers and hijackers who have already been involved in killing, when closed in upon will see nothing to lose by further killing.

In the clear light of day, I believe the people of this country want to move forward, not backward, in developing a fair and effective system of law, order and justice.

I know that the Democratic leadership and majority in Congress will readily provide cooperation for any realistic, practical and forward-looking proposals the Administration may make. And it is obvious that in dealing with a problem as massive and complex as crime in the United States, we need maximum cooperation between the legislative and executive branches.

Here are a few of the areas in which such joint action, backed with strong public support, is needed if we really mean what we say about curbing crime in the country:

We urgently need action to speed up trials and sentencing. The Democratic Congress has initiated legislation to enforce the Sixth Amendment right to speedy trial—within 60 days as the ultimate goal.

We need adequate measures to control the improper use of handguns.

Contrary to the Administration's viewpoint, we need a more efficient method of setting up programs and allocating funds for the Law Enforcement Assistance Administration than the present bloc-grant system that has produced ineffectiveness, waste and corruption.

We need reform of our over-crowded, understaffed, rotting prisons where first offenders enter to become hardened criminals and recidivists.

We need correction of social conditions known to be conducive to criminality—conditions such as overcrowding, chronic unemployment, poverty, inadequate health care, and discrimination.

That such conditions contribute to the development of criminal behavior among the people affected is simply a self-evident fact of life. Yet it is these very programs that the present Administration is most intent on eliminating or cutting back to the point of ineffectiveness.

We need legislation—such as is now in the Congressional hopper—for assistance to innocent victims of violence.

On the drug front, we need more emphasis on treatment and prevention—a stepped up effort to control the *demand* for dangerous drugs as well as the supply. As long as the demand exists and the traffic is lucrative, it will continue to be difficult to suppress smuggling and distribution, however severe penalties may be applied. In order to make real headway, at some point, we must get at the source of the problem—the addiction itself, and this, unfortunately, is the point of least emphasis by this Administration.

We need to improve the whole federal drug traffic enforcement effort—by reorganizing to eliminate inter-agency rivalry and fragmentation of effort.

We must tighten up the legal machinery against white collar crime if we are to expect anyone to respect the law.

The last point was one gaping omission in Mr. Nixon's message on crime. It is not just the nameless law-breaker who robs or kills or pushes narcotics who should be brought to justice. White collar crime is just

as serious. Fraud, bribery, rent-gouging and price-fixing ought to be included, not to mention political espionage, burglary and sabotage such as were involved in the notorious Watergate case.

We have been concerned—and rightfully so—about crime in the streets. We should be equally concerned about crime in the corridors . . . the corridors of the high echelons of government and business. If executive privilege is invoked to prevent essential witnesses from testifying in criminal cases and if the FBI is restrained from making a full investigation of such flagrant crimes as occurred in the Wategate case, how can the average American believe in our justice system?

In the aftermath of the Vietnam War and years of domestic tensions, we all recognize the need to quell divisive influences and unify our people again.

One way to bring this about, I am convinced, is to attend to compelling and long-neglected priorities here at home such as crime control.

We need to begin with more, better-trained and better-paid police.

Can we afford it? Is it worth it? We say yes.

In the battle of the budget, Congress and the President agree that there should be an overall limit on federal spending. There is no dispute about this.

The point at issue is where and how the money within that overall budget should be spent—where the true national priorities are.

This Administration has spent over $100 million to assist and train police and public safety officers in foreign lands. Meantime, here in our country, decent citizens are afraid to venture out on the streets.

It is time now to put our resources into controlling crime at home. We Democratic members of Congress are not advocating raising the overall level of spending. We are simply saying, let's put the money where our real priorities are.

If we employ anything like the energy and resources to keep the peace at home that we have expended in making war abroad, domestic tranquility and peace of mind are well within our reach.

POISON PREVENTION WEEK

Mr. SCHWEIKER. Mr. President, the week of March 18 through 24 is Poison Prevention Week. Each year there are more than 1 million cases of poisonings in the United States, including those from gases and vapors. About half of these deaths are accidental. But most tragically, fully one-third occur in children under 5 years of age.

In the Pittsburgh area of my State alone, two poison control centers, Children's Hospital and St. John's General Hospital, reported a total of 7,759 cases of poison ingestion in 1971, the last year figures were available. These figures indicate the cases taken to hospitals in the area and do not reflect ingestions treated privately by physicians or resolved by parents at home.

Since Congress passed a joint resolution in 1961 requesting that the President annually set aside the third week in March as Poison Prevention Week, countless numbers of civic, government, and business organizations in Pennsylvania have worked hard to educate parents on the handling of medicines, cleaning fluids, and other chemicals commonly found in the home. The Lancaster County Pharmaceutical Association last year distributed materials through the stores and schools. Activities were also conducted by the Boy Scouts of Milesburg and Kittanning, American Telephone and Telegraph of Pittsburgh and the Reese Candy Co. of Hershey.

Of course the problem is nationwide and Dr. Jay M. Arena, president of the American Academy of Pediatrics and a member of the Medical Advisory Board of the Council on Family Health, tells us that poisoning is now the most common medical emergency that exists in modern pediatrics. Dr. Arena, who has had a long career as a pediatrician and who now heads the Duke University Hospital Poison Control Unit, says that children's deaths from poisoning exceed the total of those from polio, measles, scarlet fever, and diphtheria combined.

Each year some 70,000 children under age 5 are involved in accidental poisonings. And at least two children in the age group die of poisoning every 3 days. Most often, these accidents occur between the ages of 1 and 3, when the child is just beginning to explore his environment and needs close supervision.

Over the years, manufacturers have made great strides in improving the quality of their products, making them more effective and efficient. Government, for its part, has been providing the force to make these products safe and, through legislation, providing consumers with the means to increase the safety aspects of using the product by requiring information on the label, appropriate warning signals, rules regarding advertising, and special packaging to thwart the curiosity of inquisitive youngsters.

The manufacturers of proprietary medicines have sponsored the Council on Family Health to promote the safe use of medicines and all household substances throuhout the year. The Council of Family Health reminds us to keep all household products and medicines out of reach of children, cap all medicines immediately after use, and store internal medicines separately from other household products.

I believe all Americans should support the goals of Poison Prevention Week. The problem of poisoning is often a family-sized tragedy that does not make page 1 of the papers or the TV screen, but the heartbreak is no less real. It is a daily problem of national magnitude that I urge everyone and organizations such as the Council on Family Health to deal with.

PAUL H. DOUGLAS' 81ST BIRTHDAY

Mr. PROXMIRE. Mr. President, today is the 81st birthday of our friend and former colleague, Paul H. Douglas.

Paul Douglas came to the Senate in January, 1949, after the spectacular upset victory in that year in which he was elected to the Senate from Illinois, Adlai Stevenson was elected Governor of Illinois, and Harry Truman was reelected President of the United States. The wisdom and good judgment of the people of the State of Illinois has never been more in evidence than it was on that occasion.

Paul Douglas spent the early part of his life as a great economist. Then he became an alderman in the city of Chicago where he gained great acclaim for his courage and independence of mind. He followed that career by joining the Marine Corps at the age of 50 and distinguishing himself in combat in the Pacific.

His Senatorial career, a career encompassing 18 years of dedicated and intelligent service to the people of his State and Nation, was not his only but his crowning achievement.

Paul was literally the first Senator to fight the so-called pork barrel rivers and harbors budget. He applied cost-benefit analysis to the budget before there was such a thing as cost-benefit analysis.

In 1952, he and HUBERT HUMPHREY started the first major congressional attack on tax loopholes—a fact that has now been largely forgotten.

He was and is a champion of the consumer and of the environment.

And in addition to all this he was a great teacher and speaker in the debates on the Senate floor. The wit and spontaneity and knowledge he displayed is rarely equalled in debate today.

But most important of all, Paul Douglas is a warm hearted, humane, and marvelous human being.

Paul, we salute you on your birthday. We hope you have many, many more.

COMMUNITY MENTAL HEALTH CENTERS

Mr. MONDALE. Mr. President, one of the saddest failings of our national health policies has been our inability to care properly for and provide hope to the mentally ill. In 1963, President John F. Kennedy took a major step when he proposed creation of a network of centers to serve the mentally ill. As a result, Congress approved and Federal, State, and local governments worked together to establish the community mental health center program.

In 1971 alone, more than 600,000 citizens sought to help at these centers. In the short period of their existence, many of the centers have developed highly effective programs in the areas of community education and prevention of mental illness. They have served thousands of poor people—particularly in rural areas—who would otherwise have no access to mental health services they could afford. So far about 400 of the 1,500 centers originally projected for the program by 1980 have been created.

We face heartbreaking and frustrating problems in dealing with mental illness in this country. We know that there is a correlation between mental illness and poverty. We know there are thousands of children whose emotional or mental handicaps are going undetected until they have become a major deterrent to learning and to functioning in our society. We know that the use of drugs and the rate of suicide among young people have skyrocketed in recent years.

And now the administration has decided to phase out the community mental health centers program, which I believe holds great promise for solving some

of these problems which our society has only begun to confront.

In a recent article in the Minneapolis Tribune, contributing editor Geri Joseph described dramatically the accomplishments of this program and the loss we would all experience if it were to be phased out as proposed. I ask unanimous consent that a copy of this article be printed in the RECORD.

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

THE PHASING OUT OF COMMUNITY MENTAL-HEALTH CENTERS

(By Geri Joseph)

To President Nixon, it may be the "new federalism." To those concerned with the care of the mentally ill, it sounds like an old, familiar story. And a discouraging one at that.

Tucked away in the President's budget message a few weeks ago was a little-noticed mention of his plan to get the government out of the community-mental-health-centers (CMHC) business. There were so many programs on the marked-for-death list that special-interest groups are just beginning to find their favorities among those proposed for closing out or cutting back.

But it is fair to say that no other program is to be discontinued because of its success. The federal responsibility for the mental-health centers is being "phased out," the administration indicated, because it has been a successful demonstration project. (Never mind that the centers were not intended to be merely a "demonstration project.")

Administration spokesmen offered another reason for ending federal participation. The centers program, they said, created inequities, since people served by them receive better care than people in the rest of the nation!

That explanation has an Alice in Wonderland quality that puzzles and angers many mental-health workers. Why not eliminate the inequities, they are asking, and fulfill the original goal of 1,500 centers across the nation by 1980? Why stop now when there are only about 400 functioning programs?

For years, citizen groups and individuals, shocked by terrible conditions in state mental hospitals, campaigned for better public understanding and more money. Both were slow in coming. But the community mental-health centers program was an enormous step in the right direction. With the Nixon administration proposing to end federal funding, the stimulation provided by federal concern also would end, and the program could falter and diminish.

Mental-health volunteers and professionals have .ittle confidence that revenue-sharing funds turned back to the states will provide the same support. Not only will competition for that money be intense, but much of the planning for health services will be directed by public-health experts. Traditionally, they have not been sympathetic to the needs of the mentally ill.

The CMHC program originated in 1963 with President John Kennedy, the only president to take official interest in the problems of the mentally ill. (Mr. Nixon has singled out cancer and heart disease and programs for both will be given increased funds. Without downgrading the need, one might ask how such priorities are determined.)

In a message to Congress, Kennedy proposed a network of community mental-health centers. "Every year," he said, "nearly 1.5 million people receive treatment in institutions for the mentally ill and the mentally retarded. Most of them are confined . . . within an antiquated, vastly overcrowded chain of custodial state institutions.

"This situation has been tolerated far too long. The federal government, despite the nationwide impact of the problem, has largely left the solutions up to the states. . . . The time has come for a bold new approach."

And so, for the first time on a large scale, the federal government concerned itself with the care and treatment of the mentally ill. That was part of the "bold new approach." About 30 percent of money for staffing, construction and special programs for children came through the government's National Institute of Mental Health. The remainder, 70 percent, came from states and local communities.

Those figures make the federal role sound small. In actual dollars, it amounted to about $624 million between 1964 and 1972. But those dollars were the all-important seed money that encouraged state and local matching funds. And that seed money also enabled the federal government to set standards.

Some of the horror and mystery about mental illness began to give way with the growth of the program. Better, more humane treatment followed, too. The light of community attention was healthy, and so was the help of local planning groups. A real alternative developed to the old-style treatment of "exile" in remote, poorly staffed institutions. That was another part of the "bold new approach."

The number of people seeking help in their community centers climbed steadily—from 372,000 in 1969 to 659,000 in 1971. Many of the centers are in areas of urban or rural poverty where those who can least afford quality mental-health care have easy access to them. Almost two-thirds of the centers' patients in 1970 had incomes of less than $5,000.

No claims are made that the CMHC is a perfect system for diagnosis and treatment of mental illness or that it does all that might be done in prevention and community education. The programs vary from place to place, some are better than others, and some try to serve too many people. Most of the centers serve areas of 300,000 people or more. In addition, Ralph Nader's group has criticized the program for not having enough "grass-roots involvement."

But most of the criticism results from the fact that fewer than 100 of the centers have been in existence for as much as five years. And only two states, North Dakota and Kentucky, come close to providing near-total coverage for their populations. But where programs exist, there is hope for improvement. The biggest problem is that no centers at all exist for the majority of people in this country. Mental-health workers fear they never will if the Nixon budget is passed.

"This is a disastrous set-back for the mentally ill and their families," Mrs. J. Skelly Wright, president of the National Association for Mental Health, said. "At what cost will they cut costs?"

And Brian O'Connell, association executive director, said reaction from state mental-health groups is "almost desperation in many quarters, a feeling of hopelessness." But the association is mobilizing its million volunteers to urge Congress to continue the federal stake in the community-mental-health-centers program, at least until the 1,500-centers goal is reached. There is strong intention, too, to try to change the mind of the man in the White House.

But optimism is in short supply. And the promise of Kennedy's "bold new approach" seems, unreasonably, foreclosed.

GRANDPARENTS DAY

Mr. ROBERT C. BYRD. Mr. President, a West Virginia newspaper editor, Mr. Robert K. Holliday, of the Fayette Tribune, has brought to my attention the commitment of a fellow West Virginian, Mrs. Joe McQuade, of Gauley Bridge, to the designation of a date to be known as "Grandparents Day." In this age of emphasis upon youth and neglect for the aging, I feel that Mrs. McQuade's sentiment is a worthy one, which will appeal to most thinking people.

I ask unanimous consent that Mr. Holliday's article concerning Mrs. McQuade's mission be printed hereafter in the RECORD.

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

MRS. MCQUADE TO GO DOWN IN HISTORY: FAYETTE RESIDENT HAS SPECIAL DAY PROCLAIMED FOR ALL GRANDPARENTS

Since West Virginia's Anna Jarvis of Grafton originated one of the most honored days of the year, Mother's Day, another West Virginian is responsible for creating another Day, that of Grandparents Day, which was officially set aside to be held May 27 of each year.

Mrs. Joe McQaude, Gauley Bridge, who is so closely connected with the elderly, the Senior Society of our area, county and state, said that the idea has been forming in her mind for some time, but its germination came about following a call from Gov. Arch A. Moore, Jr., just last week.

Mrs. McQuade, who serves on President Nixon's Council on Aging, said that she was writing to Gov. Moore about the idea of having an official Grandparents Day, late last week, when she suddenly decided to "just call him about it."

She said that one of the Department of Public Safety's state troopers answered the telephone at the Governor's office, telling Mrs. McQuade that his office was "literally swamped" with telephone calls, but informed the Gauley Bridge resident that he would try to help her if he could.

She explained her reason for calling, with the trooper telling her that he would relay her message and request to Gov. Moore.

She said that within 15 minutes, "just think, in 15 minutes, Gov. Moore called me in person to grant my request," Mrs. McQuade said, Gov. Moore stipulated that Grandparents Day not be set on his birthday, as it would "tell everyone just how old" he is.

So, between the two, Gov. Moore and Mrs. McQuade, they selected May 27 to be observed officially in West Virginia as Grandparents Day, this day to come between Mother's Day, the second Sunday in May, and Father's Day, the third Sunday in June.

Mrs. McQuade said that Grandparents Day will from now on be officially celebrated with May 27 set aside as the day of days for all grandparents.

She urged everyone, especially youngsters, to remember their grandparents, visit them, and think about them, not only on this day, but every day.

She feels also that Grandparents Day would be particularly appropriate to visit everyone in nursing and boarding care homes, with young people "adopting" grandparents to remember and work with.

"After all," Mrs. McQuade said, "we certainly owe our elderly and senior citizens a lot."

PROTECTION FOR SOURCES OF PUBLIC INFORMATION

Mr. CHURCH. Mr. President, recently I joined as a cosponsor of legislation sponsored by my distinguished colleague Senator ALAN CRANSTON of California which would provide a means by which newsmen could protect their confidential sources. Such a protection is vital to our society if the people's right to know is to be preserved. We cannot afford the

chilling effect upon free speech and free press presented by the spectacle of government agencies pressing for jail terms for reporters whose major crime has been to reveal to the public information which has embarrassed Government officials.

Recently, the legislature of the State of Idaho held hearings on this subject and Mr. Lyle Olson, the publisher of the Pocatello, Idaho, Idaho State Journal, testified in favor of legislation to protect newsmen's sources. Mr. Olsen makes an eloquent plea for the adoption of legislation of this nature.

Mr. Olson puts the argument for the legislation in a nutshell when he states:

This legislation is not a newsman's privilege law—although that is what it may be called by some, because it is not for newsmen. It is for the American citizen, on whose behalf the newsman acts.

Mr. President, I ask unanimous consent that the text of Mr. Olson's remarks, together with the text of the "Free Flow of Information Act," the proposal which I am cosponsoring, appear at this point in the RECORD.

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

WHY NEWSMEN NEED PROTECTION

(EDITOR'S NOTE.—Following is the text of a statement by Lyle Olson, managing editor of the Idaho State Journal, before the Senate State Affairs committee in a hearing Wednesday night in Boise. It is printed below as an editorial in support of S.B. 1128, the so-called newsmen's protection law)

I am pleased to appear here in support of S.B. 1128 on behalf of my newspaper, and as spokesman for the Idaho members of the Utah-Idaho-Spokane Associated Press Association. Those other members include the Idaho Falls Post-Register, the Blackfoot Daily News, the South Idaho Press at Burley, the Moscow Daily Idahonian, the Lewiston Morning Tribune, the Kellogg Evening News and the Idaho Daily Statesman.

Many of these newspapers have spokesmen here tonight, or will submit written statements, but I have the assurance of each they are solidly in support of S.B. 1128.

This solid support in Idaho reflects the concern expressed nationwide for similar so-called shield, or freedom of information laws. The American Newspaper Publishers Association has recommended passage by Congress of legislation which would block subpoena of reporters and unpublished news media materials in both federal and state proceedings, and there are some 30 measures currently before Congress which would give newsmen such protection.

According to Mr. Robert Notson, Publisher of the Portland Oregonian, 18 states had enacted shield laws as of 1972. Bills also have been put forward in legislatures of California, Oregon, Washington, Alaska and Idaho to legalize a newsman's right to protect his sources.

You may ask why, after nearly 200 years, such laws are now deemed necessary. That is because nearly all newsmen and judges believed the press enjoyed a cloak of protection under the first Amendment, guaranteeing freedom of speech. But a succession of decisions, including one by the Supreme Court of the United States, has recently made it clear the press enjoys no such protection. The Supreme Court said quite bluntly the First Amendment affords no privilege to a newspaperman over any other citizen, and in effect referred the issue back to the Congress (and by extension, to state legislatures) with the statement: "Congress has freedom to determine whether a statutory newsman's privilege is necessary and desirable and to fashion standards and rules as narrow or broad as deemed necessary to address the evil discerned and, equally important, to refashion those rules as experience, from time to time, may dictate."

What has been the result of removing the cloak of protection afforded newsmen in the past?

Several reporters have gone to jail for refusal to divulge the source of stories, a high dedication to principle that is illustrative of the devotion which newsmen hold for their profession. They went to jail even though in no case has the public interest been compromised, nor wrong-doers protected by a reporter's silence. The most abused was Los Angeles Times reporter William T. Farr, who spent 48 days in prison on a contempt citation arising out of a story about the 1970 Charles Manson trial. He calls his open-ended sentence a form of "psychological barbarity" we do not mete out to our worst criminals.

A more important result of the Supreme Court's ruling is the danger to a free flow of information to the public. Editor and Publisher Magazine of January 6, 1973, quotes Mr. Davis Taylor, Publisher of the Boston Globe and Chairman of the ANPA, as saying: ". . . Our reporters have already reported a drying up of sources because of fears stemming from the recent wave of subpoenas of newsmen and their materials." In other words, persons who might come forward to volunteer information of wrong-doing in government, or of criminal acts, now hesitate because they fear harm or reprisals if their identity becomes known.

It is not the press which suffers most when reporters—or their useful sources—are intimidated. It is the public. Our readers depend upon a free, unfettered press to throw light into dark corners, to expose corruption in high places, to call attention to the chipping away of our personal liberties by an increasingly aggressive government. The public depends upon a nosy reporter, if you will, as one important check in the system of checks and balances. It is the reporter or the broadcaster, backed by his editor and his publisher, who sallies forth to represent the ordinary citizen in the councils of government, and to ask the questions which need to be asked. The reporter has no personal axe to grind; he simply takes his obligation very seriously to report what is going on as fairly and accurately as is humanly possible. And, in our society, he alone is uniquely qualified to do the job he does. It is significant that the reporter does not ply his trade in nations which have no free government.

I do not wish to suggest there is a sinister plot afoot to centralize power or curtail free speech and inhibit other freedoms. But there are powerful interests at work which tend to usurp authority, to concentrate power in their own hands. There is even now an impending struggle between the legislature and executive branches of the federal government in which the ordinary citizen feels helpless to intervene, or even understand. The role of the press will be vital in "referring" this power struggle, freely commenting along the way, and there must be no fear of reprisals in a judicial chamber. The press has the right, and a duty, to report its findings to a public in danger of growing too cynical, too withdrawn, too intellectually dishonest.

You may wonder if all this really has any bearing on whether Idaho needs a shield law, when there is no record of any Idaho newsman being cited or threatened with contempt of court for failure to reveal sources. We believe Idaho does need such a law to forestall such an occurrence. Judges have been emboldened in recent weeks to threaten Idaho newspapers with contempt on other grounds. There is a discernible trend toward challenging, if not intimidating, the press in Idaho.

There is another good reason as well. A shield law will encourage investigative reporters to dig out information about criminal activity, or abuse of public office. The Idaho press has been criticized by some for failure to pursue sensitive stories. It seems logical we should encourage, rather than discourage, more efforts in that direction. Senator Alan Cranston of California, sponsor of one newsman's protection bill now before the Congress, has stated: "I am convinced that an absolute press confidentiality privilege would do more for the cause of law and order and justice than would any limitation of that privilege."

There are added benefits of a shield law. Reporters have dug up hundreds of news stories over the years, which have led to criminal indictments and convictions. News stories may provide useful information to law enforcement agencies, even if some confidential sources are not identified by the reporter. It has been my experience that the press and the law enforcement agencies in Idaho have had a successful working relationship, and I believe a shield law would strengthen that relationship.

Certain objections to a shield law have been heard—that it would make libel more difficult to prove, and that it would give newsmen a privilege not extended to other citizens. As to the first, I see nothing in S.B. 1128 which would make it any more difficult to prove libel. The news media would continue to be responsible for stories exposing a person to hatred, contempt, ridicule or obloquy. Challenged it is the press which must always prove truth or lack of malice.

As to status of newsmen, that is conferred upon them by the nature of their public duties. They occupy a unique role in a democracy, as the result of their inquiries benefiting the public through a free flow of information. This legislation is not a newsman's privilege law—although that is what it may be called by some, because it is not for newsmen. It is for the American citizen, on whose behalf the newsman acts. In regard to that point, I can commend the form of S.B. 1128 as a broadly based act, free from qualifying amendments. It is significant that at least two newsmen were jailed last year in states where qualified shield amendments, they can be twisted so as to provide little protection.

In conclusion, it would be possible to cite the observations of many historic figures who have recognized the need for a free and untrammeled press in America. Permit me to quote only the eloquent words of the distinguished jurist, Judge Learned Hand, who said, many years ago:

"The newspaper industry . . . serves one of the most vital of all general interests: the dissemination of news from as many different sources and with as many facts and colors as is possible. That interest is closely akin to, if indeed it is not the same, as the interest protected by the First Amendment: it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. To many this is, and always will be folly, but we have staked upon it our all."

S. 158

Amendments intended to be proposed by Mr. CRANSTON (for himself, Mr. KENNEDY, and Mr. CHURCH) to S. 158, a bill to insure the free flow of information to the public, viz: On page 1, strike out all after the enacting clause and insert the following in lieu thereof:

That this Act may be cited as the "Free Flow of Information Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress finds and declares that—

(1) the purpose of this Act is to preserve the free flow of news to the public through the news media;

(2) a public fully informed about events, situations, or ideas of public concern or public interest or which affect the public welfare is essential to the principles as well as the effective operation of a democracy;

(3) the public is dependent for such news on the news media;

(4) those in the news media who regularly gather, write, or edit news for the public or disseminate news to the public must be encouraged to gather, write, edit, or disseminate news vigorously so that the public can be fully informed;

(5) such persons can perform these vital functions only in a free and unfettered atmosphere;

(6) such persons must not be inhibited, directly or indirectly, in the performance of such functions by government restraint or sanction imposed by governmental process;

(7) compelling such persons to present testimony or produce material or information which would reveal or impair a source or reveal the content of any published or unpublished information in their possession dries up confidential and other news sources and serves to erode the public concept of the press and other news media as independent of governmental investigative, prosecutorial, or adjudicative process and functions and thereby inhibits the free flow of news to the public necessary to keep the public fully informed;

(8) there is an urgent need to provide effective measures to halt and prevent this inhibition in order to preserve a fully informed public;

(9) the practice of the news media is to monitor and report across State boundaries those events, situations, or ideas originally reported locally in one State which may be of concern or interest to or affect the welfare of residents of another State;

(10) the free flow of news to the public through the news media, whether or not such news was originally published in more than one State, affects interstate commerce;

(11) this Act is necessary to implement the first and fourteenth amendments to the Constitution of the United States and article I, section 8 thereof by preserving the free flow of news to the public, the historic function of the freedom of the press.

EXEMPTION

SEC. 3. No person shall be compelled pursuant to subpena or other legal process issued under the authority of the United States or of any State to give any testimony or to produce any document, paper, recording, film, object, or thing that would—

(1) reveal or impair any sources or source relations, associations, or information received, developed, or maintained by a newsman in the course of gathering, compiling, composing, reviewing, editing, publishing, or disseminating news through any news medium; or

(2) reveal the content of any published or unpublished information received, developed, or maintained by a newsman in the course of gathering, compiling, composing, reviewing, editing, publishing, or disseminating news through any news medium.

PRESUBPENA STANDARDS AND PROCEDURES

SEC. 4. (a) No subpena or other legal process to compel the testimony of a newsman or the production of any document, paper, recording, film, object, or thing by a newsman shall be issued under the authority of the United States or of any State, except upon a finding that—

(1) there are reasonable grounds to believe that the newsman has information which is (A) not within the exemption set forth in section 3 of this Act, and (B) material to a particular investigation or controversy within the jurisdiction of the issuing person or body;

(2) there is a factual basis for the investigation or for the claim of the party to the controversy to which the newsman's information relates; and

(3) the same or equivalent information is not available to the issuing person or body from any source other than a newsman.

(b) A finding pursuant to subsection (a) of this section shall be made—

(1) in the case of a court, grand jury, or any officer empowered to institute or bind over upon criminal charges, by a judge of the court;

(2) in the case of a legislative body, committee, or subcommittee, by the cognizant body, committee, or subcommittee;

(3) in the case of an executive department or agency, by the chief officer of the department or agency; and

(4) in the case of an independent commission, board, or agency, by the commission, board, or agency.

(c) A finding pursuant to subsection (a) of this section shall be made on the record after hearing Adequate notice of the hearing and opportunity to be heard shall be given to the newsman.

(d) An order of a court issuing or refusing to issue a subpena or other legal process pursuant to subsection (a) of this section shall be an appealable order and shall be stayed by the court for a reasonable time to permit appellate review.

(e) A finding pursuant to subsection (a) of this section made by a body, agency, or other entity described in clause (2), (3), or (4) of subsection (b) of this section shall be subject to judicial review, and the issuance of the subpena or other legal process shall be stayed by the issuing body, agency, or other entity for a reasonable time to permit judicial review.

SPECIAL LIMITATIONS

SEC. 5. (a) A finding under section 4 of this Act shall not in any way affect the right of a newsman to a de novo determination of rights under section 3 of this Act.

(b) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the invalidated provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

DEFINITIONS

SEC. 6. For the purposes of this Act:

(1) The term "information" includes fact and opinion and any written, oral, or pictorial means for communication of fact or opinion.

(2) The term "news" means any communication of information relating to events, situations, or ideas of public concern or public interest or which affect the public welfare.

(3) The term "newsman" means any person (except an employee of the Federal Government or of any State or other governmental unit while engaged in disseminating information concerning official governmental policies or activities) who is or was at the time of his exposure to the information or thing sought by subpena or legal process an operator or publisher of a news medium, or who is or was at such time engaged on behalf of an operator or publisher of a news medium in a course of activity the primary purpose of which was the gathering, compiling, composing, reviewing, editing, publishing, or disseminating of news through any news medium; and includes a freelance writer who has disseminated news on a regular or periodic basis to the public.

(4) The term "news medium" means any newspaper, periodical, book, other published matter, radio or television broadcast, cable television transmission, or other medium of communication, by which information is disseminated on a regular or periodic basis to the public or to another news medium.

(5) The terms "operator" or "publisher" mean any person engaged in the operation or publication of any news medium.

(6) The term "State" means any of the several States, territories, or possessions of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Amend the title so as to read: "A bill to preserve the free flow of news to the public through the news media."

"THIRTY MINUTES WITH . . ."

Mr. ROBERT C. BYRD. Mr. President, on Thursday, March 22, I was the guest on "Thirty Minutes With . . .," a production of the National Public Affairs Center for Television which is hosted by Elizabeth Drew.

I ask unanimous consent that the transcript of that program be printed in the RECORD.

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

"THIRTY MINUTES WITH . . ."

ANNOUNCER. People from Washington, across the nation and abroad, people of consequence are questioned on the issues of our time by Elizabeth Drew on *Thirty Minutes With . . .*

Tonight, Senator Robert Byrd, Democrat, of West Virginia.

DREW. Senator Byrd, you hold the important position of Majority Whip of the Senate, the position for which you defeated Senator Kennedy a few years ago; you may be the next Majority Leader of the Senate; and you're also on several important committees. One of them is the Judiciary Committee, and on that committee it's been highly significant that you have opposed the President's nomination of Pat Gray to be the head of the F.B.I. I'd like to put some questions to you about that.

First, what do you think is going to happen, do you think Mr. Gray is going to be confirmed by the Senate?

Senator BYRD. I think the situation in the Judiciary Committee is very tight right now, I think there'd be a very close vote. I think the time runs against Mr. Dean. And—

DREW. You mean Mr. Gray.

Senator BYRD. Mr. Gray.

DREW. Yes.

Senator BYRD. And Mr. Dean has been so much in the hearings that——

DREW. The White House aide——

Senator BYRD. Yes.

DREW. —whom you do want to testify.

Senator BYRD. Yes, yes. I don't know, I think it's about 50–50 right now, but within a day or so, or a few days, by the time the Committee has its executive mark-up, there may be another vote or two to solidify one way or the other.

DREW. What do you mean that time runs against him. Why should that count against him?

Senator BYRD. Because with each new hearing there seem to be new developments which impair the chances for his confirmation.

DREW. Now the—one of the issues that's troubled you and some of your colleagues is the fact that Mr. Gray does not seem to be independent enough of the White House, and that he turned documents over to them in the course of investigating. In

the current context though, in the current atmosphere, is it realistic to expect a director of the F.B.I. to be chosen who is not tied to the White House in some way?

Senator BYRD. Well, I'm sure that in the past, Mr. Hoover undoubtedly submitted to the President of the United States from time to time, regardless of what party was in power, a letterhead memorandum summarizing the facts in connection with some individual or some situation. And he may——

DREW. Well we used to hear that he actually gave them the files.

Senator BYRD. He may even have shown the President a raw file from time to time. But never, never would Mr. Hoover have obsequiously and subserviently turned over repeatedly raw files without questions to White House echelon people; I don't think it was in Mr. Hoover's makeup. So we see something here entirely different, with an F.B.I. acting director turning over to Mr. John Dean, the counsel to the President, raw files over a long period of time, involving even re-interviews with people who were affiliated with the Committee for the Reelection of the President, who asked for such re-interviews to be private and outside the presence of an attorney. And yet these re-interview reports were even turned over to Mr. Dean.

Now the President in August stated that the White House investigation had been completed, and that no one on the President's staff or in the government was involved. But even subsequent to that August statement in San Clemente by the President, Mr. Gray has continued to supply Mr. Dean with raw F.B.I. files, even as late as October 10, without asking any questions as to whether or not the investigation was continuing.

I am afraid that the presumption of confidentiality on which informants could heretofore depend in giving infromation to the F.B.I. can no longer be assured or assumed.

DREW. But you have said that Mr. Hoover did some of this too, perhaps, you said, not to the degree, perhaps. But we know, or we have heard that he did turn over files to the—to the White House. There are stories that he turned over information to reporters and perhaps even to politicians on Capitol Hill. So did this presumption of confidentiality really exist before?

Senator BYRD. Yes, yes. As I say, Mr. Hoover, if there was any turning over of anything, he did it himself. And he——

DREW. Well what's the difference, as long as it was turned over?

Senator BYRD. And he went to the top. There's a great deal of difference in supplying Lyndon B. Johnson with a letterhead memorandum which is a digest of information. There's a great difference in doing that and in giving to someone on the White House staff raw, undigested, teletype information, interview reports, et cetera, et cetera.

DREW. We don't know for sure that this is unprecedented, either though, do we?

Senator BYRD. We have no reason to believe that it isn't. No reason whatsoever to believe that it isn't. There's been no indication that this has been done before.

DREW. The—you used the word acting director, and that's another question I wanted to ask you. Mr. Gray has been acting director since last May. In retrospect, do you think the Senate made a mistake in not insisting on examining his credentials at the time, and letting him be acting director for so long?

Senator BYRD. The Senate had no opportunity to examine his credentials.

DREW. Well couldn't—

Senator BYRD. There's—

DREW. Couldn't your committee have demanded that he be presented for confirmation?

Senator BYRD. I think the President made a mistake in not sending the name up immediately after the election. And we all presumed that this would be the case. Actually the President could have made an interim appointment during the adjournment of the Congress, and Mr. Gray would have served until the close of this session this year.

DREW. But, why didn't the Senate insist on confirmation of someone for such an important post, when he was named?

Senator BYRD. The Senate went on the presumption that the President was going to send the name up, immediately after the election. The President indicated during the election that he would not submit a name for the office of director during the campaign because it might become political.

DREW. It sure did, didn't it?

Senator BYRD. Well, I accepted that, but I did think the name would come up immediately thereafter.

DREW. But from May to November, there was someone running the F.B.I. whom the Senate did not insist on examining or having any approval of.

Senator BYRD. Well, under the law the Senate doesn't act to confirm the acting director. The Senate under the statute acts to confirm the director. We had no name before the Senate.

DREW. One of the, one of the issues also that has come up, as you say, is Mr. Dean, the White House aide whom you would now like to call to testify. The President has said that he won't let him, that he, Mr. Dean, is covered by executive privilege. What really can you do about that?

Senator BYRD. I think that under the circumstances, the Senate ought to reject the nomination of Mr. Gray.

DREW. But that still doesn't get to the executive privilege.

Senator BYRD. I understand that.

DREW. Yes.

Senator BYRD. But if the President is going to shut the door on information to the Judiciary Committee that it needs to make a proper and well rounded and sound and considered judgment concerning the nomination, then the Judiciary Committee ought to close the door on the nominee.

Now what can the Senate do? The Senate Judiciary Committee could subpoena Mr. Dean. I don't think that it will, I don't think that it ought to in this case. I think that the battle ground for a subpoena action should be shifted to the Ervin select committee on the Watergate investigation. That committee has broader authority.

The Judiciary Committee can reject this nomination, the President can send up another name, and we can have a director of the F.B.I.

DREW. Do you agree with Senator Ervin's suggestion that White House aides who do refuse to appear ought to be gone down and arrested by the Sergeant-at-Arms of the Senate?

Senator BYRD. Mr. Ervin is not talking through his hat. I think that in a case that is properly framed, where the facts are appropriate, this could be done. The Senate can order the arrest of a United States Senator. The Sergeant-at-Arms can be ordered to arrest a United States Senator, this has been done. Now if this can be done, why can't the Sergeant-at-Arms arrest an attorney, even though the attorney is the attorney of the President.

DREW. So you'd send him down Pennsylvania Avenue and he would somehow get in the White House gate?

Senator BYRD. He doesn't have to go in the White House gate.

DREW. How would he arrest him?

Senator BYRD. A subpoena can be served on an individual, a warrant can be served on an individual, a citation can be served on an individual, outside the White House, where the person lives, at his residence, or at the hotel, or at the restaurant where he's eating. Now, I'm not saying that I would do this in this case, but I am saying that in a situation which required this, where the facts and circumstances were such as to require the arrest of an individual on the White House staff, in order for a legislative committee to perform its duty, this can be done. It has been done, not with respect to someone on the White House staff, but the Sergeant-at-Arms has been ordered by the United States Senate to arrest an attorney and that was done.

The attorney was brought before the bar of the Senate, along with his clients, the Senate held a trial, sent the individual to jail, and the trial court upheld the Senate, the appeals court reversed the trial court, but the United States Supreme Court upheld the Senate, saying that in that particular case, there was a clear duty by the legislative committee to be performed, and that the act of the attorney for his clients was by its very nature and character, such as would obstruct the performance of that duty by the Senate committee.

DREW. And under the proper circumstances, you would go along with the idea of having this done to White House aides?

Senator BYRD. I would.

DREW. Now—but they're not appearing because their boss, the President, has told them not to, so would you arrest him?

Senator BYRD. No, no.

DREW. Well, then why arrest them, if they're obeying orders?

Senator BYRD. Well, I think that there is a doctrine of executive privilege, a very narrow doctrine that's never been clearly delineated. I think it's implied in the Constitutional powers of the President as Commander-in-Chief, and in his responsibility to faithfully execute the laws. But there's never been a Supreme Court decision in this area.

So, I think that where the President himself is concerned, and there are confidential communications, sensitive communications between the President and other individuals, the President I think can and ought to have the power to exercise executive privilege.

But to extend that doctrine to members of the White House staff, to lower echelon people, and say that they cannot come up before a committee and reveal communications involving a possible crime between themselves and third parties, someone else inside or outside the White House, I think is a ridiculous application of the doctrine.

DREW. To just finish out the Gray matter, as it were, just quickly, you said time is running out on Mr. Gray. As of now, would you then predict that he will be rejected?

Senator BYRD. I would not make any prediction.

DREW. All right. You've always been known as a tough law and order man, and that's why you're—

Senator BYRD. I was making tough law and order speeches before Mr. Nixon started making them.

DREW. And that's one of the reasons your role in this has been so interesting to people. Do you agree with the President's recent proposal that the death penalty, which the Supreme Court ruled unconstitutional, should be restored?

Senator BYRD. The Supreme Court did not rule the death penalty unconstitutional per se.

DREW. Right.

Senator BYRD. It merely said that the applications of it in the cases that were before it——

DREW. Said it was unevenly applied.

Senator BYRD. —were not uniform——

DREW. By the various states.

Senator BYRD. Yes, the application was not uniform, in which case it was unconstitutional, as being cruel and unusual punishment. I favor the death penalty, I have for many years, in certain cases; premeditated murder, treason. And I have some feeling that it ought to be applied certainly in some cases involving forcible rape, kidnapping. I don't think it ought to be made mandatory with

respect to hijacking, but I think there are certainly some hijackers who ought to be executed. But to make it mandatory I think might endanger passengers.

DREW. The President said that "the time has come for soft headed judges and probation officers to show as much concern for the rights of innocent victims of crime as they do for the rights of convicted criminals." Do you——

Senator BYRD. I said this a long time ago.

DREW. Oh, is he picking up on you then?

Senator BYRD. I don't—wouldn't say that, but that's not original.

DREW. Do you support the control of hand guns?

Senator BYRD. I have voted against registration and licensing of hand guns. I voted for the Bayh Bill last year, which dealt with the so called Saturday Night Specials. I think there has to be some way, if it can be found, to keep these cheap, easily secured weapons, out of the hands of the criminal. But I don't think that solves the problem.

I think if criminals know that punishment is sure, it's swift, and it will be severe, I believe that this is more of a deterrent. Criminals will get their guns if they have to steal them. If they can't kill with guns they'll kill with knives, so there are two sides to this question.

DREW. Did you say you supported the death penalty in certain rape cases?

Senator BYRD. I have felt that the death penalty ought to at least be there and be applicable in cases——

DREW. Which kinds of cases?

Senator BYRD. In cases involving forcible rape.

DREW. Any particular—or just any forcible rape?

Senator BYRD. Well I think it ought to be applicable in cases involving forcible rape.

DREW. The—responding to the President for the Democrats, Senator Harold Hughes of Iowa said that quote, "We need correction of social conditions known to be conducive to criminality, conditions such as over-crowding, chronic unemployment, poverty, inadequate health care, and discrimination." That "such conditions contribute to the development of criminal behavior among the people affected is simply a self-evident fact of life." Do you agree with Senator Hughes on that?

Senator BYRD. One of the great Justices of the Supreme Court once said something to the effect that the only thing that we can be certain of is that we're uncertain as to the causes of crime. I don't think anybody can be certain as to what causes crime.

DREW. Well there is a point of view, which he's expressing here, that social conditions and poverty are conducive—do lead to crime, and that those should be dealt with. He went on to say that it's these very programs that the President is—is ending, or cutting back on, and the President should not, because that—they do help cut down crime. Now what do you—where do you come out? There's a fairly strong philosophical difference here.

Senator BYRD. I think many people have that viewpoint, including Senators. And there may be something to it. I'm not trying to debunk it. I don't think, however, anybody can ascribe crime to poverty. I lived during the Depression, when there were millions of people walking the streets of America out of work, and yet we didn't lock the doors at our house, in that coal-mining community at night.

A person doesn't commit rape because he has an empty stomach. I think it's too simplistic to say that poverty causes crime. I don't argue with the statement that crime can be found infesting areas where there's great poverty. But I would say that there can also be shown to be areas, poverty-stricken areas, in which crime is not so prevalent.

DREW. In a speech in 1967, you said, "Slums are not built, they develop as a result of the careless living of people. We can take the people out of the slums, but we cannot take the slums out of the people." Does that mean that you will—are not so concerned with the President's cutting back on some of the programs to rebuild the inner cities and to deal with slums?

Senator BYRD. No. It doesn't mean that at all. I think that the inner cities are in trouble, and we need Federal programs that will help people. We need manpower training programs. We need programs that will assist people, while they're trying to get on their feet. We need better educational programs. We need better health programs. But I draw a distinction between the need for these, and my support for these programs, and my objections to the President's reduction of, or elimination of, some of the programs—I draw a distinction between that and the other side of the coin which appears to say, that poverty causes crime.

DREW. The Democrats in the Senate are going to try to come up with a budget of their own to counter the President's. Would you go along with the move which they're probably planning, to cut about ten or twelve billion dollars from defense and put it to domestic social programs?

Senator BYRD. I think there are two questions here. I will probably go along with a move, when I consider it to be the right move, properly justified, and researched, for a lowering of the President's ceiling. I will probably go along with some cuts in defense. But I would not support ten, I believe you said a ten to twelve billion dollars—I would not support that kind of a cut in defense. We talk about the re-ordering of priorities. Our first priority has been, is, and ought to always be our survival as a nation.

DREW. Then it isn't very likely the Democrats can get together on an alternative budget, is it?

Senator BYRD. Oh, I think it's possible. But if it's all going to come out of defense, I—I'm not so sure that I can go along with that. We can't take everything out of defense. We've got——

DREW. Now I'm not saying everything, but the—the—the thinking now is that ten or twelve billion dollars could come out.

Senator BYRD. I think it's entirely too much. I think it's unrealistic. I think we better think this thing through. We've got to remember that 56 percent of the defense dollar goes to pay people. And Congress itself has raised this military pay and military retirement. And this will be paid. And if we make meat axe cuts in the budget, these military increases, which we ourselves have enacted, are going to be paid, at the expense of weaponry, research, bone and muscle, in the defense budget.

DREW. You—some of the Democrats are also critical of the President for abandoning his plan—family assistance plan, and income maintenance plan. Are you disturbed that he's no longer proposing that?

Senator BYRD. I think it was a bad proposal in the beginning. I think the Congress did him a favor in rejecting his proposal. Now his theory was right. Let's get them off welfare. But his proposal wouldn't have done it. It would have—as I recall, it would have doubled the welfare case loads. I may be wrong in my figures, but it would have resulted in greatly increased welfare case loads, greatly increased expenditures, and we don't reform welfare by putting more people on the rolls, and paying more money out of the Treasury.

This is not to say there shouldn't be welfare reform, but his was not welfare reform.

DREW. You were once a member of the Ku Klux Klan, which you've been very open about saying, that as you look back you find that that was a mistake. You voted against the Voting Rights Act of 1965. Looking back, would you change that vote?

Senator BYRD. No.

DREW. You—

Senator BYRD. May I say, looking back, I might change my vote on the 1964 Civil Rights Act. I would like to recall that I voted for the 1957 Civil Rights Act, the 1960 Civil Rights Act, the 1962 Civil Rights Act, the 1968 Civil Rights Act. I voted against the 1964 Civil Rights Act. I voted against the 1965 Voting Rights Act. I probably would vote for the 1964 Civil Rights Act at this time.

DREW. You——

Senator BYRD. I might have voted for it at the time, had it not come to the Senate under the explosive, tense situation which really amounted to forcing the Congress to act with a cocked pistol at its temple. I didn't like this. I probably would vote for it today. I would not vote for the 1965 Voting Rights Act today.

DREW. We have very little time which is left, which is unfortunate, because there's a lot I want to ask you. I'd like to go into your own background for a moment, and coming from that into your current role. You were a poor boy in West Virginia, and you were working as a butcher, as I understand it, before you went into politics there. You put yourself through law school at night. Has this own—has your own background affected your view of what you think social policy ought to be in this country?

Senator BYRD. May I say first of all, with reference to the Voting Rights Act, I voted against it because I didn't think it was Constitutional. I don't think it's Constitutional today, even though the Supreme Court, the Warren Court, may have held otherwise.

Tennyson said, "I'm a part of all that I have met." I may be paraphrasing him. I suppose we're all a part, and influenced by, to some extent, our own conditions, the life which we've lived, circumstances which we've had to face, battles which we've had to fight. I wouldn't say that that isn't a part of my makeup.

DREW. It's said that you run the Senate by the Rule Book and the Bible. I can understand where the Rule Book comes in, but can you explain where you think the Bible pertains to running the Senate?

Senator BYRD. Well I have never heard that statement before.

DREW. I've seen it written about you, and I thought that they said that you——

Senator BYRD. I have heard the statement with respect to the Rule Book, and I think my so-called mastery of the rules is a myth. No Senator is a master of the rules. Only the Parliamentarian, and he perhaps isn't exactly a master of the rules and the precedents.

DREW. The Senate recently rejected a proposal to have its meetings open, the Committee meetings open, a proposal that the House did adopt. Why shouldn't the Senate Committees' business, when it's dealing with the public business, be open to the public?

Senator BYRD. I think that it's in the public interest, at times, to have closed meetings. The Senate is quite different from the House. In the Senate there's no rule of germaneness, there's no closed rule.

DREW. But we're talking about Committee meetings, so——

Senator BYRD. Yes.

DREW.—those are floor——

Senator BYRD. I know that.

DREW.—the things you're talking about?

Senator BYRD. Well any Senator in a Committee can offer any amendment he wishes to on the floor of the Senate and get a vote on it in public view. I think to have open meetings—particularly in the Armed Services Committee, and Appropriations Committee markups—now I'm not talking about hearings. The hearings are generally open, and they will continue to be. But I'm talking about markups, to have closed markups

in the Armed Services Committee, and Foreign Relations Committee, where there are very sensitive foreign relations matters, and in Appropriations Committee—I think would be a disservice to the public interest. It——

DREW. But those are where the critical decisions are made, aren't they?

Senator BYRD. It sounds good. But it doesn't work out that way.

DREW. Senator Byrd, your last question, we're about out of time, you're known for your faithful attendance on the Senate floor, for being there all the time. Do you feel that your colleagues spend enough time on the Senate floor, or they travel a bit much?

Senator BYRD. I think that most any Senator could, perhaps—well, let me say this in a different way. The Senate has not suffered very much from absenteeism. In other words, we haven't had to adjourn for lack of a quorum many times. We've been able to transact business. I do have a good record. It's partly because I am the Majority Whip and feel that it's my duty to stay on the floor. I think most Senators are conscientious about their duties. And the attendance record of most Senators is better than one might suppose.

DREW. I'm sorry, we're out of time. Thank you very much for coming.

Senator BYRD. Thank you.

PROPOSED SHIP CONSTRUCTION STANDARDS

Mr. CASE. Mr. President, the U.S. Coast Guard recently asked for comments on proposed ship construction standards which would require oil tankers built in the future to be equipped with double bottoms, providing space for taking on ballast water without using oil cargo tanks.

Because of the importance of the Coast Guard's proposal, I submitted a statement endorsing the general concept.

Since then, a similar statement submitted by the Center for Law and Social Policy on behalf of a group of environmental organizations has come to my attention.

Because the statement by the Center for Law and Social Policy details the issues involved so well, I believe it is worthy of the attention of all Members of Congress.

Therefore, I ask unanimous consent that the statement be printed in the RECORD.

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

CONSTRUCTION REQUIREMENT FOR TANK SHIPS—ADVANCE NOTICE OF PROPOSED RULE MAKING CGS 72-245P

CENTER FOR LAW AND SOCIAL POLICY,
Washington, D.C., March 15, 1973.

U.S. COAST GUARD,
Washington, D.C.

DEAR SIRS: We are writing in response to the Advance Notice of Proposed Rule Making (38 Fed. Reg. 2467 [January 26, 1973]) (the "Notice") on behalf of the Environmental Defense Fund ("EDF"), the Natural Resources Defense Council ("NRDC"), the National Parks and Conservation Association ("NPCA"), the Sierra Club, Friends of the Earth ("FOE"), the National Wildlife Federation ("NWF"), and The Wilderness Society to comment upon the tank ship construction standards which the Coast Guard is considering for proposal under Section 201 of the Ports and Waterways Safety Act of 1972, Pub. L. No. 92-340, 46 U.S.C. § 391a (the "Act"). We have acted as counsel for these groups on environmental matters in the past, and we have been asked by them to coordinate the presentation of their comments.

The environmental groups which we represent are all national, non-profit membership organizations deeply concerned about the preservation and protection of the marine and coastal environments. Their combined membership exceeds 2,300,000 persons throughout the United States and abroad.[1] The membership of each organization includes a substantial number of persons who reside in coastal areas which are increasingly directly affected by oil pollution, as well as scientists who have conducted and intend to continue to engage in research in coastal and estuarine areas and the marine environment.

All of the environmental organizations have made substantial efforts to improve the quality of the marine and coastal environments by means of litigation, testimony, policy analysis, and educational programs. For example, in the litigation field, EDF, NRDC and NPCA recently achieved a settlement with the Commerce Department under which it agreed to prepare environmental impact statements in connection with its program to subsidize the construction of United States oil tankers. And The Wilderness Society, FOE and EDF are now engaged in litigation regarding the adequacy of the Department of Interior's environmental impact statement for the proposed trans-Alaskan oil pipeline and its related marine transportation systems. In the area of international regulation of marine pollution, EDF, NRDC and the Sierra Club have taken an active role in commenting upon the proposed 1973 Convention for the Prevention of Pollution from Ships. These groups have also been actively involved in presentation of testimony on this subject. Thus, during the last session of Congress, EDF and the Sierra Club submitted comments to the Senate Commerce Committee on the Act; and earlier this month the Sierra Club, EDF, NRDC, NPCA and FOE presented testimony on deep water port policy at hearings held by that Committee.

We firmly support the proposed requirement for incorporation on oil carrying vessels trading in U.S. navigable waters of a segregated ballast capacity of not less than 45 percent of full load displacement, achieved in part through utilization of a double bottom of a minimum height of one-fifteenth of the beam. This proposal represents one of the most important efforts to date by any governmental agency to deal constructively and forthrightly with the growing threat posed by marine transport of oil to coastal and marine ecosystems. These fundamental changes in tanker design are long overdue and constitute necessary first steps toward an environmentally sound marine transportation policy. Indeed, segregated ballast and double bottom requirements are absolutely essential if the United States is to achieve the goal to which it, other nations and the environmental organizations we represent are committed of eliminating all intentional discharges of oil into the marine environment and of reducing to the greatest extent possible the risk of accidental spills.[2] We also believe such requirements are integral to fulfillment of the Congressional mandate to the Coast Guard embodied in the Act to establish design and construction standards for oil carrying vessels "to prevent or mitigate the hazards to life, property, and the marine environment" which they pose.

In addition to supporting the segregated ballast and double bottom requirements, we favor the proposal to require all tank ships (new and existing) to have the capability of retaining all wastes, including tank cleaning residues, on board for shoreside disposal. We further believe that both the segregated ballast-double bottom and waste retention capability requirements should be applied to tank barges.

However, we believe the proposals to limit the segregated ballast and double bottom requirements to large, future tankers and to tank barges of 300 feet or more, as well as to permit existing tankers to utilize load-on-top procedures in the face of environmentally preferable alternatives, will seriously undermine the pollution abatement objectives of the Act and should be abandoned.

I. THE ENVIRONMENTAL NECESSITY FOR SEGREGATED BALLAST AND DOUBLE BOTTOM REQUIREMENTS

There is no need to detail the increasing threat oil pollution from oil carrying vessels poses to the marine and coastal environments of this nation. Indeed, in Section 201 of the Act, Congress finds and declares:

"That the carriage by vessels of certain cargoes [including oil] in bulk creates substantial hazards to life, property, the navigable waters of the United States including the quality thereof) and the resources contained therein and of the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems and recreational and scenic values. . . ."

The significance of this threat is underscored by the recent findings of the National Oceanic and Atmospheric Administration that "oil globules . . . in massive proportions infect nearly 700,000 square miles of blue water from Cape Cod to the Caribbean Sea."[3]

Normal tanker operations—including discharge of cargo tank washings and oily ballast water—now account for almost 70 per cent of the total influx of oil into the oceans from oil carrying vessels, while tanker accidents—including groundings and strandings—account for almost 20 per cent of tanker oil pollution.[4] If seaborne imports of oil to the United States increase, and if oil tankers numbers and traffic increase, as government and industry project, the environmental degradation from oil pollution resulting from such vessels and their operation will increase proportionately:

"Not only will the probability of accidents increase . . . but pollution of the marine environment from normal tanker operations . . . are [sic] also likely to increase. "S. Rep. No. 92-841, 92d, 2d Sess. 22 1972).

A requirement that oil carrying vessels possess the capability of carrying sufficient ballast for normal operations *without recourse to cargo tanks* such as the Coast Guard is considering is without doubt the most effective means for reducing damage to the marine environment from normal ballasting operations. The segregated ballast approach is effective because it eliminates the needs to mix oil and water, and to wash cargo tanks to hold ballast which may be clean enough to discharge at a loading port.

There can also be no question as to the environmental soundness of using a double bottom to achieve part of the required segregated ballast capacity. First, as the Notice points out: "double bottoms would provide . . . protection against accidental discharge caused by grounding incidents"—which are the most common kind of tanker casualty. Additionally, the redistribution of hull strength resulting from incorporation of a double bottom will reduce or at least delay breaking caused by stranding, thereby reducing the frequency of catastrophic oil spills. The double bottom is also likely to reduce operational pollution in at least two ways: (a) the smooth cargo tank bottom resulting from the double bottom design should eliminate sludge buildup and, thus, the need to clean cargo tanks to prevent this occurrence; (b) when tanks are cleaned to prepare for drydocking and overhaul, less wash water will be required for cleaning because of the elimi-

Footnotes at end of article.

nation of structural members within the tanks. The United States, in urging IMCO to require segregated ballast systems including double bottoms, recently estimated the environmental benefits of double bottoms as follows:

"1. Operational pollution reduced 95%.
"2. Accidental pollution reduced 35%.
"3 Total pollution reduced 67%."[5]

II. THE CONGRESSIONAL MANDATE

The language of the Act and its legislative history make clear that Congress intended that the Coast Guard give full and serious consideration to requiring segregated ballast capacity achieved in part through a double bottom and fully support, if not mandate, the adoption of such design standards. In Section 201(1) of the Act, Congress concluded that—

"Existing standards for the design, construction, alteration, repair, maintenance and operation of . . . [oil carrying vessels] must be improved for adequate protection of the marine environment."

In reaching this conclusion, Congress implicitly rejected the prevailing single bottom design for tankers and the traditional practice of utilizing cargo tanks for ballast and discharging oily water into the sea. To remedy such environmentally unsound practices, Congress, in Section 201(7) of the Act, directed the Coast Guard to establish standards—

"As soon as practicable . . . to improve vessel maneuvering and stopping ability and otherwise reduce the possibility to collision, grounding or other accidents, to reduce cargo loss following collision, grounding or other accidents, and to reduce damage to the marine environment by normal vessel operations, such as ballasting and de-ballasting, cargo handling and other activities."

Clearly, the most effective way to "reduce cargo loss following . . . grounding" is to have a double bottom on the vessel involved in the grounding.[6] Similarly, the most effective way "to reduce damage to the marine environment by normal vessel operations such as ballasting and deballasting" is to require the use of segregated ballast systems.[7]

The principal congressional report accompanying and the hearings on the Act reveal a clear recognition of the importance of these features.[8] For example, the Senate Commerce Committee in discussing possible methods for dealing with pollution from tanker groundings, cited double bottoms as "[p]erhaps the clearest instance of a standard presented at the Committee's hearings that must be seriously considered . . .", *Senate Report* at 2897, and concluded that "double bottom construction would lessen the likelihood of serious damage to the environment in those instances where groundings do occur." *Senate Report* at 2894. As regards prevention of pollution from deballasting operations, the Committee rejected industry's response to this problem (the load-on-top procedure) as "not an adequate solution", *Senate Report* at 2899, and concluded that "there seems little doubt that the adoption of segregated ballast could contribute significantly to protection of the marine environment. . . ." *Senate Report* at 2900.

In addition, Congress clearly intended that such standards be established by the United States for *all ships* entering its navigable waters whether or not progress is made toward their adoption in the international forum, concluding that the objective of protection of the marine environment should not be sacrificed on the altar of the principle of international regulation. *Senate Report* at 2903, 2908. In point of fact, it is our understanding that the present United States proposal to IMCO for segregated ballast systems, including double bottoms, is encountering opposition from several other IMCO members. Such opposition underscores the need for prompt adoption by the United States of these vital design standards for vessels trading in its navigable waters.

Finally, it is essential to recognize that Congress determined that economic considerations should not preclude adoption of segregated ballast and double bottom requirements. *Senate Report* at 2897–2900. Moreover, any increase in vessel construction costs incident to such design changes is likely to be relatively small, *e.g.*, 2 to 10 percent, and should be substantially offset in any event by reductions in operating costs. Any clean ballast system including double bottoms would reduce operating costs since no routine tank cleaning operations or complicated load-on-top procedures would be required during voyages. Cargo oil tank corrosion would be reduced since sea water would never be introduced to cargo tanks. Segregated ballast tanks would undoubtedly receive maintenance only in a shipyard, having only a minor effect on shipyard costs. And, operating costs would be reduced as a result of expanded segregated ballast capacity owing to resultant decrease in turn-around time in loading and discharge ports. In any event, as the Senate Commerce Committee recognized, oil carrying vessels have for too long been "designed and built exclusively for the economic benefit of their owners and customers, with little thought being given to their impact on the marine environment." *Senate Report* at 2897. Congress made a considered judgment in the Act that previously neglected environmental considerations are of paramount importance in devising new vessel design standards for the protection of the marine environment. Therefore, it is incumbent upon the Coast Guard to adopt segregated ballast and double bottom requirements for all vessels entering U.S. navigable waters as soon as possible.

III. PROBLEMS RAISED BY THE COAST GUARD PROPOSAL

The thrust of the Coast Guard's proposal is commendable and a necessary step towards improving the quality of the marine environment. However, there are certain basic problems in the proposal which may prevent achievement of this objective.

(a) Application to Future Tankers Only:

The Coast Guard's proposal would limit application of the segregated ballast and double bottom requirements to:

"(1) Tank ships delivered after January 1, 1976; and

"(2) Tank ships delivered before January 1, 1976, whose building contract is placed and whose construction is begun after January 1, 1974."

Nothing in the Act requires the Coast Guard to limit the proposed requirements in such a fashion. Indeed, the Senate Commerce Committee considered and rejected the legislative creation of such "grandfather rights" which, it was felt, would defeat the basic environmental protective purposes of the legislation. In so doing, the Committee reasoned:

"Providing strict 'grand-father rights" [would] . . . become an artificial incentive for tanker operators to use their oldest and worst tonnage in United States trade in the knowledge that regulations for the protection of the marine environment would not apply." *Senate Report* at 2907.

In proposing to limit the segregated ballast and double bottom requirement to a defined class of new vessels, the Coast Guard would create the precise type of artificial incentive which Congress sought to avoid.

In addition, the grandfather rights approach proposed by the Coast Guard could, as a practical matter, render a double bottom and segregated ballast requirement ineffectual until some time in the mid-1990's. A recent survey by the Federal Maritime Administration shows that, as of January 1, 1973, there were 533 oil carrying vessels on order or under construction throughout the world, including 276 tankers over 175,000 DWT; and, that the world tanker fleet contains an additional 750 tankers, including about 230 supertankers, all built within the last four years. The survey also shows that virtually none of these tankers will incorporate double bottoms or a segregated ballast capacity equal to 45 per cent of full load displacement.[9] The Coast Guard's proposal would leave this vast fleet of new oil tankers with useful lives of at least 20 years free to trade in the United States navigable waters.

In light of the problems raised by grandfather rights, but also recognizing the need for some grace period to allow for orderly adjustment to new design criteria, we recommend that the Coast Guard establish an absolute cut-off date within the near future after which no oil carrying vessel—regardless of its contract, construction or delivery date—would be permitted to trade in the United States navigable water unless it met the segregated ballast and double bottom requirement.

(b) Application of Double Bottom and Segregated Ballast Requirement to Small New Tankers:

We vigorously oppose the suggestion in the Notice that small, new tank ships be permitted to utilize the load-on-top procedure as a substitute for a segregated ballast system, including a double bottom. Not only is no justification for this distinction between small and large tankers found in the Act, (or the Notice itself), but it also appears inconsistent with the Coast Guard's own recent conclusions that segregated ballast systems, including double bottoms, are both pollution and cost effective for tankers at least as small as 20,000 DWT.[10]

(c) Authorization of LOT Procedure:

Despite the obvious environmental advantages of segregated ballast capacity, achieved in part through the use of double bottoms, the Notice states—without any explanation or analysis—that this would not be required on "[e]xisting tankships and small new tankships". Rather, according to the Notice, these vessels "would be permitted to engage in the practice of retention of oil on board (load-on-top) with specified discharge criteria". This so called "load-on-top" procedure involves in essence attempts to separate oil from dirty ballast water on board, thereby reducing—but by no means eliminating—the actual amount of oil discharged during deballasting operations.

While LOT procedure is superior to direct discharge of oil ballast to the sea, it is at best only 80 per cent effective in removing oil from overboard discharges and, thus, falls far short of meeting the no discharge criteria to which the United States and environmental groups are committed. Further, as noted above, the Senate Commerce Committee, rejected LOT as an acceptable operational procedure. In so doing, it noted the following "obvious, inherent shortcomings" of the load-on-top procedure:

"First, the rolling action of a ship in a seaway is not conducive to proper separation. Second, existing oil-water separators have generally proven inadequate for tanker ballast operation and even potential improvement in the technology of oil-water separators would certainly not seem capable of coping with various oils carried by tankers that have specific gravities close to that of water. Third, the economic or geographic features of a particular trade may not allow sufficient time for a tanker operator to fully utilize the load-on-top procedure and, since a procedure rather than design is involved, it is subject to de facto violations on a case-by-case basis." *Senate Report* at 2899.

In light of these considerations LOT procedures should only be permitted on existing tankers where other environmentally preferable alternatives, such as retrofitting for double bottoms and segregated ballast, are not possible, and, in those cases, should be *required* for such tankers.

(d) Retention of Wastes on Board:

Footnotes at end of article.

The Notice states that the Coast Guard is considering a requirement that all tank ships (new and existing) have the capacity to retain oily ballast and other wastes such as tank cleaning residues on board for shoreside disposal. We oppose such a requirement insofar as it might be construed as an alternative to fully segregated ballast systems for dealing with oil pollution resulting from ballast discharge.

Shoreside reception facilities appear, however, to offer substantial environmental benefits as regards disposal of tank cleaning residues, sewage and other wastes. We believe that such facilities, which are more effective than holding tanks on vessels and which are not subject to the same space and weight constraints or to varying weather conditions, should be used for treatment of these substances, provided that a no discharge standard is imposed and adequate efforts are made to enforce and police that standard. Thus, we favor standards requiring waste retention capability.

(e) Application of the Segregated Ballast and Double Bottom Requirement to Tank Barges:

The Notice invites comments as to the desirability of applying the proposed segregated ballast and double bottom requirement to tank barges 300 feet long or more engaged in ocean and coastwise service. We strongly support such application. However, there is no justification, in our view, for limiting such application to tank barges over 300 feet long; rather, the requirement should apply to all tank barges engaged in ocean and coastwise service. In particular, double bottoms are an essential requirement for these vessels which operate in relatively shallow and crowded coastal waters a large percentage of their time and therefore run a relatively high risk of groundings and collisions.

CONCLUSION

In conclusion, we emphasize the importance which the environmental groups attach to and the urgent need for prompt adoption of segregated ballast and double bottom requirements for all oil carrying vessels—regardless of size or type—which trade in this nation's navigable waters and commend the Coast Guard's initiative in this area. If you have any questions with respect to the comments presented above or desire any further assistance from the environmental groups in this matter, please feel free to contact either of the undersigned.

Very truly yours,

ROBERT M. HALLMAN,
ELDON V. C. GREENBERG,
Attorneys for Environmental Defense Fund, Natural Resources Defense Council, National Parks and Conservation Association, the Sierra Club, Friends of the Earth, the National Wildlife Federation and The Wilderness Society.

FOOTNOTES

[1] EDF, whose principal place of business is 162 Old Town Road, East Setauket, New York 11733, has a membership of 32,000 persons and a 700 member Scientists' Advisory Committee. NRDC, whose principal office is at 15 West 44th Street, New York, New York 10036, and has additional offices in Washington, D.C. and Palo Alto, California, has a membership of approximately 9,000 persons. NPCA, whose principal office is 1701—18th Street, N. W., Washington, D.C. 20009, has a membership of approximately 50,000 persons. The Sierra Club, whose principal place of business is at 200 Bush Street, San Francisco, California 94104, has a membership of approximately 140,000 persons. FOE, whose principal place of business is 529 Commercial Street, San Francisco, California 94111, has a membership of 27,000 persons. NWF, whose principal place of business is 1412—16th Street, N. W., Washington, D.C 20036, is composed of associate members and members of state affiliate member organizations, comprising over 2,000,000 persons. The Wilderness Society, which has its principal office at 729—15th Street, N. W., Washington, D.C. 20005 and a field office in Denver, Colorado, has a membership of about 80,000 persons.

[2] At its last meeting on marine pollution in 1971, the Intergovernmental Maritime Consultative Organization ("IMCO") adopted as a goal "the achievement by 1975 if possible but certainly by the end of the decade, of the complete elimination of the wilful and intentional pollution of the seas by oil . . . and the minimization of accidental spills."

[3] Mar Map Red Flag Report (No. 1), *Fish Larvae Found in Environment Contaminated with Oil and Plastic* (January 18, 1973).

[4] Porricelli, Keith, and Storch, *Tankers and the Ecology*, paper presented at the annual meeting of the Society of Naval Architects and Marine Engineers (November 1971).

[5] *Segregated Ballast Tankers Employing Double Bottoms*, supporting document to D. E. VIII/12 and M. P. XIV/3(c) presented to the Intergovernmental Maritime Consultative Organization by the United States of America (November 1972).

[6] See Kimon, Kiss, Porricelli, *Segregated Ballast VLCC's*, paper presented to the Chesapeake Section of the Society of Naval Architects and Marine Engineers (January 11, 1973); United States Coast Guard, *Report on Part 2 of Study I, Segregated Ballast Aboard Product Tankers and Smaller Crude Carriers* (February, 1973).

[7] *Id.*

[8] See S. Rep. No. 92–724, 92d Cong., 2d Sess., 1972 U.S. Code, Cong. & Ad. News 2886 (hereinafter cited as *"Senate Report"*); *Hearings on S. 2074 before Sen. Comm. on Commerce*, 92d Cong., 1st Sess. (September 22, 23, 24, 1971).

[9] Federal Maritime Administration, *Economic Viability Analysis* (prepared pursuant to Stipulation in *Environmental Defense Fund, Inc., et al.* v. *Peterson, et al.*) (March 2, 1973).

[10] United States Coast Guard, *Report on Part 2 of Study I: Segregated Ballast Aboard Product Tankers and Smaller Crude Carriers* (February 1973).

DEWITT AND LILA ACHESON WALLACE, PUBLISHERS OF READER'S DIGEST

Mr. TALMADGE. Mr. President, I rise to pay tribute to two Americans who have made one of the most significant contributions to America in the history of our Republic and have received a special recognition: DeWitt and Lila Acheson Wallace, publishers of the Reader's Digest.

This husband and wife team have contributed to the information and entertainment of hundreds of millions of people the world over for more than 50 years. They began their venture in 1922, and ever since, have made easily available to everyone a wealth of information on nearly every subject under the sun.

The Reader's Digest has become, in the words of President Nixon when he presented Medals of Freedom to the Wallaces, "a monthly university in print." It is used for resource material by professionals in the fields of government, theology, communications, and civics. It has become one of America's great institutions for the simple reason of its worth to so many. Between its covers can be found regularly a vast supply of concise, pertinent information, easy to understand and useful to all. In a society whose continued existence depends on a well-informed citizenry, such a publication is invaluable.

As Dixie Business publisher, Hubert Lee, so aptly puts it:

Mr. and Mrs. Wallace are the world's greatest wife-husband publishing team.

I ask that Mr. Lee's account of the Great Americans Award of 1972, as originally published in Dixie Business, be printed in the RECORD.

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

"GREAT AMERICANS" FOR 1972

(By Hubert F. Lee)

DeWitt and Lila Acheson Wallace, the founders in 1921 of Reader's Digest with $1,800 borrowed from Mr. Wallace's father and brothers, have been named for the 18th annual "Great American" award by the editors of Dixie Business.

Their first issue came out Feb. 1922, 50-years ago.

They are the world's greatest wife-husband publishing team.

Mrs. Wallace was selected as "One of World's 10 Greatest Women" in 1952—twenty years ago—by the editors of Dixie Business.

Mrs. Patricia Nixon was named one of the "World's 10 Greatest Living Women" this year by Dixie Business.

President Nixon presented the Medals of Freedom, the highest honor that the United States can bestow on a civilian, to Mr. and Mrs. Wallace on January 28th at a dinner at the White House.

Following are the citations on the Medals, read by the President when he made the presentations:

To DeWitt Wallace: the cofounder with Lila Acheson Wallace of the Reader's Digest and partner in its direction for half a century, he has made a towering contribution to that freedom of the mind from which spring all our other liberties.

This magazine has become a monthly university in print, teaching 100 million readers worldwide the wonder of common life and the scope of man's potential.

In DeWitt Wallace America has a son to be proud of—one whose lifework shows American enterprise at its creative best, and the American ethnic in its fullest flower.

To Lila Acheson Wallace: cofounder with DeWitt Wallace of The Reader's Digest half a century ago and partner with him in its direction ever since.

Lila Wallace has helped make all America better read.

Her vision and drive have given wings to the workhorse printed word, fashioning a Pegasus of a magazine that carries insights to 100 million readers wordwide.

Her gracious touch at Pleasantville has shown the way to infusing industrial settings with culture and the joy of work.

President Nixon, who was elected on November 7, 1972 as their "Great American" at the polls by the people of America, said in presenting the Medal at the White House dinner: 1–28–72

"In this room (the State Dining Room) the Great of the world and of America have been honored—kings, emperors, princes, prime ministers, and other great men and women.

"I recall myself to toasts to Churchill, DeGaulle, Nehru, all in this room. "And I think back a hundred years before when the room probably first began to be used for that purpose, to all the wonderful things that have happened here and the people who've been honored.

"But I can very truthfully say tonight we couldn't honor two people who deserve it more in this great first room of America than Lila and DeWitt Wallace."

Dr. Billy Graham, one of the speakers, said that Reader's Digest has served as source material "for sermons, for clergy, for political leaders, for speeches.

"I played golf with Bob Hope, Graham quipped," and when I would be praying about the putt, Bob had the Digest in his hands getting his next joke."

Secretary of State William Rogers noted that "in terms of international affairs, the Digest is a tremendous asset. It is published and read and respected in every country outside of the Communist bloc.

"And very few people in the world have been able to project the thoughts that we all respect the way Mr. and Mrs. Wallace have."

Bob Hope cracked jokes, including the line: "I am surprised Mr. Wallace is eating because it usually takes him a month to Digest anything.

Another: "I admire any man who made a fortune thinking small."

HOW IT ALL BEGAN

It all started in 1918 when Sgt. Wallace was in an Army hospital in France recovering from shrapnel wounds and had nothing to do but read magazines.

He realized that many articles were of enduring value were too long.

He became obsessed with the idea of condensing them and of publishing in a monthly magazine.

When he returned home the next year he spent his time at the public library condensing several dozen articles. He could not afford to buy the magazines.

Then he fixed up a full-scale dummy of Reader's Digest and mailed it to several publishers.

No publisher was interested.

In the meantime, Wallace lost his publicity job during the 1921 depression with Westinghouse.

So he decided to publish his own magazine.

That was the year I got out of the Army Air Service at Camp Benning, Ga., and went with the Atlanta Constitution as a reporter.

GORDON RULE: THE RIGHT OF CONGRESS TO OBTAIN TESTIMONY FROM GOVERNMENT OFFICIALS

Mr. PROXMIRE. Mr. President, last week Gordon Rule was given his job back after being in a bureaucratic limbo for several months following his appearance before the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee.

The Pentagon and the Navy are to be commended for the decision to reinstate Gordon Rule as Director of the Procurement Control and Clearance Division.

Just 3 weeks ago, 14 Senators and I wrote to Defense Secretary Elliot Richardson requesting that Mr. Rule's duties be restored.

The demotion and punishment of Mr. Rule as a consequence of his testimony before the Subcommittee on Priorities and Economy in Government was an unfortunate occurrence that could and should have been avoided.

The right of congressional committees to obtain information from individuals and the right of individuals to testify before Congress when invited to do so must not be tampered with.

Government officials who have facts or opinions that Congress needs to know must not be gagged or inhibited from communicating them.

I was convinced that a correct resolution of the controversy over Mr. Rule's testimony would be reached once all the facts were brought to the attention of Secretary Richardson.

The reinstatement order clears the record of a dedicated public servant whose efforts in the area of weapons procurement have saved the Government and the taxpayer millions of dollars.

In the New York Sunday Times magazine section of March 25, 1973, Brit Hume examined the Gordon Rule affair in a way that throws a great deal of light on the problems confronting individuals in the employ of the Pentagon who are devoted to the service of their country and who take literally their responsibility to eliminate the wasteful use of taxpayers' money. I recommend this insightful article to anyone concerned with the mismanagement of defense contracts.

This morning in the Washington Post, March 26, 1973, Morton Mintz reviews in the Gordon Rule affair and reports some comments by Mr. Rule in the aftermath of his reinstatement.

I ask unanimous consent to insert at the close of my remarks the articles from the New York Times magazine and the Washington Post be printed in the RECORD.

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

ADMIRAL KIDD VERSUS GORDON RULE

(By Brit Hume)

(NOTE.—Brit Hume, an associate of columnist Jack Anderson, is Washington editor of [More], a journalism review.)

When Ogden Corp., the company that owns the giant Avondale Shipyard in Louisiana, ran into trouble because of a suspiciously low bid on a Navy destroyer contract a few years ago, it did what other military contractors have often done: It demanded more money from the Government. At a high-level meeting in the office of then Under Secretary of the Navy John Warner, the company's chairman submitted a letter drafted by its Washington lawyer (himself a former General Counsel of the Navy). The company, the letter said, "neither willing nor able" to put up more money toward delivery of the destroyers. Therefore, it was "incumbent on the Department of the Navy" to come up with the needed cash or the shipyard would simply "stop work." When the company officials had been asked to leave the room, the admiral in charge of shipbuilding told Warner the contractor's demand for an extra $10-million on the spot and $4-million soon afterward was reasonable and ought to be paid. There seemed to be general agreement. But then a ruddy, expensively but conservatively dressed civilian interrupted. "Admiral," he said, "over my dead body will you reform that contract and give them $10-million. This is the goddamnedest thing I ever heard of, a contractor coming in and throwing a piece of paper on the table and saying that to the Navy."

The voice belonged to a man named Gordon W. Rule. Since he was the Navy's director of procurement, with authority over the business terms of every major Navy contract, his opinion could not be taken lightly. The result was the company's ultimatum was rejected, the letter withdrawn and work on the destroyers went forward under the original terms.

It was not the first time, nor the last, that such a blunt reproach had been heard from Rule. In a bureaucracy not noted for outspoken civil servants, he has not only survived but thrived for 10 years. During that time he has rejected contract claims worth tens of millions of dollars to huge corporations with enormous political influence. And he has spoken up, at times with astonishing irreverence, to a brigade of admirals and to civilian big shots ranging from the Secretary of Defense to the chairman of the House Armed Services Committee. His office has been the source of a stream of caustic memoranda, letters and telegrams, many of them both unsolicited and unappreciated.

How has he gotten away with it? "You've got to be right," he explains. "If you're wrong and you try something like that, goddamn, they'll clobber you. But if you're right and so right that it's a little obvious, I find that people respect the hell out of you although they may hate your guts. And believe me, I've got respect in the Department of Defense."

If that sounds boastful, it is. Gordon Rule is not a modest man. But it is also unquestionably true. For until recently, Rule's outspoken ways brought him not censure but the highest commendation. First, he won the Superior Civilian Service Award in 1967. In making the award, Adm. I. J. (Pete) Galantin, then Chief of the Naval Materiel Command, cited Rule for "courage in challenging the status quo, zeal, willingness to make innovations and, above all, your absolute integrity and ability to win cooperation and loyalty." It was high praise, but it was surpassed by the outpouring of panegyrics heard four years later when Rule was given the Navy's Distinguished Civilian Service Award, the highest honor a civil servant can receive. Assistant Secretary of the Navy Frank Sanders spoke of Rule as "the most salient point of a system of checks and balances" designed to insure that the business aspects of all Navy contracts got "independent, penetrating, objective review." Rule's job, said Sanders, was to "challenge, to question and to disapprove when such action is necessary, regardless of other considerations or consequences." The citation itself, presented by John Warner, by then the acting Secretary of the Navy, praised Rule for "extraordinary acumen, judgment, initiative and integrity . . . extreme professional skill . . . superior ability to reach the crux of problems quickly . . . outstanding service."

That was barely two years ago, but today Gordon Rule is in deep trouble with the Navy. He was ordered off his regular job and sent to a training school miles from the Pentagon to update the curriculum. It has taken several months, and now that it is done, more such assignments may be in store. His sudden demise was the result of his testimony before a Congressional subcommittee headed by Senator William Proxmire, the Wisconsin Democrat, last Dec. 19. Proxmire was inquiring into waste in military spending and was especially interested in the Navy's difficulties with two of its biggest contractors, Litton Industries Inc. and Grumman Aerospace Corp. Litton, the Navy's largest contractor, was seeking an extra $390-million in connection with a contract to build five helicopter assault vessels. Grumman, which had won the contract to build the Navy's F-14 fighter jet with a bid widely considered unrealistically low, was balking at fulfilling it because it wanted more money. Both Secretary of the Navy John Warner and Adm. Isaac Kidd Jr., the new Chief of the Naval Materiel Command, had refused to testify, citing the "delicacy" of ongoing negotiations with both contractors as their reason. As he had often done in the past, Rule accepted. In answer to pointed questions from Proxmire, Rule was sharply critical of both Grumman and Litton. But his most biting comment came when Proxmire sought his opinion of President Nixon's appointment of Litton's president, Roy L. Ash, to head the increasingly powerful Office of Management and Budget.

"Well," said Rule, "I think first, that old General Eisenhower must be twitching in his grave. He was the one who first called attention to the so-called military-industrial complex, and I frankly think we have added a new dimension. . . . I think it is almost a military-industrial-executive department complex. I think it is a mistake for the President to nominate Mr. Ash, whom I have never met. I think it is a worse mistake for him to accept the job."

By the next morning, Admiral Kidd was at the door of Rule's suburban Washington apartment, near the Pentagon, where Rule was sick in bed, with laryngitis. Shown to his bedside, the hefty gruff Admiral handed Rule a letter of retirement that needed only his signature. Kidd said he wanted it signed by the end of the day. He gave no reason except "the good of the Navy." Feeling under the-weather and overwhelmed, Rule at first agreed. But gradually his defiance began to return. The visit ended with Rule refusing to retire. Having failed to force him out of the Navy altogether, Kidd two days later simply dispatched him to the training school. Since it was technically only a temporary reassignment rather than a disciplinary demotion, there was nothing the Civil Service Commission could do about it. And Kidd indicated he had further such assignments in mind. Rule's only recourse was to file a grievance, which would ultimately be decided by Warner. Since the Secretary was in on the decision to reassign him, it was hardly likely that he would reverse it. Rule seemed beaten. At age 66, with full retirement benefits ahead of him and only himself and his wife to support, he might have been expected to give up under such adverse circumstances. But Rule, in the words of another Navy man, had not yet begun to fight.

If Gordon Rule is abrasive, and if he resists being pushed around by men like Kidd and Warner, it is in part because he doesn't consider himself just another civil servant. Conspicuously, he is one of the most fastidiously dressed men in Washington, and his wardrobe includes several blue neckties with gold stripes, which are not emblematic of the Navy, but of the Metropolitan Club, Washington's most aristocratic—and segregated—men's club. It is likely that Rule is the only career civil servant to belong to the club. He has been a member since 1940.

He was born in Washington in 1906 and went to Western High School in Georgetown, which in those days was attended by the sons and daughters of many of the city's most prominent families. He later went to George Washington University law school where he earned both a bachelor's and a master's degree in law. He spent seven years practicing at Covington & Burling, then, as now, the city's most prestigious and influential firm. He joined the Navy in 1942 as a lieutenant j.g. When he emerged in 1946, he had advanced to captain, a remarkably quick rise through the ranks, even in wartime. He returned to Covington & Burling, but left after a year to start his own practice. During the Korean war he returned to active duty and gained extensive experience in procurement, first as the deputy director, then as director of contracts for the Bureau of Ships. He negotiated contracts worth more than $2-billion, including those for the construction of the first nuclear submarine, the Nautilus, and the first supercarrier, the Forrestal.

He also negotiated the first contracts the United States had ever signed with foreign countries for the construction of ships and won a commendation medal from the Secretary of the Navy for the job. These experiences left Rule with one of his most fundamental beliefs, namely that negotiation is not just a necessary sidelight to an administrative job, but a highly sophisticated art that should be practiced only by skilled and experienced professionals, especially where large sums of public money are at stake. This conviction was strengthened when he was sent to Europe in 1952 as chief negotiator for the Defense Department in securing bases for American military installations under NATO. The assignment was supposed to last a year, but Rule was back in his law office in Washington three months early, furious over the State Department's interference in the talks with the foreign governments. He published an article about the experience in The Saturday Evening Post, which demonstrated that his use of pungent languagee is not a recently acquired habit. "For nine months recently," Rule wrote, "I drew a handsome Government salary and allowances in Europe at the expense of the American taxpayers. They were gypped, and I feel they should know why. . . . It [was] my unhappy privilege to sit at the negotiating table and watch our State Department Foreign Service officers bungle major negotiations with our European allies. . . . I am convinced that the United States is woefully lacking in capable, experienced negotiators who can sit down at a conference table with representatives of other governments and at least hold their own."

Although Rule was principally occupied for the next 10 years with his prosperous law practice, which involved representation of major corporations and trade associations before Congress and the executive departments, the lack of professionalism in Government negotiating continued to trouble him. Ultimately, he wrote a 52-page booklet on the subject called "The Art of Negotiation," which was published in 1962 at Rule's expense and dedicated "To My Country." It has been used as a training text by the Army, the Navy and the Foreign Service Institute.

In 1963, the job of "Director, Contract Clearance Division, Naval Materiel Command," came open and Deputy Assistant Secretary of Defense for Procurement Graeme Bannerman, an old friend, asked Rule to leave his law practice to fill it. Rule accepted, and plunged into the job with his customary gusto. One of his tasks was to reform the use of so-called letter contracts, whereby the Navy simply gave a contractor a set of specifications and written orders to start work, with the full terms to be worked out later. Rule had soon annoyed one admiral with a blunt letter directing him to come to terms on a particular letter contract or see the contract disapproved. The admiral complained to the Chief of Naval Materiel and Rule received the first in a series of warning letters he got during his first year on the job. He got so many, in fact, that his probation period was extended an extra year. "I have received a number of what they call 'letters of caution,'" Rule explains. "Every one has been because of the tone of the letters that I write. I've never gotten a letter of caution for substance."

It took several years, but Rule succeeded in devising a new way of handling letter contracts that greatly improved the Government's bargaining position. In the past, when the Government could not reach agreement with a company on the terms of a letter contract, it had no option except terminating it and starting over again with another company, a process that was both costly and time-consuming. Under Rule's new procurement regulation, the Government could extend the deadline for coming to terms, and, if there was still no agreement, a Government contracting officer could fix the price. The contracting officer's decision could be appealed to higher authority, but the burden of proof was on the company.

The new system grew out of an effort in the 1967 to hold down the burgeoning costs of the celebrated F–111 fighter jet, an ill-fated Navy-Air Force project. At the direction of Secretary of Defense Robert McNamara, Rule led a year-long, on-site investigation of the efficiency of the Pratt & Whitney aircraft plant, where the engines for the plane were being built on a letter contract. Rule's team concluded that the plant was operating well below its potential efficiency and used the data to project what the engines should cost.

This "should-cost" approach to pricing quickly became highly controversial. There were many, both inside and outside the Pentagon, who objected to it as a meddlesome attempt to tell a contractor how to run his business. Rule responded to such criticism in a tart letter to the head of Pratt & Whitney. "If," he wrote, "a contractor wishes to conduct a patently inefficient operation with excess indirect employes, poor estimating, labor that consistently fails to meet standards, lack of proper competitive subcontracting, abnormal spoilage and rework, etc., that is his business. It is the Government's responsibility, however, not to pay taxpayer's money for demonstrable inefficiencies . . ." The letter outraged the contractor, but Secretary McNamara passed word to Rule that it was the best letter on procurement he had ever read. The controversy produced a dead lock over the price of the engines, but Rule had earlier persuaded the company to allow him to make a contracting-officer's decision setting a price if such an impasse were reached. Pratt & Whitney objected to Rule's price as too low, so Rule got together with Joel Barlow, a Covington & Burling partner and the company's lawyer, and settled the dispute in a matter of days. The engines ended up costing about $100-million less than the contractor had predicted.

This and other such achievements kept Rule in good standing despite his abrasiveness and irreverence. At a time when military procurement was becoming a national scandal, the Navy could point with pride to its "system of checks and balances" in contracting, which neither of the other services have, and to a series of constructive procurement innovations. Rule was the key man in both and this may explain why he was chosen for the Distinguished Civilian Service Award. By honoring Rule, the Navy was honoring the idea of economy and quality in buying military hardware.

Similar public-relations considerations seem to have been involved in the appointment of Rule in late 1969 to head a new unit called the Contract Claims Control and Surveillance Group, which had authority over the Navy's proposed claim settlements in excess of $5-million. The group's job was to investigate all negotiated claims to determine if they were justified. If not, the group was to disapprove them. Although Rule's job already seemed to give him such authority, the Chief of Naval Matérial, Adm. I. J. Galantin, explained that he wanted the group, and particularly Rule, to be a "strong, visible face to put before Congress, the General Accounting Office, the contractors and the public." Rule took him at his word. Eighteen months later, the group found itself faced with a politically explosive claim that had been negotiated for $73.5-million with the Avondale Shipyard of Louisiana, the same yard whose earlier bid for more money on the same contract had been thwarted by Rule.

The claim had the full weight of the state's congressional delegation behind it, including then House Majority Leader Hale Boggs, House Armed Services Committee chairman F. Edward Hébert, Senate Finance Committee chairman Russell Long and then Senate Appropriations Committee chairman Allen Ellender. In the months preceding the tentative settlement, the Navy had been hearing regularly from this awesome Louisiana line-up. Navy officials had been summoned to a meeting in Boggs' office, where they were confronted by him, Hébert, top aides to Long and Ellender and representatives of the contractor. Shortly thereafter, the amount of the proposed settlement rose by almost $2-million. On another occasion, the contracting

officer in charge of the case was called into Deputy Defense Secretary David Packard's office to meet with Avondale representatives. The session was set up by Boggs. The Louisiana four also wrote jointly to Navy Secretary John Chafee, saying that the contractor "has offered considerable evidence in support of its position" and urging that the matter be "promptly adjudicated." The pressure made the Navy hierarchy nervous, but it made Rule furious. In July, 1971, in a blistering memo declaring that the claim was inadequately documented and that pressure had been brought "to such an unreasonable extent that one begins to wonder about the merit of the claim," Rule announced that it had been unanimously rejected. Twelve days later, Rule was notified that his claims group was about to be "reconstituted" so that a lawyer from the Navy General Counsel's office could be installed as the head of it. Before he could be officially removed, Rule resigned from the group.

A few weeks later he was summoned to Capitol Hill by John Reddan, counsel for Rep. Hébert's Armed Services Investigating Subcommittee. Rule took a Navy Department lawyer with him but Reddan wanted to interrogate Rule alone. Rule refused to be questioned without the lawyer and Reddan gave in. Rule was placed before a recording microphone to answer questions about charges by columnist Jack Anderson of Congressional pressure in the Avondale case. He asked if he could have a transcript of the recording. Reddan said no, so Rule got up and left. That afternoon, he was called on the carpet by Warner, who scolded him for taking a department lawyer with him. In the future, Warner said, Rule would have to hire his own lawyer.

He was back on Capitol Hill the next month to testify before Senator Proxmire and he took the opportunity to elaborate on his charge of pressure by the Louisiana delegation. Hébert told a reporter afterward that "Mr. Rule will have every opportunity to prove his allegations under oath—and he knows it." When Rule saw the quote in the New York Times the next morning, he promptly sent Hébert a telegram reminding him of the incident with Reddan. "His star-chamber, Gestapo tactics and attitude on that occasion were most offensive to me as a citizen and taxpayer and his recording of our conversation will show the world that I requested the opportunity to appear before a public hearing and testify under oath and your Mr. Reddan denied that request. . . . For you to now say that I know I will have the opportunity to testify under oath . . . is certainly a great deal less than factual."

Rule believes the Avondale controversy started his downfall. In the past, he had been an asset in the Navy's relations with Congress. But now he had publicly accused four of the most powerful men on Capitol Hill of using improper influence and topped that off by calling one of them, in effect, a liar. In addition, Rule's exacting approach to contractor claims had helped create a backlog of unresolved disputes which were causing friction between the Navy and its major suppliers, especially Litton and Grumman. When Adm. Isaac C. Kidd left his command of the Sixth Fleet in the Mediterranean to become Chief of the Naval Materiel Command in 1971, the pending claims totaled about $1-billion. Kidd was told upon taking his new job that he would have three major problems: the unresolved claims from Litton; the disagreement between the Navy and Grumman over the price of the F-14 jet; and Gordon Rule.

If anyone could have been expected to take a dim view of Rule, it was Kidd. The son of an admiral who became the first naval flag officer to die in combat when he was killed at Pearl Harbor, Kidd had been destined for a career in the Navy since birth. A burly, stern man of 53 who had compiled an outstanding record in a variety of commands at sea, he regards Navy regulations as "the foundation upon which you approach any problem," including, it turned out, procurement negotiations, in which he had little experience. He sees his foremost responsibility as "the need for getting reliable equipment into the hands of our bluejackets." He is deeply worried about what he considers the growing strength and menace of the Soviet Navy.

Kidd set the tone for his administration of the materiel command with a speech to a group of industry men shortly after he took over. He spoke of the "ominous threat facing the world today" and told the audience that "quality, cost-consciousness and financial profit are indeed sound motivators. . . . But if you look back in your college psychology books, I think you'll find that 'survival' is perhaps the most basic motivator of all!" The title of the speech was "What Have You Done for the Fleet Today?" and soon thereafter, a series of posters bearing this slogan began being distributed by the thousands throughout the command. Some of them bore a picture of Kidd looking as if he were staring out from the bridge of a ship, his binoculars around his neck.

It was clear that Kidd was not about to change his ways. But neither was Rule, and it was inevitable that they would have differences. Kidd had Rule's job description changed so that he was no longer the "principal agent of the Secretary of the Navy" but instead was responsible to one of Kidd's immediate subordinates. Undaunted, Rule kept up his caustic commentary on procurement matters.

About six months after Kidd took over, for example, Rule sent him a curt memo on a particular claim. "The purpose of this gratuitous memorandum," it began, "is to apprise you that a mistake has been made in the approval of this claim." Kidd acknowledges that he didn't appreciate much of what Rule said, but their differences didn't burst into public view until Rule's Dec. 19 appearance before the Proxmire subcommittee. By that time, Kidd had taken personal charge of the negotiations with both Litton and Grumman and had kept Rule out of them.

The major element in the Navy's dispute with Litton was the price of a group of helicopter assault vessels. The Navy originally planned to purchase nine, but decided in 1971 to buy only five. The original ceiling price was $133-million apiece, but after delays caused by production problems at the company's unorthodox, assembly-line shipyard in Pascagoula, Miss., and the Navy's reduced order, Litton demanded $211-million each. While he was still the company's president, Roy Ash accused the Navy of a "built-in sense of righteousness about Litton's performance," according to the minutes of a June 6 meeting in Washington. Ash said he would discuss his demands with Warner, the minutes show, and then go "on to the White House" with his case. Because Litton had been the Navy's largest contractor, it was a sensitive matter, and Ash's appointment as director of the President's budget office made it more so.

The Grumman controversy was equally charged. The Navy had contracted with the company to build 86 of the F–14 fighter planes at $16.8-million each with an option to buy at least 48 more at the same price. Grumman claimed it lost $65-million last year building the original batch and stood to lose $105-million more this year if it accepted the Navy's order for the additional 48. The company blamed the problem on "mutual" pricing errors and runaway inflation.

After Rule gave his headline-making testimony criticizing Ash, Grumman and Litton, and the Navy had moved against him, Proxmire invited Rule and Kidd to appear before his subcommittee together. Kidd declined, citing the prospect of Civil Service Commission proceedings on the matter as his reason. But the commission's general counsel decided that Rule's assignment to the training school could not be classified an "adverse action" and said the commission could not act on it. This left Kidd without his excuse. The result was a spectacular confrontation on Jan. 10 with Rule and Kidd seated side-by-side at the witness table before the irate Proxmire. The Senator began by denouncing the Navy's action against Rule as "the harassment of an able, dedicated and courageous public servant. . . ." "The significance of this episode," he said, "goes far beyond the issue of shabby, unjust treatment of one outstanding employee. It goes to the very heart of the legislative process and the ability of the Congress to obtain information on the activities of the executive branch." Proxmire reminded Kidd that Federal law prohibited the obstruction of Congressional inquiry and noted that Richard Nixon, while a Senator, had once introduced legislation making it a Federal crime to intimidate public employees from testifying before Congress.

Kidd, understandably, was on the defensive. He found himself acknowledging on the one hand that Rule "was probably the most competent gentleman we had in matters of procurement," but insisting on the other that he had lost confidence in him because of his alleged loose attitude toward news leaks and his inability to abide by instructions as to what to say before Proxmire's subcommittee. But Kidd insisted he wasn't trying to withhold information from Congress. And despite his declining confidence in Rule, and the fact that Rule had been sent on an obviously trivial mission, Kidd maintained that he had not disciplined him. Flip-flopping again, Kidd insisted that Rule's comments before the subcommittee had damaged the negotiations with Grumman and Litton. Both Proxmire and Rule had a field day with these tangled explanations. How, demanded Proxmire, had Rule's remarks hurt the negotiations? "That would be a bit difficult to measure and quantify," replied Kidd. "In other words," said the Senator, "The Navy considered any discussion of Litton or Grumman taboo." "That is what I told him, Mr. Proxmire, yes, sir," answered Kidd. Rule broke in at one point to charge that since the rejection of the Avondale claim, the Navy had systematically been reducing his influence. "I know what is going on," he said. "And I know that Admiral Kidd probably thinks I am a burr up ——— and he wants me out." When Kidd recalled how he had been told that Litton, Grumman and Rule would be his three major problems, Rule replied. "I hope he is not as screwed up in the negotiations with Litton and Grumman as he is with Rule." At another point, Rule said of Kidd, "This man has been in procurement 12 months, 13 months. All of a sudden he is an instant expert." What, Proxmire asked, was Kidd's response to that? "He is right," said Kidd, "he is right. I have no corner on the market on brains.'

The hearing may have succeeded in making Kidd and the Navy look foolish, but it did little to help Rule's standing with his superiors. Still, he is fighting to win back his job. He has withdrawn his grievance, leaving the next move up to the Navy now that his temporary assignment at the training school is complete. If there is no further action, he will automatically regain his old post. There seem to be two reasons for Rule's continuing the fight. One is that he enjoys the controversy with its attendant publicity and excitement. The other is that he likes his work. "You can practice law," he says. "You can have clients. You can make money. But you never get a feeling in your heart of having contributed a goddamned thing. In this job, boy, you really get that feeling. And what's so damned interesting

is that there are new questions every day in making these contracts and administering them and spending the taxpayer's money. These are fascinating questions. I love it." If he loved it, he was asked by a reporter, why did he risk his job with such bold comments about sensitive matters? "I got a kick out of talking about Grumman and Litton," he said, "because I really felt that those things had to be said. Those two companies had the Navy over such a barrel, sitting there negotiating with that guy who's so inexperienced."

The escalating costs of military contracts, of course, have been a problem for years. Rule believes there are two principal reasons why contractors so often submit unrealistically low cost estimates. One is that in a competitive bid, it is a good way to win the contract. This is known as "buying-in." But even in so-called sole-source procurement, where the Pentagon simply chooses the contractor it deems best suited to the job, Rule says there is also pressure for artificially depressed bids. It is caused by the desire of the military itself to keep the estimate low so that the program will be more palatable to Congress. Once the project is under way and millions have been spent, it is easier to get additional funds to keep it going. In any case, Rule believes, virtually everyone in a position to influence such matters stands to gain from high military appropriations. Rule once sat down and made a list of those with an influence on military spending. There are 10 classifications ranging from Congressmen, to the military, to the contractors themselves, to labor unions. "Everyone involved wants something," he noted. "When all these turn on their respective powers, where does that leave the taxpayer?"

Whatever becomes of Gordon Rule, his case put the Navy's dealings with Litton and Grumman on the front pages, and there can be little doubt that this was part of his objective. Soon after his testimony, Roy Ash was before Proxmire, being berated for the "palpable conflict of interest" in his Government job and relationship with Litton. That made the network news and caused more headlines. Whatever the Navy did now, it was a major story. Finally, it acted. Grumman, the Navy announced, would be held to the terms of its original contract for the additional 48 F-14's. And Litton would be paid $22-million less per ship than it had demanded for the helicopter assault vessels. What's more, Litton would be required to pay back $55-million in unearned construction progress payments under the contract. The decision involving Litton had been reached after negotiations failed and the system devised by Gordon Rule for dealing with such situations had been used. It was a contracting officer's decision, similar to the one Rule had made in the Pratt & Whitney case.

[From the Washington Post]

NAVY CRITIC RESUMES COST OVERRUN BATTLE

(By Morton Mintz)

The Defense Department's leading critic on Capitol Hill found himself commending the Pentagon and the Navy last week. The occasion was the reinstatement of a man named Gordon W. Rule as the Navy's top civilian procurement official.

"The reinstatement order clears the record of a dedicated public servant whose efforts in the area of weapons procurement have saved the government and the taxpayer millions of dollars," Sen. William Proxmire (D-Wis.) said.

Adm. Isaac C. Kidd Jr., chief of the Navy Material Command, who had assigned Rule to what the procurement official regarded as a Siberia, called him in Wednesday to restore him as director of the Procurement Control and Clearance Division.

"He absolutely could not have been nicer or finer," Rule said later. "The guy was wonderful"—concerned only with how to avoid "These claims and overruns" in procurement. "Believe me, I'll go all out to help him," Rule said.

The remarkable nature of the make-up session was underscored by the fact that it came while the Air Force and A. Ernest Fitzgerald, who was fired after disclosing a $2 billion over-run in the C-5A transport program, continued—at a Civil Service Commission hearing—a 3½-year-old battle over whether Fitzgerald should have his job back.

Only a matter of weeks ago, it appeared that the Navy and Rule also were destined to engage in years of legal combat.

Appearing before Proxmire's congressional Joint Economic Subcommittee on Jan. 10, Rule—with Kidd only a few feet away—testified that the Admiral "probably thinks I'm a burr up his ass, and he wants me out."

"I hope," Rule said at another point, that Kidd is "not as screwed up in the negotiations" with two leading Navy contractors, Litton Industries and Grumman Corp., "as he is with me."

Kidd, less flamboyant but no more complimentary, said he had been warned on taking over the Navy Material Command that Rule, Litton and Grumman would be his three principal problems, and that he had been losing confidence in Rule for 13 months, partly because he would "go outside the system."

The flap began at a December hearing of the subcommittee when Rule responded to a request by Proxmire to comment on President Nixon's appointment of Litton's president, Roy L. Ash, as director of the Office of Management and Budget.

Rule first said that "old General Eisenhower must be twitching in his grave." Later, he apologized for this "verbal excess" by which he intended "no disrespect."

Rule's principal objection was that Ash, while head of Litton last June, had proposed a "bail-out" of the firm to senior Navy officials, had said he would go "on to the White House to explain" Litton's financial problem, and had told of a grand plan envisioned by then Treasury Secretary John B. Connally for Congress to rescue all financially troubled Navy shipbuilders.

The next day, Rule, who holds the Navy's highest civilian award, was visited at his sickbed by Kidd. The admiral asked him to sign a request for early retirement. Rule refused.

The day after that, Kidd assigned Rule to update the curriculum at the Navy Logistics Management School in Anacostia. Kidd put no time limit on the assignment.

Rule actually began the assignment on Jan. 29. He now has recommended that the school's concern with procurement be of greater depth and duration, he said last week.

Proxmire and Rep. Les Aspin (D-Wis.) had protested repeatedly that Rule was punished and demoted as a consequence of his testimony, and that a law forbidding harassment and intimidation of witnesses may have been violated, Kidd insisted at the January hearing that the mission to Anacostia was a "lateral" move.

Last week Proxmire said he had been "convinced that a correct resolution . . . would be reached once all the facts" were presented to Defense Secretary Elliot L. Richardson. Three weeks ago Proxmire and 14 other senators petitioned Richardson to restore Rule.

"The right of congressional committees to obtain information from individuals and the right of individuals to testify when invited . . . must not be tampered with," Proxmire said.

MARYLAND DAY 1973

Mr. MATHIAS. Mr. President, Maryland Day is the day set aside by law for the annual observance of the arrival of the first colonists at St. Clements Island on March 25, 1634. It is a holiday within the Free State, and should be, because it commemorates the beginning of many important American contributions to mankind, the first seeds of which were planted in Maryland.

This year, Maryland Day was celebrated in a unique and splendid manner in a ceremony in the Washington Cathedral to dedicate the Maryland Bay in memory of Anna Campbell Ellicott, Charlotte Campbell Nelson, and Ella Campbell Smythe.

Those who participated in the service were:

The Very Reverend Francis B. Sayre, Jr., dean of Washington Cathedral.

His Excellency Marvin Mandel, Governor of Maryland.

The Reverend Lawrence J. Madden, S.J., director of campus ministry, Georgetown University.

Mr. Theodore H. Mattheiss, executive secretary, Baltimore Yearly Meeting Religious Society of Friends.

Bishop John Wesley Lord (retired), United Methodist Church.

The Right Reverend David K. Leighton, Sr., Bishop of Maryland, the Episcopal Church.

His Eminence Lawrence Cardinal Shehan, Archbishop of Baltimore, the Roman Catholic Church.

The Right Reverend William F. Creighton, bishop of Washington, the Episcopal Church.

The University of Maryland Chamber Singers and Chorus, Dr. Paul Traver, director, assisted by David Taylor.

The Cathedral Choir of Men and Boys.

The Maryland Bay and its symbolism has been described by Richard T. Feller, Clerk of the Works, and I ask unanimous consent that his guide be included at this point in the RECORD.

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

THE ELLICOTT MEMORIAL BAY

The areas between flying buttresses along the nave of the Cathedral Church of Saint Peter and Saint Paul are enclosed and designated as outer aisle memorial bays.

The Ellicott Memorial Bay, in the south outer aisle next to the Rare Book Library, is different from other bays in that it lacks a divider. Marble flooring at the same elevation as the nave floor is canopied with simple quadripartite vaulting. This part of the cathedral's fabric was made possible by the munificent bequest of Anna Campbell Ellicott, in memory of her sisters, Ella Campbell Smythe and Charlotte Campbell Nelson. By resolution of the Cathedral Building Committee, the bay was designated as a memorial to all three sisters. The inscription on the wall of the bay reads:

STONE CARVINGS

The three sisters were descendants of prominent Maryland families, hence this bay is enriched with symbols related to the state. At the peak of the arch where the vaulting ribs converge is an enlarged stone called a boss. Its function is similar to that of a keystone in a round arch. The Ellicott Bay boss is carved with a background of oak leaves, reminiscent of the historic Wye Oak.

Among the leaves are several small creatures: a racoon, a mother possum carrying her babies on her back, a Maryland terrapin, several denizens of the Chesapeake Bay—the Maryland crab, a starfish and an oyster. The

sculpture was designed, modeled and carved by Constantine Seferlis of the cathedral staff.

High on the east wall is the Maryland coat of arms, originally the family crest of Lord Baltimore. The shield was modeled and polychromed by cathedral sculptor Carl L. Bush and executed by cathedral master carver Roger Morigi.

THE STAINED GLASS

Many people came to the North American continent seeking refuge from religious persecution. In 1649 the Act of Toleration was adopted by the Maryland General Assembly. It was the first instance where trinitarian Christians made legal their efforts to live together in harmony. The large triangle at the top of the center lancet signifies the Act of Toleration. It is held by characteristic Maryland settlers, a gentleman cavalier and a tradesman or farmer. The two men stand on the Maryland coat of arms.

LEFT LANCET

Francis Asbury (1745–1816) was the first Methodist bishop consecrated in the United States, appointed by John Wesley in 1784. From 1784 until his death in 1816, he traveled on foot and horseback as a circuit rider, covering five to six thousands miles every year. Throughout his life he suffered from a disease of the throat which added greatly to the discomfort of his mission. However, he never relaxed his spartan self-control; the story of his life is one of triumph over hardship. Thus the artist has portrayed Asbury struggling up a mountain, leading his horse.

In the lower portion of the lancet is George Fox (1624–1691), principal founder of the Society of Friends. During his American trip in 1671–1672, he visited Maryland, where he preached to gatherings of settlers, winning many to the Quaker position.

RIGHT LANCET

The first American Roman Catholic bishop, John Carroll (1735–1815), was consecrated in 1790. He was founder of Georgetown University, which is sketched as it is seen today from Key Bridge. Below Bishop Carroll are the Dove and the Ark, the ships on which Lord Calvert's expedition come to Maryland in 1634. Father Andrew White, S.J. celebrated the first Roman Catholic mass in Maryland on March 25, 1634, under a great cross which had been hewn from a tree. His congregation included Governor Leonard Calvert. The single tepee indicates the wigams the settlers bought from the Indians to use until houses could be built.

CENTER LANCET

Thomas John Claggett (1734–1816 was the first Episcopal bishop consecrated in America. He became Bishop of Maryland in 1792. Bishop Claggett is shown holding a model of St. James Church, Lothian, Ann Arundel County, of which he was once rector. Captain John Smith, with fourteen companies, explored the Chesapeake Bay and its tributaries in the summer of 1608. He is said to have traveled three thousand miles in the open barge pictured, and he made a remarkable map of the area. Captain Smith is shown leading daily prayer.

The frieze across the base of the three lancets features the Maryland state flower (black-eyed susan), a Chesapeake Bay rockbass, a blue crab, a yellow perch, a sea nettle, a Baltimore oriole and an oyster. In the left lancet is the loblolly pine, while the center lancet features beech and white oak trees and on the right is mountain laurel.

Cathedral friends will have no trouble recognizing the luminous stained glass window as the creation of Rowan LeCompte, designer of some of the most beautiful glass in Washington Cathedral. It was fabricated and installed by his associate, Dieter Goldkuhle.

Mr. MATHIAS. Mr. President, it was appropriate that the service in the Maryland bay concluded with the prayer for Maryland composed several years ago by the Very Reverend Francis B. Sayre, Jr., dean of the cathedral, and which I would like to repeat.

Blow, Lord, Thy clean winds upon the shores and shoals of Maryland. Blow gentle breeze of blessing across the earth, atop her stalwart hills, and over the greening fields. Blow, Holy Spirit, the freshness of liberty through the hearts of Thy people whose domain named for a queen, yet worships the King who is the Father of us all.

So may Thy children catch upon their hopes the breath of glory which Thou doth send to fill the spangled sky, the lofty sails of ships, and the faithful lives of men.

Fulfill then, O God, the promise once borne upon the wings of a dove of a land of peace and companionship, and courage enough ever to follow after Thee; through Jesus Christ our Lord. Amen.

CHILD ABUSE

Mr. MONDALE. Mr. President, last week I and 13 other Members of the Senate introduced S. 1191, the Child Abuse Prevention Act, which is aimed at improving the prevention, identification, and treatment of child abuse.

According to the National Center for Child Abuse Prevention and Treatment in Denver, 60,000 cases of child abuse—including beating and other physical abuse by adults—are reported in this country annually.

The Subcommittee on Children and Youth, of which I am chairman, has a longstanding interest in trying to find solutions to the complicated problems of preventing and treating child abuse. Last fall we printed a document containing selected readings on the subject. This year we continued our investigations into the causes and possible means of eliminating child abuse and subsequently introduced S. 1191, the Child Abuse Prevention Act.

This week the subcommittee is holding three hearings on this legislation. The first two hearings will take place in Washington on Monday and Tuesday, March 26 and 27, in room 4232 of the Dirksen Office Building.

The third hearing will be held on Saturday, March 31, in Denver, Colo. at the University of Colorado Medical School. The subcommittee scheduled this field hearing in Denver because the child abuse team operating out of the medical center has developed some very promising methods of working with the families of abused children.

I was therefore extremely pleased to read in last week's edition of the National Observer a thorough and informative article describing the activities of the Denver Center. I ask unanimous consent that this article be printed in the RECORD.

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

THE CHILD-BEATERS: SICK, BUT CURABLE

(By Richard S. Johnson)

They find a healing process in sharing their experiences—including the nightmarish aspects. So one night a week they gather, some with husbands or wives, some alone. Sharon, pretty, trim, and modishly dressed, is the wife of a successful young salesman; she shook her baby by the ankles until its leg snapped. Mary, fat, wearing a sack dress, is the wife of a man who earned less than $4,000 last year; she choked her little girl. Cindy is the personable young widow of an Air Force flier who died in a plane explosion; in recurring fantasies she saw herself throwing her children to their deaths from atop an office building.

These parents are members of Families Anonymous, an organization for parents who have knowingly injured their children or are afraid they might. They are parents determined to gain control over their occasional violent impulses toward their children, whom they love—but whom they also sometimes hate.

Tonight there is a new couple. Both sit like frightened children, politely refusing coffee or Sanka.

"Well," someone asks in a theatrical voice, "who beat their kids this week?"

The question was dropped to break the ice. A few smile or laugh. Not the new couple: stiff, suspicious, proper. But they look at Mary with intense interest as she tells them: "I'll always be a battering parent."

At once there is a hush, an expectation. Then Mary adds: "But as long as I have this group, my child is safe with me. I'll never hurt her again."

They nod or quietly agree, relieved at what for them is obviously a truth. And in fact none has—since joining the group—hurt his child. And those whose children the courts had placed in foster homes have their children back home again. Except for the new couple, whose struggle for understanding of themselves, control of themselves, is now beginning.

To Dr. C. Henry Kempe, Families Anonymous is one of the innovative therapeutic approaches that demonstrate new hope for the "cure" of battering parents. If widely applied, these innovations can, he believes, save many thousands of children each year from injury or death.

Kempe is perhaps this country's best-known authority on the physical abuse of children by parents. Though his specialty is infectious diseases of childhood, he began his serious research into child abuse when he joined the pediatrics department of the University of Colorado School of Medicine 17 years ago.

Now head of that department, Kempe also directs the newly created National Center for the Prevention and Treatment of Child Abuse and Neglect.

The center began operating last Jan. 1, established on the previous work of the medical school's child-protection team and funded by gifts from private institutions, notably a three-year grant of $588,000 from the Robert Wood Johnson Foundation of Princeton, N.J.

It was Kempe who in 1961, at a meeting of the American Academy of Pediatrics, coined the term, "The Battered-Child Syndrome." Since then awareness has grown that the syndrome—the injury of a child through the nonaccidental hitting, kicking, throwing, or twisting by a parent or foster parent—is a significant cause of childhood disability and death in America and elsewhere.

Because there still isn't nationwide compliance with laws requiring the reporting of child abuse, experts agree that there is no accurate way to determine incidence. Kempe estimates there were about 60,000 reported cases in the United States last year.

"Child abuse is a sickening, largely overlooked problem in America," says Sen. Harrison J. Williams, the New Jersey Democrat who is chairman of the Senate Committee on Labor and Public Welfare. Last week Minnesota Democrat Walter F. Mondale, chairman of the committee's Subcommittee on Children and Youth, introduced the Child Abuse Prevention Act in the Senate. Williams and 13 other senators are cosponsors.

Mondale's subcommittee will hold hearings on the bill in Washington, D.C., beginning March 26. The bill would provide Federal funds for personnel and programs to prevent and treat child abuse. It would establish a National Center of Child Abuse and Neglect to be a clearinghouse for information and training materials. It also would set up a National Commission on Child Abuse and Neglect to examine, among other things, the effectiveness of existing laws affecting child abuse and neglect.

A WESTERN CULTURAL PATTERN

Studies suggest that the battered-child syndrome is only an extreme of a violent child-rearing pattern firmly established in Western culture. Two of Kempe's colleagues who have thoroughly studied the syndrome write:

There seems to be an unbroken spectrum of parental action toward children, ranging from the breaking of bones and fracturing of skulls through severe bruising to severe spanking and on to mild "reminder pats" on the bottom. To be aware of this, one has only to look at the families of one's friends and neighbors, to look and listen to the parent-child interactions at the playground and the supermarket, or even to recall how one raised one's own children or how one was raised oneself.

The amount of yelling, scolding, slapping, punching, hitting, and yanking acted out by parents on very small children is almost shocking. Hence we have felt that in dealing with the abused child we are not observing an isolated, unique phenomenon, but only the extreme form of what we would call a pattern or style of child rearing quite prevalent in our culture.

Those are the words of Drs. Brandt F. Steele and Carl B. Pollock, psychiatrists and professors at the Colorado medical school. For 5½ years they "studied intensively 60 families in which significant abuse of infants or small children had occurred." Battering parents, they found, are just like the rest of us in most respects. They come from farms, small towns, and cities. They are of Catholic, Jewish, and Protestant faiths—or of none, or are antichurch. They are intelligent and well educated and at the tops of their professions. They are unintelligent, poorly educated, and have poor job records. They are poor, middle-class, or wealthy.

TRAITS OF BATTERING PARENTS

And so Steele and Pollock and other researchers have disproved the belief "that child abuse occurs only among 'bad people' of low socioeconomic status."

Yet there are significant differences in the way battering parents and "normal" parents react to their children during crises. For example, say Pollock and Steele, a battering parent in a crisis is incapable of valuing a love object such as a child more than he values himself. Indeed, such parents characteristically turn to small children—even to infants—for nurturing and support and protection. When the children can't or won't co-operate, the parents—unable to cope by themselves with the emotional pressure they feel—sometimes respond in paroxysms of frustration and rage. At those times they cannot control the physical energy they use in "disciplining" or "punishing" or "training" their unrewarding offspring.

Apparently such behavior stems from the way the parents themselves were treated as children, say Pollock and Steele. Without exception the parents in their study group had been exploited, subjected to "intense, pervasive, continuous demand from their parents," and made to feel they could never do anything right.

Such child-rearing methods, say these psychiatrists, are "transmitted from parent to child, generation after generation."

Obviously such parents need help, these psychiatrists believe. But historically—and even today—the tendency has been to punish them.

Vincent De Francis, a lawyer who is director of the Children's Division of the American Humane Association, has said that "the general attitude toward the problem of child abuse, and a common reaction of people when confronted with the brutal facts, is shock and anger. A natural consequence is the desire to exact retribution—to punish unnatural parents for their acts of cruelty."

Such punishment, says De Francis, doesn't achieve anything except surface compliance with criminal statutes. Prosecution frequently places the child in even greater danger when the battering parent comes home—a parent whose motivational forces have remained untreated and whose emotional damage has become greater due to the punitive experience.

ABUSERS NEED MOTHERING

What, then, should society provide for such parents? "Mothering," says Kempe, Pollock, Steele, and evidently most other researchers. Their studies show that, without exception, battering parents suffered, in the words of Steele and Pollock, from "deprivation of basic mothering—a lack of the deep sense of being cared for and cared about from the beginning of one's life."

Mothering is tender loving care—a cliche suddenly freighted with meaning in the context of the battered child and his family. Either sex can mother, and Kempe and company believe a parent of either sex must have mothering before he can mother, before he can nurture and protect his children and refrain from violent physical abuse.

These experts' theory, simply stated, is that a person must *feel* loved before he can *give* love. That is why, says Kempe, the traditional modes of social agencies—welfare departments and the like—aren't highly successful in helping battering parents. Those modes are centered, he says, in the supervisory, once-a-week or once-a-month home visits of overworked caseworkers who are concerned for the child but who lack the training and time to make the parent feel cared for.

THREE MAJOR CRITERIA

A battering parent, Kempe says, needs help at 2 a.m. when he is tried, his baby is crying, and his "abusive pattern" is taking shape.

"In order for a child to be physically injured by his parents or guardian," Kempe writes in his latest book, *Helping the Battered Child and His Family* (J. B. Lippincott, 1972), "several pieces of a complex puzzle must come together in a very special way. To date we can identify at least three major criteria."

First, the parent must have a potential to abuse. He lacks the "mothering imprint." He feels isolated, unable to trust others. He has no spouse, or a spouse too passive to be able to give. And he has very unrealistic expectations for his children.

Second, there must be a special child, one the parents see as different, who fails to respond as expected, or who really is different—"retarded, too smart, hyperactive, or has a birth defect."

Finally, there must be a crisis or crises to trigger the abusive act. "These can be minor or major crises—a washing machine breaking down, a lost job, a husband being drafted, no heat, no food, a mother-in-law's visit, and the like." The crisis precipitates the act of abuse; it isn't the cause.

INNOVATIONS SEEN SPREADING

Kempe thinks that within 10 years the nation's child-welfare departments will rather universally be using the innovations now employed or recommended by his center. When that happens, he says, the battered-child syndrome—"which can be a fatal disease"—will begin to disappear.

The center here will continue to use its child-protection team: four pediatricians, four part-time psychiatrists, two social workers, a welfare-department representative, a co-ordinator, and one public-health nurse. The center also has a lawyer who represents it in court hearings and works toward reforms in the law. (The Colorado legislature last year amended the Colorado Children's Code to provide for a publicly paid law guardian with specific duties in protecting the rights of an abused child.)

Preventive and predictive services are also important in the center's work. Kempe says new and sophisticated means of prediction can reveal which persons ought *not* to become parents and which—if they become parents—need help. Prevention of child abuse includes a wide range of educational functions—reaching the public and officials—as well as practical things such as the 24-hour-a-day "hot line" over which any distraught parent can receive immediate support and counsel.

Finally, the center's treatment includes Families Anonymous, lay therapists called "parent aides," a day-care center where overwhelmed mothers can bring their children, a crisis nursery for infants, a mother-child unit where a mother and her child can live temporarily in a safe environment free from emotional pressures, and psychiatric care.

But Kempe isn't satisfied. He believes that nationally every county's protective-services department should be converted from the single-discipline approach of welfare departments to multidiscipline approaches applying expertise in social services, medicine, juvenile courts, and law enforcement. Such a change, Kempe says, would "cut across many of the traditions and unworkable rules and regulations that are built into most protective-services departments."

Thus Kempe conceives the nation's first defense of children as being a hospital-based child-protection team, such as that at the Denver center, in every county. The second line of defense would be the multidisciplinary protective-services units.

HEALTH ADVOCATES FOR CHILDREN

Ultimately Kempe would like established a nationwide corps of "health visitors," health advocates for children. Scotland has such a system now. Every child born is seen monthly by a health visitor, who follows the child's physical, emotional, and mental growth. One result, says Kempe, is that nonnurturing parents are identified and can be helped or, if they can't be helped, separated from their children.

About 10 per cent of the battering parents in America are psychotic or are aggressive psychopaths, Kempe says. He contends they cannot be helped while the child remains in the home. These parents' children, he says, should be placed permanently in foster homes, or, preferably, adopted into other families.

The other 90 per cent can be helped to become adequate parents, Kempe believes.

"A PARTICULARLY BRIGHT LIGHT"

He takes pride in his center's successes. The use of lay therapists, begun here four years ago, was a break-through that proved it is unnecessary to require years of training for persons to "mother" battering parents. The lay therapists make only $2 an hour. A battering parent may call his lay therapist at any hour. If he calls when he is in crisis, experience shows he's unlikely to hurt his child.

Kempt calls Families Anonymous a "particularly bright light." Begun in January 1972 by Joan and Walt Hopkins, it is patterned after a similar California organization formed earlier—and still directed—by a woman who calls herself "Jolly K" and who was herself a battering mother.

The Denver area now has four Families Anonymous groups. Kempe's center pays the salary of Mrs. Hopkins, a public-health nurse. Her husband, a private psychiatric social worker, helps without charge.

FINALLY, WORDS OF LOVE

Entries from Mrs. Hopkins' diary indicate a kind of heroic struggle and growth:

Jan. 21, 1972. First meeting. . . . At the end of two hours all three girls found they had common problems: 1) No self-confidence 2) Felt terrible when criticized 3) Did not believe it when complimented 4) Afraid to discipline their children.

April 4. Mary stated she had never told [her little girl] she loved her. So she was assigned this for homework.

April 11. Mary stated she did tell [her daughter] she loved her—every night just as she shut the bedroom door. The night before this meeting she left the door open and told her. She said it was hard but that she felt good being able to do it.

That group now includes about 15 young mothers and fathers. Besides receiving from one another the support and mothering they missed as children, they have "self-help" projects:

How to involve a spouse in solving problems.

How to learn to relate to their children. (Example: providing for fussy eaters tiny hamburger patties, two or three peas, and a pinch of spinach so the meal becomes a game, fun for all.)

How to be unashamed and unafraid to ask for help over "little problems" in their relationships with their children.

How *not* to have unrealistic expectations of small children.

How to learn to trust others through sharing phone numbers with members of the group. (Mrs. Hopkins' diary quotes one young woman as saying that she had never before had a "safe" person to talk to.)

How to devise practical ways to get relief from the demands of children. (For example, each mother must bring to her second meeting a list of baby sitters upon whom she could rely.)

How to enjoy themselves. (Two women confessed that a party before Mother's Day last year was the first party they had ever attended.)

MARY'S REMEMBRANCE

Perhaps one of the most significant demonstrations of growth was an essay Mary brought to the meeting at which the new couple appeared. Titled "First Night Tremor," it was her recollection of her first meeting. Mary writes:

What am I doing here? . . . Probably all they'll do is sit and stare at me. I'm fat, and have long hair and dress differently. I wish I hadn't come! . . . Say, that gal has a problem that I had with mine. Wonder what would happen if I mentioned to her what I tried. Wonder if she'd get mad. Well, here goes. Gee, she thought that was a good idea. No one has ever really said I had good ideas on raising my daughter before. . . . It's sure a good feeling to realize these people need me. Sure I need them, but they also need me! . . . I'm still fat . . . but no one really cares. I don't think they are seeing what I wear. I think they see me. . . . I like it.

G. EVERETT MILLICAN

Mr. TALMADGE. Mr. President, it is with pleasure and admiration that I call your attention to a man I personally regard highly and a man whose service to the causes of freedom and brotherhood have been exemplary.

G. Everett Millican has served in many capacities. He has been a vice president of Gulf Oil Co. He has served for 18 years as a State senator in Georgia. He was an Atlanta alderman for many years. His involvement in community affairs has been extensive despite numerous other responsibilities, and a list of the organizations and service agencies with which he is affiliated would grace anyone's record. And Mr. Millican's devotion and service to his beloved Morningside Baptist Church in Atlanta have resulted in an accelerated building program as well as a building of the spirit of fellowship and devotion to God.

Mr. Millican is the son of a Baptist minister. Although he never entered the ministry himself, he is active enough in his church and community to frequently deliver messages of inspiration. One such message has proven of such value to others that he has delivered it over 50 times to some of the largest civic clubs in the country.

The topic of this talk is freedom, and it is of such outstanding merit that I am nominating him for a Freedoms Foundation award. I know it will be of great interest to Members of the Senate, and I ask unanimous consent that it be printed in full in the RECORD.

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

TALK BY EVERETT MILLICAN, MORNINGSIDE BAPTIST CHURCH, OCTOBER 22, 1972

May I express my appreciation for the honor of designating today's service in my name and I thank each of you for being present. Several years ago I had the privilege of talking from this pulpit on the subject of "stewardship" and I know of nothing in our daily lives more important. I believe it is customary to read some scripture, and I would like to read one verse. It is First Corinthians 4:2. "It is required in *stewards* that a man be found faithful. He *may* be intelligent, gifted, skillful, capable, but he must be faithful" . . . stewardship applies to property, personality, opportunity, amusements, tithing, to only mention a few. As much as I would like to talk on our stewardship, I have picked the subject, "Where are we going"? I possibly should say "What are we doing about it"? I honestly believe that we are in a great crisis in this country and it is going to be necessary that each one of us, who have a great love for this country, to stand up and be counted. Let's go back to the beginning.

The place is Carpenters Hall in Philadelphia.

The condition of the American colonies was intensely difficult on the summer day when Mr. Lee, one of the delegates from Virginia, rose in his place to submit, upon the instructions of the legislature of that state, a motion that was not unexpected.

For the American colonies there appeared some possibilities of respectable retreat in the face of the preponderant English military power. For although the American forces were insignificant, and their commanding officer, The Virginia Planter, with no experience except in guerrilla campaigns against the Indians that ended in the overwhelming defeat of General Braddock's men, had achieved no considerable success around New York. The political situation in Britain was such that considerable leniency could be made if the colonies submitted promptly enough and abjectly enough.

Mr. Lee, following the instructions known to have been given him by the Virginia legislature, arose in his place at the termination of the roll call and moved that "Those colonies are, and by right ought to be, free and independent states".

The great debate had begun.

The principals on the floor were Mr. Dickinson, from Pennsylvania, who opposed the propositions and Mr. John Adams of Massachusetts, who supported them. Eventually the Congress named a committee that was directed to draft a declaration presenting the viewpoint expressed in Mr. Lee's resolution. The members of the committee were Mr. Franklin, an elderly gentleman from Philadelphia with considerable reputation as an author and publisher; Mr. Adams of Quincy, a lawyer of wide repute and the principal champion of the resolution on the floor of the congress; and Mr. Jefferson, of Albemarle County, Virginia, a lawyer with some reputation as a writer of incendiary pamphlets.

Mr. Jefferson was a man of charm, known to be attached to the ideas of his fellow Virginian, Mr. Mason, and to those of Mr. Samuel Adams, a smart incendiary of Boston, who inflamed men's minds by talk of individual responsibility. There was some surprise among members of the congress when the two senior members of the committee entrusted the actual writing of the document to the young Virginian.

In the oppressive heat of Philadelphia, sitting at a plain table in simple lodgings, the young lawyer—not long past his thirtieth birthday—prepared a document designed to justify in the eyes of all mankind the revolutionary and unthinkable proposal that the aristocrat from the tidelands of his home state had submitted to the representatives of the thirteen colonies.

Certainly this band of patriots, a motley crowd if anyone had ever observed such, must find it necessary to comply with the properties and in the formal language that Mr. Jefferson prepared. They sought to meet this obligation:

"The decent respect to the opinions of mankind requires that they should declare causes. . . ."

It was a bold statement. It asserted that ideas were more important than guns.

Let's listen to John Adams, as he speaks in favor of his younger friend's resolution, while Jefferson sat silent in his place:

"Sink or swim, live or die, survive or perish, I give my heart and hand to this vote."

Quietly, in the corners, Mr. Samuel Adams and Mr. Benjamin Franklin performed their allotted task. It was not their job to defend the declaration on the floor with a steady flow of eloquence. Theirs was a practical task—a buttonholing of members and taking snuff with them and discretely cajoling them into acceptance of a way by less than a million souls, themselves badly divided against all the world.

196 years lies between that day and this. Across that gulf of time it is difficult to say whether it was the skill of Mr. Jefferson's writing or the eloquence of Mr. Adams, or the finagling of Mr. Franklin, that carried the day, but in the end the members voted "Aye," and walked solemnly to the table at which the presiding officer sat to affix their signatures to the document which was concluded with these words:

"And for the support of this declaration, with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

They went and signed—Mr. Franklin, who though not a Quaker, in the somber brown that befitted a resident of the Quaker metropolis: Mr. Jefferson in the ill-cut clothes of the frontier lawyer—and then the old wit of Franklin must have bubbled over as he said:

"Well, gentlemen, now for sure we must all hang together or we will hang separately."

A nation had been born. Our nation—yours and mine.

And may I say that on July 4, 1826 (146 years ago) both Mr. Jefferson "The Sage of Monticello" and Mr. Adams "The Colossus of Independence" died. Jefferson, too ill to take part in the 50th anniversary celebration in Washington wrote this—"Let the

annual return of this day forever refresh our recollection of these rights and an undiminished devotion to them."

And when a Quincy, Massachusetts committee called upon Adams to compose a toast for the celebration he said "Independence Forever", and when asked would he care to say more, his reply—*"No, Not a word."*

Let's look further—there was a young law student named Nathan Hale who went down to spy on Sir Henry Clinton's men at New York and got himself hanged. There was a shuffling old peddler of needles and matches named Abraham Marah, who concealed in his peddler's pack a subversive manifesto called "Common Sense" that was written at Valley Forge and distributed up and down the back woods of Pennsylvania and Virginia and New York. There was an angry young country bumpkin named Salette who hid in the salt rivers and marshes between Savannah and Darien, Georgia, and slipped out in a canoe at night to blow up powder houses and to burn the supplies of Lord Cornwallis' Red Coats.

I could go on and on, but the foundation that these men and many others built is today in serious danger.

Have you ever wondered what happened to the men who signed the Declaration of Independence. Men, who the so-called Revolutionaries of today who would like to tear down our government, are trying to compare themselves with those who signed the Declaration 196 years ago.

I will not go into detail—some were captured and tortured—many had their homes ransacked and burned—nine fought in the war. Some of their wives and families were jailed and driven from their homes.

What kind of men were they? They included lawyers and jurists, merchants, farmers and large plantation owners, men of means, well educated. But they signed the Declaration of Independence knowing full well that the penalty would be death if they were captured.

Such were the sacrifices of those who signed the Declaration. They were not wild-eyed, rabble-rousing ruffians: They were soft-spoken men of means and education. They had security, but they valued liberty more.

I am sure those who signed our Declaration of Independence and those who wrote our Constitution had in mind a government that would not be overrun and destroyed by those things that we see today.

What is happening in America? Why do we indulge and permit these excesses and outrages; Why do so many continue to perpetrate and sanction them? The answers, while complex, are not as difficult and mysterious as they may seem.

At the heart of the problem is an age-old moral dilemma with which every healthy society must come to terms. It is that of balancing the rights of the individual against the good of society as a whole: of drawing a fine line between the function of government and the obligation of the citizen to himself and to his country. I believe a republic must preserve the proper balance between the duties of government and the responsibilities of its citizens—each must uphold its end of the bargain. When one is exaggerated at the expense of the other and the balance is lost, societies decay and eventually collapse from within

In my opinion, there are certain rights in a free republic which are the function of government to guarantee and protect. Among these is the right to life, liberty and the pursuit of happiness. But there are other so-called rights, about which we hear a great deal lately, which are not really rights at all. They have taken on an air of credence as "rights" because of the myths surrounding them. In the process of perpetrating these myths, genuine rights—such as the right of the majority to freedom from fear, to protection by the law and to the freedom to choose—have been so twisted and degraded that not only has its true meaning been obscured, but the acts committed in its name have made a mockery of its original intention. It is becoming fashionable today to justify almost anything by calling it a "right."

In the past several years we have seen our cities convulsed with destruction in the name of "civil rights".—Universities shut down by self styled Revolutionaries, both students and faculty members, in the name of "academic rights".—Sedition and draft evasion by cowards in the name of "morality—Radicals openly advocating guerrilla warfare and anarchy in order to disrupt the Democratic process and overthrow the government in the name of freedom:—A youth culture anesthetized and sustained by drugs in with those friends in America, they "the Communists" can go forward to total victory.

I am much concerned about what's going on in our country today. It is certainly a parallel between the rise and fall of Rome and of our own Republic.

"Dr. Robert Straus-Hauppe recently published a series of articles based on the observations of a number of historians: among them "Spengler, DeReincourt, Ferraro, Gibbons and some others.

He told how Rome had known a pioneer beginning not unlike our own pioneer heritage, and then entered into two centuries of greatness reaching its pinnacle in the second of those centuries, going into decline and collapse in the third. Yet, the signs of decay were becoming apparent in the latter years of that second century.

It is written that there were vast increases in the number of the idle rich, and the idle poor. The latter were put on a permanent dole, a welfare system not unlike our own. As this system became permanent the recipients of public funds increased in number. They organized into a political bloc with sizeable power. They were not hesitant about making their demands known, not with increasing frequency. Would-be emperors catered to them. The great, solid middle class—Rome's strength then as ours is today—was taxed more and more to support a bureacracy that kept growing larger, and ever more powerful. Surtaxes were imposed upon incomes to meet emergencies. The Government engaged in deficit spending. The denarius, a silver coin similar to our half dollar, begin to lose its silvery hue. It took on a copper color as the government reduced the silver content.

Even then, Gresham's Law was at work, because the real silver coin soon disappeared. It went into the name of "self expression": Hippies and flower children aimlessly wandering and littering our streets in the name of "love and peace"—motorcycle gangs killing and torturing—pornography and obscenity running rampant and in many cases condoned and approved by our courts: Unprecedented rising crime rate (more than 12 times faster than population increase):—Radicals and those who advocate overthrow of our form of government being invited to speak on college campuses. Lawlessness in many areas in the name of "The right to equal shares for everybody".

We see parades and riots in our streets in the name of peace. Some who march carry the flag of a nation that has killed over 50,000 of our young men. Are those who organize these parades interested in peace or with the welfare of our enemy? Some time ago the premier of North Vietnam in Hanoi, then Van Dong, made it plain that he does receive comfort and aid from all the protests and parades. His letter has been made public in Hanoi. It is addressed to his "Dear American Friends" and is full of praise and gratitude for their efforts. It expresses the hope that together hiding.

Military service was an obligation highly honored by the Romans. Indeed, a foreigner could win Roman citizenship simply by volunteering for service in the legions of Rome. But, with increasing affluence and opulance, the young men of Rome began avoiding this service, finding excuses to remain in the soft and sordid life of the city. They took to using cosmetics and wearing feminine-like hairdo's and garments, until it became difficult, the historians tell us, to tell the sexes apart.

Among the teachers and scholars was a group called the cynics whose number let their hair and beards grow, and who wore slovenly clothes, and professed indifference to worldly goods as they heaped scorn on what they called "middle class values".

I'm still talking about Rome.

The morals declined. It became unsafe to walk in the countryside or the streets. Rioting was commonplace and sometimes whole sections of towns and cities were burned.

And, all the time, the twin diseases of confiscatory taxation and creeping inflation were waiting to deliver the death blow.

Then finally, all these forces overcame the energy and ambition of the middle class.

Rome fell when its citizens lost their desire for freedom and lost sight of the good of the nation as a whole.

Here are some of the things that led to the decline and fall of the Roman Empire. How many of them do you recognize as happening in our country today?

Permissiveness in Society.
Immorality.
The welfare state.
Endless wars.
Consiscatory taxation.
Destruction of middle class.
Cynical disregard of the established human virtues and principles and ethics.
Pursuit of materialistic wealth.
The abandonment of religion by many.
Politicians who cater to the masses for votes, regardless of principle.
Inflation.
Deterioration of the monetary system.
Bribery.
Riots.
Street demonstrations.
Release of criminals on public.
Loss of masculine sturdiness.
Feminization of the people.
Scandals in public office.
Plundering of the public treasury.
Deficit spending.
Toleration of injustice and exploitation.
Bureaucracies and bureaucrats issuing "regulations" each week.
Centralization of government.
Public contempt for good and honorable men.

We are now approaching the end of our second century—it has been said that the days of a democracy are numbered once the stomach takes command of the head. When those who are less affluent feel an urge to break a commandment and begin to covet that which their more affluent neighbors possess they are tempted to use their votes to obtain instant satisfaction. (We see this in bloc voting in every election).

Under the phrase "the greatest good for the greatest number" we destroy a system which for 2 centuries has accomplished just that. *The greatest good for the greatest number.*

We see colleges divorcing themselves from participation in the defense of their nation due to demonstrations. We see riots in the streets—bombs being planted in factories, government buildings, defense, installations. We no longer walk the countryside or city streets without fear—draft dodgers at every turn—those who say it is no crime to break a law in the name of social protest—our moral code continues to erode—what happened to Rome can easily happen to us.

No city, state or nation rises to a higher level than the moral integrity and honestly of its leadership.

I ask you? What is happening to our leadership? Have the statesmen of former years been replaced by "politicians".

Some time ago I read a comment by Senator John Williams upon his retiring as Republican Senator from Delaware. "When I first came to the Senate, I looked around and wondered how in the world I ever got elected to a body of such able and wise men. Now, I look around and wonder how the devil some of these men ever got there".

Do we ever hear the word "economy" mentioned?

This word, "economy", has been lost in government at all levels. I wonder if we should not heed the advice given by Thomas Jefferson when he said, "I place economy among the finest and most important virtues and public debt as the greatest to be feared. To preserve our independence, we must not let our rulers load us with perpetual debt. If we run into such debt, we must be taxed in our meat and drink, in our necessities, in our labor and in our amusements. If we can prevent the government from wasting the labor of the people, under the pretense of caring for them, they will be happy".

We are slowly sacrificing our legitimate rights. Liberty does not mean license from the law. The right to dissent means protest within the bounds of law, not mob rule. The right to the pursuit of happiness means equal opportunity, not guaranteed income or equal shares.

Democracy calls for equal opportunity under the law. It does not believe in guaranteeing equal results for everybody irrespective of effort. It is not the function of government to guarantee prosperity for everyone. It is the function of government to provide a climate in which everyone is free to prosper. The present outcry for "equal rights" is really a demand for "special rights".

In my opinion, there are some things which are beyond the realm of government and money to cure. In many cases, the underlying causes of poverty are lack of initiative or just plain laziness. The government cannot make a man learn a skill. It cannot keep a woman from having children for whom she is unable to care. Money will not buy incentive, the will to work or the desire to take advantage of educational and job-training programs. It will not buy the wisdom of prudence to use one's money for balanced foods, instead of a shiny new automobile or a color television set or a bottle of liquor.

It is time to put an end to the present soft-line response to violence. Too much disorder has been permitted for personal advantage under the guise of civil rights. Even if there were a just cause, no end could justify the means. Our first duty should be to uphold the law and to protect the rights of the majority. Decent, law-abiding citizens have a right to walk the streets without fear, a right to see their taxes spent for constructive purposes and, above all, a right to the preservation of their property. The current excuse for the permissive approach, that property is not as valuable as lives, is totally wrong. It not only establishes a dangerous precedent, which could result in complete anarchy, it is mistaken in principle. Property rights, along with the right to live, are among the oldest of all human rights. A man's property—his work—is an extension of himself. If you take away the product of his efforts, his life work, you destroy him as surely as if you had taken his mind and left his body as a live shell.

It is sheer folly to condone lawlessness in the belief that it is a form of social unrest which must have an outlet. This is to admit the criminal has become stronger than the law. To sacrifice the rights of the majority for the sake of pacifying a small minority is the epitome of misguided humanitarianism at best.

The time is already past to begin to counter the trend of concepts such as freedom and rights to the point that they are no longer recognizable: Time to reestablish the balance between the role of government and the responsibility of the individual. We must affirm the ethics of individual strength and substitute them for collective dependence. We should remind ourselves again and teach our children and grandchildren that real power lies in moral strength and mental integrity. These qualities are hard won products of a long process.

I believe that honest poverty deserves the conserted and prayerful attention of all who are blessed with a better life, but today we hear very little about "the poverty of character, morality and courage".

"The American private enterprise system, although under constant attack, has proven through the years to be the greatest anti-poverty program the world has ever known. Ten million jobs have been created within the past several years. The qualities of character, courage, vision, ability, faith and understanding made the United States a great nation. These qualities can only be by dedication and loyalty with one's heart.

May I urge that we do a better job in our responsibilty as citizens in voting than many of us have done in the past.

I hardly need labor this point but I would like to suggest its bearing on the small percentage of votes cast in most elections. Nothing is more frightening than this abdication of the right to vote by a large number of our citizens. It is frightening when we realize how many of our countrymen have laid down their lives to win for us this right from the American Revolution to the present. What they died for many of us won't even walk *down the street for*. Certainly we won't get wet for it, because if a little rain comes that always cuts down the number of voters. Nothing fades like a voter on a *rainy* day. *Remember—pressure groups vote.*

Some years ago a survey team examined voting habits of Chicago citizens for the period of four (4) years—This revealed among other things that qualified voters going to the polls included 99% of the tavern keepers and employees, 97½% of the gamblers and their employees, 16% of the housewives. 17% of the protestant ministers and 29% of the protestant church laymen.

Two weeks from now we have the privilege that citizens of many countries do not have—that of *freedom of voting* and I would urge you and every eligible voter in this country to exercise that priceless privilege.

We must stand up and be counted.

Many times "bad people are elected to office by good people who do not vote."

Edmund Burke many years ago wrote these words: "All that is necessary for the triumph of evil is that good men do nothing".

We might do well to remember the saying of Plato: "The punishment suffered by the wise who refuse to take part in the government is to live under the government of bad men".

I am a great believer in free enterprise. In my opinion free enterprise has nothing to do with politics, or wealth, or business, or class. It is a way of living in which you and I as individuals are important. Many little things make up this way of life . . . but think what we would lose if we ever surrendered it.

Some time ago, one of our TV commentators stated that some people are saying the bigger you are the better you are. Atlanta, in my opinion, can get all of the tall buildings, stadiums, colosseums, a liquor store and dance hall on every corner, and everything else to make it larger from a commercial and physical standpoint, *but* the one thing that makes a great city is dedicated citizens. The greatest asset any company has is dedicated employees and the greatest asset any city could have is dedicated citizens, and we are losing them mighty fast.

Atlanta is big town? Big in office buildings—hotels—motels—colosseum—civic center—art center *but* also big in crime growth . . . racketeering . . . gambling . . . criminal elements finding a home . . . juke joints . . . cocktail lounges . . . murders . . . prostitutes . . . hippies . . . and we will continue this. Last year we had 243 homicides in Atlanta. Make up your mind we already have organized racketeers and gangsters in Atlanta.

Let's take a look at what's happening.

With the population increase being practically zero for the past 10 years, we find these increases:

Homicides 161%.
Rape 293%.
Assaults 157%.
Burglaries 147%.
Robberies 259%.
Auto thefts 53%.

The erosion of freedom is our paramount peril. Many people recognize that something is wrong with our country. There is a growing uneasiness that something tragic is happening to American life. American morals are at a new low. Some colleges and universities are teaching that morality is "relative" and "one person's opinion is as good as another's". There are no moral absolutes, we are told.

Alarming is the breakdown in family life and family discipline. Parents are pampering their children and they are becoming irresponsible and soft. Children are permitted to indulge in anything that the crowd does.

Our paramount peril, however, is the loss of our individual rights and freedoms. Our power of self determination continues to be impaired with the passing of each year and once a government gains control of the economic area of life it can control every facet of our life. When a free economy is gone it will not be long until all our other freedoms will also disappear.

What are we going to do about it?

No one ever stands still. Either we go forward or we slip backward. We are all seeking happiness and success and as Christians, spiritual growth. Wonderful blessings have been showered upon us by giving us the privilege of living in such a great country as these United States and I urge that each of you take a more active part in public affairs and in civic responsibilities and opportunities, and that you urge your children and grandchildren to do likewise. Each of us have a responsibility to government . . . and only by accepting that responsibility will we continue to enjoy the liberties given us in the Declaration of Independence and in *our* competitive free enterprise system.

Keep in mind that there is a large number of people who do not believe this—they want strict government control of all business—all people—all services.

We must never forget that freedom is not a gift, automatically bestowed, but something not easily attained and difficult to keep.

I am sure we all want to protect the liberties we have and make our communities, our state, and our nation a better place in which to live, and I would like to close with the words of John Ruskin:

"When we build let it not be for the present delight, nor for the present use alone. Let it be such work as our descendants will thank us for, and let us think, as we lay stone upon stone, that a time is to come when these stones will be held sacred because our hands have touched them, and that men will say, as they look upon the labor and wrought substance of them see, this our fathers did for us".

GENOCIDE CONVENTION WOULD NOT USURP STATE POWERS

Mr. PROXMIRE. Mr. President, one argument often advanced against ratification of the Genocide Convention is that it would wreak havoc in the administration of criminal justice by allowing a confusion of jurisdictions for crimes of homicide, kidnapping, and assault and battery.

This argument contends that there could be no clear initial assumption of whether a crime was committed with "genocidal intent" and should, because of the Genocide Convention, be tried in Federal courts; or whether it was committed without such intent and belongs under State jurisdiction. Problems could arise if the initial assignment of jurisdiction offered in the indictment for the crime was wrong. A typical case offered by opponents of the convention in which justice would allegedly be obstructed is this: A man commits several atrocious homicides and is accused of genocide and put on trial in Federal court. The court finds no "genocidal intent" and thus acquits. State courts are then powerless to try the murderer because of the prohibition of double jeopardy in the Constitution, and the murderer goes free because of the initial mistake in assigning jurisdiction.

There are several answers to this argument. One is that it overstates the likelihood of such confusion. Since the convention is non-self-executing in view of the requirement of article V to enact the necessary implementing legislation, no procedures to deal with these cases have yet been devised. The United States, according to the administration, will not deposit its ratification of the treaty before such implementing legislation is enacted, so these objections are moot at this point. We can presume, for instance, that implementing legislation would countenance the possibility of such problems as mentioned earlier by reserving the rights of the States to prosecute and punish as homicides those acts described in the Genocide Convention. In such a case, then, Federal charges of genocide would be brought only when the intent was clear; when the intent was not clear, proper and prudent prosecution would dictate that indictment be sought under State laws against simple homicide.

Furthermore, the alleged proscription of consecutive Federal and State trials for genocide and homicide under the double-jeopardy clause of the Constitution is open to doubt.

Also, it is clear that opponents of the convention are again indulging in hypothetical hyperbole by exaggerating the importance of cases which are most unlikely to arise.

Mr. President, it is time we affirm our stand against genocide by ratifying this convention.

ROLE OF THE SENATE COMMITTEE ON AGING

Mr. CHURCH. Mr. President, the Special Committee on Aging has been charged by the Senate with the responsibility of keeping watch over all Federal activities related to aging, issuing recommendations, and then helping to make those recommendations become realities.

It is a demanding assignment, but a very necessary one. As chairman of that committee, I can attest to the very wide range of subjects which receive its attention. Within recent weeks, we have dealt at hearings with such subjects as the present and future of our social security systems, fires in highrise apartment houses for the elderly, administration proposals to raise costs paid by participants in the medicare program, and social service programs for the elderly.

Our interests are so numerous and diversified that we must select priority areas for our attention, but nevertheless we must somehow keep tabs on all that is happening.

A concise, but incisive, account of the committee's work is described in the March–April journals of the National Retired Teachers Association and the American Association of Retired Persons. Mr. Cyril F. Brickfield, legislative counsel for NRTA–AARP, is the author of the article, and he has done a splendid job of describing the committee. He also sums up the purposes of this year's major effort, hearings on "Future Directions in Social Security."

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

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

OUR SENATE FRIENDS

(By Cyril F. Brickfield)

Many government bodies are working today for the interests of America's older citizens, but none more so than the Senate Special Committee on Aging. Established in 1961, the Committee is responsible for identifying and studying the special needs and problems of older persons and for making recommendations to the Senate based on its findings.

The Committee on Aging is not a legislative committee. Instead, it gathers the information needed by other committees when they write legislation affecting older persons.

A recent study described the role of the committee thus:

First, the committee proposes legislation to other committees in the Senate. It gathers information, analyzes possible solutions and presents data to show that legislation is needed.

Second, the committee works in the Senate to achieve passage of legislation benefiting older persons. It holds hearings to publicize the need for legislation and works to gather support among the Senators and the general public.

Third, the committee serves as a watchdog for the interests of persons over 65. It attempts to insure that the special needs of older persons are considered whenever legislation is enacted on any issue that might affect them.

For example, when housing legislation was considered in the Senate during 1972, committee members worked to include special provisions benefiting older persons. Senator Charles Percy of Illinois, who is a member of both the Special Committee on Aging and the Senate committee that considers housing legislation, was particularly active. He pressed especially for a provision to establish the office of Assistant Secretary on Housing for the Elderly. This official would be responsible for meeting the needs of older persons in the area of housing.

In addition, the committee oversees the activities of the Executive Branch to determine the effectiveness of Federal programs for older persons.

The Special Committee on Aging, with 22 members—13 Democrats and 9 Republicans—is one of the largest committees in the Senate. The committee is divided into seven subcommittees. The areas they study are consumer problems; employment and retirement income; Federal-state-community services; health; housing; long-term care and retirement.

During the 92nd Congress, the members of the committee worked to promote legislation in each of these seven areas. The 20 members of the committee are particularly effective as advocates for the interests of older persons in their role as members of other Senate committees.

With the enactment of HR 1 and of the 20 per cent benefit increase measure during 1972, sweeping changes have been brought to the Social Security system. Committee Chairman Frank Church of Idaho ranks these changes as second only to the achievements of 1935, when the original Social Security Law was passed, and 1965, when the Medicare system was established.

With this in mind, the committee in the 93rd Congress has begun a new series of hearings on "Future Directions in Social Security."

"Our goal," says Senator Church, "is to take a reflective look at the significance of recent accomplishments as well as actions that must ultimately be taken to build upon those accomplishments."

Experts in the field of Social Security will present their views on how the Social Security system can be improved, how Medicare coverage can be expanded and how these improvements should be financed. Representatives of our Association will also testify at these hearings.

To date, attempts to establish a similar Committee on Aging in the House of Representatives have not been successful. The need for such a committee is clear, and its usefulness has been amply demonstrated by the important role played by the Senate Special Committee on Aging. Our Association has long urged the establishment of a Special Committee on Aging in the House; this will continue to be one of our major legislative objectives in 1973.

TAX RELIEF FOR SMALL BUSINESSMEN

Mr. SPARKMAN. Mr. President, I wish to note my cosponsorship and strong support of the small business tax simplification and reform bill introduced recently by the distinguished chairman of the Select Committee on Small Business (Mr. BIBLE).

For many years I have been active in the effort to gain meaningful tax relief for the many small businessmen of my State of Alabama and throughout the Nation. See, for instance, "Time for Congress to consider tax relief for Small Business," remarks which I made on the Senate floor, appearing in the CONGRESSIONAL RECORD, volume 117, part 11, pages 14343–14344.

During 1972, I met with leading members of the tax-legislation-writing House Ways and Means Committee to see what might be done to advance the cause of small business tax relief.

I have been active in the field of small business for the past 22 years. I was especially pleased to have had a part in guiding into law the Small Business Tax Act of 1958.

The Small Business Committee realized that the small business tax changes in the Internal Revenue Code of 1954 were helpful but not broad enough to remove many discriminatory features in the tax laws. So, we renewed our work in the tax field in 1955. For example, a graduated corporate income tax was proposed to the Congress in 1956 and 1957. In the fall of 1957, I directed the committee to conduct a major, nationwide investigation of small business tax problems. The investigation, more extensive even than the 1952 investigation, was concluded in December 1957.

In January 1958, I submitted the committee's tax report to the Senate and introduced a seven-point small business tax adjustment bill. In February, I appeared before the House Ways and Means Committee to testify in behalf of this bill. The bill that was passed by Congress in the summer contained four of the seven proposals in my bill and two other features that were endorsed by me and some other committee members.

Special features of the tax bill were:

First, the tax option permitting owners of small, closely held corporations to choose to be taxed as partners.

Second, the plowback provision, permitting 20-percent additional depreciation in the year of an asset's purchase. This was applied to used as well as new equipment and, therefore, endorsed a fifth recommendation of mine for equal tax depreciation treatment for new equipment and the used equipment so frequently purchased only by small firms.

Third, the estate tax option, permitting 10-year installment payment of estate taxes on family-run business assets.

Fourth, an increase in the minimum accumulated earnings credit of use to small corporations from $60,000 to $100,000. This means small firms which previously did not have to prove that a $60,000 earnings surplus was reasonable would, under the new law, not have to prove reasonableness on as much as $100,000.

No less an authority than financial writer Sylvia Porter termed the committee acomplishments for small business in 1958 "an impressive package of aid to small business."

I as very pleased to join with Senator BIBLE to cosponsor the Tax Simplification Act when it was first introduced in 1970. I feel that the Senator from Nevada is entitled to a great deal of credit for developing over the past 6 years what is the most comprehensive proposal for small business tax reform which has ever come before the Congress.

I am glad that the Senator has not become discouraged. It sometimes takes many years for a good bill to work its way through Congress and be enacted into law. I hope that the Bible-Evins bill has now become one of those pieces of legislation "whose time has come."

Many of the time-honored ideas about the American economy are now being changed. We have witnessed two reevaluations of the American dollar in the past 14 months, and a trade deficit of $6 billion in 1972—the worst trade performance since the 19th century. We have witnessed inflation so severe that price controls were required, and the threat of renewed inflation clouds the economy again in 1973.

It seems to me this kind of economic performance is sending us a message, and we in Congress and in the executive branch of Government should be receptive to this message—that many of our fundamental economic policies need to be overhauled.

The area of taxation is, I believe, one where the adverse results to small business as a result of Federal, State, and local taxation and reporting requirements have accumulated over the years.

We do not expect a 2-month-old baby or a 2-year-old child to measure up to the same standards as an adult. Yet according to excellent hearings on paperwork conducted by the Senator from New Hampshire (Mr. MCINTYRE), we expect a family restaurant business to pay the same $800 in accounting fees as the 20-year-old restaurant, just to fill out government forms during its first year, whether it earns a dime's worth of profits or not.

The infant corporation is immediately subject to a 22-percent Federal tax rate. If the company earns a bit more than $500 a week, it must pay Federal tax at the same statutory rate as a billion dollar a year profit corporation which earns 40,000 times as much.

According to the figures cited by the Senator from Nevada (Mr. BIBLE) burdens on small- and medium-sized business continue and intensify as the firm grows to maturity and attempts to preserve its independence when its founder dies or wishes to retire.

It seems to me the time has come to ask whether it is wise or fair for small corporations to pay taxes at double the rate of large corporations.

It has always seemed to me that a small owner-operated business has a vested interest in efficiency and productivity. I have felt that where a man's pride as well as his dollars are involved, he has a double incentive for good workmanship and good service to his customers. Traditionally, small and new firms have given us the innovation and flexibility to develop new products which make this country more competitive internationally. These are factors that keep prices down and keep quality up. Small businesses also keep our economy open for young people, and hardworking people, and people with better ideas. I therefore think we must ask whether a tax system which penalizes small business and rewards larger corporations is helping or hindering the Nation in reaching the economic goals which we all desire.

Small businesses—about 12 million businesses of them in the country—can be a large force in the economy if they receive equitable tax treatment. They are 97½ percent of all businesses and they account for 44 percent of total employment and more than one-third of the gross national product. I think it is remarkable that small firms, with all of the handicaps they have been carrying, have been able to do so much.

I hope it will be possible that this bill and other small business tax bills, which have or soon will be introduced, be taken up as vehicles for considering the tax needs of small business in a systematic manner. I hope this will lead this 93d Congress to write into the law some practical and meaningful help for hard-pressed, new, small family, local, and independent business enterprises in Alabama and across the country so they may contribute to America's future as they have to its past.

THE OIL CRISIS

Mr. MONDALE. Mr. President, the public debate over the oil crisis which has manifested itself this past winter continues to intensify. Now that the coldest part of the winter is over, we face another potential crisis, this time in gasoline supplies.

Our Nation cannot continue to move from crisis to crisis. We need a comprehensive energy policy which takes into account the needs of consumers and the environment, as well as the urgent requirements for better and more reliable sources of energy.

The Midwest and Eastern States have been starved for energy resources, and will continue to be in difficulty unless changes are made. We in these sections of the country desperately need the oil and natural gas resources of the North Slope of Alaska. It is my firm belief that these resources can be delivered by a trans-Canadian pipeline with no greater delay than that which would result from a trans-Alaskan pipeline. In addition, such a pipeline would help to dramatically reduce currently inflated fuel prices in the Midwest and East.

The Alaskan oil and gas resources, however, are merely one facet of the much broader need for a comprehensive energy policy. Certainly, this need is greatest to help solve the near-term scarcity problems which cannot wait for the many possible long-term solutions in this field.

Mr. President, the St. Paul Pioneer Press recently published an editorial which accurately and wisely assessed the need for such an energy policy. This editorial urges vigorous congressional debate over the contours of our Nation's energy policy, and stresses the importance of developing such a policy as quickly as possible. I believe it presents a balanced and needed view of the need for rapid but effective action to meet our Nation's energy needs.

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

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

NEW OIL POLICIES NEEDED

While the public is bombarded almost daily with pessimistic predictions of shortages in natural gas, gasoline and fuel oil there is a scarcity of specific programs for improving conditions, other than to permit big price increases in the petroleum industry.

President Nixon has promised a comprehensive message on energy problems, but it has not yet appeared. It would be most helpful if the Administration would produce its program without further delay. Its own

policies on restrictive oil import quotas since 1969 were a factor in permitting recent Midwest fuel oil shortages to develop. Congress and the public should now be given the Administration's specific recommendations for new programs.

A variety of proposals are pending in Congress. Sen. Thomas McIntyre, D.-N.H., has a bill to abolish oil import quotas and substitute a tariff system which would permit greater competition and presumably increase supplies and lower or stabilize prices. In 1970 a Cabinet level task force of the Administration recommended this approach, but the proposal was discarded, apparently after opposition from the oil industry. This approach should be revivied by congressional action.

Sen. Walter Mondale, D-Minn., and Rep. Les Aspin, D-Wis., have introduced a bill favoring construction of a trans-Canada pipeline to bring Alaskan oil to the Midwest. This is an alternative to the proposed trans-Alaska pipeline which would deliver the oil to the Pacific Coast, a region which already has adequate supplies. Mondale and Aspin charge that the trans-Alaska project "would keep Midwestern and Eastern fuel prices high and jack them up higher when oil supplies run low in the future."

Meanwhile, although the U.S. oil industry complains that no new refineries are being built in this country, plans have just been announced for establishing a $300 million refinery in eastern Canada. Two other big new refineries already are in process of development in the same region. One in Nova Scotia will be completed in August and the other will start construction in May. All three are planned to refine crude oil from foreign sources.

The United States needs an overall program for dealing with its immediate, short-range oil scarcity problems. The Administration should produce its own recommendations, which then can be debated in Congress along with other proposals. And ways should be found to overcome the delays in plans for making Alaskan oil supplies available in the Midwest at the earliest possible time. Environmental considerations are important, but the necessity for bringing Alaska oil to American users is paramount.

FARMERS FEAR CROP SURPLUS

Mr. CHURCH. Mr. President, American housewives continue to agonize, and justifiably so, over the unending upward spiral in food prices. At the same time, farmers enjoyed their best income year in nearly two decades. Unfortunately, the combination of these two factors facilitates the conclusion that the American farmer is the bandit at the supermarket. Informing the American public that the realized net farm income for 1972 was still only about 10 percent above 1947 and that during this same period of time—1947 to 1972—corporate profits rose 250 percent is no medication for the deep cuts that are being made in every food budget. The plain truth is however, that the farmer receives only 40 cents out of every dollar that is spent at the grocery store. The other 60 cents disappears between the farm gate and the checkout counter.

While he is unfairly criticized by the hard-pressed consumer, the farmer is also feeling the razor's edge of the budget cutter's knife. The Nixon administration proposes to trim agriculture and rural programs by $1.5 billion. The primary reason given for these budget cuts by Mr. Butz is that the farmer's income has never been so high. Mr. David Mutch of the Christian Science Monitor recently provided the readers of the Washington Post with an informative analysis of the genuine fears of farmers that 1972 gains can be wiped out in 1973. I commend this article to my colleagues as a concise explanation of both the faulty assumptions that could quickly wipe out any gains made and the revealing relationship between the farmer's costs and his returns.

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

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

FARMERS FEAR CROP SURPLUS—IT COULD DROP 1973 PRICES FASTER THAN 1972 GAINS

(By David Mutch)

CHICAGO.—While housewives fret about food prices going through the roof, American farmers worry about crop prices going through the floor.

How can it be, the consumer asks, knowing that, in 1972, farmers had the best year in 20 years, with net farm income up by $3.1 billion over 1971's $16.1 billion.

Here is how farmer Vere Vollmers of Wheaton, Minn., explains it: "President Nixon's farm policies are a gamble that Russia will have another crop failure. He's put about 40 million acres of idle land back into production and wants to end subsidy payments on wheat, feed grain, and cotton, and other crops.

"Basically, the idea of the farmer earning his money from the marketplace is good, but Nixon's plans allow no provision for the government to step in if there is a crop surplus. And so prices could drop faster than they went up this year."

The President says his policies are aimed at cutting the food-price rise, expected to be 6 per cent in 1973.

Vollmers sees the same problem farmers in the U.S. have seen for more than 40 years: Food production is so vigorous in America that overproduction and consequent deflated prices hang constantly over their heads like the sword of Damocles. They see their economic happiness hanging by a hair whenever the government threatens to withdraw its pervasive support in favor of a free market.

The actual volume of farm marketings last year was barely larger than in 1971—it was higher prices and government payments that raised farm income. Therefore, a larger crop in 1973 is easily achievable.

Last year, the billion-dollar wheat sale to the Soviet Union mopped up a grain surplus, with the Russians getting a bargain price. Already, there are reports from Moscow that the weather looks better this year and that Soviet officials will not commit themselves early to large purchases of American wheat. Hence, planning in this country to avoid supply fluctuations is not yet possible.

At the same time, acreage goes up in this country and government payments to farmers are expected to drop by $1 billion—a record—from $4 billion last year. These factors, plus the high prices farmers in general received last year for their crops, could combine to product a damagingly large surplus, many experts are beginning to say.

This point was made in a recent study by C. Edward Harshbarger for the Federal Reserve Bank of Kansas City, Mo. In that study, he warned that the "wheel of fortune in agriculture is a capricious device that is capable of producing sudden changes with little or no warning."

Farmers interviewed by the Christian Science Monitor News Service agree with another conclusion drawn by Dr. Harshbarger: Production costs—for fertilizer, fuel, equipment and credit—have risen much faster than farm income for years and, if farmers push up the crop supply this year, production costs will rise even faster.

Balancing the concern of oversupply are the growing population and improved eating habits in this country as well as demands by consumers elsewhere, such as in Russia, Japan and Europe, for better diets. China, too, may become a large importer of U.S. agricultural goods. All of this bodes well for keeping demand for U.S. agricultural products strong. Exports are more than $11 billion in this sector, a figure few would have believed possible only three or four years ago. Certainly, the U.S. balance of trade needs this help.

Farmers are as upset about the President's cuts in farm supports as are big city mayors about cuts in the poverty programs. Vollmeres had a bad year due to spring floods and then found a loan program dropped just before he applied. Some of his neighbors got in just under the wire. He is also very concerned that, if the soil-conservation program is dropped, it will hurt the next generation of farmers worse than this one.

Bobby Grueben, a cotton farmer from Rotan, Tex., said that, if subsidy payments are dropped, all cotton farmers in the U.S. "will be put out of business."

Here is how he explains it: "The Department of Agriculture estimates that it costs a minimum of 32 cents a pound to produce cotton. Last year, I got 20½ cents a pound on the market and the subsidy brought it up to 35 cents, with a profit of only 3 cents a pound."

Grueben and Vollmeres, along with other farmers, were in Washington recently to testify before Sen. Herman E. Talmadge's Senate Agriculture Committee. Senator Talmadge (D) of Georgia is highly critical of President Nixon's farm proposals. Grueben says he talked to a farmer from South Dakota who had thought "the subsidy for cotton was making us rich in Texas. So you see, even other farmers don't understand the subsidy program."

Consumers should—but don't—understand the economic position of farmers. In 20 years, the prices farmers get for crops have gone up only by 11 per cent, while retail food prices have gone up by 46 per cent. Sixty per cent of the family food dollar goes to transporting, processing and distributing food, and these sectors have risen fastest; in the same period, salaries of industrial workers went up by 129 per cent; food-marketing employees, 148 per cent. Farm costs in 20 years went up by 109 per cent, while taxes went up by 297 per cent.

NEW SCHOOL OF SOCIAL RESEARCH CENTER FOR NEW YORK CITY AFFAIRS

Mr. JAVITS. Mr. President, on Monday, March 19, 1973, I had the great honor of delivering an address before the New School of Social Research of the Center for New York City Affairs.

The Center for New York City Affairs, which is directed by Dean Henry Cohen and governed by a very distinguished board of directors, grew out of a rescue mission in the 1930's, when 167 European scholars, imperiled by totalitarian governments, were brought here by the university-in-exile program.

The new school sees adult education as its basic goal and provides a wide range of courses in the areas of education, the arts, and other areas. It is currently conducting a 2-year program leading to a master of arts degree in manpower

development; approximately 80 graduate students are now enrolled in this course, which will be so crucial to the future success of manpower policy.

The Subcommittee on Employment, Manpower, and Poverty of the Senate Committee on Labor and Public Welfare, of which I am the ranking minority member, is now considering comprehensive manpower legislation and my address sets forth in some detail my views with respect thereto, I ask unanimous consent that there be printed in the RECORD at this time a copy of my prepared remarks for that occasion together with a description of the 2-year program in manpower development which I mentioned.

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

FUTURE OF NATIONAL MANPOWER POLICY

The school has always been at the "cutting edge" of social change and I am most honored to be asked to participate in this meeting and to share my views with you on the "Future of National Manpower Policy".

At the present time the "cutting edge" is especially sharp, not only in the social sciences, but in politics, as the Administration moves quickly to attempt to implement what it considers to be the necessary reforms of the "Great Society" and other programs; these are very challenging times in the Congress for those of us who welcome change, but believe that it need not be carried out either abruptly or with such apparent disregard for the legislative branch.

Manpower training, like many other efforts that have found impetus in the war against poverty, is in the center of the action.

THE CURRENT SITUATION

One might ask the threshold question whether there is to be any "future" at all for manpower policy given the threats of the Administration last year to abandon manpower training altogether, the failure of the last Congress and the Administration to agree on comprehensive reform legislation, the "on again, off again" nature of recent federal administrative action—with freezes and recissions— and the Administration's fiscal year 1974 budget for manpower training which dropped from $1.6 billion in fiscal year 1972 to $1.2 billion in fiscal year 1974—a cut of 25%.

The great shame is that as the Administration moves toward its goals of managerial efficiency, decentralization, and maximum benefit to the recipients in social programs, it is creating in the interim an almost intolerable situation marked by administrative chaos, undermining of the ability of State and local government to plan effectively, and the resulting "shortstopping" of benefits to the intended recipients.

To give you a startling example, the Administration began this fiscal year by requesting $256.5 million for the funding of 575,000 opportunities in the Neighborhood Youth Corps summer program, a program that provides work experience during the summer months for disadvantaged teenagers.

A number of us have placed the need much higher; based on a survey conducted at my request by the National League of Cities—U.S. Conference of Mayors, $505.0 million is needed for a little over a million opportunities.

Joined by 26 Senators, I advised the Administration to that effect.

Now, the Administration has requested "rescission" of its original request so that no funds at all will be provided for the summer program, and States and cities are urged instead to meet the needs of youth by raiding funds for the Emergency Employment Act which were never intended for that purpose.

As this cannot be resolved for a number of weeks when we will seek these funds under a supplemental appropriations bill—which I shall do—planners are put into complete "limbo" with respect to the Neighborhood Youth Corps program and the public employment program both and the poor suffer.

COMPREHENSIVE MANPOWER TRAINING REFORM

These and other disrupting actions arise principally from the determination of the Administration to "go it alone" with respect to accomplishing manpower reform, that is, decentralization, decategorization, and consolidation of existing efforts but by administrative action alone.

This is most unfortunate and ironical because at the very same time that the Administration has abandoned its own "manpower revenue sharing" as a legislative proposal, the Congress stands ready to adopt that general approach. Indeed, Senator Nelson, Chairman of the Subcommittee on Employment, Manpower and Poverty and I intend to introduce in the next few weeks a proposal along those lines. Similar action may be expected in the House.

The basic difference between the Administration's approach and the one we will offer lies not in decentralization, decategorization or consolidation, but in what the federal role should be after these goals are generally achieved.

The Administration's proposals for special revenue sharing proceed on the assumption that States and cities are entitled to funds in almost any event.

We view shared funds as "trust funds" granted by the Federal government to States and cities as trustees charged with the duty of expending them wisely for the poor, the unemployed and the underemployed.

The federal government should not be in the position to tell the States, cities and counties what particular investments to make—that is the essence of decentralization and decategorization.

But the Federal government should guarantee that the funds are spent for the intended beneficiaries, that investments are generally prudent, and that they do not find their way directly or indirectly into the pocket of the "trustees"—the formal sponsor—generally a State or local unit of government or its nominee.

Translating these principles into the manpower area, respectively our bill will include very tough criteria to ensure coverage of the most disadvantaged, investments in programs where there is a job at the end of training, and criteria to ensure that worthwhile efforts now conducted by nonprofit agencies—such as community action agencies—are not squeezed out by programs that serve only to build up the prime sponsor.

Accordingly, we propose that if the "trustee" fails in any of these respects, then the federal government may revoke the trust and find some other agency or organization to do the job that needs to be done, or do it itself, as it does now.

There is no matter of higher priority than manpower reform, and I hope very much that the Administration will join with us in accomplishing this item of "unfinished business" with a new legislative mandate that these efforts deserve.

But manpower training reform—as essential as it is—does not give us a national manpower policy; it is in essence a matter of "recycling" efforts of the past into new and more flexible containers.

To determine a national manpower policy, it will be necessary to look to options in respect to both the public and private sector that address themselves to the matter of "full employment" generally.

PERMANENT PUBLIC SERVICE EMPLOYMENT

There are many distinguished experts who want to wipe out all manpower problems and reach full employment through a massive program of guaranteed work relying on "permanent" public service employment. One of the advocates of this approach, the Socialist leader, Michael Harrington, wrote in the *New York Times Magazine* on March 26, 1972:

"There should be a formal Federal guarantee of a right to work for every employable citizen. . . . The right to work would operate in two ways: negatively in that the Government would be obliged to offer meaningful employment to all those who cannot find it in the private sector (this is employer of the last resort); positively in that the Government should undertake comprehensive manpower planning and wherever indicated establish itself as an employer of the first resort."

In the Congress, proposals have been introduced authorizing the appropriation of as much as $9.0 billion annually for 1¼ million public service jobs.

In the long term, this approach may be the basis of a great leap to full employment, but let us not fool ourselves; it is not "in the cards" right now. We will not get that kind of fiscal commitment from either the Congress or the Executive in these times.

Even if we could it would be fraught with the danger that our manpower objectives would be lost in a form of "disguised revenue sharing" benefitting governments more than individuals.

TRANSITIONAL PUBLIC SERVICE EMPLOYMENT

But to say that a large scale permanent public service employment program is not imminent does not mean that we should abandon the commitment made to "transitional public service employment" under the Emergency Employment Act of 1971, which I co-authored with Senator Gaylord Nelson.

The Administration's posture is that the Act which authorized $1.25 billion and created 228,000 jobs in fiscal 1973 should not be continued beyond its expiration in June; no funds are contained in the fiscal 1974 budget for that purpose.

This position is entirely inconsistent with the Administration's previous approach to public service employment—unrealistic in terms of the present situation, and a lost opportunity in respect to the future of manpower policy generally.

It is inconsistent with the President's approach because President Nixon on December 15, 1970, in vetoing a permanent public service employment program said:

"Transitional and short-term public service employment can be a useful component of the nation's manpower policies".

We tailored the Emergency Employment Act in response to that concept.

The employment under the Emergency Employment Act is as short-term as the Administration could expect because of the $1.25 authorized, $1.0 billion is available only if unemployment is above the 4.5 percent level, the very threshold that the Administration chose in its first proposal for triggered funds.

It is a most unrealistic position because unemployment is still at the 5 percent level with more than four million unemployed. The Administration need only come to this City and walk through many of its depressed areas to realize that this program—which is really a "crumb" compared with the overwhelming needs—is generally needed.

It represents a lost opportunity because I believe that the Emergency Employment Act could, in the context of an extension, be used as a vehicle to test out the use of transitional public service employment in meeting the needs of particular groups where the Administration, in its own manpower report, expresses great concern.

The key word in the Emergency Employment Act has been "transitional", that is that jobs are to lead to "regular" employment in the public or private sector.

If the Administration is not comfortable with a general job creation program, then I recommend that it consider supporting extension of the Act with particular attention to groups of the potential labor force, where the term "transitional" has the most meaning, and where the needs are most pressing.

First, the transition from school to the world of work. In fiscal 1971, the Nation expended a total of almost $48.0 billion for elementary and secondary education; we spend almost $7,000 for the education of each child finishing the 11th grade.

But as large as our commitment has been, it has not been completely successful. Education is not an end in itself, its purposes are frustrated if it does not lead to the opportunity to lead a productive and meaningful life. Nothing is more depressing and inconsistent with the "American dream" and "work ethic" than the fact that unemployment among teenagers ranges from two to six times the national norm, reaching 30%–40% in poverty areas. 541,000 young persons, 16–19 years of age were out of school and out of work last year.

In contrast, only 16 percent of the current enrollees under the Emergency Employment Act are disadvantaged youth under 21; while 70 percent are aged 22 to 44. Thus, we are still left with what the Manpower Report of the President has described as the "critical problem" of youth unemployment. This record must be improved under any extension of the EEA, and the educational establishment must be brought into it more than under the current authority.

Second, the transition from the Armed Services to work. Under the EEA, 43 percent of the participants have been veterans, 27 percent from Vietnam. But there are now over 300,000 veterans from Vietnam still unemployed and clearly even more attention can and must be given to this deserving group.

Third, the transition from the welfare rolls to work. It is a national malady that in contrast to our "workfare" rhetoric, we provided in this past fiscal year only 43,600 public service jobs for welfare recipients under the EEA and the Work Incentive programs conducted under the Social Security Act; in fact only one in ten of EEA participants were on welfare. In contrast the Department of Labor estimates that one to two million of the 12 million persons on welfare fall into the "employable" category. Indeed, the President's own welfare reform measure of last year, H.R. 1 as passed by the House, would have provided for the creation of 200,000 additional transitional public service jobs. The fact that the vehicle, H.R. 1, has stalled on the road does not negate the necessity of providing for that quotient in a new context; the EEA provides that context.

Fourth, the transition from national correctional institutions to the world at large. Each year more than 100,000 previously incarcerated leave State, federal or local correctional institutions and begin their search for employment and a productive life.

Ex-offenders have levels of unemployment three times the national norm. Two-thirds return to prison. At the present time, the number of public service jobs made available to offenders is so miniscule that there is no data on it.

A quotient of EEA funds must be used for this purpose as a model to show private employers as well as the public generally that the ex-offender can serve well as a regular employee.

Finally, the transition from manpower training to regular employment. Training should be designed to lead to a job. But 500,000 persons leave training each year without a job lined up and for many, a transitional employment opportunity may be the necessary bridge between institutional and other training and regular employment.

With this emphasis to be considered along with manpower training reforms, I hope very much that the Administration will join with the Congress in an extension of the EEA, to that end, Senator Nelson and I intend to introduce, as a separate measure, a two year extension to be considered along with manpower training reform and in the process of consideration, I hope to focus it on the elements I have emphasized.

THE PRIVATE SECTOR

But again, let us not deceive ourselves. Public service employment, whether transitional or permanent, cannot be viewed as a "cure-all"; it is merely a tool in a broader national manpower policy.

The fact is that even if we doubled the authority under the Emergency Employment Act, the 440,000 jobs created would be but .5 percent of the 87.3 million persons employed annually.

The private sector is in essence the employer of both first and last resort and if we do not learn to run that sector in the interest of national manpower objectives then we might as well give up now.

Strengthening the economy, as the President has stressed, must continue to be one of our key objectives.

And we must continue on with successful efforts such as the JOBS program conducted by the National Alliance of Businessmen, and with tax credits, as now are available under the Talmadge Amendment to the Social Security Act.

But these are not enough in themselves and it is time that we developed new vehicles and initiatives to ensure that the private sector is operating to the maximum extent possible in the interest of a full employment policy.

Three new approaches should be considered:

First, I recommend that we establish a federal board or commission to put "'teeth" into the concept of full employment, particularly in respect to the private sector.

We have no agency at the present time which may serve adequately and forcefully as an "advocate" for full employment. The Council of Economic Advisers established under the "Full Employment Act of 1946" has been given a broader, and wholly advisory function; its responsibility is to oversee the general economy, it should not and cannot be an advocate for full employment alone and it has not been.

Neither can the National Commission on Productivity serve that function, as it too, has a related but different focus.

The Department of Labor, while generally entrusted with the goal of full employment has no charter to make recommendations with respect to the many programs outside of its jurisdiction.

Today the Government has a whole range of powerful tools available to it to help control the economy and insure that employment goals are reached. Budgetary policy, tax policy, procurement policy, the timing and location of public works, control of interest rates, foreign trade and investment policy, and wage and price controls as well as manpower training programs, are all powerful levers on employment levels.

It is about time that we started pulling those levers in a planned way so as to achieve and maintain full employment as well as price stability.

Importantly, such a board could undertake manpower planning and long-range and short-term surveys, including a review of decisions of public and private employers as they effect full employment.

S. 3927 "The Full Employment and Job Development Act of 1972" which I introduced in the last Congress with 14 cosponsors to establish such a Board will be reintroduced shortly for consideration in this Congress.

Second, we should begin to develop a policy of continuing education as an employer responsibility. We are clearly way behind the European nations such as France and Germany, in making it possible for all workers to adapt to technological changes through continued education. As indicated in "Work in America", a study prepared by the Department of Health, Education and Welfare: "Many Americans may want to enlarge their choices through additional education and training."

Possibilities in reacting to these needs—following the European models—include funding from a kind of payroll tax, or unemployment insurance fund, or providing incentives for actions taken on by the employer, in concert with the educational establishment.

Third, an unexplored area in the manpower field which leans heavily on the private sector is the use of vouchers for the purchase of manpower training and related employment opportunities.

This is particularly useful in terms of the problems of youth employment. We now give scholarships with federal assistance to those who pursue higher education; more than a billion dollars was loaned to 1.2 million students last year under the guaranteed student loan program, there is no reason why a voucher system could not be used as a "work scholarship" for youth who need it in order to enter the labor market. This follows similar experiments in education and housing. Thus, in this controlled way we can experiment with direct subsidies to private employers.

I plan to introduce separate legislation in the near future to advance this concept.

In conclusion, while I have broken down this presentation in terms of the public and private sectors, whether or not we have a national manpower policy will depend to a large extent on the bridge between the two. We need to bring the private sector into the prisons; educational experts should join with manpower experts in addressing the problem of youth unemployment, and the future of public service employment may well depend upon the extent to which the private sector begins to draw on the new experienced manpower pool created through public service employment programs. Working together, I hope that we can build a new national manpower policy which will benefit our great strength as a Nation and be compatible with both the tenets of the free enterprise system and the further social commitment which these times dictate.

A 2-YEAR PROGRAM OF PART-TIME STUDY LEADING TO THE MASTER OF ARTS DEGREE IN MANPOWER DEVELOPMENT CENTER FOR NEW YORK CITY AFFAIRS

This new graduate degree program has been designed to meet the growing need of the manpower profession for highly trained and skilled personnel in administration, planning and training.

Manpower Development is a new profession. Its evolution parallels a quarter-century of Federal legislation aimed at combating unemployment and poverty. The Full Employment Act of 1946; the Vocational Education Acts of 1946, 1963, and 1968; the first Manpower Development and Training Act of 1962 (which gave the field its name); the War on Poverty in the mid-60's, and the spate of educational legislation enacted in the 60's and 70's—all contributed to the growth of a vast network of public and private organizations devoted to job development and training, and to the creation of greater employment opportunities for the poor, the unskilled, the illiterate and the under-educated.

As part of a local, regional or national effort to meet the needs of the labor force,

the manpower practitioner engages in a variety of vital tasks, among them job training, vocational guidance, testing and assessment, job development, job placement and follow-up counseling, as well as overall manpower planning, analysis, and administration.

There is a critical need to strengthen performance and to prepare people to assume positions of leadership in the field. A continuing need for manpower professionals has developed in government agencies, educational institutions, community organizations, labor and private industry. They are required at every level of operations, and there is a particularly significant shortage of trained planners and administrators capable of formulating long-term manpower policy of local, regional or national scope.

The need for professionals with graduate preparation will become even more critical in the 70's as Federal commitments to the eradication of unemployment are intensified. Congressional appropriations for manpower development and training amounted to 500 million dollars in 1962; they will exceed 4½ billion dollars in 1972, and may reach 10 billion dollars by 1975.

The establishment of this graduate degree program in Manpower Development has been made possible by the Louis Calder Foundation.

THE NEW SCHOOL

The new MA program in manpower development extends the rare tradition of educational innovation which has characterized the New School for Social Research throughout its history. Established in 1919, The New School was the first American university to evolve out of a deep commitment to meeting the intellectual and professional needs of mature citizens. This commitment has given birth to a variety of courses and programs designed to help the working professional increase his competency.

From its earliest years on, The New School program has included courses of interest to practitioners in urban related professions. In the inaugural year of 1919, the institution offered a course on municipal government, and in the 1930's it became the first school to introduce courses on housing. In the 1960's, The New School developed within the Center for New York City Affairs the nation's largest and most diversified program of urban studies for both professionals and laymen.

The New School is a diversified urban university offering a variety of day and evening programs of undergraduate, graduate and adult education. In addition to the Center for New York City Affairs, its major divisions are the Adult Division, the Graduate Faculty of Political and Social Sciences, the Senior College (an undergraduate liberal arts college), and Parsons School of Design.

THE CENTER FOR NEW YORK CITY AFFAIRS

New York's high intensity of urban problems and concentration of leadership and expertise are invaluable resources for education in urban affairs. The Center for New York City Affairs, established in 1964, utilizes these unique resources in educational, research, and community service programs which focus on, but transcend the bounds of the metropolitan region. The location of the Department of Manpower Development within the Center assures students of the availability of these resources to their preparation for manpower policy roles. It offers them advantageous proximity to research, action programs, forums, publications and lectures on pressing city problems. It places them within an urban educational community that is rich with relevant ideas and high level dialogue and debate.

In addition to this degree program, the Center offers a MA degree program in Urban Affairs and Policy Analysis.

SETTING THE RECORD STRAIGHT ON TAX REFORM, MORTGAGE INTEREST DEDUCTIONS, CHARITABLE CONTRIBUTIONS DEDUCTIONS, AND THE LITTLE GUY

Mr. CHURCH. Mr. President, recently on the ABC network news show, "Issues and Answers," Presidential Adviser John D. Ehrlichman said, in effect, that the only way to raise more tax revenue was to tax the little guy. Now that may be Mr. Ehrlichman's opinion, indeed, with the largesse this administration bestows upon big businesses such as the Penn Central Railroad and Lockheed Aircraft, it undoubtedly is Mr. Ehrlichman's opinion. Unfortunately for Mr. Ehrlichman, but fortunately for the American taxpayer, this opinion has no basis in fact.

In the Washington Post of March 15, 1973, Mr. Hobart Rowen points out where additional revenue could be raised by closing tax loopholes that are anything but beneficial to the average taxpayer.

I think its time that the Nixon administration stopped using scare tactics to head off the long needed move for tax reform that is currently underway in the Congress. Mr. Rowen's column goes a long way toward clearing up the distorted picture that Mr. Ehrlichman painted for the average American taxpayer last week. I ask unanimous consent that Mr. Rowen's article entitled "Loopholes and Little Guys" appear at this point in the RECORD.

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

LOOPHOLES AND LITTLE GUYS

(By Hobart Rowen)

On ABC's "Issues and Answers" last Sunday, presidential aide John D. Ehrlichman said that "there is a lot of misinformation around in this business of tax loopholes," and then he did his best to spread some more of it around.

The basic point that Ehrlichman was trying to make is that it's not possible to raise a great deal of money by tax reforms, "unless you start digging into the average taxpayer's exemptions, or charitable deductions, or mortgage credits, or something of that kind."

That, as Mr. Ehrlichman must know, is simply not true. He was just trying the usual scare tactics that have been this administration's old reliable weapon against tax reform.

What is true is that the exemptions or loopholes he mentions account for a considerable part of the erosion of the tax base. But there is plenty more that he didn't choose to mention.

Could it be that Ehrlichman failed to point to other loopholes because the chief beneficiaries are businesses and the most affluent taxpayers?

For example, the exhaustive analysis of erosion of the individual income tax base by Brookings Institution economists Joseph A. Pechman and Benjamin A. Okner in January, 1972, for the Joint Economic Committee of Congress shows that under a comprehensive tax system, the Treasury would pick up $55.7 billion in revenue it now loses to the leaky tax structure.

Of this total, $13.7 billion would come from taxing all capital gains, and gains transferred by gift or bequest: $2.4 billion from "preference income" such as tax exempt, interest, exclusion of dividends, and oil depletion; $2.7 billion from life insurance interest; $9.6 billion from owner's preferences; $13 billion from transfer payments (welfare, unemployment compensation, etc.); $7.1 billion for the percentage standard deduction; $2.9 billion for deductions to the aged and blind; and $4.2 billion for other itemized deductions.

On the corporate side, Ehrlichman made no mention of the $2.5 billion in reduced tax burden that business will get this year through accelerated depreciation schedules (ADR); and another $3.9 billion via the investment credit. From 1971 through 1980, ADR will be worth $30.4 billion and the tax credit $45.2 billion (all U.S. Treasury calculations). And in that span of time, there will also be some $3 billion in give-aways through DISC—a tax shelter for export sales profits just created by the revenue act of 1971.

Another tax reform target Ehrlichman appears unable to see is income-splitting, which Pechman and Okner estimate causes a revenue loss of at least $21.6 billion annually, almost half of which is a benefit to a relative handful of taxpayers in the $25,000-$100,000 income brackets.

But there's more to it than that. Ehrlichman pretends to be concerned about that "average householder" who would be hit if he couldn't take his mortgage interest as a deduction. But of the $9.6 billion that Pechman-Okner show lost to homeowners' preferences, defined as deductions for mortgage interest and real estate taxes, $5.3 billion goes to the tiny 5 per cent of taxpayers with reportable adjusted gross income of $20,000 or more.

And how about Ehrlichman's warning that Uncle Sam can't raise tax-reform money in significant amounts "if you don't let the average householder . . . deduct charitable contributions to his church or to the Boy Scouts . . ."? Is he really worried about the little guy?

The Tax Reform Research Group (one of Ralph Nader's operations) showed last year that when you divide the number of taxpayers in each income group into the total tax preference benefits of charitable deductions, other than education, you find this:

Among taxpayers in the $7,000 to $10,000 income bracket, the average tax benefit for charitable contributions was $17.44; for those in the $10,000 to $15,000 bracket, $33.11; for those in the $20,000 to $50,000 bracket, $199.09; for those in the $50,000 to $100,000 bracket, $1,211.16; and for those making $100,000 and over, a whopping $11,373.56.

So who is Ehrlichman trying to kid? If the administration doesn't have a decent tax reform program, it's not because it could wring the money only out of the little guy, nor because there aren't outrageous loopholes waiting to be plugged. It's just because Mr. Nixon must believe that his constituency likes the inequitable tax system pretty much the way it is.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

PUBLIC HEALTH SERVICE ACT EXTENSION OF 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 91, S. 1136.

The PRESIDING OFFICER. The bill will be stated by title.

The bill was stated by title as follows:

A bill (S. 1136) to extend the expiring authorities in the Public Health Services Act and the Community Health Centers Act.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

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

That this Act shall be known as the "Public Health Service Act Extension of 1973".

SEC. 2. (a) Section 304(c)(1) of the Public Health Service Act (42 U.S.C. 201) is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(b) Section 305(d) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(c) Section 306(a) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(d) Section 309(a) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(e) Section 309(c) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(f) Section 310 of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(g) Section 314(a)(1) of such Act is amended (1) by striking "June 30, 1973" the first time it appears and inserting in lieu thereof "June 30, 1974", and (2) by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(h) Section 314(b)(1)(A) of such Act is amended by—

(1) striking the term "June 30, 1973" in the first sentence and inserting in lieu thereof the term "June 30, 1974"; and

(2) striking the phrase "for the fiscal year ending June 30, 1973" in the second sentence and inserting in lieu thereof "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(i) Section 314(c) of such Act is amended by—

(1) striking the term "June 30, 1973" in the first sentence and inserting in lieu thereof "June 30, 1974"; and

(2) striking the phrase "for the fiscal year ending June 30, 1973" in the second sentence and inserting in lieu thereof "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(j) Section 314(d)(1) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(k) Section 314(e) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(l) Section 393(h) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(m) Section 394(a) of seuch Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(n) Section 395(a) of such Act is amended by striking "June 30, 1973" and inserting in lieu thereof "June 30, 1974".

(o) Section 395(b) of such Act is amended by striking "June 30, 1973" and inserting in lieu thereof "June 30, 1974".

(p) Section 396(a) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(q) Section 397(a) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(r) Section 398(a) of such Act is amended by striking "June 30, 1973" and inserting in lieu thereof "June 30, 1974".

(s) Section 601(a) of such Act is amended by striking the word "eight" and inserting in lieu thereof the word "nine".

(t) Section 601(b) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(u) Section 601(c) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(v) Section 621(a) of such Act is amended by striking "June 30, 1973" wherver it appears and inserting in lieu thereof "June 30, 1974".

(w) Section 625(2) is amended by striking out "for the fiscal year ending June 30, 1973" and inserting in lieu thereof "for each of the fiscal years ending June 30, 1973, and June 30, 1974".

(x) Section 631 of such Act is amended by striking the word "two" and inserting in lieu thereof the word "three".

(y) Section 791(a)(1) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(z)(1) Section 792(a)(1) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(2) Section 792(a)(2) of such Act is amended by striking "June 30, 1973" and inserting in lieu thereof "June 30, 1974".

(aa) Section 792(b) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the pharase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(bb) Section 792(c)(1) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(cc) Section 793(a) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(dd) Section 794A(b) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(ee) Section 794B(f) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(ff) Section 794C(e) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(gg)(1) Section 794D(c) is amended (A) by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof "for each of the fiscal years ending June 30, 1973, and June 30, 1974", (B) by striking out "each of the two succeeding fiscal years" and inserting in lieu thereof "each of the three succeeding fiscal years", and (C) by striking out "July 1, 1973" and inserting in lieu thereof "July 1, 1974".

(2) Section 794D(e) is amended by striking out "1977" each place it occurs and inserting in lieu thereof "1978".

(3) Section 794D(f)(1)(A) is amended by striking out "each of the next two fiscal years" and inserting in lieu thereof "each of the next three fiscal years".

(hh) Section 901(a) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(ii) Sections 1001(c), 1002(d), 1003(b), 1004(b), and 1005(b) of the Public Health Service Act are amended by striking out "for the fiscal year ending June 30, 1973" and inserting in lieu thereof "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

SEC. 3. (a) Section 201 of the Community Mental Health Centers Act (42 U.S.C. 2681) is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(b) Section 207 is amended by striking out "1973" and inserting in lieu thereof "1974".

(c) Section 221(b) is amended by striking out "1973" each place it occurs and inserting in lieu thereof "1974".

(d) Section 224(a) of such Act is amended (1) by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974" and (2) by striking out "thirteen succeeding years" and inserting in lieu thereof "fourteen succeeding years".

(e) Section 246 of such Act is amended by striking "June 30, 1973" and inserting in lieu thereof "June 30, 1974".

(f) Section 247(d) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(g) Section 252 of such Act is amended by striking "June 30, 1973" and inserting in lieu thereof "June 30, 1974".

(h) Section 253(d) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(i) Section 261(a) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973 and June 30, 1974".

(j) Section 261(b) is amended (1) by striking out "nine fiscal years" and inserting in lieu thereof "ten fiscal years", and (2) by striking out "1973" and inserting in lieu thereof "1974".

(k) Section 264(c) of such Act is amended (1) by striking the words "June 30, 1973" and

inserting in lieu thereof the words "June 30, 1973 and June 30, 1974" (2) by striking out "eight fiscal years" and inserting in lieu thereof "nine fiscal years", and (3) by striking out "July 1, 1973" and inserting in lieu thereof "July 1, 1974".

(l) Section 271(d) of such Act is amended by striking the phrase "for the fiscal year ending June 30, 1973" and inserting in lieu thereof the phrase "for each of the fiscal years ending June 30, 1973, and June 30, 1974".

(m) Section 271(d)(2) is amended (A) by striking out "eight fiscal years" and inserting in lieu thereof "nine fiscal years", and (B) by striking out "1973" and inserting in lieu thereof "1974".

(n) Section 272 is amended by striking out "1973" and inserting in lieu thereof "1974".

SEC. 4. Section 601 of the Act entitled "An Act to amend the Public Health Service Act to revise, extend, and improve the program established by title VI of such Act, and for other purposes", is amended by striking "July 1 1973" and inserting in lieu thereof "July 1, 1974".

SEC. 5. (a) Section 121(a) of the Developmental Disability Services and Facilities Construction Act is amended by striking out "for each of the next five fiscal years through the fiscal year ending June 30, 1973" and inserting in lieu thereof "for each of the next six fiscal years through the fiscal year ending June 30, 1974".

(b) Section 122(b) of such Act is amended by striking out "for the fiscal year ending June 30, 1973" and inserting in lieu thereof "for each of the fiscal years ending June 30, 1973, and June 30, 1974".

(c) Section 131 of such Act is amended by striking out "for the fiscal year ending June 30, 1973" and inserting in lieu thereof "for each of the fiscal years ending June 30, 1973, and June 30, 1974".

(d) Section 137(b)(1) of such Act is amended by striking "the fiscal year ending June 30, 1973." and inserting in lieu thereof "the fiscal years ending June 30, 1973, and June 30, 1974.".

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.

EXTENSION OF TIME FOR EULOGIES TO THE LATE FORMER SENATOR GUY M. GILLETTE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the RECORD for eulogies to the late former Senator Guy M. Gillette remain open for an additional week.

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

RESUMPTION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a resumption of the period for the transaction of routine morning business, with statements limited therein to 5 minutes each, and the period not to extend beyond 20 minutes.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DOMESTIC RETREAT: NIXON BUDGET SUPPORT FOR RESEARCH AND RESEARCH TRAINING PROGRAMS

Mr. HUMPHREY. Mr. President, the Nixon administration's budget proposes drastic cutbacks in research and research training programs in our Nation's graduate schools. This represents not only misplaced priorities but extreme shortsightedness.

We may save a little in the short run, but we shall certainly lose heavily in the future.

The decision to terminate and phase out many research programs is not sound public policy. We will simply have to face the huge expense of restarting these programs 5 or 10 years from now, when we fall behind and confront another crisis as we did when the Soviets launched sputnik. This stop-go-policy is terribly inefficient and ineffective.

Two years ago, the President's Task Force on Education reported that during the next decade, resources available to colleges and universities must more than double if we are to meet our research needs and alleviate the inequalities in our education system. New discoveries are needed in the area of biomedical research, energy development, and environmental technology if the United States is to continue to be the world's leading industrial nation.

In the areas of social science, Government-sponsored researchers have found ways to allocate the costs of municipal services more rationally to promote balanced community growth. Economists are working on a project to link several national econometric models so that international trade and inflation may be studied. And, recently the benefits of federally sponsored research was clearly demonstrated by the announcement of a new discovery that could lead to effective solutions to the problem of drug addiction. This discovery was made at Johns Hopkins as the result of a grant from the National Institute of Mental Health. If this discovery should eventually result in a cure for drug addiction, the investment which we have made will have been repaid many times over. Yet despite results like this, the National Institutes of Health will receive little new support for research.

What is most disturbing is that the areas of NIH research to be funded are chosen by the Office of Management and Budget, without consulting the Scientific community. As Science magazine reported:

> When it comes to the budget proposals for the National Institutes of Health (NIH) and, therefore, Federal support of research, there are few, if any, leaders of the biomedical community who are happy with the choices that the President, through his Office of Management and Budget, has made.

There is certainly a need for program evaluation in the area of research, but all members of society, and especially scientific experts, should take part in this evaluation. Finding indicators of social benefit from scientific research is too difficult a task to be left to OMB.

Unfortunately, it is still the case that college education is primarily the prerogative of the young person from an upper income family, I find this to be morally, socially, and economically wrong.

For too many low- and middle-income children who cannot afford to go to college, much less attend graduate school, the real cost is that of not getting a higher education. They are denied the opportunity to develop their talents and obtain appropriate, high-paying jobs.

The misguided nature of the proposed cutbacks can be found in the following examples:

First, a new graduate fellowship program for disadvantaged students is cut by 25 percent. Thus, our efforts to bring about a long-needed diversity in the student population of graduate schools are being frustrated.

Second, the National Science Foundation training grant program receives only phase-out money. This could have disastrous long-run consequences. Scientists and research specialists do not grow on trees. There must be trained professionals if quality research is to continue.

Third, funds for the Health Manpower Act are cut by almost 40 percent from 1972 levels. This includes a two-thirds reduction in funds for nursing schools. While the need is growing the effort is shrinking.

Fourth. Support for foreign language and area study programs is terminated. Some of our country's finest programs, particularly in the field of Asian studies, may be ended completely. And all at a time when Asian experts are desperately needed to deal with the increased importance of China and Japan in world affairs. How can we expect to maintain good relations and formulate sound policies toward these countries if we lack expertise in their languages and cultures?

Fifth. Finally, graduate schools throughout the Nation are beginning to feel the pinch of trying to make less funds go further. University after university has reported that graduate training programs are suffering massive dislocations as a result of the Nixon budget. Said the Dean of the University of California at Berkeley, Sanford Elberg:

> The graduate education enterprise is being torn apart. It's a —— disaster.

Dean Elberg noted that he will lose funds for almost a thousand of 8,900 students next year.

Dean Elberg's predicament is shared by graduate deans at other schools. A recent article in the Washington Post

by Andrew Barnes catalogs some of the cutbacks and the impending loss of fiscal support as it effects graduate training. Barnes notes that "enrollments are off, sharply at some schools, and all face financial trouble."

Mr. President, the American people stand firmly behind our Nation's commitment to be the world's leader in the field of research and education. Congress will not allow this commitment to be watered down. The investment in graduate research and education must be continued.

I ask unanimous consent that an article from Science, detailing these reductions in research commitments, and an article written by Andrew Barnes of the Washington Post entitled "Elite Graduate Schools Are in Trouble," be printed at this pointed in the RECORD.

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

THE BUDGET OF THE U.S. GOVERNMENT—1974

The President's first peacetime budget is significant not only for the stamp it sets on priorities in the next fiscal year, but also as a guide to the general shape of spending in his second term. The message seems to be that many domestic programs will be cut, but science, with some qualifications, is to continue at steady state. The overall picture for federal investment in research and development is one of standstill, with a few new ventures made at the expense of fairly careful cuts in existing projects. The cost-cutters in the President's Office of Management and Budget (OMB) have gone over the science budget with a scalpel, not a hatchet.

Technology reached its apotheosis with the Apollo program, its nadir, some say, in Vietnam. Both adventures are now over, but the new budget unveiled last week seems to contain no backlash against either technology or pure science. Within the general standstill of science spending there is an evident, but limited, trend toward the focusing of research on specific objectives such as cancer and heart research and the prevention of natural disasters. What is notable is that basic research seems to have remained more or less inviolate, at least as judged by gross figures in the budgets of the leading science agencies. The National Science Foundation (NSF) will spend 5 percent more on research grants. The Atomic Energy Commission (AEC) supports physical and biomedical research at the same rate as before. And the National Institutes of Health appear to have more money available for research grants in fiscal 1974, although less for training and fellowships.

The "News and Comment" section this week is given over to an analysis of the budget as it affects science. Unlike other political statements, the budget message lays out the measures the President intends to support with hard cash as well as lip service. At the same time, the budget writers are not given to making things appear worse than they really are, and it is frequently hard to be sure just what is meant by a particular category of funds. The budget is explained in a set of four documents (the chief of which is known in the OMB as the "novel-sized" budget), but none defines exactly what is meant by research and development. The following articles attempt to sketch out the implications of the budget message for health, energy, defense, and the principal agencies responsible for federal support of science.

The President's budget is subject to change both by Congress and second thoughts in the OMB. Some of the programs slated for extinction have strong support in Congress or from constituencies outside government. And what the President seems now to be giving with one hand he may later take away by having the OMB impound the funds that Congress has appropriated, as has happened to the NSF's technology incentives program. But the general outline of the science budget is unlikely to change much, despite the departure from the White House of the Office of Science and Technology.

The federal budget for fiscal 1974 (which runs from July 1973 to June 1974) totals $268.7 billion, of which 6.25 percent is earmarked for R & D. In terms of obligations, the budget's $17.4 billion for R & D breaks down into $9.4 billion for military R & D, $2.5 billion for space research, and $5.5 billion for civilian R & D. Civilian R & D is up $0.3 billion over the current year. But scientists may feel the draught from the budgeteers' heavy retrenchment in categorical programs, particularly in the areas of health and education).

That civilian R & D would escape the budget makers' knives is something that few would have predicted prior to last week. Science lies in the small category of budget items which are "controllable," or not already committed. The $12.7 billion deficit expected for 1974 and the President's determination to control inflation and avoid a tax increase all pointed toward a savage slash in all of the controllables. As it turns out, the cutbacks in science-based activities amount to less than 4 percent of the $17 billion the OMB hacked away from federal programs, even though civilian science represented a considerably greater fraction of the controllable expenditures. Science may not have done well but it could have done far worse.

NICHOLAS WADE.

BUDGET BACKGROUND: WHERE SCIENCE STANDS AND WHY

The recession in science which began in the middle 1960's was generally attributed to pressures on the budget from costs of the Vietnam war and Great Society programs. It was hopefully assumed in the scientific community that the setback was temporary, merely a short-term reversal of the trends established in the early 1960's. President Nixon's budget for fiscal year 1974 released on 29 January is based on the assumption that U.S. military involvement in Vietnam is over. The budget makers also seem fairly optimistic that inflation has been restrained and employment is expanding. But the growth curve for science retains its horizontal ways.

The immediate explanation is clear enough. The Administration is determined to hold the line on federal expenditures to keep inflationary pressures in hand and developments within the budget in the past decade have made R & D particularly vulnerable to budget-cutting activities. In other sectors of the budget, particularly in programs which commit the government to payments to individuals—social security, public assistance, veterans benefits, medical care for the aged and indigent, for example—limits on spending are virtually impossible to set. More than $200 billion in the budget is estimated to be in this category of "uncontrollable" expenditures and the science budget, on the other hand, is eminently controllable.

In retrospect, the remarkable burst of growth in the science budget, beginning in the early 1960's, was produced by a very unusual combination of circumstances. The figures testify to the rapidity of expansion. In 1960 federal R & D expenditures amounted to about $7.7 billion with some $6.6 billion spent on military R & D. In 1963 the science budget was $12.4 billion ($8.6 billion military), and by 1966 the total was $15.4 billion ($6.8 military). The fiscal 1974 budget proposes an R & D budget of $16.7 billion with expenditures of $8.3 billion in the military sector. The first half of the 1960's, obviously, witnessed a boom in science spending with civilan R & D growing at a much faster rate than military R & D. By the later 1960's the rate of growth has flattened, the proportion of military R & D began to increase, and inflation had taken hold.

The boom in science in the first half of the decade was made possible not only by policy decisions but by unusually favorable economic circumstances. The end of the 1958–1961 recession began a long period of uninterrupted expansion of the economy during which productivity rose steadily and prices remained relatively stable. Federal revenues rose rapidly and some economists worried about "fiscal lag"—the retarding effect on the economy of the government's lack of ways to keep federal expenditures up with revenues. Science was a logical beneficiary in this situation not only because R & D was looked upon as fitting in with the philosophy of the "investment" budgets put forward by President Kennedy, but also because science was politically palatable. Major spending of federal programs of aid to education and medical care to the aged, for example, encountered impassable opposition in Congress at that period.

Because the scientific enterprise was starting from a relatively small financing base, the percentage increases in funding were very large. The expansion of the space program—the NASA budget rose from under $2 billion in 1962 to about $5 billion in 1966—of course provided a major fillip. The 1960's was a period of unexample expansion in higher education and there were jobs in universities and colleges as well as in industry for the rising tide of graduates of scientific manpower programs.

By the middle 1960's the buildup in Vietnam and the mounting cost of Great Society social and welfare programs had taken the discretionary slack out of the budget. President Johnson's fiscal 1967 budget submitted in January 1966 was the first budget in a decade not to carry a request for an increase in total spending for R & D. And from then on inflation took a mounting toll.

What are the post-Vietnam prospects for science? It is difficult to see the implications for science in the President's efforts to implement his concept of a "New Federalism." The budget indicates he will seek to strengthen state local governments by devolving responsibility for community programs currently administered by the federal government and by shifting federal funds directly to the operating governments through new "revenue sharing" programs. Most R & D programs presumably are "national" programs and would continue to administered from Washington. Congress, however, is expected to take a protective stance toward many of the programs in question and the debate over revenue sharing is likely to become a major skirmish in the battle of the budget.

A better clue to the outlook for science is probably the evaporation of the so-called "peace dividend" which was anticipated at the end of the Vietnam war. The continuation of military spending at a high level and the rigors of the Administration's countercyclical budget, which incidentally has been projected into 1975, seem to leave little room for expansion of the science budget. A group of independent economists in a Brookings Institution study, *Setting National Priorities The 1973 Budget*, see this inelasticity built into the budget lasting into the next decade unless big tax increases are voted or a major reordering of priorities occurs.

This sort of an economic interpretation of the fortunes of R & D in the federal budget can be carried too far. Sputnik, for example, obviously helped give impetus to R & D in the late 1950's and early 1960's. But it is clear that science faces tough, long-term competition for funds in the budget. Looking back, the early 1960's were

a mini-golden age for science, cut short by long-term trends in the budget.—JOHN WALSH.

PRESIDENT PROPOSES, CONGRESS DISPOSES—TRUE OR FALSE?

Congress's power of the purse is one that, like other powers, has come to be heavily shared with the executive branch. The President's new budget is subject to review by Congress, but, in practice, the legislators have limited possibilities for reordering the President's priorities. Internal disarray is one reason—Congress has no equivalent of a budget bureau to assess the overall budget only appropriations committees which do a piecemeal job. When Congress diverges from the dictates of the Office of Management and Budget (OMB), the Administration has a variety of devices for sidestepping congressional intent, ranging from a presidential veto to a simple refusal to spend the monies appropriated, a practice known as impoundment.

In the last session of Congress, for example, President Nixon twice vetoed appropriations bills containing more than he had requested for the Department of Health, Education, and Welfare (HEW). Congressional initiatives to set up a National Institute of Gerontology and a National Environmental Data System were also cut down by presidential veto. Probably the most pointed rebuff was Nixon's action on the water pollution bill, one of Congress' major legislative achievements, which provided money for waste treatment plants. The President vetoed the bill, Congress overrode the veto by overwhelmingly majorities of 52 to 12 in the Senate and 247 to 23 in the House, whereupon Nixon ordered that more than half of the funds—some $6 billion—authorized for the program's first 2 years be withheld.

Such high-handed behavior by the President in an area Congress feels to be its own preserve is deeply resented by many legislators. Particular fury has been generated by impoundment, a device that allows the President to kill parts of a bill without the fanfare of a full veto. Resentment over impoundment policies is believed by White House officials to have been the decisive factor in their defeat on the SST in March 1971. And impoundment promises to be a significant issue between Nixon and the 93rd Congress. Senate majority leader Mike Mansfield noted in his speech to the Senate Democratic caucus last month that impoundment is a "dubious Constitutional practice" which "denies and frustrates the explicit intention of the Legislative Branch." Similar expressions of impotent rage have been heard in the House, notably from Representative Jake Pickle (D-Texas), who complaiend recently: "A budget drawn up by the OMB seems to carry here the force of law. An act of Congress signed by the President does not. At this rate, we might as well sit around and make paper airplanes out of the laws we pass."

Contrary to the impression these protests might give, Nixon did not invent impoundment, which proved equally convenient for Presidents Kennedy and Johnson. (Over the last decade, impoundments have run at about 6 percent of total federal outlays.) The issue has been helped to prominence now in part because of the pressure being put on Congress by institutions such as Common Cause and Ralph Nader to assert its prerogatives, including that of financial control. More important; the party difference between Nixon and the present Congress casts his use of impoundments in a more partisan context than that of his predecessors. As it happens, impoundments have fallen heavily on such Democratic causes as urban renewal and the model cities program.

The most recent list of impounded funds the OMB has made available, current to the end of fiscal 1972, shows a total of some $10.5 billion withheld. Most impoundments are only temporary in that they are eventually released, sometimes up to a year late. Others, it seems, would revert to the Treasury if impounded until their appropriations, authority expired. The OMB is unable to say what percentage of impoundments are permanent.

IMPOUNDMENT AND PERMISSIVENESS

The constitutional issue of impoundment hinges on whether the President must or only may spend the sums appropriated by Congress. With some notable exception (such as the chairman of the House appropriations committee, George H. Mahon), Congress argues that he must, while the executive branch claims that appropriations are only permissive. OMB officials cite laws interpreted to mean that funds can be impounded for reasons of routine financial management (such as a project being delayed) or to combat inflation. The congressional comeback is the allegation that impoundments are made for reasons of policy. On one occasion the OMB withheld all the add-ons to the President's budget made by the House Public Works committee—a move that Congress sees as a denial of its right to set priorities.

Other impoundments include $21 million for institutional support and $9.5 million for graduate traineeships which were withheld from the National Science Foundation's 1972 budget. (Both were subsequently released, though the funds for graduate traineeships went into a general purpose fund.) Funds impounded from the NSF this year total $75 million or 9 percent of a $646 million budget. The funds, which may or may not be released before the end of the fiscal year, include $16 million withheld from the much touted R & D incentives program, and $43 million from science education.

Congress has sometimes tried to write language into a bill making it mandatory for the President to spend the full amount appropriated. Nixon vetoed one such bill, grounding his action in part of a legal memorandum drawn up by the then assistant Attorney General William H. Rehnquist, now a Supreme Court justice. But the Rehnquist memo, though useful against mandated appropriations, contained some rather unhelpful thoughts on impoundment. The memo states, in part:

"With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent. . . . It may be argued that the spending of money is inherently an executive function, but the execution of any law is, by definition, an executive function, and it seems an anomalous proposition that because the Executive branch is bound to execute the laws, it is free to decline to execute them."

The constitutional question of whether the President can decline to execute appropriations bills may soon reach the Supreme Court as the result of a suit filed by the state of Missouri. The suit challenges the President's right to impound highway trust funds voted by Congress. Some 23 Democratic senators have filed friend-of-court briefs supporting the state's case. But the Supreme Court, if the case gets that far, is likely to make the narrowest possible ruling in an effort to avoid, if possible, arbitrating so fundamental an issue.

Besides impoundment, there are other budgetary devices whereby congressional directives may be reinterpreted. Transfer authority, written into appropriations bills by Congress, allows a limited amount of money to be switched within an agency's budget—up to $750 million in the Defense Department. Reprogramming is a device that permits funds to be shifted from one purpose to another within the same budgetary account; the procedure is for the agency concerned to check with the chairmen of the relevant congressional committees. In fiscal year 1972, reprogramming in Defense approached $1 billion. Other sorts of money over which congressional control tends to be feeble are secret funds—whose amount is unknown but may be on the order of $10 billion a year—and deferred balances. The latter are special-purpose appropriations that may be carried over from one year to the next; if the original purpose falls through, the unexpended balance may, depending on the wording of the authorization language, be applied to new uses. In fiscal year 1971, Defense had $43 billion in unspent authority from previous years, in addition to its $71 billion budget.

Quite apart from the external mechanisms that erode the appropriations process, the process itself is none too well attuned to modern times. The persistent failure of Congress to pass appropriations bills before the beginning of the fiscal year—this year's HEW appropriation is a case in point—simply invites agencies to develop ways of circumventing Congress. The system of House and Senate appropriations subcommittees is not the ideal machinery for supervising a federal budget of present-day size and complexity. "We have no single, coordinated way in which we view the totality of our appropriations," Representative John A. Blatnik (D-Minn.) has observed. The creation of practically autonomous subcommittees within the appropriations committee has further split responsibility for total spending and overall management, he says. It remains to be seen whether the dissatisfaction of Blatnik and other congressmen will lead to any strengthening of Congress's appropriations system. The constitution may have given Congress what is called the power of the purse, but somehow the purse strings seem to lead round through the back door of the President's Office of Management and Budget.—N.W.

HEALTH

There are two generalizations that can be made about President Nixon's health budget for fiscal 1974. First, unless you are in an area that is one of the President's favorites—the White House calls them "high priority programs"—you will probably have less money than you did before, whether you are a research scientist or a sick person looking for medical care. Second, even if you are part of the in-crowd of the health establishment, increased funding in your field may not be as great as the Administration implies.

The President's budget for the Department of Health, Education, and Welfare (HEW) is one that reduces federal support for health delivery or service programs, sometimes to the point of extinction, and cuts basic research funds as well. Many observers see some merit in trimming some of the service programs under the Health Services and Mental Health Administration (HSMHA) and the National Institute of Mental Health (NIMH), agreeing with the President that they have either proved unsuccessful or have fulfilled their mission. Regional medical programs under HSMHA fall into the former category. They will be obliterated with little mourning. The NIMH's community mental health centers program, which will cost about $134 million in 1973, fall into the latter. The Administration maintains they have demonstrated their value and should now be supported by local governments. Within NIMH, the only programs in line for major funding increases are those dealing with addiction and drug abuse. The 1974 budget calls for an expenditure of $448 million in this area. The 1973 figure is given as $204 million. Options about the merits of this selective boost are mixed.

When it comes to the budget proposals for the National Institutes of Health (NIH) and, therefore, federal support of research,

there are few, if any, leaders of the biomedical community who are happy with the choices that the President, through his Office of Management and Budget (OMB), has made,

Nixon's favorite, high priority programs reside within the NIH. As everybody knows, they are cancer and heart disease. Each will benefit from an increase in funds. According to OMB figures, the budget of the National Cancer Institute (NCI) will go up by $74 million to $500 million for fiscal 1974. Heart disease seems to be a lesser favorite. The allotment for the National Heart and Lung Institute (NHLI) will jump by $19 million to $265 million, again according to OMB figures. It is not exactly a staggering rise. It is, however, a big jump over the 1972 budget which was $224 million. Sickle cell anemia has also been singled out as a priority program—NIH officials are beginning to refer to them as the President's "sacred cows"—and population research will go unhurt. As for everything else . . . According to NIH leaders, this is the first year that general research funds have suffered an absolute decrease, the first year that the emphasis on cancer and heart disease has actually cost other disciplines in dollars and cents. The President's budget is something they do not defend.

The first question anybody asks about the budget when it rolls off government printing presses at the end of January is, simply, is it up or down. Each year, the Administration, as one might expect, tries to emphasize places where its support of popular programs has grown. The press and other observers try to sort out the figures to see whether they will buy the government's analysis of itself. It is never an easy job. This year, with the health budget, it is particularly tricky, because the 1973 budget, which would normally be a standard reference against which to measure the upward and downward trends in the 1974 HEW money bill, does not really exist. It is the budget the President vetoed last summer. It has never been revived. Instead, NIH and all other agencies in HEW have been living on a "continuing resolution," which means that spending has been held, more or less, to 1972 levels.

As a result of this unusual and highly confusing situation, there are three different sets of 1973 figures one can use as a yardstick for measuring the 1974 budget. There are the figures in the original 1973 budget, the one Nixon sent to Congress last January just as he is sending the 1974 budget to the Hill now. There is the "revised" 1973 budget which is listed in the 1974 budget and which the Administration now considers the one that counts. It's figures are consistently lower than those originally presented for 1973. And, there is the 1973 budget according to the Congress of the United States. It's figures are consistently higher than either of the other two.

By looking at the various numbers as they apply only to the budgets for the NIH's institutes and research divisions, one can get an idea of the numbers games there are to be played. The total request in the 1974 budget is $1.531 billion. The total request in the revised 1973 budget is $1.483 billion. Thus, the new NIH budget is $48 million more than the old one. However, if you compare the 1974 figure with the original 1973 request ($1.570 billion), you get a different answer: $1.570 (1973)—$1.531 (1974) =—$0.39.

Viewed that way, NIH comes out way behind, particularly because these figures do not include inflationary factors. If you look at NIH from the perspective of what Congress wanted, the situation is poorer yet. Congress passed a bill appropriating $1.783 billion to NIH for 1973. By that measure, the President's 1974 request puts research $252 million behind.

Whatever set of figures you use to evaluate the situation, it is obvious that federal spending for medical care and for biomedical research is declining. Neither area was accorded any special treatment in the Administration's overall plan to trim federal spending. Certainly, this will offend those who used to be the recipients of federal largesse. Along these lines, the Administration will continue to push for development of controversial Health Maintenance Organizations which involve pre-paid care. However, it will bow out of graduate training and its concomitant institutional support altogether (*Science*, 26 January). Some institutional support will come through capitation grants, but they will be funded only at 1973 levels which many schools consider inadequate. Furthermore, the Administration has acted to reduce capitation. It will limit those funds to the country's 125 schools of medicine and osteopathy and 58 schools of denistry. Nurses and other health professionals are now out of the capitation picture. Whether these budgetary actions will really have an irreparable and adverse affect on the progress of biomedical research and the quality of medicine is hard to gauge, to put it mildly. But one aspect of all this that the biomedical brass finds most distasteful is the fact that they are really not in on the decision-making any more. For political reasons, for example, cancer and heart disease are targeted to be conquered and the implication is that, with enough money and good management, they will be. The OMB apparently believes this. Most scientists still do not, but their opinions carry little weight.

—BARBARA J. CULLITON.

SCIENCE FOUNDATION

The proposed budget for the National Science Foundation (NSF) for fiscal 1974 will be going up and down at the same time. In terms of actual spending, there will be a 2 percent rise to $584 million. In obligations, which include future spending, NSF will seek $641.5 million, or $33.2 million less than it did last year, and $8.7 million less than Congress appropriated when it voted $650.2 million for NSF's 1973 budget.

This has happened partly because this year NSF didn't get its full appropriation. The OMB held in reserve about $62 million of NSF's budget during fiscal 1973. The Administration plans to spend that money instead during fiscal 1974. Hence it can seek a lower new appropriation. This system of reducing new appropriations is being used throughout the budget this year.

At a press briefing on the budget, NSF director H. Guyford Stever maintained that NSF's basic research was being sustained in fiscal 1974. Most NSF basic research is funded through the Science Research Project Support (SRPS) program which seeks a 5 percent increase to $275 million. But if current 5 percent general inflation rates persist into fiscal 1974, this increase will be absorbed by inflation.

There are no new staff slots or funds for NSF to take over the functions of the now-abolished Office of Science and Technology. The White House announced on 26 January that Stever would be the new science adviser and NSF would assume OST's role. However, without new funds for this change, it is unclear how NSF can effectively don such a new, broadened role.

What will be cut back in fiscal 1974? The 1973 NSF budget was artificially swollen by about $20 million which paid for three ski-equipped C 130 aircraft for Antarctic research. More important for the future, graduate student support will decline by $4.8 million with the finish of the graduate traineeships. Institutional grants for science will decrease by $2 million to $6 million. NSF will seek $3 million only in special foreign currency for international programs; last year it sought $7 million.

There are some interesting increases reflecting NSF's interest in the newer so-called "practical" programs. The Very Large Array telescope will need $10 million in fiscal 1974 for construction. RANN, or Research Applied to National Needs, will get a healthy $9 million boost—largely in its hardware-oriented advanced technology applications section. Most of the basic science areas in SRPS receive $1 million raises; but engineering and social sciences did must better with $2.6 million and $2.1 million increases, respectively. The technology assessment program—one of the few relics of last year's Presidential Technology Message—will still be funded at $2 million, and the money for the R & D incentives program, which for a time had most of its $18 million 1973 appropriation held up by OMB, now expects to get $15 million before the end of fiscal 1973 and $18 million in fiscal 1974. Science education, which had $30.8 of it funding held up last year by OMB, will receive that money during fiscal 1974 along with a smaller new amount of $29 million—a clear example of how OMB holds on funds are being applied to the 1974 budget.

The NSF budget also illustrates the lesson that such documents cannot be read too skeptically. NSF's lead chart shows steady increases in NSF's "direct program funds" from $600 million in fiscal 1972 to the $641 sought for fiscal 1974. But in terms of budget authority—the ceilings on programs—NSF's share, with the exception of the airplanes—has been going down from $618 million in fiscal 1972 to $579.6 million in fiscal 1974.

What will become of the proposed NSF budget? If the past is any guide, the House and Senate will try to increase it, perhaps by as much as $50 million.

OMB may well continue to impound funds or delay them. Asked about this, Stever said he had assurances that OMB was committed to the full fiscal 1974 amount. But he later added "I have my suspicions." OMB withholding could well cancel out any congressional increases.

Most important, however, is the three-way fight brewing over NSF's future mission. The Administration's announcement that Stever and NSF will take over the science advisory role clearly indicated a new dimension for the agency. Meanwhile Senator Edward M. Kennedy (D–Mass.) whose bill, S32, would establish a new, applied wing within NSF, can be expected to try to move it through Congress this session. And the Republican legislators this year intend to submit an alternate bill dealing with NSF's role to the Congress too. If any rash reorganization of NSF comes about, it could affect how much money it finally receives.—DEBORAH SHAPLEY.

INFLATION

No one should read the federal budget, or any R & D funding statistics, without bearing in mind the impact of inflation on all the numbers involved.

The federal budgets, with some exceptions in the Department of Defense, do not include inflation rates in their calculations of spending trends so readers must calculate them in as they proceed to evaluate the actual worth of the funding. The difficulty lies in knowing which inflation rates to apply.

In 1973, the country's general rate of inflation was frequently mentioned as standing near 5 percent. The Administration hopes to cut that rate to 3 percent by 1 July 1973—at the start of fiscal 1974.

However, there is no single rate of inflation that applies everywhere; different fields of science have different rates of inflation, according to Edward C. Creutz, assistant director (research) of the National Science Foundation. Some fields of science use more equipment than others, and he says the cost of equipment, particularly of very sophisticated equipment, inflates more rapidly than do salaries and expenses. Thus, funding for high-energy physics, inflates not at the general 5 percent rate but at about 2 percent higher, or 7 percent. Creutz says that a rate of 2 percent higher than the normal rate is a

sound, "across the board" number to use for inflation in equipment-intensive fields.

Funds for less equipment-intensive fields, such as mathematics and theoretical astronomy, inflate at the general rate, since the money is spent for salaries and expenses. Scientific salaries are not inflating as fast as they were a few years ago, however, because there is currently a surplus of scientists for some fields, Creutz says.

So for fiscal 1973, an inflation rate of 5 to 7 percent should be applied depending on the field of R & D. Should the Administration succeed in lowering the general rate in fiscal 1974, rates of 3 to 5 percent should be applied.—D.S.

ENERGY

With nationwide shortages of fuel oil this winter spurring public fears of an energy crisis, the Administration's new budget propitiously asks Congress for $772 million to support energy-related R & D—an increment over the current fiscal year of $130 million. The new budget conveys continuing confidence on the part of the White House that the nuclear breeder reactor will meet the nation's long-term needs for electrical energy, but, for the short term, the budget carries quite a different message. In essence, the White House wants the nation's utilities to place more reliance on coal—as opposed to oil and natural gas—to meet energy demands through the mid-1980's. And the budget contains some sizable sums to buy the technology to make this new reliance possible.

As the budget's section on R & D puts it:

"Improved technology cannot, by itself, solve all energy and related environmental problems. But it can contribute to substantial reduction of their impact, particularly by the production of clean energy from coal—our most abundant fuel source."

The nation's known coal reserves exceed 500 billion tons, enough to last at the current rate of production for 800 years or more. Much of this, however, is bituminous coal containing up to 10 percent sulfur, an amount that makes it wholly unacceptable for use in most urban areas, especially in the Northeast, where strict limits on emissions of sulfur oxides are enforced. The President's Council on Environmental Quality has estimated that between 1970 and 1985 coal's contribution to the nation's total energy supply will slip from 20 to 17 percent unless economical methods are developed to overcome the sulfur problem.

Accordingly, the 1974 budget asks Congress for $129 million for fossil fuel R & D, an increase of nearly 20 percent over the current year. Most of this would be spent by the Interior Department through contracts to industrial firms; special emphasis would be placed on developing methods for "precombustion cleaning of coal to meet environmental standards." Such methods include gasification and liquefaction of coal and solvent extraction of sulfur from raw coal. A total of $60 million is earmarked for development of this technology in fiscal 1974, an increase of $15 million.

At the same time, the Administration will phase out a program in the Environmental Protection Agency that sought to develop means of scrubbing sulfur oxides from the stack gases of industrial and power plants. Thus industry is presented with a choice of pursuing stack gas technology on its own—an unlikely prospect, given current problems with the technology—or of banking on the success of "clean coal" technologies. The net effect may be a powerful inducement to accelerate coal mining in the vast and largely untouched deposits of the central plains and the Rocky Mountain states.

The rationale for accelerated coal production is not purely technological, however. In an energy message planned for later this winter, the President is expected to characterize increased coal production as a boon for national security and the U.S. balance of payments, to the extent that clean coal can reduce U.S. reliance on foreign petroleum and natural gas of low sulfur content.

Other, alternative sources of energy also receive new support in the 1974 budget. Money for solar energy and geothermal R & D would double to $16 million, and the Atomic Energy Commission is to receive $323 million for its work on the breeder, raising the government's contribution by 20 percent. Nonmiliary R & D on controlled fusion would increase $7 million to a 1974 total of $44 million The Administration also lumps the millions it is spending on laser-triggered fusion weapons under the heading of "clean energy" programs, on the grounds that such work might produce spin-off of interest to the civilian effort.

The new budget also creates a $25 million "central fund" for energy in Interior to support the "exploitation of promising technologies." This new money would seem to vest Interior with new authority over energy R & D, an arrangement that is consistent with the President's announced intention of transforming Interior into a Department of Natural Resources with central authority over national energy policy, both nuclear and nonnuclear.—ROBERT GILLETTE.

ENVIRONMENT

Is there anyone here who understands this book? These numbers don't make any sanse to me.—William Ruckelshaus, Administrator, Environmental Protection Agency (EPA), in discussing a portion of the budget with newsmen.

Mr. Ruckelshaus' tongue was planted firmly in cheek, but his complaint is nonetheless a common one. Federal budget documents are as much a masterwork of public relations as a proposal to Congress, and their lucidity sometimes rivals that of the Penn Central Railroad's annual report. But so far as one can divine from the voluminous documents released last week, the sector of the federal budget loosely described as "natural resources and environment" fared as well as any other category in a year when the watchword, more than ever, is inflationary control.

President Nixon has withheld about half the $11 billion authorized last week by Congress—over his veto—for water pollution control. At the same time though, the White House proposes to more than double the amount actually to be spent on pollution abatement (mostly for municipal sewage plants). This amount would rise from $727 million in fiscal 1973 to $1.6 billion in fiscal 1974.

In addition, the White House places a figure of $1.012 billion on its request for environmental R & D in fiscal 1974, an increase in obligations of $60 million. Much of this increase apparently would go into energy R & D.

A billion-dollar figure for environmental R & D may be a bit misleading, however, in two respects. For one, the definition of R & D is stretched to include such government services as maintenance of a weather satellite system and topographic mapping by the Geological Survey. Moreover, a close reading of the budget reveals several significant reductions in areas classically defined as R & D. Not the least of these involves a major "redirection" of the EPA's research program that tends to shift the agency away from development of pollution control technology and toward a narrower mission of supporting the agency's regulatory functions.

Thus, in fiscal 1974, the EPA's obligations for R & D would drop by $25 million to a level of $148 million. The single greatest cut, and potentially the most controversial, is an 88 percent or $15 million reduction in EPA's support of solid waste processing technology. In a news conference, Ruckelshaus maintained that this "new technology is in hand" and that it was now up to local communities to adapt it to their solid waste problems. This view, however, is not universally shared within the agency. "Obviously," one EPA official said privately, "this is a devastating reduction."

At the same time, the White House budget office proposes to cut 30 percent or $3 million from EPA's work on cleaner, alternative automobile engines and to terminate the agency's $5-million program to develop devices for scrubbing surfur oxides from industrial stack gases. Ruckelshaus said that the EPA has fulfilled its responsibility of nurturing this technology to a point where "only engineering problems remain," although he acknowledged that the severity of these problems is a matter of great controversy in industry.

Other EPA research programs in radiation, pesticides, noise, water quality, and the social effects of pollution would remain static or rise slightly in the new budget.

Elsewhere, the Interior Department cut $24 million from its Office of Saline Water, marking the end of a desalination demonstration program. The $2 million that remains will be applied to "basic" research in desalination. In what appears to be a pattern throughout the environmental sector of the budget, this reduction was offset by the creation in Interior of a $25-million contingency fund for energy R & D. Thus, a few selective increases appear to balance out a few selective cuts, leaving the overall funding picture essentially static.—R.G.

MILITARY

With an initial "post Vietnam" budget of $81.1 billion, the U.S. military establishment would have by far the largest peacetime budget ever, yet it is caught in an increasingly tight and troublesome fiscal situation. For the Pentagon the "peace dividend" comes largely in the shape of a struggle to meet huge payroll and retirement benefit costs, bear up under inflation, and, at the same time, modernize its forces by buying incredibly expensive new weapons—for instance, $19-million fighter aircraft (the F–14) and $1-billion submarines (the Trident).

In fiscal 1965, the last year before the massive U.S. involvement in Vietnam, the military budget was about $50 billion. By fiscal 1969, at the peak of the Vietnam war, the military budget—all of these figures include military assistance to foreign nations and defense-related spending of the Atomic Energy Commission—had increased by $31 billion to approximately its present size. Operational and force levels were of course much higher in fiscal 1969 than they are today. There were then 3.4 million uniformed personnel, some 1.2 million more than at present. Strategic forces then were at about the same strength as now except that today there are fewer B–52 bomber squadrons, but more missiles with multiple warheads. But conventional or "general purpose" forces—tactical air wings, attack and antisubmarine carriers, airlift and sealift forces, and so on—were all at higher levels 5 years ago.

Where, then, did the peace dividend go? There has been no decline in the military budget primarily because of two legacies of the Vietnam war—inflation and the "all-volunteer forces," with its extraordinary high payroll costs. Economists seem to agree that the wartime inflation, which zoomed upward to an annual rate of more than 6 percent in 1970 before it was finally checked, resulted from the government's failure to raise taxes promptly and avoid a deficit when military costs began escalating in 1965 and 1966. The price index for defense as well as other federal purchases is now up by more than a third of what it was in fiscal 1964. The idea of an all-volunteer army gained political currency as the military draft became one of the detested symbols of an unpopular war. Accordingly, the goal of phasing out the draft—this has just now been completed—and creating an all-volunteer force was adopted by Rich-

ard M. Nixon in his 1968 campaign platform as a way to defuse the war at home.

To attract the volunteers, the Administration and Congress set about to increase military pay and did so with a vengeance. In 1964 the basic pay of an Army recruit was $78 a month; by 1972 it had rise to $332 a month. A sergeant's basic pay during this period went from $205 per month to $467, a colonel's from $985 to $2057. The budgetary impact of the higher pay scales and allowances for active duty personnel, plus increasing benefits for retired personnel, was to be enormous. In fiscal 1968 the budget (actual outlays) for the Department of Defense was $78 billion, and, of that total, 42 percent was allocated to manpower costs, 42 percent to "investment" (weapons procurement, research and development, and construction of facilities), and the remainder to costs of operations. Under the fiscal 1974 budget, however, the share of manpower has risen to 56 percent and the share for investment has declined to 29 percent. The one encouraging sign Pentagon officials have noted is that over the past year these percentages have held steady, with no further erosion in the investment category.

There is expected to be one modest peace dividend, part of which can be applied to modernization of forces. Preparation of the new budget was completed prior to the announcement of the peace agreement, but, by taking into account the continuing "Vietnamization" of the conflict, the budget does show a decline of $3.3 billion from the $6.2 billion to be spent during the current fiscal year in Southeast Asia. Whether there will be any additional "dividend" from the Vietnam peace is not yet known. Investment in weapons procurement, R & D, and construction of facilities will rise by about $1.3 billion. Allocations for basic research will go up by about $29.6 million, remaining at about $0.5 billion overall, and the total for all R & D increases from $6.5 billion to $7.4 billion (this stated in terms of "obligational" authority rather than of outlays).

Development of three new strategic weapons would be continued under the new budget—the so-called antiballistic missile "Site Defense," the B–1 bomber, and the Trident ballistic missile submarine. The Site Defense is designed to defend U.S. Minuteman missile sites. The Strategic Arms Limitation Talks (SALT) agreement bans any deployment of such a system beyond the existing installation at Grand Forks, North Dakota, and one for the protection of Washington, D.C. (which the Administration apparently now has no intention of building). Further development of the system is referred to in the budget document as a "hedge" against possible abrogation by the Soviets of the SALT agreement.

The Air Force hopes to buy 244 B–1 bombers over the next 10 years, at a cost of about $11 billion. The Navy intends to build 10 Trident submarines, at a cost of $13.5 billion (unofficially, there have been reports that the Navy hopes to build perhaps as many as 15 or more of these submarines). The need for Trident and the B–1 has been disputed by the Federation of American Scientists, which includes among its leaders such strategic arms experts as Herbert F. York (former director of Defense Research and Engineering), and by the Center for Defense Information, a new group headed by a recently retired rear admiral who has held important sea commands. The 1974 budget document indicates that the real purpose of moves to deploy new systems such as Trident and the B–1 is to "provide the Soviet Union an incentive for meaningful negotiations" in the new round of SALT talks. This, in a word, is the "bargaining chip" argument.

As the enormous fiscal problems manifest in the proposed budget make clear, however, there is reason to question just how many new bargaining chips the United States can afford to put on the table. A projection for defense spending in fiscal 1975—still another year ahead—shows outlays rising to $85.5 billion or $4.4 billion over the outlays now proposed for 1974, with military pay and retirement benefits again the major factor in the increase. It will be ironic indeed if the "all-volunteer force" that has emerged as a legacy of Vietnam should turn out to be a built-in inducement to arms limitation.—LUTHER J. CARTER.

SPACE

The space program seems to be alive and well as it makes the transition into the post-Apollo era, despite recent fears at the National Aeronautics and Space Administration (NASA) that its activities might be cut back severely. NASA's fiscal 1974 budget of $3.1 billion is little more than half what its budget was at the peak of preparations for Apollo but is about the same size as this year's. Commenting on the new budget, NASA administrator James C. Fletcher pronounced the space program to be "balanced" and "surprisingly strong." Manned spaceflight activities will remain important, but with the unmanned and scientific activities claiming a larger share of the NASA budget than they have in the past. The experimental space station Skylab will be launched on schedule, in May of this year; the Apollo-Soyuz Test Project, the joint flight with the Soviets, will take place in the summer of 1975; and the first orbital launch of the space shuttle—the reusable vehicle intended to cut the cost of carrying astronauts and heavy payloads into space—is to come in 1979.

In the field of unmanned planetary exploration, a Pioneer mission to Juniper and a Mariner Venus-Mercury mission will be launched later this year, to be followed by a Mariner Jupiter-Saturn mission in 1977. The Viking orbiter/lander mission to Mars is set for 1975–76. Other activites will include the launching of the Orbiting Solar Observatory in 1974, of two German-American solar probes in 1974 and 1976, and of a number of technological "applications" satellites (for earth resources reconnaissance, weather studies, and the like) between now and the end of 197. With the foregoing manned and unmanned space activities, together with a modest program in aeronautics, NASA would have about 25,000 civil service employees throughout the 1970's and support about 100,000 contractor personnel (the later figure going somewhat higher at the peak of work on the space shuttle).

A clear indication that NASA's major programs were safe (certainly for the moment) came several weeks ago when the agency, faced with White House demands to do its part toward holding total federal spending for fiscal 1973 to a $250-billion ceiling, escaped with a cut of only $179 million. To make the cut, development of the shuttle was ordered slowed by somewhat less than a year off of its original schedule and the launch dates for two of the technological applications satellites was ordered delayed. In addition, there were decisions to suspend the High Energy Astronomy Observatory project (pending redesign of HEAO in a cheaper configuration), to phase out the communications satellites project (letting industry take over), and to terminate long-term projects for development of nuclear propulsion and large-scale nuclear power sources.

Should there ever come a decision to kill or indefinitely postpone the space shuttle, the agency's status may slip to that of an inconspicuous scientific and technological agency quietly doing interesting but not very exciting things. The shuttle is in fact critical to NASA's future, as that future is now envisioned. During this decade as much as a third of the agency's civil service personnel and up to one half or more of its contractor personnel will at times be working on this project. And, for the long term, once the shuttle becomes operational—at a total cost of at least $6.5 billion—an ambitious program of flights will have to be carried out to justify having built it. In terms of cost-effectiveness, the shuttle does not start breaking even unless at least 30 heavy scientific, military, or other payloads are launched annually over a 12-year period.

NASA officials probably are not going to be able to rest easy about the shuttle until a few billion dollars have been spent on it. Not more than about $775 million will have been spent by the close of fiscal 1974—little enough that the Administration might be tempted to cancel the project should severe budgetary difficulties again arise.

Yet NASA officials seem confident that the shuttle will be built, and there perhaps is little reason to believe otherwise. President Nixon has supported the project—although his new budget message contained no mention of the space program whatever—and, in Congress, it has survived handily all past attempts to kill it. The fact that the project helps sustain an aerospace industry that has suffered grieviously from layoffs is a point lost on no one. And, then too, NASA has going for it the fact that, both in Apollo and in the unmanned programs, it has generally met its goals and stayed within its budget.—L.J.C.

SUPERSONIC TECHNOLOGY

Ever since that day two years ago when the White House lost, by a close vote in the Senate, the battle to keep the supersonic transport alive, there has been speculation that President Nixon would ultimately seek to revive the project. The evidence now is that the President does indeed look to a possible revival of the SST, but not until later in the 1970's. The new NASA budget contains $28 million—more than twice as much as last year's budget—for research and development on supersonic technology. The work will focus on problems of noise, pollution, and efficiency of configuration.—L.J.C.

ELITE GRADUATE SCHOOLS ARE IN TROUBLE

(By Andrew Barnes)

America's elite graduate universities, the top dozen or so that produce a quarter of the Ph.D's each year, are in trouble. Enrollments are off, sharply at some schools, and all face financial trouble.

"The graduate education enterprise is being torn apart. It's a goddamn disaster," says the dean of the University of California at Berkeley, Sanford Elberg. He will lose funds for 900 of his 8,900 graduate students next year, "and that's just the tip of the iceberg."

Harvard expects to be able to admit 550 new students in its graduate programs next fall, down from 900 a few years ago. Students angered at lower stipends, have formed a union.

The number of people studying for doctorate degrees across the country continues to inch up despite the well-publicized glut on the job market, but the most prestigious universities complain they are being cut off from the federal money.

Some deans report the best students have already begun to branch out beyond the traditional inner circle of graduate schools, searching for more money.

The prestige schools were the big gainers when federal money started pouring into advanced education after Sputnik in the early 1960's, and they are the big losers in the current pullback.

And they have fewer jobs to offer as teachers of undergraduates, the traditional mainstay for graduate students when the money gets tight. Because they have focused on the most advanced studies, they simply have fewer undergraduates.

Gone is a whole range of federal programs supporting the brightest students:

National Aeronautics and Space Administration fellowships have disappeared with cutback in the space program. The National Science Foundation is supporting 1,450 stud-

ents, down from 7,800 in 1968. Office of Education's support for the training of college teachers has dropped from $47 million to $3 million since 1970.

All were programs for the most able graduates, who chose to take their fellowships to the best universities.

The coming fiscal year budget calls for a drastic cut in health-related graduate studies, and elimination of language and area studies.

George Owen, dean of the graduate school of arts and sciences at Johns Hopkins, sees the withdrawal of federal money in such a way that it hits the top universities hardest as "meddling with the interests of the academic community."

PROPOSAL AT HEW

"I think it's a general anti-intellectualism," says Owen. "A demonstration of power. It's saying to us 'Behave, look what we can do.' It has a capricious aspect which is unforgivable."

The charge is denied by Charles B. Saunders, an official at the Department of Health, Education, and Welfare, who ascribes the difficulties that may be caused by changes in federal programs to the fact that "the federal government does not have a national policy for graduate education and it never has."

HEW has before it a proposal from a committee headed by Frank Newman of Stanford University that it give money to graduate students and let them spend it wherever they would like, but Saunders said the study has not yet been given serious consideration.

Meanwhile, in the words of Berkley's Elberg, "we are using up all of our reserves, to pour into the breach."

"We're not going to be able to recruit the finest (students) in the nation," he fears. and with less and less financial support to offer, the question is, "Will they come, if admitted?"

Elbert sees the impending dissolution of departments. "It's a question of how long they want us to remain a great national resource."

WORK VULNERABLE

At the University of Wisconsin, which granted more doctorate degrees in 1970–71 (915) than any other university, Dean Robert M. Bock sees "very costly dislocations" coming. Graduate enrollment is down 1,000 since 1968, and will continue to fall, because the way to pay for the programs "simply is not identified."

At the University of Illinois, acting dean George Russell sees the work "on the forefronts of knowledge" most vulnerable. Graduate enrollment has been cut back 20 per cent. If the enrollment of 8,000 had to be cut back to 4,000, Russell says he could do it intelligently, but that programs respond badly to the current "instability."

"There are certain things that worry me," Russell says, about the way federal contracts seem to be drawn so as to stifle publication. If that happens "then we're in real trouble." An attack on academic freedom would be "just as bad as the attack on free press."

The University of Michigan, another of the public giants usually included among the top ranks, Dean Donald E. Stokes complains that programs being cut now are ones that were instituted to meet national needs. Stokes talks about the "heated knife" of federal cutbacks.

"We are just going to have to withdraw support from students and terminate programs," Stokes says.

Among the private universities, the complaints are, if anything, more vociferous.

FURTHER CUTBACK

At Massachusetts Institute of Technology, Provost Paul Gray says the federal government supported 800 to 900 students three years ago, 400 now, 250 next year and the decline is expected to continue. Students are switching to programs at less experienced universities because they can get teaching jobs.

Yale University's Dean Donald W. Taylor last week warned all graduate departments of a further cutback in the size of the graduate school next year, with an entering class of 425, well below the minimum of 500 he has written of in the past as forming a critical mass necessary to support specialized studies. "I see no reason for optimism at this point."

At the University of Chicago, Provost John T. Wilson reports enrollment stable despite sharp drops in federal graduate support. Chicago has concentrated on making loan money available as a substitute for grants. This may not work so well, Wilson says, for students who have already incurred many thousands of dollars of debt to pay for their undergraduate educations.

Princeton has seen a small cut in graduate enrollment, and a larger cut in the number supported by outside funds. "Students will be much less well supported," says Dean Charles Packard, and may decide not to come.

Harvard's reduction from 3,000 to 2,000 in graduate enrollment has meant "a lot of smaller, more specialized areas have had to be cut back," according to Richard Kraus, assistant dean.

As he was talking on the telephone last week, Kraus opened an envelope, containing only a torn piece of paper with a message, evidently from a disappointed scholar: "You should be ashamed of yourself."

QUALITY THREATENED

"Very high expectations are being eroded," commented Kraus, whose job is to parcel out the available money. "The pain is felt in extreme measure by the people who are here."

The Harvard Graduate Students Union argues that Harvard should spend more of the income of its $1.34 billion endowment to support graduate studies, but the university has so far disagreed.

Overall, what is happening to America's top graduate programs is seen by the Newman report on graduate education as:

"A shift in enrollment of Ph.D candidates from institutions of acknowledged quality to new institutions, giving rise to a threat to the overall quality of graduate training for scholarly research."

A central thrust of the Newman report is the encouragement of change among the 325 institutions which award doctorate degrees. This, it argues, can best be done with three new programs.

One would be direct grants to students, who would "vote with their feet," choosing the programs they believe to be best and being able to take their financial support with them.

A second would expand the federal role in making work and loan programs more available.

Third would be grants from the government to encourage promising innovations at colleges.

But this may be a long time coming, if it comes at all, and meanwhile the slogan of the Harvard graduate students remain "You can't eat prestige."

The PRESIDING OFFICER. Is there further morning business?

Mr. HUMPHREY. 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.

CONSULAR CONVENTION WITH POLAND (EX. U, 92D CONG, 2D SESS.); CONSULAR CONVENTION WITH RUMANIA (EX. V, 92D CONG., 2D SESS.); CONSULAR CONVENTION WITH HUNGARY (EX. W, 92D CONG., 2D SESS.); EXCHANGE OF NOTES WITH ETHIOPIA CONCERNING THE ADMINISTRATION OF JUSTICE (EX. B, 93D CONG., 1ST SESS.); AND CONVENTION WITH JAPAN FOR THE PROTECTION OF BIRDS AND THEIR ENVIRONMENT (EX. R, 92D CONG., 2D SESS.)

Mr. ROBERT C. BYRD. Mr. President, as in executive session, on tomorrow, the Senate will vote on the following treaties and conventions:

First. A consular convention with Poland.

Second. A consular convention with Rumania.

Third. A consular convention with Hungary.

Fourth. A treaty involving an exchange of notes with Ethiopia concerning the administration of justice.

Fifth. A convention with Japan for the protection of birds and their environment.

I shall now read extracts from the committee reports with respect to each of the foregoing treaties and conventions.

As to the consular conventions with Poland, Rumania, and Hungary, the provisions contained in these conventions follow the pattern of bilateral consular conventions in force with a number of countries. They deal with such matters as the establishment of consulates in the countries involved, the inviolability of land and buildings used for consular purposes, tax exemptions, and notification to the consulate when a national of the United States is being detained by authorities in Hungary, Poland, or Rumania.

Set forth below are excerpts from Secretary Rogers' letter of submittal on each of the pending conventions:

POLAND

I believe that the signing of this Convention testifies to the welcome improvement in our relations with Poland which has been taking place during the past year. The Convention formalizes the consular rights and privileges agreed upon by representatives of the two countries as a result of negotiations begun in 1964 and pursued intermittently since then. Like bilateral consular conventions already in force with numerous countries, it guarantees early notification of detention of a country's nationals and access thereto; describes consular functions and responsibilities in such fields as the issuance of visas and passports and the performance of notarial services; and provides for the inviolability of consular communications, documents, and archives, and for the immunity of consular personnel with regard to legal proceedings in the host country.

HUNGARY

I believe that this Convention will make possible improved consular services in both countries. It will afford American citizens in Hungary a fuller degree of consular protection than existed previously, particularly by its guarantee of quick and unhindered communication between a citizen and his consul and prompt notification to the consul of any detention or other limitation of the freedom of one of his countrymen.

RUMANIA

As a result of this Convention, American and Rumanian consuls will be better able to help their fellow citizens in numerous ways. Improved consular services will be possible in both countries. These include issuance of passports and visas, performance of notarial services, and representation of the interests of nationals in estate matters.

More importantly, the convention assures that consuls whose nationals are detained or whose personal freedom is limited will be notified promptly—in no event more than 2 days—48 hours—after detention—and will have the right to visit and communicate with such nationals. Visits may take place as soon as possible, and may not be refused after 4 days—96 hours—from the date of detention.

DATE OF ENTRY INTO FORCE

The conventions with Poland, Rumania, and Hungary will enter into force 30 days after instruments of ratification are exchanged. According to the Department of State, all three of the countries involved have completed their ratification processes.

COMMITTEE ACTION AND RECOMMENDATION

The Committee on Foreign Relations held a public hearing on the conventions with Poland, Rumania, and Hungary on March 6, 1973, at which time Mr. K. E. Malmborg, Assistant Legal Adviser for Management and Consular Affairs, Department of State, testified in support of the conventions.

The committee considered the consular conventions in an executive session held on March 7, 1973, and, by voice vote, ordered them reported with the recommendation that the Senate advise and consent to their ratification.

As to the exchange of notes with Ethiopia concerning the administration of justice, the purpose of this exchange of notes is to terminate the notes exchanged on September 7, 1951, when the treaty of amity and economic relations between the United States and Ethiopia was signed. The notes which it is proposed be terminated set forth commitments on the part of the Ethiopian Government.

According to the executive branch, the notes have never been invoked during the 21½ years they have been in force and, in view of the unilateral and unusual character of the commitments involved, it is considered appropriate and highly desirable that the notes be terminated. The termination would become effective on the date the United States sends the Ethiopian Government a note informing Ethiopia of the U.S. intention to terminate.

COMMITTEE ACTION AND RECOMMENDATION

The Committee on Foreign Relations held a public hearing on the exchange of notes with Ethiopia on March 6, 1973. At that time Byron Keith Huffman, Jr., Assistant Legal Adviser for African Affairs, Department of State, testified on behalf of the administration. His prepared statement is reprinted below.

During an executive session held on March 7, 1973, by a voice vote, the committee ordered the pending exchange of notes reported favorably with the recommendation that the Senate give its advice and consent to ratification thereof.

As to the convention with Japan for the protection of birds and their environment, the purpose of the convention is: (A) to provide for the protection of species of birds which are common to the United States and Japan or which migrate between them; and (B) to provide that each country will develop programs to preserve and enhance the environment of the birds protected by this agreement.

BACKGROUND

The convention marks the culmination of several years of international conservation effort. Its origins date back to the 12th World Meeting of the International Council for Bird Preservation held in Tokyo in 1960. At those meetings, a Japanese-sponsored resolution, proposing that countries of the Pan-Pacific area conclude a convention for the protection of migratory birds, was unanimously adopted.

Following these meetings, studies were undertaken by the Department of Interior, the Smithsonian Institution and their Japanese counterparts. It was determined that approximately 189 species of birds should be protected by such an agreement.

In October 1969, delegates from the United States and Japan met in Washington and negotiated a draft convension. The current text is substantially the same as that 1969 draft.

The convention was signed in Tokyo on March 4, 1972, and was submitted to the Senate on August 18, 1972.

PROVISIONS OF THE AGREEMENT

The convention consists of a short preamble and nine articles followed by an annex which lists the 189 different species of birds protected by the agreement.

The primary objective of the convention is found in article III, which prohibits the taking of all migratory birds and their eggs listed in the convention's annex. Articles IIb and IIc provide for appropriate review and amendment of this annex in order to keep it current with scientific knowledge.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Convention between the Government of the United States of America and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment, on March 6, 1973. At that time Ambassador Donald L. McKernan, Special Assistant to the Secretary for Fisheries and Wildlife and Coordinator of Ocean Affairs of the Department of State, testified in favor of the convention.

On March 14, 1973, the committee met in executive session and, by voice vote, ordered the convention reported favorably to the Senate for advice and consent to ratification.

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

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

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. What is the pending business?

The PRESIDING OFFICER. The Senate is in a period for the transaction of routine morning business.

Mr. JAVITS. I thank the Chair, and ask to be recognized as within that period.

The PRESIDING OFFICER. The Senator from New York is recognized.

DR. BURNS AND INTEREST RATE BEHAVIOR

Mr. JAVITS. Mr. President, the behavior of interest rates during the past few weeks is a good example of the difficulty we shall have during the critical months ahead as we approach the top of the business cycle.

First and foremost I would like to commend the Federal Reserve Chairman, Dr. Arthur Burns, who also serves as the Chairman of the Committee on Interest and Dividends, for charting a secure course through the precarious issue of keeping interest rates in check, while continuing an appropriate monetary policy of moderate monetary expansion. He is just now in the way of making an extraordinary contribution to interest rate stability.

What we have read in the papers is that interest rates have gone up. This rise, incidentally, had been foreseen by virtually all economic analysts, for it is clear that with our economy under a full head of steam, the demand for credit is now running head-on with the need to keep the economy from going through the roof.

But now we have a change and the structure of interest rates in the financial markets is beginning to demonstrate the effect of Dr. Burns' Committee on Interest and Dividends. For example, the commercial paper rate, which consistently runs below the prime rate, was quoted today at 6⅝ percent to 7⅜ percent, which is substantially higher than the 6½-percent prime rate which is being posted by most major banks. As we have read, that 6½-percent rate is the direct result of Dr. Burns having convinced a number of major banks that they should go down from a 6¾-percent prime rate

level, but it is pretty clear that even the higher 7⅜-percent level is below what the prime rate would be if free market conditions were allowed to prevail.

It would be politically tempting to advocate hard controls on interest rates, but the current experience shows how difficult and dangerous this could be. For the difficulty is that the money markets are auction markets, where the law of supply and demand reigns virtually supreme; controls simply do not apply to auction markets. The danger of imposing hard controls is that controlled rates would impose huge distortions in the credit markets, shifting their activity and much heavier competition for funds into the low-interest rate sectors. We have already seen this happen with regard to the prime, which has attracted a disproportionate amount of borrowing out of commercial paper and into the banks themselves.

Also, when we are dealing with money, we are dealing with a subtle situation, not just in the local market but in the world market, which can be withheld without any great cost to the withholder but is terribly disruptive to bear.

What is developing from this experience, as described in the Wall Street Journal this morning, is an initiative by Dr. Burns to find ways in which increased pressure on interest rates will still keep debt costs for borrowers of moderate means down, while also keeping adequate flows of credit for those firms with access to national money markets. Here Dr. Burns is breaking new ground, and the complexities—both political and economic—of his task are enormous. The goal, which I believe to be in his grasp, is an interest rate structure where mortgage, consumer, and other rates which apply to the man in the street will not feel the full heat of rising interest rates. This is as much as we should expect from an economy which must at all times maintain the delicate balance between public policy and private freedom. Dr. Burns deserves great credit for maintaining this balance as do those banks that have shown a patriotic spirit of cooperation during this difficult time; I believe that this approach to interest rate "control" will prove to be the most equitable and effective, and at any rate, far less injurious to the economy than the direct controls which have been proposed by some.

I ask unanimous consent that an article about this situation in today's Wall Street Journal be placed in the RECORD.

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

[From the Wall Street Journal, Mar. 26, 1973]

ADMINISTRATION WANTS TO FREE PRIME RATE OF CONTROLS; URGES TWO-TIERED SYSTEM; SOME BANKS ROLL BACK BOOSTS

(By Edward P. Foldessy and James P. Gannon)

Although publicly chiding banks for boosting their minimum lending charges on corporate loans, the Nixon administration privately told bankers it wants to free the prime rate entirely from the control of the Committee on Interest and Dividends.

Despite the private disclosure, several banks bowed to the public criticism and partially rolled back their rate increases.

The administration's plan to decontrol the prime rate was detailed last Thursday at a meeting with banks that earlier had boosted their base interest rates to 6¾% from 6¼%. The banks ostensively were summoned to the meeting to "justify" their actions.

But informed sources said the discussions were "thoroughly political" with very little emphasis on the financial or economic side. The bankers were "severely warned" the sources stated, against making any public disclosure contradicting the committee's official statement after the meeting that the half-point increase in the prime rate "wasn't justified at this time.

Over the weekend, Arthur F. Burns, committee chairman, continued to press his public position. The committee summoned to meetings today three other banks that Friday announced increases to 6¾% in their prime rates: Chase Manhattan Bank, Chemical Bank and First National Bank of Chicago.

TELEPHONE CALLS TO BANKS

The action was followed up Saturday in telephone calls by Mr. Burns to banks posting 6¾% minimum rates. As a result of the calls, at least some banks, including Chemical Bank and First Pennsylvania Banking & Trust Co., Philadelphia, trimmed their rates to 6½%.

Chase Manhattan also lowered its prime rate to 6½% after its chairman, David Rockefeller, met with Mr. Burns in Washington Saturday afternoon. Mr. Rockefeller yesterday said Chase representatives will still meet with the CID staff today to present additional data. A spokesman for Chemical Bank, however, said its meeting was called off.

In the official statement last Thursday, Mr. Burns, who also is chairman of the Federal Reserve Board, suggested the banking industry adopt a two-tiered system for pricing corporate loans. Under such a dual system, large corporations that have access to national money and capital markets would receive one prime lending rate, while a second would apply to small businesses and "special moderation" would be observed.

On the question of the 6¾% prime rate, the statement went on: "It was the present judgment of the committee that, although costs of interest-sensitive funds to banks had risen considerably, an increase in the prime lending rate as large as one-half percentage point . . . wasn't justified at this time" on the basis of criteria the committee has previously set.

But according to sources at the meeting, Mr. Burns conceded the question of the prime rate was a "monkey on the back of the committee." That's "almost a direct quote," said one source. The committee chairman further told bankers that he'd rather prefer to see the prime rate itself treated as a money market rate and "outside the concern of the CID," the source related.

The interest committee is the watchdog group for so-called administered rates and hasn't any responsibility for open-market rates that fluctuate freely in response to supply and demand.

Another source said the CID isn't "particularly concerned with what General Motors has to pay. They're mainly worried about the corner drugstore."

UNHAPPY IN DUAL ROLE

It has been widely known in Washington that Mr. Burns has been unhappy in his dual role as chairman of both the CID and the Reserve Board. On one hand, the CID is obliged to keep the lid on interest rates. The Federal Reserve, however, for domestic and international considerations has had to foster higher market rates in an attempt to contain the nation's credit expansion.

By putting a lid on the prime rate, bankers have charged, the CID has distorted money flows and has made the Federal Reserve's monetary tasks more difficult.

Thus, setting the prime rate free, the Federal Reserve would have more latitude in carrying out credit policy.

But for political reasons the interest committee has had to pressure banks to moderate increases in the prime rate, analysts said. They noted the House Banking Committee starts hearings today on extending the President's wage-price authority for one year. And some administration critics have been pushing proposals to freeze all prices and interest rates for 60 days at their March 16 level.

If the CID didn't maintain the stern public position it has had on the prime rate, the analysts reason, it would hinder the administration's efforts at putting through a simple extension of the wage-price authority, unencumbered by mandatory freezes.

DOESN'T HAVE MASTER PLAN

According to bankers, Mr. Burns' dual-rate proposal would be the key to setting the national prime rate free. But the CID doesn't have a master plan to determine how to set up or administer the lower tier rate structure for small business. At the Thursday meeting, Mr. Burns told bankers he hadn't even had time to think of a definition of small business and indicated he might seek help from the Small Business Administration on that score.

Basically, the CID will rely on banks to come up with a viable plan to handle rates on loans to small businesses, one source said. "It isn't going to be worked out here," he stated.

Whatever the case, the maneuvering through the weekend left the banking industry widely split on the prime rate with some banks posting 6¼%, others at 6½% and still others at 6¾%.

The scurrying was initiated last Monday by Manufacturers Hanover Trust Co., New York, when it boosted its prime rate to 6¾% from 6¼%. It was joined by other banks including First National Bank of Boston; Continental Illinois National Bank & Trust Co., Chicago; Marine Midland Bank-New York; Republic National Bank of Dallas; Franklin National Bank of New York, and First Pennsylvania Banking.

By last night, all those banks, except Manufacturers Hanover, had trimmed their rates back to 6½%.

A number of other banks used the opportunity to raise their prime rates to 6½% from 6¼%. These included Wells Fargo Bank, San Francisco; Philadelphia National Bank; Chicago's Harris Trust & Savings Bank, and Commerce Bank of Kansas City. These increases brought no public response from Mr. Burns or other members of the interest committee.

At least one bank, San Francisco's Crocker Bank, over the weekend went to a 6¾% rate despite CID pressure that was placed on other banks.

Manufacturers Hanover said it would leave its prime rate at the 6¾% level announced last Monday. It said it believed the rate was within the guidelines of the interest and dividends committee, and would wait for the final assessment of the committee before taking any action.

Almost all of the banks that made any announcements Friday or over the weekend praised the idea of a dual prime rate and a number of banks moved to implement a lower-tier structure for small businesses.

Among these was Chase Manhattan, which Friday announced a "graduated" 6¾% prime before backing off to a straight 6½% rate yesterday. Under the graduated system, Chase said interest on loans at or tied to the prime rate, up to a total of $500,000 to any one borrower, would remain unchanged, linked to the 6¼% prime. All prime rate borrowings over that amount were to have earned a 6¾% rate.

"All loans tied to the prime rate will be covered by the new arrangements," Chase had said Friday. "The bank's prime rate will

be applied on a graduated basis in accordance with the amount outstanding to any single borrower."

In announcing yesterday the graduated system would be "temporarily" suspended, Chase said Mr. Burns "expressed considerable interest in the basic approach" the bank had taken. It added, however: "Mr. Burns said he felt the committee needed more time to study the various implications of the plan before making a definitive judgment."

First Pennsylvania took a different tack Friday. It said rates on consumer loans and residential mortgages would be frozen and that loan rates to small businesses that aren't contractually tied to the prime rate wouldn't be changed from pre-March 20 levels for at least a month.

The bank didn't make any mention of the freeze, however, after it rolled its prime rate back to 6½% Saturday.

In an interview, James F. Bodine, president of First Pennsylvania, said Mr. Burns called John Bunting, chairman of the parent company, "and asked Mr. Bunting to accommodate him (Mr. Burns). He fears that unless we roll back, every bank in the country would go to 6¾% (today). He asked us to stand fast temporarily, which was more or less defined as a period of about two weeks."

Asked if First Pennsylvania was likely to increase its prime rate after the cooling-off period, Mr. Bodine answered "sure." He added: "I believe the CID now concedes the point that we made the first time around—that the prime has to move with the money-market rates. Conditions could change in two weeks, but the environment of our discussions in the past few days has been such that we don't think it would be difficult to move to 6¾% at that time. It probably really ought to be 7% or 7¼%, but I don't think we'll get that level in two weeks time."

Franklin National, despite its rollback to 6½%, said it regarded 6¾% as justified. It added that it hoped there would be speedy clarification and implementation of the two-tier proposal. But, Franklin stated, it planned to reassess its position in the next week or two.

ORDER FOR SENATOR STEVENS TO BE RECOGNIZED ON WEDNESDAY, MARCH 28

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

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10 a.m. Mr. FANNIN will be recognized for not to exceed 15 minutes, after which Mr. GRIFFIN will be recognized for not to exceed 15 minutes.

At 10:30 a.m., the first of five rollcall votes on treaties will occur—the treaties are not controversial and were reported unanimously from the Committee on Foreign Relations. The first yea-and-nay vote will require the usual 15 minutes, but the four successive following rollcall votes will be limited to not more than 10 minutes each.

The Senate will then take up the omnibus health program extension bill. Yea-and-nay votes will occur, and it is hoped that final passage of the bill can be secured tomorow.

ADJOURNMENT TO 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 a.m. tomorrow.

The motion was agreed to; and, at 2:02 p.m., the Senate adjourned until tomorrow, Tuesday, March 27, 1973, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate March 26, 1973:

DEPARTMENT OF STATE

Phillip V. Sanchez, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Honduras.

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

The following-named persons to be members of the National Council on Educational Research for the terms indicated; new positions.

For a term of 1 year:
James S. Coleman, of Maryland.
Vincent J. McCoola, of Pennsylvania.
Vera M. Martinez, of California.
Carl H. Pforzheimer, Jr., of New York.
Wilson Riles, of California.
For a term of 2 years:
William O. Baker, of New Jersey.
T. H. Bell, of Utah.
Dominic J. Guzzetta, of Ohio.
Charles A. LeMaistre, of Texas.
W. Allen Wallis, of New York.
For a term of 3 years:
Patrick E. Haggerty, of Texas.
Ralph M. Besse, of Ohio.
John E. Corbally, Jr., of Illinois.
Ruth Hurd Minor, of New Jersey.
John C. Weaver, of Wisconsin.

IN THE AIR FORCE

The following officers for appointment in the Reserve of the Air Force to the grade indicated, under the provisions of chapters 35, 831, and 837, title 10, United States Code:

To be major general

Brig. Gen. Gordon L. Doolittle, [redacted] FG, Air National Guard.
Brig. Gen. Raymond L. George, [redacted] FG, Air National Guard.
Brig. Gen. George M. McWilliams, [redacted] FG, Air National Guard.
Brig. Gen. Robert S. Peterson, [redacted] FG, Air National Guard.

To be brigadier general

Col. John C. Campbell, Jr., [redacted] FG, Air National Guard.
Col. Winett A. Coomer, [redacted] FG, Air National Guard.
Col. William D. Flaskamp, [redacted] FG, Air National Guard.
Col. Leo C. Goodrich, [redacted] FG, Air National Guard.
Col. Cecil I. Grimes, [redacted] FG, Air National Guard.
Col. Ronald S. Huey, [redacted] FG, Air National Guard.
Col. Paul J. Hughes, [redacted] FG, Air National Guard.
Col. Grover J. Isbell, [redacted] FG, Air National Guard.
Col. Billy M. Jones, [redacted] FG, Air National Guard.
Col. Raymond A. Matera, [redacted] FG, Air National Guard.
Col. Patrick E. O'Grady, [redacted] FG, Air National Guard.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 26, 1973:

COMMODITY CREDIT CORPORATION

The following-named persons to be members of the Board of Directors of the Commodity Credit Corporation:

Robert W. Long, of California.
Clayton Yeutter, of Nebraska.

SELECTIVE SERVICE SYSTEM

Byron V. Pepitone, of Virginia, to be Director of Selective Service.

DEPARTMENT OF STATE

Marshall Green, of the District of Columbia, a Foreign Service Officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Australia.

William B. Macomber, Jr., of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Turkey.

V. John Krehbiel, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Finland.

Dr. Ruth Lewis Farkas, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Luxembourg.

U.S. INFORMATION AGENCY

Eugene Paul Kopp, of Virginia, to be Deputy Director of the U.S. Information Agency.

(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.)

IN THE AIR FORCE

The following officer to be placed on the retired list in the grade indicated under the provisions of section 8962, title 10 of the U.S. Air Force.

To be lieutenant general

Lt. Gen. James V. Edmundson, [redacted] FR (major general, Regular Air Force) U.S. Air Force.

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. William Joseph McCaffrey, [redacted] Army of the United States (major general, U.S. Army).

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Gilbert Hume Woodward, [redacted] Army of the United States (major general, U.S. Army).

IN THE NAVY

Vice Adm. James F. Calvert, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

IN THE MARINE CORPS

The following-named officer of the Marine Corps Reserve for temporary appointment to the grade of major general:

Louis Conti

The following-named officers of the Marine

Corps Reserve for temporary appointment to the grade of brigadier general:

Alan T. Wood
Hugh W. Hardy

The following-named officers of the Marine Corps for temporary appointment to the grade of major general:

Kenneth J. Houghton
Frank C. Lang
Robert D. Bohn
Edward J. Miller
James R. Jones
Charles D. Mize
Norman W. Gourley

The following-named officers of the Marine Corps for temporary appointment to the grade of brigadier general:

Nolan J. Beat
Edward A. Parnell
Thurman Owens
Edward B. Meyer
William J. White
Noah C. New
Harold L. Coffman
Maurice C. Ashley, Junior

IN THE AIR FORCE

Air Force nominations beginning Omar R. Adame, to be lieutenant colonel, and ending Thomas F. Lowry, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on February 15, 1973.

IN THE ARMY

Army nominations beginning Laverne H. Dahl, to be lieutenant colonel, Regular Army, and colonel, Army of the United States, and ending Michael A. Richardson, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on February 15, 1973.

Army nominations beginning Joseph V. Brady, to be colonel, and ending Alberto W. Tio, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on February 15, 1973.

Army nominations beginning Sara E. Baucom, to be captain, and ending Walter M. Zoller, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on March 12, 1973.

Army nominations beginning Richard L. Absher, to be lieutenant colonel, and ending Armie K. Gruenewald, to be captain, which nominations were received by the Senate and appeared in the Congressional Record on March 13, 1973.

IN THE DIPLOMATIC AND FOREIGN SERVICE

Diplomatic and Foreign Service nominations beginning Robert O. Blake, to be a career minister, and ending John E. Reinhardt, to be a career minister for information, and beginning John Eaves, Jr., to be a consular officer of the United States of America, and ending M. Patricia Wazer, to be a consular officer of the United States of America, which nomination list was received by the Senate and appeared in the Congressional Record on March 13, 1973.

HOUSE OF REPRESENTATIVES—*Monday, March 26, 1973*

The House met at 12 o'clock noon.

The Very Reverend Vasil Kendysh, Byelorussian Autocephalic Orthodox Church, Highland Park, N.J., offered the following prayer:

In the name of the Father, and the Son, and the Holy Spirit.

Almighty Father, Thou art our Creator, Teacher, and Judge. We beseech Thee, free us of all human weakness and guide us in every step of our life on a rightful path.

Eternal God, bless this august House of Representatives of the United States of America. Strengthen the minds of its Members with wisdom, fortify their hearts with love, and their deeds with courage and justice.

Merciful God, we pray Thee on this 55th anniversary of the Proclamation of Independence of Byelorussia, have mercy upon her people. Strengthen their faith in Thy infinite goodness, support them in their sufferings, restore their freedom.

O God, accept this humble prayer of ours, bless the United States of America. Bless Byelorussia and her oppressed people. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment, a bill of the House of the following title:

H.R. 3298. An act to restore the rural water and sewer grant program under the Consolidated Farm and Rural Development Act.

The message also announced that the Vice President, pursuant to section 123 (a), Public Law 91–605, appointed Mr. RANDOLPH to the Commission on Highway Beautification in lieu of Mr. BAYH.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C., *March 22, 1973.*

Hon. CARL ALBERT,
The Speaker, House of Representatives.

DEAR SIR: On this date I have been served a Summons and Complaint by the United States Marshal that was issued by the U.S. District Court for the District of Columbia. The summons and complaint are in connection with Robert L. Mauro v. W. Pat Jennings, Clerk of the U.S. House of Representatives, and Francis Valeo, Secretary of the U.S. Senate, Civil Action No. 447–73 (U.S.D.C. D. D.C.). I have also received this date by certified mail (987602) the Plaintiff's Application for a three judge court to hear this action.

The Summons requires an answer to the Complaint within sixty days after service.

It is my purpose to inform you that I intend to make arrangements for my defense as provided for the Officers of the U.S. House of Representatives under 2 U.S.C. 118.

The Summons, Complaint and Plaintiff's Application in question are herewith attached, and the matter is presented for such action as the House in its wisdom may see fit to take.

Sincerely,

W. PAT JENNINGS,
Clerk, House of Representatives.

SUMMONS

[U.S. District Court for the District of Columbia, Civil Action File No. 447–73]

(Robert L. Mauro, Plaintiff, *v.* W. Pat Jennings, Clerk of the U.S. House of Representatives; Francis R. Valeo, Secretary of the U.S. Senate, Defendants)

To the above named Defendant: W. Pat Jennings, Clerk of the U.S. House of Representatives.

You are hereby summoned and required to serve upon Robert L. Mauro, plaintiff, whose address is 20 Lippincott Avenue, Long Branch, N.J., an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY,
Clerk of Court.
MARY B. DEAVERS,
Deputy Clerk.

Date: March 7, 1973.

[U.S. District Court, District of Columbia, Civil No. —]

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

(Robert L. Mauro, Plaintiff, *v.* W. Pat Jennings, Clerk of the U.S. House of Representatives, and Francis R. Valeo, Secretary of the U.S. Senate, Defendants)

Plaintiff Robert L. Mauro files this complaint under the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201, and the Administrative Procedure Act, 5 U.S.C.A. Section 2201, stating that the bases for jurisdiction are that the matter in controversy arises under the Constitution and laws of the United States, diversity of citizenship exists, and the civil rights guaranteed to plaintiff under the Constitution and laws of the United States, particularly under Article XIV are being infringed.

Plaintiff petitions for a three judge court to hear the within complaint.

Plaintiff Robert L. Mauro, a citizen of the United States, and of the State of New Jersey, residing at 20 Lippincott Avenue, in the City of Long Branch, State of New Jersey, by way of complaint against the defendant W. Pat Jennings in his official capacity as Clerk of the U.S. House of Representatives, and whose office is at Room H–105, Capitol Building, Washington, District of Columbia, and the defendant Francis R. Valeo, in his official capacity as Secretary of the U.S. Senate, said defendant's office being in Room S–221, Capitol Building, Washington, District of Columbia, alleges that:

FIRST COUNT

1. Defendant W. Pat Jennings is the Clerk of the U.S. House of Representatives, and defendant Francis R. Valeo is the Secretary of the U.S. Senate.

2. Among the official duties of the aforesaid defendants are the receipt of official communications to the U.S. House of Representatives and the U.S. Senate, the defendant W. Pat Jennings having these duties in regard to the U.S. House of Representatives, and the defendant Francis R. Valeo having these duties in regard to the U.S. Senate. In addition, the defendants W. Pat Jennings and Francis R. Valeo, have among their duties the custody of said communications, and the reporting of same on the official calendars and journals of the U.S. House of Representatives and the U.S. Senate, respectively.

3. Among the official communications which the defendants W. Pat Jennings and Francis R. Valeo and their predecessors receive, keep or oversee the keeping of, and report to the bodies of which they are Clerk