of the California Desert and to provide for the immediate and future protection, development, and administration of such lands; to the Committee on Interior and Insular Affairs.

By Mr. RARICK (for himself, Mr. PARRIS, Mr. LOTT, and Mr. FLYNT):

H.R. 12256. A bill to amend title XI of the Social Security Act to repeal the recently added provision for the establishment of Professional Standards Review Organizations to review services covered under the medicare and medicaid programs; to the Committee on Ways and Means.

By Mr. ROYBAL (for himself, Mr. FORD, Ms. ABZUG, Mr. BADILLO, Mr. BROWN of California, Mrs. CHISHOLM, Ms. COLLINS of Illinois, Mr. DAVIS of South Carolina, Mr. DELLUMS, Mr. ECKHARDT, Mr. EDWARDS of California, Mr. FASCELL, Mr. FRASER, Mr. HARRINGTON, Mr. HELSTOSKI, Mr. LEGGETT, Mr. LEHMAN, Ms. MINK, Mr. MOAKLEY, Mr. MOLLOHAN, Mr. MOSS, Mr. RANGEL, Mr. REES, Mr. RIEGLE, and Mr. ROE):

H.R. 12257. A bill to provide for the establishment of National Office for Migrant and Seasonal Farmworkers within the Department of Health, Education, and Welfare, with responsibility for the coordinated administration of all of the programs of that Department serving migrant and seasonal farmworkers; to the Committee on Education and Labor.

By Mr. ROYBAL (for himself, Mr. FORD, Mr. ROONEY of Pennsylvania, Mr. ROY, Mr. SARBANES, Mr. SEBELIUS, Mr. STARK, Mr. THOMPSON of New Jersey, and Mr. WALDIE):

H.R. 12258. A bill to provide for the establishment of a National Office for Migrant and Seasonal Farmworkers within the Department of Health, Education, and Welfare, with responsibility for the coordinated administration of all of the programs of that Department serving migrant and seasonal farmworkers; to the Committee on Education and Labor.

By Mr. SCHERLE:

H.R. 12259. A bill to amend title XI of the Social Security Act to repeal the recently added provision for the establishment of Professional Standards Review Organizations to review services covered under the medicare and medicaid programs; to the Committee on Ways and Means.

By Mr. SHOUP:

H.R. 12260. A bill to provide for the suspension of annual assessment work on mining claims held by location in the United States; to the Committee on Interior and Insular Affairs.

By Mr. STEELE:

H.R. 12261. A bill to amend the Federal-Aid Highway Act of 1970; to the Committee on Public Works.

By Mr. STEIGER of Wisconsin:

H.R. 12262. A bill to amend the Internal Revenue Code of 1954 and title II of the Social Security Act to provide a full exception (through credit or refund) from the employees' tax under the Federal Insurance Contributions Act, and an equivalent reduction in the self employment tax, in the case of individuals who have attained age 65; to the Committee on Ways and Means.

By Mr. TEAGUE:

H.R. 12263. A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. THOMPSON of New Jersey:

H.R. 12264. A bill to grant a Federal charter to the Pearl Harbor Survivors Association, Inc., to the Committee on the Judiciary.

By Mr. VEYSEY:

H.R. 12265. A bill to organize and consolidate certain functions of the Federal Government in a new Energy Research and Development Administration for research development and demonstration in fuels and energy, making the United States self-sufficient in energy needs by 1980; to the Committee on Government Operations.

By Mr. WILLIAMS:

H.R. 12266. A bill to amend the Food Stamp Act of 1964 to provide food stamps to certain households which include an able-bodied adult person who is a member of a labor union and is refusing to work at a plant or site subject to strike or lockout; to the Committee on Agriculture.

By Mr. CHARLES H. WILSON of California:

H.R. 12267. A bill to prohibit discrimination by any party to a federally related mortgage transaction on the basis of sex or marital status, and to require all parties to any such transaction to submit appropriate reports thereon for public inspection; to the Committee on Banking and Currency.

H.R. 12268. A bill to carry out the recommendations of the Presidential Task Force on Women's Rights and Responsibilities, and for other purposes; to the Committee on the Judiciary.

By Mr. YATRON (for himself, Mr. STARK, Mr. PIKE, Mr. PREYER, Mr. GUDE, Mr. FRENZEL, Mr. CONLAN, Mr. MORGAN, Mr. FASCELL, Mr. MARTIN of North Carolina, Mr. ANDERSON of Illinois, Mr. MANN, Mr. STUDDS, Mr. CHARLES WILSON of Texas, Mr. HELSTOSKI, Mr. HAMILTON, Mr. GAYDOS, Mr. DENT, Mr. FORD, Mr. BUTLER, Mr. HENDERSON, Mr. THOMSON of Wisconsin, Mr. SARBANES, Mr. BELL, and Mr. FOLEY):

H.R. 12269. A bill to direct the Comptroller General of the United States to conduct a study of the burden of reporting requirements of Federal regulatory programs on independent business establishments, and for other purposes; to the Committee on Government Operations.

By Mr. RHODES:

H.J. Res. 876. Joint resolution authorizing the Secretary of the Army to receive for instruction at the United States Military Academy one citizen of the Kingdom of Laos; to the Committee on Armed Services.

By Mr. SCHERLE:

H.J. Res. 877. Joint resolution proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. ICHORD (for himself, Mr. ASPIN, Mr. DENT, Mr. RANDALL, Mr. MATHIS of Georgia, Mr. BAUMAN, Mr. ROUSSELOT, Mr. DUNCAN, Mr. MARAZITI, Mr. FUQUA, Mr. PEPPER, Mr. LUJAN, Mr. SISK, Mr. ASHBROOK, Mr. DICKINSON, Mr. LOTT, Mr. BEVILL, Mr. BURKE of Massachusetts, Mr. FOUNTAIN, Mr. RUNNELS, Mr. KOCH, Mr. EDWARDS of California, Mr. DENHOLM, Mrs. BURKE of California, and Mr. YATRON):

H. Res. 782. Resolution declaring the sense of the House with respect to a prohibition of extension of credit by the Export-Import Bank of the United States; to the Committee on Banking and Currency.

By Mr. PERKINS (for himself and Mr. QUIE):

H. Res. 783. Resolution to provide funds for the expenses of the investigations and studies authorized by House Resolution 175; to the Committee on House Administration.

By Mr. ROUSSELOT:

H. Res. 784. Resolution declaring the sense of the House with respect to prohibition of extension of credit by the Export-Import Bank of the United States; to the Committee on Banking and Currency.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

334. By the SPEAKER: A memorial of the Legislature of the State of Oklahoma, relative to exempting Oklahoma from the provisions of the Emergency Daylight Saving Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

335. Also, memorial of the House of Representatives of the State of Oklahoma, relative to requiring able welfare recipients to meet certain work requirements; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. EILBERG:

H.R. 12270. A bill for the relief of Ho Thi Thu Nga; to the Committee on the Judiciary.

By Mr. MEZVINSKY:

H.R. 12271. A bill for the relief of Carmichael C. Peters; to the Committee on the Judiciary.

By Mr. STEELE:

H.R. 12272. A bill for the relief of Rafael Strochlitz Wurzel; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

385. The SPEAKER presented a petition of Estelle M. Kay, Cleveland, Ohio, relative to redress of grievances; to the Committee on the Judiciary.

SENATE—*Wednesday, January 23, 1974*

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

PRAYER

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

Eternal God, who art Truth, show us the truth about Thyself and ourselves. Teach us the truth about man, his nature and his destiny. Make known to us the truth for this Nation and for all mankind. Keep us from falsehood and from half-truths. Make us apostles of the whole truth that we may serve this Nation and advance Thy kingdom. And when we are uncertain, give us the humility to turn to Him who said "I am the Way, the Truth, and the Life."

In Thy holy name, we pray. Amen.

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 bills, in which it requested the concurrence of the Senate:

H.R. 6120. An act to permit the vessel *Manatra II* to be inspected, licensed, and operated as a passenger-carrying vessel, and for other purposes;

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H.R. 10309. An act to amend the act of June 13, 1933 (Public Law 73-40), concerning safety standards for boilers and pressure vessels, and for other purposes;

H.R. 11295. An act to amend the Anadromous Fish Conservation Act in order to extend the authorization for appropriations to carry out such act, and for other purposes;

H.R. 11537. An act to extend and expand the authority for carrying out conservation and rehabilitation programs on military reservations, and to authorize the implementation of such programs on certain public lands;

H.R. 11541. An act to amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the system and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses; and

H.R. 11809. An act to amend the act entitled "An act to establish a contiguous fishery zone beyond the territorial sea of the United States", approved October 14, 1966, to require that the method of straight baselines shall be employed for the purposes of determining the boundaries of such fishery zone, and for other purposes.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on Commerce:

H.R. 6120. An act to permit the vessel *Manatra II* to be inspected, licensed, and operated as a passenger-carrying vessel, and for other purposes;

H.R. 10309. An act to amend the act of June 13, 1933 (Public Law 73-40), concerning safety standards for boilers and pressure vessels, and for other purposes;

H.R. 11295. An act to amend the Anadromous Fish Conservation Act in order to extend the authorization for appropriations to carry out such act, and for other purposes;

H.R. 11537. An act to extend and expand the authority for carrying out conservation and rehabilitation programs on military reservations, and to authorize the implementation of such programs on certain public lands;

H.R. 11541. An act to amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the system and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses; and

H.R. 11809. An act to amend the act entitled "An act to establish a contiguous fishery zone beyond the territorial sea of the United States", approved October 14, 1966, to require that the method of straight baselines shall be employed for the purposes of determining the boundaries of such fishery zone, and for other purposes.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, January 22, 1974, be dispensed with.

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

ATTENDANCE OF SENATORS

Hon. DEWEY F. BARTLETT, a Senator from the State of Oklahoma, Hon. PAUL J. FANNIN, a Senator from the State of Arizona, and Hon. CLIFFORD P. HANSEN, a Senator from the State of Wyoming, attended the session of the Senate today.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 605 and 638.

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

AMENDMENT OF FLOOD CONTROL ACT OF 1938

The bill (S. 1961) to amend the Flood Control Act of 1938, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the part of the plan for flood control on the Mississippi River and tributaries authorized by the Flood Control Act of 1938, as amended, providing for the authorization of the Lone Rock Lake, Buffalo River, Arkansas, be and is hereby modified.

SEC. 2. The authorized plan for flood control and other purposes for the White River Basin, Missouri and Arkansas, as described in House Document Numbered 499, Eighty-third Congress, second session, is hereby modified by the deauthorization of the Lone Rock Lake, Buffalo River, Arkansas, in recognition of the designation of the Buffalo River as a national river by Public Law 92-237 and the environmental concern and values expressed by the people of the State and Nation concerning the preservation of the Buffalo River as a national stream.

MILITARY ASSISTANCE TO GREECE

The Senate proceeded to consider the bill (S. 2754) to prohibit all military assistance to Greece until it is determined that Greece is fulfilling its obligations under the North Atlantic Treaty, which had been reported from the Committee on Foreign Relations with amendments, on page 2, at the end of line 3, strike out "the law", and insert in lieu thereof "this or any other Act after the date of enactment of this Act".

On page 2, at the beginning of line 6, insert "after such date,".

On page 2, in line 11, after the period, insert:

If the President proposes any such military assistance, sales, credit sales, or guaranties, notice shall be given to the Speaker of the House of Representatives and the President of the Senate thirty days in advance thereof, stating that such military assistance, sales, credit sales, or guaranties are to be given, the terms thereof, and the overriding national interest which justifies it, notwithstanding any other provision of this Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress declares that it is the policy of the United States Government to provide military assistance and military sales, credit sales, and guaranties to or for the Government of Greece only when that Government fulfills its obligations under the North Atlantic Treaty, including both adherence to the political principles stated in the preamble to the treaty and the maintenance of its capability to perform common defense functions assigned under the current North Atlantic Treaty Organization defense plans. Therefore, no military assistance and no sales, credit sales, or guaranties shall be provided to or for the Government of Greece under this or any other Act after the date of enactment of this Act until the President (1) undertakes a comprehensive review, after such date, of United States policy toward Greece, (2) has made a full report with respect to such review to Congress, and (3) finds and reports to Congress that, as a result of such review, the Government of Greece is in full compliance with its political and military obligations under the North Atlantic Treaty. If the President proposes any such military assistance, sales, credit sales, or guaranties, notice shall be given to the Speaker of the House of Representatives and the President of the Senate thirty days in advance thereof, stating that such military assistance, sales, credit sales, or guaranties are to be given, the terms thereof, and the overriding national interest which justifies it, notwithstanding any other provision of this Act. The provisions of this section shall not apply to funds obligated prior to such date of enactment.

The amendments were agreed to.

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

Mr. MANSFIELD. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I send to the desk two resolutions, and ask that they be considered in sequence.

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

SENATE RESOLUTION 234—RELATING TO THE NUMBER OF MEMBERS OF CERTAIN SENATE COMMITTEES

The PRESIDENT pro tempore. The resolution submitted by the Senator from Montana (Mr. MANSFIELD) will be stated.

The assistant legislative clerk read as follows:

S. RES. 234

Resolved, That paragraph 2 of Rule XXV of the Standing Rules of the Senate is amended—

(1) by striking out of the item relating to Aeronautical and Space Sciences, the number "13" and inserting in lieu thereof "14";

(2) by striking out of the item relating to Banking, Housing, and Urban Affairs, the number "16" and inserting in lieu thereof "15";

(3) by striking out of the item relating to Government Operations, the number "16" and inserting in lieu thereof "15"; and

(4) by striking out of the item relating to Interior and Insular Affairs, the number "14" and inserting in lieu thereof "15".

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

There being no objection, the resolution was considered and agreed to.

SENATE RESOLUTION 235—RELATING TO THE COMMITTEE ASSIGNMENTS OF SENATORS METZENBAUM AND TAFT

The PRESIDENT pro tempore. The resolution submitted by the Senator from Pennsylvania (Mr. HUGH SCOTT) and the Senator from Montana (Mr. MANSFIELD) will be stated.

The assistant legislative clerk read as follows:

S. RES. 235

Resolved, That Mr. Metzenbaum of Ohio be, and he is hereby, assigned to service on the Committee on Aeronautical and Space Sciences and the Committee on Interior and Insular Affairs, to fill vacancies on those committees.

SEC. 2. Mr. Taft of Ohio be, and he is hereby, assigned to service on the Committee on Armed Services, to fill a vacancy on that Committee, and that he be relieved of his service on the Committee on Banking, Housing and Urban Affairs.

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

There being no objection, the resolution was considered and agreed to.

QUORUM CALL

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

The PRESIDING OFFICER (Mr. NUNN). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Does the Senator, acting as minority leader, desire to be heard on the time of the minority leader?

Mr. TAFT. Yes; I ask that I may be heard on the time of the minority leader.

The PRESIDING OFFICER. The Senator is recognized.

LEWIS L. STRAUSS

Mr. TAFT. Mr. President, I wish to note the passing of Lewis L. Strauss. I speak today not because of the great accomplishments of this man, although they are certainly worthy of recognition. Rather, I speak as a close personal friend who had the privilege of knowing Admiral Strauss and, at times, working with him in his various endeavors.

It is interesting to note, I think, that his public service goes back to the early days, when the United States had just come out of World War I, and when, as a very young man, he became associated with Herbert Hoover in the Food Administration.

At that time, another young man working for the Food Administration was my father, later Senator Taft, who served in this body. He had a life-long friendship, admiration, and great warmth for Lewis Strauss, and the feeling was mutual.

Then I was privileged, really, throughout my life to know Admiral Strauss as a close personal friend of my father, and later of myself, and to have the benefit of his very sound judgment, advice, and wisdom, as well as his warm support and friendship throughout the entire period of our association.

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

Mr. TAFT. I am glad to yield to the distinguished Senator from Nebraska.

Mr. CURTIS. I thank my distinguished friend from Ohio. I should like to have the record show my very high regard for Admiral Strauss. He was one of the outstanding men of our time. He had an excellent mind. He was a man of broad knowledge, devoted to the public good, a sponsor of many worthwhile activities, and was truly a great citizen and a splendid public servant. The country owes a great deal to Lewis Strauss.

Mr. TAFT. I thank the distinguished Senator from Nebraska for his very appropriate remarks.

I had indicated that Admiral Strauss had many fine attributes, as the distinguished deputy minority floor leader remarked yesterday in commenting on the passing of Admiral Strauss.

One of his rebuffs came at the action of this body in refusing to confirm his nomination to be a member of the Cabinet, a capacity in which I know he would have been proud to have acted officially, although as an acting Secretary of Commerce for quite a period of time he did serve effectively in that capacity.

Perhaps his close friendship with my father might be attributed to the fact that they were both very direct men and sometimes a little blunt in the way they responded to inquiries and to posititons that were put to them with which they were not in agreement. But under it all, what should be noted is that, even with his brilliant mind, with his great achievements, and with the acerbity that existed at times in his relations with some on the public scene, he was a warm man, a great family man. He has a fine family. I talked with his wife, Alice, this morning and expressed to her my deep sympathy and the deep sympathy of many of the Admiral's friends. We shall miss him tremendously.

The New York Times yesterday, January 22, contained an article by Mr. Alden Whitman that gave a very excellent summary of the life and attainments of Lewis L. Strauss. 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:

LEWIS STRAUSS DIES; EX-HEAD OF AEC

(By Alden Whitman)

Rear Adm. Lewis L. Strauss, U.S.N., retired, former chairman of the Atomic Energy Commission, died yesterday of cancer at his home, Brandy Rock Farm, in Brandy Station, Va. He was 77 years old.

For about a dozen years at the outset of the atomic age Lewis Strauss, an urbane but sometimes thorny former banker with a gifted amateur's knowledge of physics, was a key figure in the shaping of United States thermonuclear policy. He was a member of the Atomic Energy Commission from 1946 to 1950, and its chairman from 1953 to 1958.

In the often-acrimonious debates within the Government and the atomic community in 1949 and 1950 following the explosion of a Soviet atomic bomb in 1949, Mr. Strauss was a powerful advocate of immediate American development of a hydrogen bomb. His view, which had the support of a leading atomic scientist, Dr. Edward Teller, but not that of another, Dr. J. Robert Oppenheimer, prevailed with President Harry S. Truman. The first American hydrogen device was exploded Nov. 1, 1952, followed in 10 months by the detonation of a Soviet device.

In his dealings with Congress as commission chairman, Mr. Strauss—pronounced to rhyme with traws—was sometimes less than tactful. "For the first time in my life I have enemies," he remarked after an especially arduous experience on Capitol Hill. One result of these tussles was that the Senate, in June, 1959, rejected his nomination by President Dwight D. Eisenhower to be Secretary of Commerce. He had been acting Secretary since the previous October. Privately bitter over this rebuff, Mr. Strauss returned to private life.

PUZZLED OBSERVERS

In the years of his mightiest influence in Washington, the owlish-faced Mr. Strauss puzzled most observers. He was, on the one hand, a sociable person who enjoyed dinner parties and who was adept at prestidigitation; and, on the other hand, he gave the impression of intellectual arrogance. He could be warm-hearted yet seem at times like a stuffed shirt. He could make friends yet create antagonisms.

"He has more elbows than an octopus," one associate said after citing his affable qualities.

Assessing Mr. Strauss' settos with members of Congress, one observer suggested that he was "seemingly driven by an overwhelming desire to prove that he has been correct on every major and minor point in every major and minor battle in which he has been engaged for the last decade." An air of infallibility, this observer went on, affronted many Congressmen who preferred public servants willing to display a modicum of humility.

Mr. Strauss exercised enormous power as chief of the A.E.C. His job was to make certain that the United States produced more nuclear weaponry than the Soviet Union. In addition, he was special adviser on atomic

matters to President Eisenhower, and all Federal agencies were obliged to clear their atomic-related activities with him. The strictest secrecy about the atomic effort then prevailed, with the result that Mr. Strauss was laden with a stupendous amount of top-classified information. It was a burden he felt keenly.

COLD WAR ASSUMPTION

At the same time, Mr. Strauss accepted the basic assumption of the cold war—that the Soviet Union was bent on world conquest. "Honesty, truth and solemn covenants appear to be abstractions which have existence for them only as bait for those of other nations naive enough to believe in them," he wrote in "Men and Decisions," an autobiographical memoir. To thwart what he saw as the Soviet goal, he advocated both the amassing of nuclear weapons and hermetic security.

His beliefs underlay his role in the Oppenheimer loyalty-security hearing of 1954 in which the physicist's loyalty was upheld, but not his security clearance. Mr. Strauss maintained that he did not initiate the hearing, but his critics argued that he did not defend Dr. Oppenheimer, then a contract consultant to the A.E.C. The charges against the man often called "the father of the atomic bomb" dated at least to 1947—these charges had to do with Communist associations—and their appearance in 1954 seemed to many scientists to be a form of retribution for Dr. Oppenheimer's opposition to the hydrogen bomb.

"Physicists who regard Strauss as the master architect of the case against Oppenheimer believe that in the last analysis Strauss was sincere," Nuel Pharr Davis wrote in "Lawrence and Oppenheimer," a detailed account of differences between Dr. Oppenheimer and Dr. Ernest Lawrence over atomic policy. Dr. Lawrence, the Berkeley physicist, along with Dr. Teller, was a Strauss mentor in science. Both men also had strong reservations about Dr. Oppenheimer.

"DEROGATORY INFORMATION"

Paradoxically, Mr. Strauss, a trustee of the Institute for Advanced Study at Princeton, N.J., was responsible for Dr. Oppenheimer's appointment as director in 1947. At the time, the scientist informed Mr. Strauss that the Federal Bureau of Investigation file contained "derogatory information about me." Mr. Strauss, according to the Davis book, was familiar with the material and regarded it as trivial. The parting of ways seemingly came over Dr. Oppenheimer's reluctance to press on with a superbomb.

Mr. Strauss's early life had a touch of the Horatio Alger theme. Born on Jan. 31, 1896, in Charleston, W. Va., he was the son of a shoe merchant. He grew up in Richmond and became a traveling salesman for his father's shoes after he was graduated from high school. He had developed meantime a textbook interest in physics as well as a layman's concern with Judaism.

By his 20th birthday, Mr. Strauss had saved $20,000 and was thinking about attending college. In his memoir, he recalled that he was attracted instead by a desire to work for Herbert Hoover, appointed in the wartime year 1917 to manage food production in the United States. He went to Washington, searched out Mr. Hoover and sat down in his hotel suite.

"In a short while, Mr. Hoover entered from his adjoining office. He was wearing a hat and overcoat and was on his way to an appointment," Mr. Strauss recounted in after years, adding:

"I recognized him from his photographs, and, seeing that his secretary did not intend to introduce me, I stepped up and gave my name and said that I would like to work for him, adding that I had understood that he was accepting no salary for his services and that I would be happy to work for two months under the same arrangement.

"As I completed that long sentence, he looked at me with a puzzled smile and asked, 'When do you want to start?' 'Right now,' I replied. 'Take off your coat,' he said and left. These 12 words were the only exchange I had with him for a matter of weeks."

CONFIDANT OF HOOVER

Ultimately, Mr. Strauss became Mr. Hoover's assistant, confidant and close friend. It was through Mr. Hoover that he met Mortimer Schiff, a partner in Kuhn, Loeb & Co., the investment bankers. He joined the Wall Street concern in 1919 and spent about a quarter-century with it, accumulating vast wealth, impeccable respectability and a wardrobe that included a derby and a fur-collared overcoat.

Making at least $1-million a year as a Kuhn, Loeb partner, Mr. Strauss helped to market Kodachrome film for Eastman Kodak and the Polaroid camera for Edwin Land. Meantime, he maintained his interest in physics, becoming absorbed in cancer research. After his mother died of a malignancy in 1935, he helped finance a generator at the California Institute of Technology with the aim of producing radioactive isotopes for cancer therapy. He also sought out physicists fleeing from Nazism and befriended them. From them and other sources he learned in 1939 that uranium had been fissioned in Germany.

In 1941, Mr. Strauss, who held a Reserve commission as a lieutenant commander in the Navy, joined the Navy Department's Bureau of Ordinance and helped to coordinate its inspection of weapons production. He was also co-opted by Secretary James V. Forrestal, a fellow Wall Street banker, as his special assistant, and he represented the Navy on the Interdepartmental Committee on Atomic Energy.

Mr. Strauss left the department after four years with the rank of rear admiral in the Reserve, an honorific of which he was exceedingly proud. Indeed, he liked afterward to be addressed as Admiral Strauss, which upset some regular officers who looked upon him as a civilian.

After a brief return to Kuhn, Loeb, Mr. Strauss was back in Washington as a member of the first Atomic Energy Commission, which was headed by David E. Lilienthal, the former chairman of the Tennessee Valley Authority. An admitted "black Republican" of pronounced conservative attitudes, Mr. Strauss got along well with President Truman and, initially, with members of Congress.

On the commission, Mr. Strauss was often at odds with the chairman. One issue had to do with monitoring atomic explosions outside the United States. Mr. Strauss ultimately persuaded the Pentagon to set up detection stations, which picked up the first Soviet atomic explosion in 1949, a few days before Moscow made its official announcement.

Another issue was the hydrogen bomb, on which Mr. Strauss was insistent. The decision to proceed with the project caused profound reverberations in the scientific community. Many agreed with Dr. Oppenheimer in his opposition while others backed Dr. Teller. Mr. Strauss saw the issue as a military one, and he appeared never to have regretted his stand. "The atom is amoral," he contended.

After leaving the commission in 1950, Mr. Strauss worked for the Rockefeller family as a financial adviser and indulged his interest in farming at Brandy Rock, a 1,500-acre spread near Culpeper, Va., where he bred cattle and raised corn.

Returning to the Atomic Energy Commission in 1953 for a five-year term as chairman, he earned a reputation for operating a tight ship. He also became embroiled in the so-called Dixon-Yates controversy, which involved a contract for privately financed electrical power to compensate the T.V.A. for electricity used for atomic purposes. The contract, canceled in the end, hurt Mr. Strauss politically—he supported it—and it contributed to the campaign against him when he was nominated as Commerce Secretary.

Surviving are his widow, the former Alice Henauer; a son, Lewis H. Strauss, and three grandchildren, Louis C., Jeremy and Jacqueline Strauss.

The funeral will be at 2 p.m. on Thursday in Temple Emanuel, Fifth Avenue at 65th Street. There will also be a memorial service at 3 p.m. on Friday in the Washington Hebrew Congregation, Washington.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes.

ORDER FOR ADJOURNMENT

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

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 second assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON OPERATIONS UNDER THE FOOD STAMP ACT

A letter from the Assistant Secretary of Agriculture transmitting, pursuant to law, the annual report on operations under the Food Stamp Act of 1964 (with an accompanying report). Referred to the Committee on Agriculture and Forestry.

JUDGMENTS OF THE U.S. COURT OF CLAIMS

(S. Doc. —)

A letter from the Clerk of the United States Court of Claims transmitting, pursuant to law, a statement setting forth all the judgments rendered by the United States Court of Claims for the year ended Septem-

ber 30, 1973 (with accompanying papers). Ordered to be printed as a Senate document and referred to the Committee on Appropriations.

REPORT OF THE EXPORT-IMPORT BANK ON LOANS TO CERTAIN FOREIGN COUNTRIES

A letter from the First Vice President of the Export-Import Bank of the United States reporting, pursuant to law, on loan, guarantee and insurance transactions supported by Eximbank to Yugoslavia, Romania, the Union of Soviet Socialist Republics, and Poland during December 1973. Referred to the Committee on Banking, Housing and Urban Affairs.

REPORT ON CIGARETTE LABELING

A letter from the Chairman of the Federal Trade Commission transmitting, pursuant to law, a report on the effectiveness of cigarette labeling, current practices and methods of cigarette advertising and promotion, and recommendations for legislation deemed appropriate (with accompanying report). Referred to the Committee on Commerce.

REPORT OF THE POTOMAC ELECTRIC POWER CO.

A letter from the vice president of the Potomac Electric Power Co. transmitting, pursuant to law, a copy of a balance sheet of Potomac Electric Power Co. as of December 31, 1973 (with accompanying papers). Referred to the Committee on the District of Columbia.

LIABILITIES AND FINANCIAL COMMITMENTS OF THE UNITED STATES

A letter from the Assistant Secretary of the Treasury transmitting, pursuant to law, the statement of liabilities and other financial commitments of the U.S. Government as of June 30, 1973 (with accompanying papers). Referred to the Committee on Finance.

REPORT OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT

A letter from the Administrator of the Agency for International Development in the nature of a report, pursuant to law, on the plans and programs for the utilization of funds made available pursuant to the terms of the Foreign Assistance Act of 1973. Referred to the Committee on Foreign Relations.

DISPOSAL OF FOREIGN EXCESS PROPERTY

A letter from the Assistant Secretary of Agriculture transmitting, pursuant to law, a report on the activities of the Department of Agriculture for the fiscal year ending June 30, 1973, regarding the disposal of foreign excess property (with an accompanying report). Referred to the Committee on Government Operations.

PROPOSED LEGISLATION BY THE INDIAN CLAIMS COMMISSION

A letter from the Chairman of the Indian Claims Commission transmitting a draft of proposed legislation to authorize appropriations for the Indian Claims Commission for fiscal year 1975 (with accompanying papers). Referred to the Committee on Interior and Insular Affairs.

REPORT OF THE FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

A letter from the Executive Secretary of the Federal Metal and Nonmetallic Mine Safety Board of Review transmitting, pursuant to law, the report of the activities of the Board for the calendar year 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION BY THE VETERANS' ADMINISTRATION

A letter from the Administrator of Veterans' Affairs transmitting a draft of proposed legislation to permit interest on loans under section 1810 of chapter 37, title 38, U.S.C., to be as agreed upon by the lender and borrower, and for other purposes (with accompanying papers). Referred to the Committee on Veterans' Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A resolution of the General Assembly of the State of New Jersey. Referred to the Committee on Foreign Relations:

"ASSEMBLY RESOLUTION

"Whereas, The actions and threats of action by certain oil-producing nations to interrupt or restrict the flow of petroleum supplies to this nation have resulted in, and may hereafter exacerbate, critical shortages of necessary fuels, resulting in numerous instances of human hardship and economic dislocation; and,

"Whereas, It is not consonant with either the interests or the dignity of this nation to tolerate such high-handed attempts by oil-producing nations to dictate American policy through the use of such threats and acts of embargo; and,

"Whereas, It is inconsistent with decent and usual international practice that normal commercial arrangements should be deranged and distorted for the purposes of economic blackmail by any nation or group of nations against any other nation or group of nations; now, therefore,

"Be It Resolved by the General Assembly of the State of New Jersey:

"That this House hereby calls upon the President of the United States to make perfectly clear to any and all nations taking, or threatening to take, measures to curtail or interrupt the supply of essential fuels to the United States that any such action is, and will be deemed by this nation to be, an unfriendly act, with such consequences as may necessarily flow therefrom; and ,

"Be It Further Resolved, That duly authenticated copies of this resolution be transmitted to the President of the United States, to the President pro-tempore of the United States Senate, the Speaker of the United States House of Representatives, the Chairman of the Senate and House Foreign Relations Committees and each of the members of the Congress elected from this State."

A resolution of the Senate of the Commonwealth of Massachusetts. Referred to the Committee on Interior and Insular Affairs:

"RESOLUTIONS MEMORIALIZING CONGRESS TO ENACT LEGISLATION NATIONALIZING THE CRUDE OIL AND PETROLEUM INDUSTRIES

"Whereas, The natural resources of the United States are fast becoming exhausted, resulting in reliance upon foreign supplies of such critical imports as fuel, gas and oil; and

"Whereas, Corrective measures which have been attempted to date to curb the rapidly increasing shortage of all resources have been short-range and ineffective; and

"Whereas, Courageous action on the part of the Congress of the United States is necessary to preserve our natural resources for the coming decades and essential to avoid skyrocketing prices and monopolistic control of such resources by a very few companies; and

"Whereas, The energy and fuel problems of the United States has demonstrated to its citizens the need for better government controls and regulation on the crude oil and petroleum industries, whether the present crisis is real or fabricated and whether short-term or long lasting; now, therefore, be it

"Resolved, That the Massachusetts Senate hereby respectfully urges the Congress of the United States to enact legislation immediately which would nationalize the crude oil and petroleum industries of the United States; and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States, to the presiding officer of each branch of Congress and to each member thereof from the Commonwealth."

A resolution of the Springville-Griffith Institute Central School District (New York) opposing foreign aid and supporting the promotion of education. Referred to the Committee on Foreign Relations.

A letter from the House of Commons, London SWIA OAA, opposing the importation of Rhodesian chrome. Referred to the Committee on Foreign Relations.

A resolution of the Legislative Council of the State of Arkansas pertaining to busing of school children to obtain racial balance and the impact thereof on the energy crisis. Referred to the Committee on the Judiciary.

A petition by sundry citizens seeking a redress of grievances. Ordered to lie on the table.

A resolution of the San Diego County Federation of Republican Women's Clubs relating to the program for Congress. Ordered to lie on the table.

A resolution of the Greater Daytona Beach Republican Men's Club in tribute to President Nixon. Ordered to lie on the table.

A resolution of the Sangamon County (Springfield, Illinois) Teen-Age Republican Club in support of President Nixon. Ordered to lie on the table.

A resolution of the Republican State Central Committee of California in support of Vice President Ford. Ordered to lie on the table.

A resolution of the Louisiana Baptist Convention relating to tax support of nonpublic schools. Ordered to lie on the table.

A resolution of the West Bloomfield Township (Michigan) in tribute to Vice President Ford. Ordered to lie on the table.

PRESENTATION OF A RESOLUTION

Mr. NUNN. Mr. President, on January 14, 1974, the House of Representatives of the State of Georgia passed a resolution expressing its opposition to the Secretary of Agriculture's proposed changes in the flu-cured tobacco program.

I share the opinion of these Georgia legislators that any change in the present flue-cured tobacco production quotas and price support system would destroy the existing tobacco program and would have a disastrous effect on the small farmers of this Nation.

I ask unanimous consent that this resolution be printed in the RECORD.

There being no objection, the resolution was referred to the Committee on Agriculture and Forestry, was ordered to be printed in the RECORD, as follows:

"A RESOLUTION

"A resolution expressing opposition to the proposal of Secretary of Agriculture Earl Butz to increase or terminate flue-cured tobacco quotas for 1974; and for other purposes.

"Whereas, the Honorable Earl Butz, Secretary of Agriculture of the United States, has proposed the increase or termination of flue-cured tobacco quotas for 1974; and

"Whereas, there is a potential flue-cured tobacco crop in Georgia and Florida of nearly 200 million pounds of tobacco; and

"Whereas, tobacco farmers in Georgia and Florida cannot produce their present quotas for 1974, much less an additional allocation; and

"Whereas, Georgia tobacco farmers have

neither the curing facilities nor the labor to produce an extra quota amount of tobacco; and

"Whereas, the tobacco farmers of Georgia are keenly aware of the scarcity and the high cost of fertilizer and curing fuels, as well as the rising cost of labor, equipment and supplies; and

"Whereas, the total national flue-cured tobacco production in 1973 amounted to 1 billion 185 million pounds, while disappearance for the same period was just under 1 billion 200 million pounds, thus making supply and demand only about one percent apart; and

"Whereas, production costs, supplies, labor, interest rates and taxes rose between 15 and 20 percent during the production of the 1973 crop while tobacco farmers received only about three percent in prices above the 1972 price levels; and

"Whereas, if prices are reduced by the 11 cents per pound received above support prices in 1973, the tobacco farmers of Georgia and Florida would suffer losses of 18 to 20 million dollars and the farmers of the entire flue-cured tobacco belt would lose between 135 and 150 million dollars; and

"Whereas, it has been suggested that the purpose of increasing or terminating quotas is to force farmers into complete mechanization, but it should be recognized that complete mechanization cannot be rapidly undertaken since necessary equipment is not readily available; and

"Whereas, an increase in quotas at this time would be bad for the flue-cured tobacco farmers, but the termination of quotas would be tragic and would bring disaster not only to tobacco farmers, but would also seriously affect the entire economies of several States; and

"Whereas, the proposals of the Secretary of Agriculture, if adopted, will cheapen tobacco farm lands, will reduce the income of many elderly people who have leased their small quotas, and would seriously affect the solvency of tobacco farmers, many of whom are heavily in debt for equipment, farm land and other necessities.

"Now, therefore, be it resolved by the House of Representatives that the members of this body hereby express their opposition to the proposals of Secretary of Agriculture Earl Butz to increase or terminate flue-cured tobacco quotas for 1974, and hereby urge the Secretary of Agriculture to withdraw his proposals.

"'Be it further resolved that the Clerk of the House of Representatives is hereby authorized and directed to transmit appropriate copies of this Resolution to the Honorable Earl Butz, Secretary of Agriculture of the United States; the Honorable Phil Campbell, Undersecretary of Agriculture of the United States; the Honorable Herman E. Talmadge and the Honorable Sam Nunn, United States Senators; and to each member of the Georgia Congressional Delegation."

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. HUGHES (for himself and Mr. CLARK):

S. 2876. A bill for the relief of Carmichael C. Peters. Referred to the Committee on the Judiciary.

By Mr. TOWER (for himself, Mr. HUGH SCOTT, Mr. METCALF, Mr. EASTLAND, Mr. MCINTYRE, Mr. JOHNSTON, Mr. YOUNG, Mr. NUNN, Mr. GRAVEL, Mr. DOMENICI, Mr. PERCY, and Mr. HUGHES):

S. 2877. A bill to commemorate the American Revolutionary Bicentennial by establishing a "Meeting House" program, by making grants available to each of the several States for the purpose of acquiring and restoring certain historic sites with a view to designating and preserving such sites for use as meeting houses in connection with such Bicentennial, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. METCALF (for himself, Mr. JACKSON, Mr. BIBLE, Mr. FANNIN, Mr. HANSEN, and Mr. STEVENS):

S. 2878. A bill to promote the conservation and orderly development of hard mineral resources of the deep seabed, pending adoption of an international regime relating thereto. Referred to the Committee on Commerce.

By Mr. JAVITS:

S. 2879. A bill to establish in the Department of Health, Education, and Welfare the positions of Deputy Secretary of Health, Education, and Welfare and an additional Assistant Secretary of Health, Education, and Welfare in lieu of the Under Secretary and the Assistant Secretary for Administration. Referred to the Committee on Labor and Public Welfare.

By Mr. McGOVERN (for himself, Mr. ABOUREZK, and Mr. BURDICK):

S. 2880. A bill to amend the Agriculture and Consumer Protection Act of 1973 to provide additional incentives for farmers to produce wheat, feed grains, and cotton, and for other purposes. Referred to the Committee on Agriculture and Forestry.

By Mr. FANNIN:

S. 2881. A bill to amend section 1951, title 18, United States Code, Act of July 3, 1946. Referred to the Committee on the Judiciary.

By Mr. MONTOYA:

S. 2882. A bill to designate May 30 of each year as Memorial Day and to designate November 11 of each year as Veterans Day and to make such days legal public holidays. Referred to the Committee on the Judiciary.

By Mr. BIDEN:

S. 2883. A bill to amend the Fair Credit Reporting Act. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TOWER (for himself, Mr. HUGH SCOTT, Mr. METCALF, Mr. EASTLAND, Mr. MCINTYRE, Mr. JOHNSTON, Mr. YOUNG, Mr. NUNN, Mr. GRAVEL, Mr. DOMENICI, Mr. PERCY, and Mr. HUGHES):

S. 2877. A bill to commemorate the American Revolutionary Bicentennial by establishing a meeting house program, by making grants available to each of the several States for the purpose of acquiring and restoring certain historic sites with a view to designating and preserving such sites for use as meeting houses in connection with such Bicentennial, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

MEETING HOUSE PRESERVATION ACT

Mr. TOWER. Mr. President, in 1976, this country will celebrate its Bicentennial. Hopefully, this will be a meaningful and lasting experience for every citizen.

When we were schoolchildren we were taught about the American Revolution—the Boston Tea Party, General Washington, Valley Forge, Cornwallis and Yorktown. But there was more to the Revolution than a one time event that occurred on the eastern seaboard. The American Revolution was also a revolution of ideas that has continued for almost 200 years. Our ability as a country to grow and change is our strength. This revolution of ideas has taken place in every State in the Union. Consequently, our Bicentennial has to include all ethnic groups and regions if it is to truly represent the essence of America and its people.

I have been concerned for some time that our celebration might be limited to place and to the people involved. I was concerned that, in many States, there was no regional focus for the celebration. It was my desire, therefore, to draft a proposal which would provide a meeting place in each of the States which would be a regional focus and impetus to the preservation of our physical and cultural heritage and would bring citizens together to plan the preservation of the quality of our total environment for the present and for the future.

Today, I am introducing the Meeting House Preservation Act. This act would set up a meeting house program and would make grants available to each of the States for the purpose of acquiring and restoring certain historic sites to use as meeting houses to carry out the goals and purposes of this act. Approximately two-thirds of the States have already acknowledged approval of the meeting house proposal and have expressed their wish to participate. Some fascinating sites have already been proposed: a few examples, an opera house in Texas, a fort in North Dakota, a tavern in Connecticut, a royal brewery in Hawaii, a theater in North Carolina, and a casino in Puerto Rico.

I hope that this bill will have the support of the Senate and that action will be taken on it as soon as possible—1974 is already here and the celebration is almost upon us. If the States are to have a meaningful meeting house program, then the Senate must take action and initiate this program quickly.

At this point, I shall read excerpts of correspondence from some of the various States which favor this proposal:

RHODE ISLAND

In conclusion, strong interest and enthusiasm for the Heritage '76 Meeting House program has been evidenced by all participants in the preparation of this proposal. There is no doubt that the announcement of the Heritage '76 Meeting House program would generate additional public and private support for future restoration and programs. The Rhode Island Historical Preservation Commission and the Rhode Island Bicentennial Committee recognize that the realization of the American Revolution Bicentennial Commission's goal in terms of "brick and mortar" restorations and the establishment of the Heritage '76 Meeting House program would be a major contribution to the cause of historic preservation in America.

WYOMING

Governor Stanley K. Hathaway: Here in Wyoming our enthusiasm has been aroused for the Heritage '76 Meeting House Program proposing "a permanent legacy to the American people of fifty-five historic sites that will be saved, restored and used as a meeting house for all citizens concerned with the preservation of our cultural heritage and the quality of our physical environment." Today, with tremendous industrial and commercial needs bringing greater pressure than ever upon the nation's natural resources, and

with the manifestation of a corresponding pressure to protect the aesthetic, cultural and recreational values of our environment . . . (preservation of this site) becomes more important than ever before. . . .

HAWAII

The prime aspect of Heritage House involves facilities for the headquarters of historical, cultural, educational, and ethnic organizations concerned with the preservation of historic materials and sites, with "town hall" type discussions of problems relevant to our time, and with the charting of our future. In addition to office space, there would be conference rooms and an auditorium equipped for the use of audio-visual techniques, in which to conduct meetings.

The need for such facilities is great in that many groups that would benefit from the availability of them are at present housed in temporary, makeshift, and inadequate quarters or have no place to call their own.

WASHINGTON

The Heritage '76 Meeting House program, as envisioned by the American Bicentennial Commission, has a great appeal to a broad spectrum of the nation's population who share a concern for the preservation of their cultural heritage and the quality of their physical environment. Millions of Americans are proud of their nation's history and are eager to join in the celebration of its founding.

MAINE

The potential use of such a Meeting House is almost limitless if the funds were made available to give it birth. Such a concept which places all of these groups under one roof would not only provide the public with access to the latest thinking in historic and environmental concepts but would enhance internal communication between these groups whose responsibilities, talents and resources, which may at present overlap, would compliment each other with more efficient and accessible results.

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

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

S. 2877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Meeting House Preservation Act."

SEC. 2. (a) The Congress hereby finds and declares that—

(1) if the Bicentennial celebration of the United States in 1976 is to be a meaningful celebration, there is a need for each citizen to become aware of his historical, cultural, and physical heritage in order that we may carry out one of the major themes of the Bicentennial, namely, "A Past to Honor: A Future to Mold";

(2) in order to encourage participation in preserving our heritage and in actively planning the direction this country will take in the future, our citizens need a focal point, a meeting place where they can come to discuss, to learn, and to participate;

(3) because this country is so diverse and rich in varied cultures, it is not possible to establish a single meeting place which would be accessible and responsive to the majority of the citizens;

several States of an historic site which might be utilized as a Meeting House would provide an easily accessible meeting place for a majority of the citizens and would further provide a regional focus and impetus to the preservation of our physical and cultural heritage and a meeting place to bring citizens together to plan the preservation of the quality of our total environment.

(b) The Congress further declares that it is the purpose of this Act—

(1) to celebrate the Bicentennial of this country through the preservation within each of the several States of an historic site that might otherwise be lost;

(2) to provide a meeting place in each of the several States for those citizens interested in retaining their tangible, indigenous heritage, whether historic, cultural, or natural, and in planning for future changes and developments, and

(3) to give existing State programs involved with preserving historic and architecturally important structures an illustration of the best possible techniques used in the preservation of such historic sites and structures, and the multiple, significant ways in which such sites and structures can be used.

SEC. 3. In carrying out the purposes of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to make grants to each of the several States for the specific purpose of enabling such State to acquire and restore an historic site within such State for use as a Meeting House in accordance with the provisions of this Act, and to initiate and carry out programs in connection therewith, except that no grant to any one such State shall exceed $1,000,000. No grant shall be made to any State pursuant to this Act except pursuant to an application submitted by such State and approved by the Secretary in accordance with the provisions of this Act.

SEC. 4. (a) Any application for a grant under this Act shall contain an estimated budget of the following:

(1) acquisition costs of such historic site to be acquired;

(2) restoration planning costs for such historic site;

(3) restoration work costs for such historic site;

(4) maintenance costs of such historic site;

(5) expenses involving use of such historic site as it applies to the Meeting House concept provided for by this Act;

(6) staffing costs; and

(7) costs of publishing a report to Congress, by January 1, 1976, on the restoration of the historic site for use as a Meeting House and the program for its use.

(b) No application shall be approved by the Secretary pursuant to this Act unless such application is filed with the Secretary within one year following the date of the enactment of this Act, is filed in accordance with regulations and procedures prescribed by the Secretary, and contains provisions, satisfactory to the Secretary, assuring that—

(1) any historic site covered by such application will provide an atmosphere conducive to exploring new and innovative ways to make the citizens of the United States more aware of the need to protect their natural and other heritage;

(2) such historic site is a documented historic or architecturally significant building, group of buildings, or site that is listed on the National Register and suitable for the purposes of this Act;

(3) such historic site, together with other Meeting Houses authorized by this Act, illustrates a characteristic of the applicant's heritage and helps to reflect the diverse cultural and geographic background of the United States;

(4) the historic site covered by such application is in need of rescuing from neglect, demolition, or because it is functionally obsolete for its original purpose; and

(5) such historic site is located so as to insure its ongoing uses as a public meeting place.

(c) Each State submitting an application pursuant to this Act shall designate one or more historic sites which it desires to acquire, restore, and utilize or preferences with respect thereto. The designation of such site or sites shall be based on nominations made by the applicant's Bicentennial Commission, in cooperation with such applicant's State Preservation Officer, in accordance with an approved State Historic Preservation Plan. In making such nominations, the applicant's Bicentennial Commission shall consult with such other professional sources within the affected State as such Commission determines necessary.

(d) Upon the approval by him of any application submitted in accordance with the provisions of this Act, the Secretary is authorized to make a grant (not to exceed $1,000,000) to the applicant for the purpose of enabling such applicant to acquire and restore an historic site for use as a Meeting House in accordance with the provisions of this Act, including the carrying out of programs in connection therewith, except that in no case shall the Secretary approve the acquisition or restoration of any such historic site except on the basis of recommendations of the Meeting House Coordinating Board in accordance with the provisions of section 5 of this Act. In no case shall the Secretary make grants for the acquisition and restoration of more than one historic site in any one State pursuant to this Act.

SEC. 5. (a) There is hereby established a Meeting House Coordinating Board, which shall consist of the Keeper of the National Register, the Chairman of the Heritage '76 Committee of the American Revolutionary Bicentennial Administration, a repersentative of the National Trust for Historic Preservation in the United States designated by the Chairman thereof, a representative of the Advisory Council on Historic Preservation designated by the Chairman thereof, and a representative of the President's Council on Environmental Quality designated by the Chairman thereof.

(b) It shall be the function of the Meeting House Coordinating Board to review each application made in accordance with the provisions of this Act for the purpose of making recommendations to the Secretary as to which of the historic site or sites contained in such application should be approved by the Secretary for purposes of this Act, and to provide a national overview of site selections for purposes of this Act.

(c) Members of the Board shall receive no compensation as such, but shall be reimbursed for expenses incurred by them in carrying out their duties under this Act.

(d) The members of the Board shall elect one of their members as Chairman. The Secretary shall call the first meeting of the Board.

SEC. 6. The Secretary, acting through the grants division of the National Register within the Office of Archeology and Historic Preservation, National Park Service, shall administer this Act in accordance with the provisions thereof.

SEC. 7. As used in this Act, the term—

(1) "State" means each of the several States, possessions, and territories of the United States; and

(2) "historic site" means any property which is a documented historic or architecturally significant building, group of buildings, or site that is listed on the National Register and which is in need of rescuing from neglect, demolition, or because it has become functionally obsolete for its original purpose, but in no event shall such term be construed as including any Federally owned property.

SEC. 8. There are authorized to be appro-

priated such sums as may be necessary to carry out the provisions of this Act.

Mr. HUGH SCOTT. Mr. President, I am pleased to join my distinguished colleague from Texas (Mr. TOWER) in sponsoring this bill to select and preserve one historic site in each State as a focal point during the Bicentennial observance. Under this proposal, the Secretary of the Interior would make grants available to each State for the purpose of acquiring and restoring one historic site in that State to be used as a "Meeting House." This site would be the meeting place for citizens concerned with the preservation of cultural heritage and environmental quality.

The Commonwealth of Pennsylvania is among those States which have made prospective site selections—and none would be more appropriate than the Valley Forge area, site of George Washington's encampment of 1777–78, a turning point in the Revolutionary War. Lafayette's Headquarters, the proposed "Meeting House," is located on the Lafayette Farm adjacent to Valley Forge State Park in Tredyffrin Township, Chester County. The 34-acre site served as Maj. Gen. Marquis de Lafayette's residence during the famous encampment.

An estimated $500,000 will be necessary to complete the acquisition and restoration of Lafayette's Headquarters. Senator TOWER's bill is designed to assist in this effort, and in similar projects throughout the Nation, and I hope that Congress does not let too much time pass before giving it favorable consideration. I commend the Senator for his active interests in an endeavor which will be of lasting benefit to our cultural heritage.

By Mr. METCALF (for himself, Mr. JACKSON, Mr. BIBLE, Mr. FANNIN, Mr. HANSEN, and Mr. STEVENS):

S. 2878. A bill to promote the conservation and orderly development of hard mineral resources of the deep seabed, pending adoption of an international regime relating thereto. Referred to the Committee on Commerce.

DEEP SEABED HARD MINERALS ACT

Mr. METCALF. Mr. President, as much of the world today stands gaping at the power which is being so effectively wielded by the developing oil nations of the Middle East in the midst of an unprecedented fuel crisis, there continues to develop a similar situation regarding minerals of strategic importance to the industrialized nations. I refer to the limited supplies of manganese, cobalt, nickel and, to some extent, copper, and to the fact that much of the world's suppliers of these key minerals are now located in a number of the developing nations of Africa and South America.

It has become apparent that a strategy valued by the nations that comprise what has come to be called the third world is to effect maximum economic and political clout through the controlled distribution of the natural resources indigenous to these nations. In a development ominous to the industrialized nations dependent on these key minerals, we now are advised, as in the Journal of Commerce edition of December 27, 1973, that developed nations are concerned about "an Arab-led movement to organize developing countries to raise prices not only of oil, but of aluminum, iron ore, copper, and other strategic materials."

The article identifies an anxiety common not only to western industrialists. On January 6 of this year, Federal Energy Director William E. Simon said that even after the Arab States embargo on oil shipments to the United States has been lifted there will be serious supply problems. In an account published in the Washington Post, Simon predicted that his most difficult task will be "to keep the American people awake to the fact that we are going to have shortages, and thereby subject ourselves to the economic and political blackmail of any foreign nation, both on the supply side and the price side." Mr. Simon was talking about oil. But he could well have been talking about other key industrial materials for which domestic sources are limited or nonexistent.

There also have been indications that the copper-producing countries of Africa and South America have been moving recently to consolidate their relations with groups such as the Arab-dominated Organization of Petroleum Exporting Countries—OPEC. A proposed joint statement from the OPEC and the Council of Copper Exporting Countries proclaims "mutual solidarity and their right to a fair price for and control of their natural resources."

Mr. Simon also suggested in a recent newsmagazine interview that the United States eventually should resume its trading relationships with the Arabs "and at the same time seek long-run self-sufficiency. When it becomes apparent to them that we are dead serious about self-sufficiency that is when the price of their oil is going to come down."

The cosponsors of S. 2878 believe this bill will contribute to our self-sufficiency in these vital minerals before we and other nations are forced to endure the strictures of supply dependence on the developing third world nations, and hopefully before the prices of these minerals, like oil, have been twice doubled over a few months.

The identical bill is being introduced today in the other body by Chairman DOWNING of the Subcommittee on Oceanography of the House Committee on Merchant Marine and Fisheries. We anticipate that we will be able to hold hearings on this legislation within 2 months.

S. 2878, authorizing the Secretary of the Interior to promote the conservation and orderly commercial recovery of the hard mineral resources of the deep seabed, pending the adoption of an international regime therefor, incorporates substantial alterations from its predecessor bills—S. 2801 in the 92d Congress and S. 1134 in the 1st session of the 93d Congress. Basically, it would permit U.S. operators to seek, recover, and distribute the valuable manganese nodules which are scattered over much of the Earth's ocean floors—nearly three-fourths of the Earth's surface.

In light of a comprehensive report prepared recently by John R. Justus and Nancy P. Peterson of the Science Policy Research Division of the Congressional Research Service, it has become clear that the U.S. technological advantage in recovering the five vital minerals contained in these nodules is fading while our dependence on the developing nations increases.

The manganese nodules, described by the Wall Street Journal as resembling burned potatoes, are rich in iron, copper, nickel, and cobalt. They were discovered about a century ago during the Challenger expedition. By obtaining our supplies of these minerals largely from foreign terrestrial sources instead of resorting to the seabeds of the Atlantic and Pacific Oceans, we have contributed substantially to the economies—and economic clout—of a number of developing nations.

The small African nation of Zaire, for example, produces 14,800 tons or 57 percent of the world's annual supply of cobalt while the United States, which imports about 5,500 tons of cobalt annually, produces only negligible amounts of this mineral critical to the production of superalloys for electronic equipment and spacecraft components, as well as having medical uses.

The remaining principal producers of cobalt in the world are Zambia—9 percent; Cuba—7 percent; and Morocco—4 percent—nations which in 1971 combined with Zaire to produce nearly 76,000 tons of cobalt.

By 1985, according to projections by the U.S. Bureau of Mines, the United States will be consuming as much cobalt every year as is now produced annually by Zaire, which also has joined in coalition with other nations outside of North America and Europe which export copper and tin.

Domestic copper mines are able to supply roughly three-fourths of the U.S. requirements for production of electrical equipment, transportation components, home appliances, and numerous other uses.

Of the 331,000 tons of copper which the United States imported in 1971, 37 percent came from Canada, 29 percent from Peru, 15 percent from Chile, and 19 percent from other foreign nations. These figures represent a significant shift from the 4 years prior to 1971 in which 27 percent of our copper imports came from Chile, 23 percent from Canada, 21 percent from Peru, and 29 percent from other countries.

Considering current resources, the Bureau of Mines projects that by 1985 all but 15 percent of the 400,000 tons of nickel which we will consume annually will have to be imported, mostly from New Caledonia and Canada. Petroleum refiners and chemical producers are the primary users of nickel in metals which resist corrosion. Nickel also is vital to production of stainless steel and a number of alloy steels.

Maganese is the principal metal to be obtained from these nodules. It is vital to the continued production in America of a wide variety of commodities, ranging from machinery and equipment used in

transportation, agriculture, and industry to home appliances, glass, and numerous chemicals.

The known minable reserves of manganese are quite large in comparison to world consumption, but these reserves are irregularly distributed around the world. In recent years, for example, the U.S. requirements of about 1,127,000 tons of manganese annually have been supplied about 40 percent by Zaire and another African nation, Gabon, while the remaining 60 percent has been satisfied by the Republic of South Africa, India, and Brazil. There is no domestic production of manganese, an essential commodity to current steel technology, in the United States.

More detailed figures on the worldwide production of these minerals and the present and projected consumption of them by the United States are available in the charts prepared by the Congressional Research Service which I attach to this statement for insertion in the RECORD.

As we discuss the situation today, there are those who already have acted to exploit these minerals at their own risk—and probable profit. One such individual, the obscure but celebrated Mr. Howard Hughes, has worked through his Hughes Tool Co. and Global Marine Inc. to initiate this exploitation. On January 6, 1974, the United Press International reported that "a huge underwater mystery barge—as big as an airplane hangar" constructed for Hughes under tight security in Redwood City, Calif., was towed under the Golden Gate Bridge and south into the Pacific. The barge, according to this report and other observations, was constructed at great cost to mine the ocean floor at an undetermined location.

As far back as 26 months ago there were 19 organizations in five nations actively engaged in the development of technology associated with the recovery and processing of deep seabed minerals. Already, the Japanese have developed a recovery method employing a continuous rope and dredge buckets, an alternative method to the process of hydraulic dredging using an airlift pump.

S. 2878 would allow U.S. operators to mine portions of the seabed in the absence of an international agreement, pending the creation—with the participation of the United States—of an international regime to license, monitor, and govern the mining processes. There are few indications that such an agreement will be forthcoming in the near future, and it may be as long as 15 years before such a regime can take over the regulation of deep seabed mining.

In the meantime, I do not see how Congress can responsibly refrain from regulating the deep ocean mining activities of U.S. firms.

In a letter to the Wall Street Journal, published on January 7, 1974, and which I read into the RECORD of Monday, January 21, Ambassador John R. Stevenson, Special Representative of the President for the Law of the Sea Conference, said:

U.S. policy is predicated on completion of the conference's work on schedule—preferably next summer but in any event by 1975 at the latest.

Not in any way wishing to interfere with world agreement in this vital area, the cosponsors of this legislation have agreed no permit for commercial recovery of seabed minerals should be issued prior to January 1, 1976. If the world community can agree by that time, fine; the international community takes over. If they cannot agree, at least someone will be looking over the shoulder of our nationals as they go out to get the minerals we need—pending international agreement.

During the much-heralded Law of the Sea Conference scheduled to open in June in Caracas, Venezuela, it is anticipated that there will be substantial attempts by the developing countries to block any final agreement to permit seabed mining until, perhaps, these nations are at less of a disadvantage technologically and more able to actively participate in commercial mineral recovery themselves. Apparently, they fear that if seabed minerals prove to be competitive with those mined on land, the new supplies could have a depressing effect on the market prices of these five minerals—to the benefit of manufacturers and consumers, and to the detriment of nations such as Zaire—cobalt and copper; Brazil, Gabon, and India—manganese; Zambia and Chile—copper; and New Calendonia and Cuba—nickel.

As there are now only about 10 delegations to the conference whose nations have the current capability, either singly or in group efforts, to mine the seabeds, they are expected to be outvoted on substantive issues. But we will continue to watch with sincere interest the progress being made in the Law of the Sea Conference and in the United Nations as the coastal and noncoastal nations seek to resolve the issues revolving around the equitable distribution of the mineral wealth of nearly three-fourths of the Earth's surface.

The security of future supplies from current sources of these vital minerals is fairly solid in the cases of copper and nickel, but is at best uncertain regarding cobalt and manganese, according to the Congressional Research Service report. Almost all of our cobalt and manganese, upon which the aircraft and electronics industries rely heavily, come from nations with which there is a genuine potential for the development of unfavorable political atmospheres.

A further crucial consideration is the fact that we are now in continual competition with the developed countries of Western Europe and Japan for these minerals and a number of them have obtained long-term contracts for these resources, which eventually may put the United States in a very disadvantages position—possibly making us reliant on Japan or West Germany, for example, for refined metals or the actual goods fabricated from these metals.

As far as the national stockpiles of these minerals at the end of 1972 is concerned, we are not today in serious trouble, although copper stockpiles of 258,659 tons are only about one-third of the national objective of 775,000 tons. Manganese stockpiles of 11.6 million tons are three times the national objective, cobalt stockpiles of 35,750 tons are nearly twice the objective, and the United States has 47,731 tons of nickel in storage although there was no national stockpile objective in 1972.

Mining industry spokesmen have consistently pointed out that any commitments to deep seabed mining should be preceded by some form of protection of their sizable investments and security of their tenure. Estimated research and development costs borne by U.S. companies to date amounts to $90 million, and these expenditures represent only a small portion of the total investment required for the successful recovery of deep ocean minerals. The estimated costs for one operation which would recover 1 to 3 million dry tons of nodules annually range from $200 million to $300 million for a complete venture, extending from prospecting through mining, processing and distribution of the metals.

The minimum expenses required by law under this legislation for each company will amount to $5,900,000 over a 10-year period. These economic factors and other facets of the legislation should eliminate seabed mineral speculation.

The cosponsors of this legislation also feel that it satisfactorily responds to concerns over the effect of seabed mining on the environment and does not conflict with important considerations of national defense, fishing rights and international law.

As is evident in the Congressional Research Service tables, by the year 2000 the projected U.S. demands for cobalt, nickel, and copper will either exceed or nearly equal the world production levels of 1971. And it is expected that our industries will continue to be totally reliant on imports for their annual projected minimum need of 2,265,000 tons of manganese.

Should we start even today to recover that portion of the seabed mineral content that is rightfully part of our national heritage, it is improbable that returns on the massive investments could be realized before 1980—Mr. Hughes' intentions and activities notwithstanding.

In introducing this legislation, its cosponsors and I are responding to the incontrovertible need at this time for the United States to reinforce its rights to mine the deep seabed, to encourage the continuation of the U.S. leadership in deep sea technology and to provide a climate conducive to domestic investment in deep seabed exploration and commercial recovery of the minerals essential to our industrialized economy.

Mr. President, I ask unanimous consent to insert in the RECORD following my remarks, the text of the bill; of the article in the December 27, 1973, editions of the Journal of Commerce; the article in the Washington Post of November 25, 1973 entitled "Globe Gobbling: The World Scarcities Ahead"; eight tables prepared by the Science Policy Research Division of the Congressional Research Service, the Library of Congress; an ex-

cerpt from "The Threat From the Third World," a Brookings Institution publication—reprint No. 268—authored by C. Fred Bergsten; an article headlined "Crisis in Minerals Is Feared" from the January 14, 1974 edition of the Washington Post, and an article headlined "Raw Materials: U.S. Grows More Vulnerable to Third World Cartels" in the January 18, 1974 issue of Science magazine.

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

S. 2878

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deep Seabed Hard Minerals Act".

DECLARATION OF POLICY

SEC. 2 (a). FINDINGS.—The Congress finds—

(1) that the Nation's hard mineral resource requirements will continue to expand in order to supply national industrial needs and that the demand for certain hard minerals will increasingly exceed available domestic sources of supply;

(2) that, in the case of some minerals, the Nation is totally dependent upon foreign sources of supply and that the acquisition of mineral resources from foreign sources is a substantial factor in the national balance of payments position;

(3) that the national security interests of the United States require the availability of mineral resources which are independent of the export policies of foreign nations;

(4) that there is an alternate source of supply of certain minerals which are significant in relation to national needs contained in the manganese nodules which exist in great abundance on the ocean floor;

(5) that, to the extent that such nodules are located outside the territorial limits and beyond the Continental Shelf of any nation, the nodules are available for utilization by any nation with the ability to develop them;

(6) that United States mining companies have developed the technology necessary for the development and processing of deep seabed nodules and, given the necessary security of tenure, are prepared to make the necessary capital investment for such development and processing; and

(7) that it is in the national interest of the United States to utilize existing technology and capabilities of United States mining companies by providing for interim legislation which will encourage further efforts to insure national access to available deep seabed hard minerals and to provide the means whereby the national program may be merged into an international program which evolves from negotiations on the Law of the Sea and is subsequently ratified by the United States.

(b) PURPOSES.—The Congress declares that the purposes of this Act are—

(1) to establish a national program to insure the orderly development of certain hard mineral resources of the deep seabed, pending the establishment of an international regime for that purpose; and

(2) to insure the establishment of all practicable requirements necessary to maintain and enhance the quality of the marine environment to the extent that that environment may be affected by deep seabed hard mineral mining development.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(a) "Secretary" means, except where its usage indicates otherwise, the Secretary of the Interior;

(b) "Deep seabed" means the seabed, and the subsoil thereof, lying seaward and outside the Continental Shelf of any nation;

(c) "Continental Shelf" refers to the seabed and subsoil of the submarine areas adjacent to the coast of any nation (including the coasts of islands), but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas;

(d) "Block" means an area of the deep seabed having four boundary lines which are lines of longitude and latitude, the width of which may not be less than one-sixth the length, comprising not more than 40,000 square kilometers, and extending downward from the seabed to a depth of ten meters;

(e) "Hard mineral" or "hard mineral resources" refers to nodules or accretions containing, but not limited to, iron, manganese, nickel, cobalt, and copper;

(f) "Development" means any operation of exploration and commercial recovery, other than prospecting, having the purpose of discovery, recovery, or delivery of hard minerals from the deep seabed;

(g) "Prospecting" means any operation conducted for the purpose of making geophysical or geochemical measurements, bottom sampling, or comparable activities so long as such operation is carried on in a manner that does not significantly alter the surface or subsurface of the deep seabed;

(h) "Person" includes private individuals, associations, corporations, or other entities, and any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government;

(i) "Eligible applicant" means a citizen of the United States or a corporation or other juridical entity organized under the laws of the United States, or its States, territories, or possessions, and possessing such technical and financial capabilities as may be prescribed by the Secretary in order to assure effective and orderly development of hard mineral resources pursuant to a license issued under this Act;

(j) "Investment" includes any contribution of funds, commodities, services, patents, processes, or techniques in the form of (1) a loan or loans, (2) the purchase of a share or shares of ownership, (3) participation in royalties, earnings, or profits, and (4) the furnishing of commodities or services pursuant to a lease or other contract;

(k) "Exploration" means that activity involving observation and evaluation, following the location and selection of a hard mineral deposit of potential economic interest, which has, as its objective, the establishment and documentation of the nature, shape, concentration, and tenor of an ore deposit, and the nature of the environmental factors which will affect its susceptibility of being developed, including the sampling of the deposit necessary for the design, fabrication, installation, and testing of equipment, and the development of recovery techniques; and

(l) "Commercial recovery" means that activity following exploration, which has, as its immediate objective, the removal or conversion of ores from the selected hard mineral deposit at a substantial rate (without regard to profit or loss), for the primary purpose of processing the ore for marketing or commercial use.

ACTIVITIES PROHIBITED

SEC. 4. (a) Except as authorized pursuant to the provisions of this Act, including subsection (b) hereof, or as may be authorized under a treaty, Convention, or other international agreement, which is ratified by the United States, no person subject to the jurisdiction of the United States shall engage directly or indirectly in the development of hard mineral resources of the deep seabed. The prohibition of this subsection does not apply to prospecting or scientific research.

(b) In any case in which an eligible applicant is already engaged in the exploration of a block, on the date on which this Act takes effect, that eligible applicant may file an application for a license to develop that block and may continue any exploration activities until such time as the Secretary acts upon the application, with any activity subsequent to the action of the Secretary to be determined by the decision of the Secretary under the provisions of section 5 hereof.

LICENSE TO DEVELOP

SEC. 5. (a) GENERAL.—Pursuant to the provisions of this Act, the Secretary shall accept application from, and issue licenses to, eligible applicants for the development of hard mineral resources of the deep seabed. Any license issued pursuant to this section shall be issued to the first eligible applicant who makes written application therefor, and tenders a fee of $50,000 for the block specified in the application and available for licensing. Such fee shall be deposited into an appropriate fund to be established by the Secretary, which fund shall be utilized for administrative and other costs incurred in the processing of applications for licenses under this Act. No such license may be issued until the Secretary determines—

(1) that the applicant is financially responsible and has demonstrated the ability to comply with applicable laws, regulations, and license conditions;

(2) that the operations under the license will not unreasonably interfere with other reasonable uses of the high seas, as defined by any treaty or Convention to which the United States is signatory, or by customary international law;

(3) that the issuance of a license does not conflict with any obligations of the United States, established by treaty or other international agreement; and

(4) that operations under the license will not pose an unreasonable threat to the integrity of the marine environment and that all reasonable precautions will be taken to minimize any adverse impact on that environment.

(b) NATURE AND DURATION OF LICENSE.—(1) Any license issued pursuant to this Act shall be exclusive as against all persons subject to the jurisdiction of the United States, and shall authorize development of the hard mineral resources of the deep seabed for specified blocks thereof, pending adoption, and ratification by the United States, of an international agreement covering the same activity: *Provided,* That in no event shall any license issued under this Act authorize the commercial recovery of such resources prior to January 1, 1976: and *Provided further,* That, except to the extent that such licenses are authorized pursuant to the provisions of an international agreement establishing a regime for the development of mineral resources of the international seabed area beyond the limits of coastal State territorial or resource jurisdiction, on licenses shall be issued under this Act subsequent to the ratification by the United States of any such international agreement.

(2) Priority of right for the issuance of a license shall be created and maintained by receipt by the Secretary of a license application from an eligible applicant: *Provided,* That the application is submitted in conformity with the provisions of this Act and the regulations promulgated by the Secretary pursuant to section 6 hereof.

(3) An application, submitted in accordance with subsection (b) of section 4 hereof and prior to the effective date of the regulations promulgated pursuant to section 6 of this Act, shall be entitled to priority of right as established in paragraph (2) of this subsection: *Provided,* That the eligible applicant complies with the provisions of this Act, including, but not limited to, the tender of the fee required by section 5, the furnishing of information required by subsection (b) of section 6, and the minimum expenditures required by section 8: *Provided further,*

That the eligible applicant brings his application and his other activities into compliance with all applicable regulations issued by the Secretary, as soon as such regulations become effective.

(4) Every license issued under this Act shall remain in force for ten years and, where commercial recovery of the hard mineral resources has begun from a licensed block within the ten year period, such license shall remain in force for as long as commercial recovery from the block continues or until the end of the twentieth year subsequent to the beginning of the commercial recovery, whichever occurs first.

(c) TRANSFER OR SURRENDER OF LICENSE.—Any license issued under this Act may be surrendered at will or, upon written request of the licensee, may be transferred by the Secretary to any other eligible applicant. Such license, as issued or as transferred, may be revoked for willful, substantial failure to comply with the provisions of this Act, with any regulation promulgated thereunder, or with any license restriction or condition, in a proceeding in an appropriate United States District Court: *Provided*, That the Secretary has first given the licensee written notice of such violation and the licensee has failed to remedy the violation within a reasonable period of time.

(d) LICENSE CONDITIONS.—The Secretary is authorized to include in any license issued, or transferred, under this Act, any reasonable conditions which he finds necessary to carry out the purposes of this Act: Such conditions shall include, but need not be limited to—

(1) such measures as the Secretary may prescribe to prevent or minimize any adverse impact of development operations on the marine environment;

(2) such measures as the Secretary may prescribe to prevent unreasonable interference with other ocean uses in the area, including navigation and scientific research;

(3) such requirements as the Secretary may find necessary to insure that the minerals which are processed from the deep seabed development are available to supply industrial demands in the United States; and

(4) provisions necessary to implement the provisions of section 8 as to required minimum annual expenditures.

LICENSING PROCEDURES

SEC. 6. (a) GENERAL.—The Secretary is authorized to issue reasonable rules and regulations prescribing procedures governing the application for, and the issuance of, licenses pursuant to this Act. Such rules and regulations shall contain an adequate mechanism for full consultation with all other interested Federal agencies and departments, and for the full consideration of the views of any interested members of the general public.

(b) LICENSE APPLICATION.—Each application shall contain such financial, technical, and other information as the Secretary may find necessary to evaluate the application. Such information shall include, but is not, limited to—

(1) the specific block for which the license is sought;

(2 the equipment and facilities which will be utilized at the licensed block for the development of the hard mineral resources;

(3) the financial and technical capabilities of the applicant;

(4) the qualifications of the applicant to receive a license under this Act; and

(5) an agreement that the applicant, upon acceptance of the license, will comply with all conditions attached thereto.

(c) PUBLIC ACCESS TO INFORMATION.—(1) Copies of any communications, documents, reports, or information received from any applicant shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released under the terms of paragraph (2) of this subsection.

(2) The Secretary shall not disclose information obtained by him under this section which concerns or relates to trade secrets or other confidential matter referred to in section 1905 of title 18, United States Code.

(3) Nothing contained in this subsection shall be construed to require the release to the public of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from such release.

(d) NOTICE, HEARINGS, AND REVIEW.—(1) Within thirty days after receipt of an application, and prior to granting a license, the Secretary shall publish in the Federal Register a notice containing a summary of the application and information as to where the application and supporting data may be examined allowing interested persons at least sixty days for the submission of written data, views, or arguments to the granting of the license, with or without opportunity for oral presentation. The Secretary shall utilize such additional methods as he deems reasonable to inform interested persons and groups about the proceeding and to invite their comments thereon. Each such publication of notice shall provide for a hearing or hearings on the issuance of the license. After the completion of all hearings, the presiding officer shall submit to the Secretary a report of his findings and recommendations, and the participants in the hearings shall have an opportunity to comment thereon.

(2) The Secretary's decision granting or denying a license shall be in writing and shall be made within one hundred and twenty days following conclusion of all hearings. The decision shall include a discussion of the issues raised in the proceeding and the Secretary's conclusions thereon, as well as findings on the issues of fact considered. The Secretary shall grant the license applied for when he finds that the application, as submitted, or as modified, meets the requirements of this Act and the regulations and criteria applicable thereto, and further finds that the issuance of the license is otherwise in the national interest.

(3) Judicial review of the Secretary's decision shall be in accordance with sections 701–706 of title 5, United States Code.

(4) The Secretary shall maintain a registry in which is recorded the filing or withdrawal of an application for a license under this Act, the issuance, denial, expiration, surrender, transfer, or revocation of such license, or the relinquishment of any licensed portion of the deep seabed. Registry records shall be available for public inspection during the business hours of every working day.

ENVIRONMENTAL CRITERIA

SEC. 7. Prior to the issuance of any license under this Act, the Secretary, after consultation with other appropriate Federal agencies and departments, shall establish and apply, and may from time to time, revise criteria for evaluating the potential impact on the marine environment of deep seabed hard mineral mining operations.

MINIMUM ANNUAL EXPENDITURES

SEC. 8. In connection with the development of hard mineral resources from each licensed block, the licensee shall make or cause to be made minimum expenditures in the following amounts per block until commercial recovery from such block is first initiated:

Year:	
1	$100,000
2–5	200,000
6–10	1,000,000

The minimum annual expenditures required under this section shall consist of expenditures for operations, facilities, and equipment as required or utilized at the site for which the development license is issued. Such expenditures in any year in excess of the required minimum may be credited to requirements for later years.

AUTHORIZATION TO BEGIN COMMERCIAL RECOVERY

SEC. 9. Upon completion of its exploration activities at any licensed block, the licensee shall so notify the Secretary and request from the Secretary an authorization to begin commercial recovery. Upon receipt of such request, the Secretary shall grant such authorization provided that the licensee is in compliance with all conditions of the license and has furnished the Secretary with copies of all raw data relating directly to the documentation of the nature, shape, concentration, and tenor of the ore deposit of the licensed block and the nature of the physical environmental factors which will affect such commercial recovery.

AREAS WITHDRAWN FROM LICENSING: DENSITY LIMITATION

SEC. 10. (a) No license shall be issued under this Act for any portion of the deep seabed—

(1) which has been relinquished by the applicant under a license issued under this Act within the prior three years;

(2) which is subject either to a prior application for a license, or an outstanding license, under this Act;

(3) which, if licensed, would result in the applicant's holding more than five licensed blocks at any one time during the first five years after the effective date of this Act; and

(4) which if licensed, would result in a holding by licensees under this Act of more than thirty percentum of an area of the deep seabed which is within a circle with a diameter of 1,250 kilometers.

(b) No license shall be issued or transferred under this Act, and no person subject to the jurisdiction of the United States shall have a substantial interest in a license issued under this Act, which would result in any person directly or indirectly holding, controlling, or having a substantial interest in licenses for development of any portion of the deep seabed which that person could not hold directly under this Act in accordance with the limitations of this section.

RELINQUISHMENT OF LICENSED AREAS

SEC. 11. Within ten years of the license date for any block, and not later than the request for authorization to exploit as required by section 9 hereof, the licensee shall, by written notice to the Secretary, relinquish seventy-five percentum of such block measured laterally. The relinquishment shall be such that the unrelinquished area or areas shall conform to the shape of a block as defined in section 3 hereof. The licensee shall select the area of the block to be relinquished and as many as four contiguous blocks of the same type held by the licensee may be treated as a single unit for selecting the area to be relinquished.

INTERNATIONAL REGIME

SEC. 12. At such time as an international agreement, providing for the establishment of an international regime for the development of the hard mineral resources of the deep seabed, shall become binding upon the United States, licenses issued under this Act shall become subject to the provisions of that agreement. To the extent that they may be consistent with the international regime, licenses issued under this Act shall continue in effect, and, to the extent possible under the international agreement, the United States shall exercise its rights and responsibilities under the agreement to insure such continuation.

INVESTMENT GUARANTY

SEC. 13. To the extent that an international agreement, binding upon the United States, shall differ from the requirements of this Act, the United States shall be responsible for complying with all fees and other payments required under the regime and shall provide the licensee with compensation in an effectively realizable form representing the value of the investment taken or impaired by virtue of the differing requirements: *Provided*, That the liability for fees and payments under the international regime shall commence January 1, 1976: *Provided further*, That the liability for compensation shall, until after an authorization for commercial recovery has been granted, be limited to compensation in relation to equipment and facilities utilized for exploration purposes at a licensed block: *And provided further*, That the Secretary of Commerce shall determine in the first instance the amount owing on the claims for compensation under this section.

INVESTMENT INSURANCE

SEC. 14. On annual payment by any licensee of a premium to be determined by the Secretary of Commerce, utilizing standard insurance practices and based upon the relative risks involved, the United States shall insure the licensee, in an amount not exceeding the value of the investment, and for a period not extending beyond twenty years after the initiation of commercial recovery pursuant to a license issued under this Act, for any damages suffered through the impairment of the insured investment, or through the removal of hard minerals from the licensed block, by any other person against whom a legal remedy either does not exist or is unavailable in any legal forum to which the licensee has access. The Secretary of Commerce shall determine the amount owing on any claim for reimbursement under this section.

NONDISCRIMINATORY TREATMENT

SEC. 15. All hard minerals recovered from the deep seabed under a license issued pursuant to this Act shall be deemed to have been recovered within the United States for purposes of the import and tax laws and regulations of the United States, and such laws and regulations shall be administered so that there will be no discrimination between hard minerals recovered from the deep seabed and similar hard minerals recovered within the United States.

REGULATORY AUTHORITY

SEC. 16. In order to carry out his responsibilities under this Act, the Secretary is authorized to issue such reasonable rules and regulations as he may deem necessary and appropriate.

JURISDICTION OF UNITED STATES DISTRICT COURTS

SEC. 17. United States district courts shall have original jurisdiction of cases and controversies arising out of, or in connection with, development activities conducted in any area of the deep seabed under the authority of this Act, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place where the cause of action arose.

PENALTIES

SEC. 18. (a) CIVIL PENALTIES.—Any person subject to the jurisdiction of the United States who violates any provision of this Act, or any rule or regulation issued pursuant to section 16 hereof, shall be liable to a civil penalty of $10,000 for each day during which the violation continues. The penalty shall be assessed by the Secretary, who, in determining the amount of the penalty, shall consider the gravity of the violation, any prior violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation. No penalty may be assessed until the person charged shall have been given notice of the violation involved, and an opportunity for a hearing. For good cause shown, the Secretary may remit or mitigate any penalty assessed. Upon failure of the person charged to pay an assessed penalty, the Secretary may request the Attorney General to commence an action in the appropriate district court of the United States for collection of the penalty without regard to the amount involved, together with such other relief as may be appropriate.

(b) CRIMINAL PENALTIES.—In addition to any other penalty, any person who willfully and knowingly violates any provision of this Act, or any rule or regulation issued pursuant to section 16 hereof, shall be punished by a fine of not more than $25,000 for each day during which such violation continues.

(c) LIABILITY OF VESSELS.—Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this Act, or of any rule or regulation issued pursuant to section 16 hereof, shall be liable *in rem* for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was, at the time of the violation, a consenting party, or privy to such violation.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 19. (a) There are authorized to be appropriated for the current fiscal year and for each of the two succeeding fiscal years such sums as may be necessary for the administration of this Act.

(b) There are authorized to be appropriated for fiscal year 1976, and for each of the two succeeding fiscal years, such sums as may be necessary for the implementation of section 13 of this Act.

EFFECTIVE DATE; SEPARABILITY

SEC. 20. This Act shall take effect on the date of its enactment. If any provision of this Act or any application thereof is held invalid, the validity of the remainder of the Act, or of any other application, shall not be affected thereby.

[From the (New York) Journal of Commerce and Commercial, Dec. 27, 1973]

THIRD WORLD GOODS PRICE RISE FEARED

(By Sidney Fish)

An Arab-led movement to organize developing countries to raise prices not only of oil, but of aluminum, iron ore, copper and other strategic materials is feared by industrialists.

Such a program was hinted at by Shah Mohammed Pahlevi of Iran, at a press conference in Teheran Monday, when he announced the new posted price for Mideast oil would be more than doubled Jan. 1 to $11.05 a barrel, equivalent to a market price of $7.11 a barrel.

Shah Pahlevi said the oil-producing nations, now emerging among the wealthy countries of the world, might assist the poorer countries in the "exploration and mining of iron ore." This role, he said, would have to be taken up by the new wealthy oil producing nations.

While he did not mention why these countries would assume this task, he is believed to have in mind the balance of payments problems arising for the industrial countries, including the U.S., Western Europe and Japan, as a result of sharply higher prices of imported oil. Such problems would make it more difficult for the developed countries to play an active role in the third world areas.

If the Arab nations finance iron ore, bauxite, and copper mines, it is believed that they will bring to third world countries the same monopolistic tactics in metals that have enabled the Arabs to boost their oil prices fourfold in recent months.

Such a program would pose a distinct threat to the military security of the United States, which is increasingly dependent on imports of strategic metals.

Any cartelization of the ore-mining third world countries would widen the unfavorable balance of trade of the industrialized nations, including the U.S., European countries and Japan. Balance of trade deficits will initially be created or intensified by the new record prices for Mideast oil, which will cost the Western countries many billions of dollars a year.

A similar boost in ore prices, engineered through threats of embargoes on shipments, would increase the trade deficits of the Western countries, until such time as the third world countries could become substantial consumers of Western industrial products.

Third-world countries are already organizing to strengthen their bargaining position. The United States, for example, is heavily dependent on bauxite imports needed by our aluminum industry. This country may soon have to deal with the leading bauxite producers. The latter are planning to hold a meeting early next year to discuss the formation of a group similar to the Organization of Petroleum Exporting Countries.

In copper, the Inter-governmental Council of Copper Exporting Countries (Chile, Peru, Zambia and Zaire) is already in existence. An international tin council, producing members of which are: Malaysia, Bolivia, Indonesia, Nigeria, Zaire, and Australia, is also in being.

Any move of these councils to restrict production to boost prices through joint action would have to be offset by increased exports of the U.S. The U.S. in recent months has achieved a favorable balance of trade, but it has done so by exporting in large volume such scarce commodities as chemicals, copper, steel, scrap, etc. This trend has had direct inflationary effects, by increasing shortages of these commodities.

The Arab countries have disclaimed any desire to wage economic warfare against the industrialized countries of the West. But their moves in oil, and possibly in metals, point to efforts to reduce the Western world's influence in world affairs.

Shah Pahlevi, for example, said a "new equilibrium was emerging," among the rich nations, those rapidly turning wealthy through their oil reserves, and the poor countries.

The United States, faced with threats to its supply of strategic war materials, may have to give new attention to its stockpiles of these metals. Unless steps are taken to assure adequate stockpiles, the United States could face a mineral crisis, according to Interior Secretary Rogers Morton. In recent years, the stockpiles have been reduced to fight inflation.

Two-thirds of bauxite used by U.S. aluminum plants comes from Jamaica and Surinam. Nearly all of the rest comes from Canada and Australia. The U.S. has low grade bauxite in Georgia and Alabama, but no efforts have been made to develop this ore, since imported ore is cheaper.

Aluminum is vital to the U.S. aircraft producing industry, and as such is an irreplaceable material in national defense.

Iron ore, similarly, is imported from third world countries, including Venezuela, Liberia, and Brazil, although Canada and U.S. taconite mines have become important sources.

The Arab countries, encouraged by the success of their embargo, appear to be eager to extend their influence to other commodities. In this way, they hope to influence the foreign policies of the West, and also gain

an economic foothold in the developing countries.

CIPEC IGNORES ZAMBIA-CHILE TROUBLES

CIPEC countries laid down the foundation for a more active organization last week in Paris, and moved to consolidate its ties with OPEC, Chile, Peru, Zaire, and Zambia—which formed the Intergovernmental Council of Copper Exporting Countries (CIPEC) six years ago—held the annual meeting of their governing board in Paris on Nov. 15–16.

Avoiding political difficulties—the breaking of diplomatic relations by Zambia as a protest to the military coup in Chile—they reaffirmed their goal to "continue aid and assistance to each other in the face of all emergencies."

When Kennecott started litigation with the Chilean government in the European courts over El Teniente copper, Zambia, Zaire, and Peru pledged not to compete in the affected markets against Chile. Likewise they stood behind Zambia in its border problems with Rhodesia.

Ineffective as these measures may have been, the unity of economic purpose among the CIPEC countries has been preserved and may be cemented further when they carry out their recent three-point agreement. The first point calls for turning CIPEC's working panel of experts into a permanent committee, which will align policies in trade and in the relationships between producers and consumers. This committee will meet for the first time in January. The second and third points call for setting up a new production and investment committee to coordinate action of the member countries and for setting up a new documentation and information office.

The chairmanship of the governing body of CIPEC fell this year to Jaime Velasco of Chile.

CIPEC represented around 40% of world production last year and about 80% of world copper exports. Following is a breakdown of 1972 production in short tons, according to the American Bureau of Metal Statistics:

Chile	794,700
Zambia	769,841
Zaire	463,000
Peru	194,281
Total	2,221,822

A proposed declaration of CIPEC and OPEC, the Organization of Petroleum-Exporting Countries, is also in the works. A joint statement would proclaim "mutual solidarity and their right to a fair price for and control of their natural resources." Officials of both groups held working sessions in September and October.

[From the Washington Post, Nov. 25, 1973]

GLOBE GOBBLING: THE WORLD SCARCITIES AHEAD

(By Lester R. Brown)

(NOTE.—Brown, a senior fellow at the private Overseas Development Council here, is a former Agriculture Department official and the author of "Seeds of Change" and "World Without Borders.")

As we approach the final quarter of this century, global scarcity of many important resources is emerging. While the energy crisis has been occupying the headlines, scarcity of other resources is now apparent.

Global consumption of every important mineral required by a modern industrial economy is increasing dramatically. Having already depleted their own reserves of critical raw materials, industrial countries are turning increasingly to non-industrial countries for supplies. As global economic growth continues we can only anticipate growing international competition and rising prices for supplies of many key resources.

Accelerating world price rises and frequent shortages of forest products—lumber, fuel and newsprint—are arising from the fact that the earth is gradually being deforested.

Shortages of natural fibers, principally cotton and wool, are helping to drive up clothing prices. In the past, scarcity of natural fibers has been offset easily by increased production of man-made fibers. However, the rising cost of petroleum—a basic raw material for the synthesis of fibers—has severely reduced that possibility

Skyrocketing food prices in 1973 resulted in part from a disturbing long-term trend: the global demand for foodstuffs generated both by population growth and affluence is gradually outrunning the productive capacity of the world's farmers and fishermen.

Food scarcity is being accentuated by energy scarcity. Energy is an important cost in the manufacture of chemical fertilizers, and the primary raw material for the production of crucial nitrogen fertilizer is natural gas. High yield agriculture in Western Europe, Japan and the midwestern United States depends upon the intensive use of energy.

In many nations, population growth and economic growth are rapidly increasing the demand for land suitable for living space and commercial purposes. The result has been soaring land prices. Recreational, industrial and residential uses are reducing the land available for food production—a dangerous trend in a food-short world which has little unused arable land.

One essential resource which is beginning to constrain the expansion of both agricultural and industrial activity in substantial areas of the world is the availability of fresh water. Within agriculture it is now the principal constraint on the spread of the new high-yielding dwarf wheats in countries ranging from Mexico to Afghanistan. It is hamstringing Soviet efforts to meet expanding consumer demand for livestock products.

In many nations we are seeing growing pressures on another resource on which economic activity depends: waste absorptive capacity. Increases in the incidence of environmentally induced illnesses, the change in oxygen content of lakes and a lengthening list of species threatened with extinction are among the symptoms.

A DOMINO EFFECT

The scarcity characterizing the world market for many important commodities in the early 1970s must not be viewed as a historical accident or a temporary situation which will shortly vanish. It is the product of continuing exponental economic growth within the physical constraints of a finite, rather small planet. And if we are to deal with this problem we must create new mechanisms of global cooperation, such as a world food reserve and international management of ocean fisheries.

We are, in fact, seeing a domino effect of resource scarcity in operation. A shortage of fresh water with which to restore strip-mined areas holds down the level of coal extraction, adding pressures not only on available coal supplies but on all other energy resources as well. A fall-off in the growth of the world fish catch raises global demand for soybeans in order to produce substitute protein products such as poultry. Scarcity of cotton pulls cropland needed for soybean production into cotton production, intensifying the protein shortage. The list of such extended chains or networks of resource interdependence is long.

Economists traditionally have regarded substitution as the panacea for scarcity of a particular resource. In today's world, however, the opportunities for substitution frequently ensure only that scarcity is contagious.

Scarcities are not merely national scarcities affecting a particular country or group of countries; they are global scarcities. Countries throughout the world are dependent on common supplies of petroleum, soybeans, marine protein, copper and natural fibers. As the global economy has become more integrated, as a result of growing monetary interdependence and rapidly expanding international trade, it has become exceedingly difficult for individual countries to isolate themselves from scarcities elsewhere.

The United States, historically blessed with relative resource self-sufficiency, is experiencing a growing dependence on imported minerals, closely paralleling that for energy. Of the 13 basic raw materials required by a modern economy, the United States in 1970 was dependent on imports for more than half of its supplies of six. By 1985 it is projected to be primarily dependent on imports for supplies of nine of the 13 basic raw materials, including three major ones: bauxite, iron ore and tin.

In no areas has American interdependence with the world been demonstrated more dramatically than with food. If there is any area in which the U.S. economy was believed to be invulnerable, it was in its capacity to provide an adequate supply of low-cost food for American consumers. But at present, American consumers find that they must share food scarcity with consumers in other countries, most importantly those in the Soviet Union. The United States could have avoided the politically painful food price rises of early 1973 by restricting farm exports, but unfortunately an adequate U.S. energy supply is dependent on expanded farm exports to pay the rapidly rising import bill.

The international consequences of the growing common dependence on geographically concentrated, and often increasingly scarce, global resources deserve far more attention than they have thus far received. Resource scarcities are altering the economic and political relationships among countries, changing the relative position and influence of countries in the international hierarchy. A given country may find its position abruptly strengthened in one sector of economic activity and weakened in another. World food scarcity has greatly improved the terms on which the United States makes foodstuffs available to the rest of the world, but its negotiating position in the world energy economy has deteriorated sharply. The converse is true for the Soviet Union, which is highly vulnerable in food but in a much better position with energy, which it produces in surplus.

Efforts by individual countries to expand their share of global output, employment and wealth are taking new forms. Linkage between global scarcities and internal policies affecting economic growth, inflation and employment are becoming both more direct. Stresses on the international political fabric are increasing. Cooperation among countries is needed in spheres of activity where none was needed before.

THE COIN'S OTHER SIDE

Since World War II, the overriding objective of national trade policies has been that of expanded access to markets abroad for exports. The General Agreement on Tariffs and Trade (GATT) was created specifically with this in mind. Five successive rounds of GATT negotiations since World War II have steadily reduced tariff barriers, as evidenced by the healthy growth in world trade throughout the postwar period.

Scarcity is now bringing the other side of the international trade coin, the question of access to supplies, to the fore. Highlighting this question is the disturbing tendency for countries to limit exports of raw materials. Countries are limiting exports to cope better with internal inflationary pressures, to extend the foreign exchange earning lifetime of a nonrenewable resource, to increase the share of indigenous process-

ing, to improve export terms and to take advantage of anticipated future price rises.

Countries with nonrenewable resources such as petroleum and minerals are beginning to ask themselves at what rate they want to exploit their resources. Historically, when potential supplies almost always exceeded prospective demand, and supplier countries were eager to maximize exports, this issue was seldom raised. But today it is a much more complex issue.

Should the growth in world demand determine the rate at which a given resource is exploited or should it be determined by some longer-term internal development strategy, which might argue for a much slower rate of exploitation and lower level of exports?

What should determine the rate at which Venezuela's remaining oil reserves are exploited—its own longer-term foreign exchange needs or the short-term consumption needs of the United States? The former may argue for a much lower level of petroleum production and export than the latter.

Exports of scarce commodities are being banned or restricted by a number of countries in order to cope with internal inflationary pressures. Brazil has limited the export of beef in 1973 to levels 30 per cent below the corresponding month in 1972. Thailand, a leading world supplier of rice, has banned exports in order to prevent inordinate price rises in its national food staple. The United States severely limited the export of soybeans this summer (the controls subsequently were lifted) and it is virtually the sole supplier of this critical protein resources to the rest of the world.

As lumber prices soar within the United States, a leading exporter of forest products, it is attempting to negotiate a voluntary quota for Japan on its imports of U.S. forest products. This represents a dramatic turnabout in the U.S.-Japan trade relationships, where the focus over the past decade has been on the negotiation of voluntary quotas with the Japanese to limit their exports of textiles and steel to the United States. Under what conditions should a country be permitted to use trade policy to, in effect, export inflation?

Should a country be permitted to deny others access to an indigenous raw material of which it is the principal global supplier? We must begin to at least ask the question of how to cope with export limitations on raw materials which directly affect the well-being of people throughout the world. Guidelines governing terms of access to external markets and penalties for those countries which fail to comply have evolved within the framework of GATT, but there are no such guidelines on whether or when a country should be permitted to withhold a given resource from the rest of the world.

EXPORTING PROCESSED GOODS

Many developing countries see the improved market outlook for raw materials as an opportunity to substitute exports of semi-processed or processed raw materials for those of raw materials *per se*. They wish to abandon the "hewers of wood, drawers of water" role they have traditionally occupied in the world economy. Perhaps the best single example to date of the exercise of newly acquired bargaining power is an agreement between Japan and Turkey, wherein Japan has agreed to build a 50,000-ton-per-year ferro-chrome ore alloy plant in Turkey in exchange for agreement to supply a million tons of chrome ore over the next 11 years.

If the Shah of Iran gets his way, more and more of the oil leaving Iran will be refined rather than crude oil. Argentina, Brazil, and India are taking advantage of the global scarcity of cattle hides by restricting or banning exports, thus furthering development of their domestic leather goods industry. In effect, they hope to shift the geographic focus of the leather goods export industry from Italy and Japan to the southern hemisphere. Indonesia is combining its favorable resource situation with mounting Japanese fears of pollution at home to persuade Japanese firms investing in mineral extraction to ship processed ore rather than crude ore to Japan.

Poor countries eager to acquire smokestacks and the jobs which they bring are likely to view their unused or underused waste absorptive capacities as a resource to be exploited in international economic competition, much like mineral reserves or fertile farm land.

The response of investors to pollution differentials among countries in some ways parallels that to wage differentials. In effect, firms are beginning to locate pollution-intensive phases of their operation in countries with low pollution levels much as they have located labor-intensive aspects of their operations in low-wage countries, most prominently Mexico, Taiwan, Hong Kong, Singapore and South Korea over the past decade.

COLLECTIVE BARGAINING

As the industrial countries turn increasingly to non-industrial countries for raw materials, their negotiating position is likely to weaken over time, altering the terms on which these raw materials are made available.

In the wake of the extraordinarily successful, highly visible collective bargaining by petroleum exporters over the past few years, the possibility of collective bargaining by suppliers of other raw materials is being viewed with more than ordinary interest. For them it is a tantalizing model. The prospects for successful collective negotiation by raw material exporters are influenced by a number of factors, including the number of suppliers, the ability and willingness to restrict supply, the availability of possible substitutes, alternative sources of foreign exchange earnings for the supplier and the possibility for collective bargaining by importing countries.

Efforts to bargain collectively fail far more often than they succeed but oftentimes a convergence of special circumstances can give the exporting countries the leverage to alter the terms on which a given raw material is made available. A prolonged strike in the mining or transport sector and interference with global transport arteries, such as blockage of the Suez Canal or the severing of a strategic rail or pipeline linking a major supplier with world markets, are but two of the events which can combine to strengthen inadvertently the hands of exporting countries.

One of the necessary, though far from sufficient, requisites for effective collective bargaining is that a relatively small number of countries control most of the exportable supplies. Four poor countries—Chile, Peru, Zambia and Zaire—supply most of the world's exportable surplus of copper. Three others—Malaysia, Bolivia and Thailand—account for 70 per cent of all tin entering international trade channels. Australia, Mexico and Peru account for 60 per cent of the exportable supply of lead. Cuba and New Caledonia have well over half of the world's known reserves of nickel. Known reserves of cobalt are concentrated in Zaire, Cuba, New Caledonia and parts of Asia.

Exportable protein feedstuffs are concentrated in even fewer countries. One country, Peru, supplies most of the fish meal entering the world market.

Exportable supplies of cereals are controlled by a few countries. North American dominance of cereal exports, both foodgrains and feedgrains, is even greater than Middle Eastern dominance in energy. Not only is the United States the leading supplier of wheat and feedgrains, but it is now the leading exporter of rice as well. The world is more dependent on North American food supplies than ever.

Suppliers of some raw materials are certain to attempt to emulate the Organization of Petroleum Exporting Countries. The four copper exporting countries are already doing so. There is concern within the aluminum industry that the politics of petroleum are becoming the politics of bauxite. Coffee exporters are now beginning to bargain collectively as a group where as in the past they were dependent on the willingness of the importing countries to support prices of coffee.

While some poorer nations may be benefiting handsomely from resource shortages, others may suffer greatly. Global resource scarcity could threaten future economic progress in those countries which are densely populated and not blessed with any of the critical raw materials the rest of the world needs.

For example, a 40 per cent rise in the world market price of petroleum and cereals could bring economic development to a near standstill in those poor countries dependent on imports of both. The foreign assistance needs of resource-rich Indonesia, Algeria or Brazil no longer can be considered in the same light as those of Bangladesh, India or Colombia.

AFFECTING LIFESTYLES

Global resource scarcities impact heavily on economic and political relationships among countries, in part because they affect so directly the living conditions within a given country. They affect the very lifestyles of people, their dietary habits, their mode of transportation. The level of protein intake in the Soviet Union and Japan are directly affected by U.S. farm export policy. The size of automobiles in the United States is inevitably affected by production decisions of Middle Eastern oil countries. It is this dimension of global resource scarcity that makes the terms of access to needed resources such a politically sensitive issue.

As global resource scarcity makes itself felt within the United States, it is generating a need to modify lifestyles. As long as the resources consumed within the United States were largely indigenous, how much was consumed was largely an internal matter, but as these resources come more and more from abroad, others will have some say over the rate and terms on which they are consumed.

Many of the technologies embodied in the U.S. economy evolved in a situation of resource abundance, of seemingly unlimited supplies of energy, land and water. The time has now come to re-examine these technologies in light of the growing resource scarcity. For example, the time may have come to redesign the transportation system, imposing limits on the size of automobiles and investing more in urban mass transit and less in interstate highways and urban throughways.

A similar situation exists with food. Claims on world food resources by the average American are nearly five times as great as those of the average Indian, Nigerian or Colombian. Whether Americans can continue to consume ever more animal protein, as existing economic projections indicate, in a protein scarce world s now problematic. It may become necessary for both economic and ecological reasons to begin to substitute high-quality vegetable protein for animal protein much as vegetable oils have been substituted for animal fats over the past generation.

NEEDED: GLOBAL COOPERATION

Coping with scarcity of some resources calls for specific new modes of international cooperation. Growing food scarcity is one such need. With world grain reserves now far below the desirable working level, and idled cropland in the United States rapidly disappearing, a major stabilizing influence on world food prices has been lost. Under these

circumstances, an internationally managed world food reserve becomes highly desirable as counter to the threat of famine and as a source of assurance and security to consumers everywhere, including the United States.

In some instances, such as in world fisheries the failure to cooperate could leave all involved worse off. Unless an institutional framework can be created within which to cooperatively manage oceanic fisheries, we must face the prospect of depleted stocks, declining catches and soaring seafood prices. It is in this context that consumers have a direct stake in the forthcoming U.N.-sponsored Law of the Sea Conference.

Advancing technology has brought us to the point where national efforts to expand the supply of fresh water through river diversion or alteration of rainfall patterns may have international if not global consequences. Under these circumstances we need to think seriously of creating a supranational institution to regulate national interventions in the hydrological cycle. When should a country be permitted to increase its rainfall at the expense of another, if at all? Should individual countries be permitted to divert river flows or deforest on a scale which will affect the global climatic system?

Scarcity manifested in rising prices and intensified competition among countries for access to and control of resources may make continuing global population growth a much more obvious threat to the future well-being and security of people everywhere than it is today.

One of the inevitable consequences of scarcity and, more importantly, the realization that it may not be temporary, is a growing doubt as to whether the currently projected world population of 6.5 billion by the end of the century will be considered tolerable. This in turn may impart a new urgency for putting on the demographic brakes, highlighting the importance of the U.N.-sponsored world population conference, now scheduled for Bucharest in August, 1974, and the World Population Plan of Action it is intended to produce.

TROUBLED YEARS AHEAD

The supply position of some raw materials will undoubtedly improve from time to time in the years ahead, but overall the prospect is for continuing scarcity. Over the longer term, technological breakthroughs may dramatically improve the supply situation. The energy crisis may one day disappear, but a technological breakthrough which might permit this, such as the harnessing of fusion power, is not likely to have an impact before 1990 at best. Advances in the technology of fish farming may some day permit growth in the supply of cultivated fish to offset the inevitable decline in growth in the oceanic catch. But progress on this scale almost certainly will be reserved for some point beyond the current decade, if it comes at all. And so it is with all too many resources plagued by global scarcity.

How to cope with global scarcity must be recognized as a global problem. The temptation at the governmental level will always be to act in the national interest, narrowly defined, and against a short-term time horizon. Political leaders often will be tempted to blame other countries for inflation, economic stagnation, rising unemployment or other ills deriving from scarcity. All too often, they will be tempted to use trade and monetary policy to export inflation and unemployment.

We delude ourselves if we think the years ahead will be an easy period in international relations. At best, they will be troubled ones. The complex resource issues which must be resolved, one way or another, will place great stress on the international political fabric. At issue is whether we can create a workable world order for an increasingly interdependent world.

TABLE 1.—MANGANESE NODULES: COMMERCIALLY ATTRACTIVE CONSTITUTENTS, U.S. STATISTICS FOR 1971

Commodity (short tons)	U.S. production	U.S. consumption	Imports for consumption	Import value (1971 prices)	Major foreign sources	Current metal prices (per pound)	Estimated reserves [1]
Manganese	0	1,127,382 (Mn content)	1,127,382 [2] (Mn content)	$74,576,000	Brazil, Gabon, South Africa, Zaire.	$0.33	Insignificant.
Cobalt	Negligible	6,250 (contained Co)	5,456 (Co content)	23,740,000	Zaire, Belgium, Luxembourg, Finland, Canada, Norway.	3.30	28,000 (0.06 percent cobalt).
Nickel	15,654 [3] (Ni content)	128,816 [4]	142,183 (Ni content)	376,599,000	Canada, Norway	1.40–1.53	1,000,000 (0.4 to 1.5 percent nickel ore).
Copper	1,522,183 (recoverable)	2,019,507 [5]	330,738 (Cu content)	321,071,000	Canada, Peru, Chile	.68	81,000,000.

[1] Reserves—Those resources whose extent is measured or estimated and which are currently extractible at a profit at current prices and technology.
[2] Includes Mn ore and ferromanganese (average grade of imported Mn ore was 49 percent Mn in 1971).
[3] Includes 2,581 short tons recovered as byproduct of metal refining.
[4] Exclusive of scrap.
[5] Refined copper.

Sources: (1) Final Report of the National Commission on Materials Policy. Washington: June 1973, pp. 2.25, 4B.8. (2) Minerals Yearbook, 1971, vol. I. U.S. Bureau of Mines. Washington: 1973, pp. 407, 408, 485, 491, 722, 818, 819, 821. (3) Summary Petroleum and Selected Mineral Statistics for 120 Countries, Including Offshore Areas. U.S. Geological Survey Professional Paper 817. Washington: 1973, p. 116.

TABLE 2.—1971 PRODUCTION OF MANGANESE ORE FROM DEVELOPING COUNTRIES

Country	Production (short tons)	Percent of world production [1]
Brazil	2,868,000	12.58
Gabon	2,059,753	9.03
India	1,961,000	8.60
People's Republic of China	1,100,000	4.83
Ghana	659,801	2.90
Zaire	427,000	1.87
Mexico	294,198	1.29
Indonesia	13,181	.06

[1] Total 1971 production was 22,792,130 short tons. (Figures given in gross weight manganese ore—35 percent or more Mn content).

Source: U.S. Bureau of Mines. Minerals Yearbook, 1971; vol. I: Metals, Minerals, and Fuels. Washington: U.S. Govt. Print. Off., 1973. (92d Cong., 2d sess. House Document No. 92-222, vol. I) p. 724.

TABLE 3.—1971 PRODUCTION OF COPPER FROM DEVELOPING COUNTRIES

Country	Production (short tons)	Percent of world production [1]
Zambia	718,300	10.78
Chile	790,910	11.87
Zaire	449,000	6.74
Peru	234,665	3.52
Philippines	229,600	3.44
People's Republic of China	110,000	1.65
Mexico	69,611	1.04
Bulgaria	50,000	0.75
Southwest Africa	35,317	0.53
Southern Rhodesia	32,338	0.48
Uganda	18,802	0.28

[1] Total 1971 production was 6,664,079 short tons. (Mine production, Cu content).

Source: U.S. Bureau of Mines, Minerals Yearbook, 1971; vol. I: Metals, Minerals, and Fuels. Washington: U.S. Govt. Print. Off., 1973. (92d Cong., 2d sess. House Document No. 92-222, vol. I) pp. 491–492.

TABLE 4.—1971 PRODUCTION OF COBALT FROM DEVELOPING COUNTRIES

Country	Production (short tons)	Percent of world production [1]
Zaire	14,800	57.22
Zambia	2,293	8.86
Cuba	1,700	6.57
Morocco	1,078	4.17

[1] Total 1971 production was 25,867 short tons. (Mine output, Co content).

Source: U.S. Bureau of Mines. Minerals Yearbook, 1971; vol. I: Metals, Minerals, and Fuels. Washington: U.S. Govt. Print. Off., 1973. (92d Cong., 2d sess. House Document No. 92-222, vol. I) p. 409.

TABLE 5.—1971 PRODUCTION OF NICKEL FROM DEVELOPING COUNTRIES

Country	Production (short tons)	Percent of world production [1]
New Caldonia	112,751	15.97
Cuba	40,000	5.66
Indonesia	29,762	4.22
Southern Rhodesia	13,000	1.84
Greece	11,600	1.64
Brazil	3,500	0.50

[1] Total 1971 production was 706,069 short tons. (Mine production, Ni content).

Source: U.S. Bureau of Mines. Minerals Yearbook, 1971; vol. I: Metals, Minerals, and Fuels. Washington: U.S. Govt. Print. Off., 1973. (92d Cong., 2d sess. House Document No. 92-222, vol. I) p. 825.

TABLE 6.—CHANGING IMPORT REQUIREMENTS OF THE UNITED STATES

[Net imports as a percent of domestic use [1]]

Commodity	1950	1960	1970	1971
Manganese	77	92	94	96
Cobalt	92	75	96	75
Nickel	99	88	91	66
Copper	35	9	8	6

[1] Net imports include semi-refined forms.

Sources: (1) Final Report of the National Commission on Materials Policy. Washington: June 1973. p. 2.23. (2) The Stockpile Problem. American Mining Congress. Washington: June 1973. p. 4.

TABLE 7.—MINERAL STOCKPILE HOLDINGS AND OBJECTIVES

Commodity and unit	Amount in storage Dec. 31, 1972	Value as of Dec. 31, 1972	Objective Dec. 31, 1972	Apparent excess Dec. 31, 1972
Manganese (short dry [1] ton)	11,568,481	$420,432,100	4,000,000	7,568,481
Cobalt (pounds)	71,499,318	173,716,200	38,200,000	33,299,318
Nickel (short ton)	47,731	145,219,400	0	47,731
Copper (short ton)	258,659	266,054,600	775,000	−516,341

[1] Manganese ore, metallurgical grade.

Source: July–December 1972 Statistical Supplement, Stockpile Report to the Congress. Executive Office of the President, Office of Emergency Preparedness. Prepared by the General Services Administration. pp. 14, 18, 30, 39.

TABLE 8.—MANGANESE NODULES: COMMERCIALLY ATTRACTIVE CONSTITUENTS PROJECTIONS FOR FUTURE DEMAND

Commodity (short tons)	U.S. production 1971	World production 1971	United States, 1985		Total world, 1985		United States, 2000		Total world, 2000	
			Low estimate	High estimate	Low estimate	High estimate	Low estimate	High estimate	Low estimate	High estimate
Manganese	0	22,792,130 [1]	1,700,000	1,950,000	13,700,000	17,950,000	2,265,000	2,900,000	18,265,000	23,900,000
Cobalt	Negligible	25,867 (Co content)	14,650	17,050	25,850	28,250	26,000	34,300	40,550	48,850
Nickel	15,654 [2] (Ni content)	706,069 (Ni content)	356,000	414,000	960,000	1,018,000	632,000	833,000	1,464,000	1,665,000
Copper	1,522,183 (recoverable)	6,664,079 (Cu content)	3,600,000	4,200,000	11,200,000	13,500,000	6,000,000	7,800,000	15,700,000	20,600,000

[1] Figure given is gross weight manganese ore (35 percent or more Mn content).
[2] Includes 2,581 s. tons recovered as a byproduct of metal refining.

Sources: (1) Marine Resources and Legal-Political Arrangements for Their Development. U.S. Commission on Marine Science, Engineering and Resources. Washington: 1969, pp. VII–133, 134, 140, 142. (2) Minerals Yearbook, 1971, vol. I, U.S. Bureau of Mines. Washington: 1973, pp. 409, 91–492, 724, 825.

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THE THREAT FROM THE THIRD WORLD

(By C. Fred Bergsten)

NATURAL RESOURCES

First, the United States is rapidly joining the rest of the industrialized countries in depending on the Third World for a critical share of its energy supplies and other natural resources. For oil alone, annual U.S. imports are expected to rise by $20 billion by the end of the decade. But it is not only much-publicized oil; accelerating imports of other raw materials will raise these figures significantly.

Four countries control more than 80 percent of the exportable supply of world copper, have already organized, and have already begun to use their oligopoly power. Two countries account for more than 70 percent of world tin exports, and four countries raise the total close to 95 percent. Four countries combine for more than 50 percent of the world supply of natural rubber. Four countries possess over one-half the world supply of bauxite, and the inclusion of Australia (which might well join the "Third World" for such purposes) brings the total above 90 percent. In coffee, the four major suppliers have begun to collude (even within the framework of the International Coffee Agreement, which includes the main consuming countries) to boost prices. A few countries are coming to dominate each of the regional markets for timber, the closest present approximation to a truly vanishing resource. The percentages are less, but still quite impressive, for several other key raw materials and agricultural products. And the United States already meets an overwhelming share of its needs for most of these commodities from imports, or will soon be doing so.

A wide range of Third World countries thus have sizeable potential for strategic market power. They could use that power against differential pricing or supply conditions—for example, to avoid higher costs to other DLC's or against the United States alone to favor Europe or Japan.

Supplying countries could exercise maximum leverage through withholding supplies altogether, at least from a single customer such as the United States. Withholding is a feasible policy when there are no substitute products available on short notice, and when the foreign exchange reserves of the suppliers become sizeable enough that they have no need for current earnings.

The suppliers would be even more likely to use their monopoly power to charge higher prices for their raw materials, directly or through such techniques as insisting that they process the materials themselves. Either withholding or price-gouging could hurt U.S. security. The threat of either could pressure the United States to compromise its positions on international political and economic issues. Either would hurt U.S. efforts to combat domestic inflation and restore equilibrium in our international balance of payments.

The price and balance-of-payments effects on the United States of withholding or price-gouging by suppliers of raw materials could not be attacked through conventional policy instruments. Domestic demand for raw materials could be dampened only at the cost of additional unemployment. Foreign suppliers are outside the jurisdiction of U.S. price controls. Substitution of domestic resources would also raise costs significantly. Stockpile sales help only for a short time. Devaluations make resource imports more costly without much dampening their volume. Such actions could thus cause major new problems for the U.S. economy and international position.

Such Third World leverage could have a double bite on the United States if used discriminatorily against it, thereby benefiting the competitive positions of Europe and Japan. Such discriminatory action, triggered either by the suppliers or by our industrialized competitors, is by no means impossible. It was attempted in oil by some Arab countries in 1967 and has been actively sought at least by Italy and France in the recent past. The spectre of "cannibalistic competition" among the rich for natural resources is unfortunately a real possibility which suggests that the owners of those resources have tremendous clout.

The Third World suppliers could also cause major problems by the way in which they use their huge export earnings. Oil earnings alone could rise to at least $50 billion per year by the end of the decade. It is hard to see how more than $20 billion of the total can be spent on imports. These countries could thus add $30 billion per year to their portfolios seeking profitable (or mischievous) outlets. They could use the money to disrupt international money markets overtly, and we have already seen that they generate great monetary instability, perhaps without consciously trying, by pushing the world toward a multiple reserve currency system. Aimed specifically at particular currencies, they could seek to force the United States (or anyone else) to adopt policies which clashed with its national objectives of the moment—as a few Arab countries, from a much weaker financial base, attacked the United Kingdom by converting sterling balances in June 1967 and again in 1971.[1] At a minimum, the uncertain destination of these huge resources will add to the already formidable problems faced by the international monetary system, which can affect the United States quite adversely.

The oil situation is, of course, the prototype. The concerted action of the OPEC countries in raising oil prices has raised energy costs throughout the world and dramatically increased their revenues. Such extortion by the oil producers—including such "normal" LDC's as Nigeria, Indonesia, Iran, and Venezuela—is likely to continue. This economic pressure is unlikely to be reduced as a result of the takeover of the production facilities by the OPEC countries from the international companies,[2] because the countries themselves—including "opposition" politicians in each—have well learned from the companies that *each* benefits from getting the highest possible price for *all*, and that price-cutting by one would be counterproductive because it would quickly be emulated by the others to preserve existing market shares. Equally important is the fact that OPEC has shown other countries how to do it. Oil may be merely the start.

To be sure, each of the specific commodity situations presents different and complex problems. There are serious obstacles to concerted supplier action: the economic option of using substitutes for some of the commodities, the political problem of achieving adequate cooperation among the suppliers, and the risk of overt retaliation by the industralized world (or just the United States).

[1] Feeling no responsibility for the system, they hold their assets in whichever national currency appears most likely to appreciate in value and/or has the highest yield at the moment—switching rapidly among currencies (and even buying gold in the free market) as the situation changes. Some of those oil countries which are members of the IMF have even opted out of the SDR scheme, which was a first step toward reducing such problems. For the problems involved, see C. Fred Bergsten, "Reforming the Dollar: An International Monetary Policy for the United States," Council on Foreign Relations Paper on International Affairs No. 2 (New York: Council on Foreign Relations, September 1972), esp. pp. 9–13.

[2] As argued by Theodore H. Moran, "Coups and Costs," Foreign Policy 8 (Fall 1972).

But the two obstacles specific to commodity action can be largely overcome within the Third World itself. Subtle pricing and marketing strategies could boost consumer costs and producer gains significantly without pushing consuming countries to the development of substitutes, which requires heavy initial investments and start-up costs. Concerted action by copper, tin, and bauxite producers would sharply reduce the risk to each that cheaper aluminum or tin would substitute for higher priced copper, or vice versa. An alliance among the producers of coffee, cocoa, and tea could preempt substitution by drinkers around the world. Objective calculations of the benefits to all producers could provide a basis for "equitable" division of the spoils.

All that is needed to permit political cooperation is increased knowledge of the market and the potential gains from concerted action, self-confidence and leadership. Whether such action actually eventuates would seem to depend quite importantly on the policy milieu of the future. The countries involved will certainly be more likely to act if the industrialized world frustrates their efforts to achieve their goals more constructively, and if they are barred from participating effectively in global decisions which vitally affect their own destinies. They are more likely to act against the United States alone if the United States is the most obstinate or neglectful of all. Even a perception of such obstinacy or neglect, sufficiently plausible to be widely believed in both the Third World and the industrialized countries themselves, could trigger action. It would seem far better for the United States, and for all the industrialized countries, to try to preempt such risks by taking initiatives to help these countries fulfill their aspirations by more stable means.

Second, a number of Third World countries exercise major leverage over U.S. investments. The book value of U.S. direct investment in the Third World exceeded $23 billion at the end of 1971 (about $14 billion excluding oil), and the real market value is at least twice as large. About 5 percent of U.S. corporate profits now derive from these investments. Many jobs relate directly to them. Even excluding oil, they provide over $1 billion annually for the U.S. balance of payments.

Earnings on foreign investment are particularly important to the United States because of their strategic importance for its balance of payments. Many observers expect the United States to move into a structural trade deficit of growing size by the end of the decade, with the huge flow of investment earnings paying (in foreign exchange terms) for its net imports, overseas government expenditures, and continued net outflows of private capital. Any significant cutback in investment earnings would thus require new measures to compensate elsewhere in the balance of payments, levying new costs on us. Cutbacks in imports or subsidies of exports, perhaps by further devaluations, would again raise U.S. prices and costs. New constraints might emerge for U.S. foreign policy, perhaps far more costly than the actions suggested here to avoid negative Third World action. Effective controls on capital exports to help the balance of payments in the short run would cut future income from abroad, including income on investments already made, and hence produce the same constraints in the future.

Confiscation of its investments in the Third World could thus create major costs for the United States. Much of this investment is in the same raw materials just discussed, so Third World action could affect the United States doubly (as it already has in oil) by both raising our costs and reducing our earnings. It is often argued that any foreign confiscations would eliminate new U.S. investments in the confiscating countries, along with the return on old investments, so there would be no net cost to our balance of payments. This argument of course ignores the negative effects of such action on domestic jobs, profits, and perhaps even prices.

But it is also almost certainly wrong for the balance of payments over the longer run, since virtually all foreign investments return more income to the United States—and hence provide financing for net imports of goods, etc.—than they cost us capital at the outset. In the short run, it is not clear that takeover of one U.S. investment places a halt on new U.S. investment even in the same country; major U.S. endeavors have continued in Peru despite the take-over of the International Petroleum Company. Given the focus of multinational firms on growth and market shares, it is quite likely that investments in alternative foreign locations would supplant investments which would have taken place otherwise in the expropriating country—perhaps a little less efficiently, with lower eventual returns to the United States. It is thus highly likely that the net effect of foreign confiscation on the U.S. balance of payments would almost always be negative.

Third World countries could also adopt a variety of measures against U.S. investment, far short of confiscation, which would hurt U.S. economic interests. Expropriation with compensation would of course eliminate future earnings, and could cut U.S. exports and jobs. Requirements that the local subsidiaries of U.S. firms export enough of their output to meet targets determined by the host government, reinvest some sizable share of their earnings, or limit their imports, could all reduce the value of the investment to the United States. The investment area provides unique opportunities for Third World action geared specifically to the United States, in view of our dominant share of foreign investment.

Third, Third World countries could undertake massive repudiation of their debts to the industrialized world if it became unwilling to negotiate "fair rescheduling" thereof. U.S. government claims on LDC's totaled about $25 billion at the end of 1971, and private claims other than direct investment added another $15 billion. Foreign payments of principal and interest on these U.S. assets were well over $2 billion in 1971. In the wrong policy milieu, the severity of the debt burden faced by many of these countries—many of which have become net capital exporters—could propel them to action to evade it. The effects on individual U.S. financial institutions, on our over-all money markets, and on the U.S. balance of payments, could all be severe. Repudiation has already been threatened by a number of countries, and has been avoided only because each one has succeeded in getting its debts rescheduled as a result.

Fourth, Third World countries could create additional economic difficulties in the industrialized world by deliberately cutting the prices of their manufactured exports. The United States is already seriously concerned about the effect of imports, particularly from "low wage countries," on U.S. jobs. But these countries might feel forced to compete even more vigorously if they were unable to receive cooperative treatment for their output in major international markets, or otherwise meet their needs for jobs and foreign exchange. They would of course do so subtly enough to avoid early detection and clear "blame," and only in instances where they could expand output sufficiently to take advantage of the price cuts in the short run and where foreign demand was adequate to make the strategy pay over the long run.

Again, the United States might not be able to respond through conventional measures. Anti-dumping duties might be inapplicable, because the foreign market would so dominate internal demand in the Third World that the suppliers would simply use the export price at home as well. Suppliers could also avoid countervailing duties, even under the elastic definition of "export subsidies" now applied by the Treasury, by using devaluations (including multiple exchange rates) to effect the price cuts. The United States could always react with import quotas, but quotas would almost certainly levy high costs on the United States by limiting trade with "innocent" countries, as well as the aggressive price-cutters, and in turn trigger retaliation or simply market-induced cutbacks in U.S. exports.

Fifth, LDC's could expand their exports by becoming "pollution havens." They could ignore pollution concerns in their production processes, and perhaps even foul the world environment in the process. Some major LDC's (Brazil, for example) are in fact already inviting those industries most heavily restricted by new anti-pollution standards in the United States to come to their countries with a promise that they will be free from the anti-pollution measures that are raising production costs in the United States.

These are some of the negative steps through which countries in the Third World can seriously hurt the United States. Each of these steps has already been tried and, in particular cases, has succeeded. The United States can always adjust—but the costs of doing so will become increasingly significant.

The United States also has numerous theoretical means to retaliate against such moves. Many have already been mentioned: import quotas, denial of new private investments or foreign aid, including blockage of loans by international financial institutions in which the United States has effective veto power, even overt military intervention in cases of blatant withholding of energy supplies for purposes of political blackmail. But most of these responses are only theoretical. Any LDC which undertook such actions would do so with sufficient subtlety so that tough U.S. responses would be difficult to mobilize, especially since some domestic interests (importers, consumers, exporters, other private investors) would be hurt as a result. The thought of military intervention seems remote after the domestic divisiveness of Vietnam. And, perhaps most importantly, other industrialized countries will usually be waiting in the wings with money and long-term purchase contracts—in the same way that Japanese and European companies wasted no time entering Chile in the wake of its nationalization of U.S. firms. Neither gunboat nor dollar diplomacy will work very well for the United States in the 1970's.

Thus it is no longer likely that the United States would emerge "the winner" in confrontation with the Third World. Even if it were economically irrational for other countries to trigger such confrontations, however, this by no means rules them out. Individual LDC governments might be forced into such a posture by internal political imperatives even if the outcome was unfavorable to their "true" national interest. But the main point is that the United States would suffer significant costs even if, in some sense, it "won" a confrontation—by substituting high-cost shale oil for lower-cost Persian Gulf crude, or South Carolina cotton goods for Korean synthetics. In the long run, there will be no winners. Since the policy framework of U.S. relations with the Third World is likely to go far in determining whether such events occur, or even threaten to occur, U.S. interests would be greatly served by creating a framework in which they will not occur.

ARAB EXAMPLE WORRIES OFFICIALS: CRISIS IN MINERALS IS FEARED

(By Carroll Kilpatrick)

With the energy shortage as the first lesson, Americans must now turn their attention to what one official has called a "global minerals shortage."

"We are not in a minerals crisis at the moment," John D. Morgan Jr., acting director of the Bureau of Mines, said in an interview, "but we must take cautionary action to avoid being in one a short distance down the road."

What worries many officials here is that a handful of nations that have the bulk of supplies of a given mineral may follow the example of the Arab oil countries and try to blackmail the rest of the world.

Bauxite is an example. It is the basic ingredient for the manufacture of aluminum. The chief suppliers are Guinea, Australia, Guyana, Jamaica and Surinam. If they got together and said that there would be no more exports of bauxite unless the consuming countries paid twice the price they have been paying, aluminum factories all over the world would be threatened.

Last week, Guinea invited the other principal bauxite producers to a meeting in February. U.S. officials don't like the looks of it.

On Dec. 18, Secretary of the Interior Rogers C. B. Morton told a press conference that he was concerned that bauxite producers might "get together" to form some kind of cartel.

Ten days later, Morton announced that he was ordering officials "to evaluate our minerals positions and to take all action available to assure U.S. supplies."

The United States has been a net importer of minerals since World War II, with a deficit now of about $6 billion a year. Elburt F. Osborn, until last year director of the Bureau of Mines, warned shortly before leaving office that if the present trends in the use of minerals continue, which they obviously cannot, the U.S. deficit could approach a rate of $100 billion a year.

In the meantime, he predicted "cutthroat competition on a global scale."

C. Fred Bergsten, a senior fellow at the Brookings Institution, has said that four countries control more than 80 per cent of the world supply of copper; two countries account for more than 70 per cent of tin exports; four countries control half the supply of natural rubber and four countries possess over half the reserves of bauxite.

Peter M. Flanigan, President Nixon's adviser on international economic policy, said that the United States must develop alternative sources of supplies for oil and other minerals. For example; there are bauxite substitutes in the United States in great supply, but, like extracting oil from shale, they are much more expensive to use.

Flanigan said it is not enough to argue that because a mineral is imported it is insecure. It is also important to know the reliability of governments this country must deal with and the reliability of transportation.

At present, Flanigan is more concerned about the prices of mineral products than about collusion among suppliers to cut off supplies. But he recognizes that cartels can be organized by others than Arab oil producers.

Other experts believe that the supply problem, in the short run, is secondary to the price problem as supplies become scarcer and harder to obtain.

Walter W. Heller, chairman of the Council of Economic Advisers under Presidents Kennedy and Johnson, estimated the other day that the "oil factor" will add about three percentage points to the rise in the cost of living for the average American this year.

As alarming as that prediction is, the results of a serious short-fall in the supply or of an artificial increase in the price of bauxite, iron ore, nickel, zinc, manganese, chromium, tin, lead, platinum or any other imported metals would be similarly inflationary.

The United States now imports all or nearly all of its platinum (used to make jewelry, laboratory containers and as a catalyst in chemical processes), mica (electrical equipment, insulation), chromium (metallurgy), strontium (flares and fireworks), cobalt (tool steel, magnets), tantalum (electronic equipment), manganese (metallurgy) and bauxite.

It imports more than half its fluorine (refrigerants), titanium (paint, rubber, aircraft parts), asbestos (insulation), tin (metallurgy), bismuth, (drugs, cosmetics, metallurgy), nickel (metallurgy), columbium (stainless steel, other metallurgy processes), and antimony (metallurgy, certain plastics).

The nation also imports more than a third of its iron ore, up from 8 percent in 1960.

Bureau of Mines chief Morgan said that the major American objective should be "stable and strong domestic production."

To strengthen reliance on America's own resources, he advocates more research, increased geological searches for minerals, better metallurgical work, improved methods of recycling used metals, larger inventories by industries and studies to determine whether tax and other incentives should be provided to encourage greater utilization of domestic supplies.

Morgan doubts that inventories and government stockpiles in themselves can provide any degree of security against the loss of foreign supplies. Yet he is pleased that the government has 250,000 tons of tin in stockpile—a five-year supply.

The existence of that stockpile would discourage foreign producers from starting an embargo or imposing artificial price increases on exports.

Secretary of State Henry A. Kissinger said at a news conference Thursday that "if anything was needed to illustrate the interdependence of nations in this world, it is what has happened in the field of energy." The same can be said of other scarce commodities.

"No single country is capable of solving the problem by itself," Kissinger said, adding that "unrestricted bilateral competition will be ruinous for all of the countries concerned."

The President has invited foreign ministers of eight oil-consuming nations to meet in Washington Feb. 11 as a preliminary to a meeting of oil exporters and importers.

If successful the meeting could lead to cooperation between producers and consumers in other fields.

Bergsten maintains that it is essential for the industrial countries to cooperate to a greater extent with Third World countries, which possess many of the minerals the advanced countries require.

"In addition to its efforts to improve overall U.S.-Third World relations, the United States is going to have to pinpoint its policies on those particular developing countries which can most affect our national interests," Bergsten testified last month before the Senate Banking Committee.

"For example, when we awaken to an oil crisis we realize how vital to us are Nigeria, Indonesia and Ecuador," Bergsten said.

The most critical problem now, according to Morgan, is the supply of iron ore, which comes principally from Canada, Venezeula, Japan and Western Europe. There are no political obstacles, but the imports are substantial and the supply is limited.

Forty million tons of iron ore are imported annually as well as 16 million tons of iron and steel.

Some officials doubt that the poor countries will ever be able to get together to control the shipment of important minerals the way the Arab states have banded together to hold the flow of oil. Bergsten disagrees. He says that the very fact that the Arabs have been able to defy most of the industrial world has given the producing states an incentive to organize to control their own wealth.

RAW MATERIALS: U.S. GROWS MORE VULNERABLE TO THIRD WORLD CARTELS

By putting the rest of the world over a barrel the Arab oil sheikhs have managed in a very brief time to force a fourfold increase in the posted price of oil. Will the success of their concerted action encourage other producers of scarce raw materials to try their hand at the same game?

Pessimists argue that America's growing dependence on imports for a number of key industrial minerals is making the threat of producer cartels more and more likely. Others believe that as far as nonfuel minerals are concerned, there is at present no commodity whose producers have the right combination of economic strength and political hostility to form a cartel against the United States. Whichever view is correct, the nation's position on nonfuel minerals is an intricate amalgam of diplomacy, economics, and technology, whose importance has gone largely unrecognized until the present oil crisis.

The basic facts of the case are, on the one hand, that the United States is more autonomous in nonfuel minerals than any other country except the Soviet Union and would probably be less affected than any other by an embargo. But, although rich in minerals, America began in the 1920's to be a net importer. According to the Department of the Interior, U.S. imports of all nonfuel minerals cost $6 billion in 1971 and are estimated to rise to $20 billion by 1985 and $52 billion by the turn of the century.

For 20 nonfuel minerals, including such key metals as chromium, aluminum, nickel, and zinc, the United States already derives more than half of its supply from abroad (see Table 1), and the extent of this dependence seems certain to increase. Because of the uneven distribution of minerals in the earth's crust, a handful of countries have dominating positions in several metals. Four countries control more than four-fifths of the world's exportable supply of copper. Malaysia. Thailand, and Bolivia together provide 98 percent of U.S. imports of tin.

Even before the oil crisis broke, people were expressing concern about America's vulnerability to group action by producing countries. Collective bargaining by raw materials producers is a "real possibility" in the case of copper, tin, and lead, wrote Lester R. Brown of the Overseas Development Council in an article in 1972. More recently, C. Fred Bergsten, a former assistant to Henry Kissinger on the National Security Council and now with Brookings Institution, has argued that the United States' neglect of the third world is dangerously myopic in view of the nation's growing dependence on the raw materials controlled by third world countries. "A wide range of Third World countries . . . have sizeable potential for strategic market power," Bergsten noted in an article last summer in *Foreign Policy*. Third world leverage might be exercised against all industrialized countries, or discriminatorily against the United States, thus benefiting Europe and Japan. "The spectre of 'cannibalistic competition' among the rich for natural resources is unfortunately a real possibility which suggests that the owners of those resources have tremendous clout," Bergsten presciently opined.

TABLE 1.—PERCENTAGE OF U.S. MINERAL REQUIREMENTS IMPORTED DURING 1972[1]

Mineral	Percentage imported	Major foreign sources
Platinum group metals	100	United Kingdom, U.S.S.R., South Africa, Canada, Japan, Norway.
Mica (sheet)	100	India, Brazil, Malagasy.
Chromium	100	U.S.S.R., South Africa, Turkey.
Strontium	100	Mexico, Spain.
Cobalt	98	Zaire, Belgium, Luxembourg, Finland, Canada, Norway.
Tantalum	97	Nigeria, Canada, Zaire.
Aluminum (ores and metal)	96	Jamaica, Surinam, Canada, Australia.
Manganese	95	Brazil, Gabon, South Africa, Zaire.
Fluorine	87	Mexico, Spain, Italy, South Africa.
Titanium (rutile)	86	Australia.
Asbestos	85	Canada, South Africa.
Tin	77	Malaysia, Thailand, Bolivia.
Bismuth	75	Mexico, Japan, Peru, United Kingdom, Korea.
Nickel	74	Canada, Norway.
Columbium	67	Brazil, Nigeria, Malagasy, Thailand.
Antimony	65	South Africa, Mexico, United Kingdom, Bolivia.
Gold	61	Canada, Switzerland, U.S.S.R.
Potassium	60	Canada.
Mercury	58	Canada, Mexico.
Zinc	52	Canada, Mexico, Peru.
Silver	44	Canada, Peru, Mexico, Honduras, Australia.
Barium	43	Peru, Ireland, Mexico, Greece.
Gypsum	39	Canada, Mexico, Jamaica.
Selenium	37	Canada, Japan, Mexico, United Kingdom.
Tellurium	36	Peru, Canada.
Vanadium	32	South Africa, Chile, U.S.S.R.
Petroleum (includes liquid natural gas).	29	Central and South America, Canada, Middle East.
Iron	28	Canada, Venezuela, Japan, Common Market (EEC).
Lead	26	Canada, Australia, Peru, Mexico.
Cadmium	25	Mexico, Australia, Belgium, Luxembourg, Canada, Peru.
Copper	18	Canada, Peru, Chile.
Titanium (ilmenite)	18	Canada, Australia.
Rare earths	14	Australia, Malaysia, India.
Pumice	12	Greece, Italy.
Salt	7	Canada, Mexico, Bahamas.
Cement	5	Canada, Bahamas, Norway.
Magnesium (nonmetallic)	8	Greece, Ireland.
Natural gas	9	Canada.
Rhenium	4	West Germany, France.
Stone	2	Canada, Mexico, Italy, Portugal.

[1] Data derived from Mining and Minerals Policy 1973, a report by the Secretary of the Interior to the Congress.

Whether other countries have the same clout as the oil producers is a matter of some debate. Contrary to the opinions of Bergsten and Brown, the National Commission on Materials Policy, a heavyweight group that included as members the Secretaries of Commerce and the Interior, concluded in a report last June: "As to the possibility that countries might form effective cartels to deny supplies to major importers or to raise prices, with the exception of petroleum the Commission has not isolated any commodities for which the economic and political basis for such action exists."

What the commission is saying in so many words is that only the Arab oil producers have enough reserves to withhold production; most third world countries need to sell as much as they can produce. Second, the political hues of most potential members of a cartel make such an arrangement unlikely. Southern Rhodesia, South Africa, Turkey, and the Soviet Union have a fairly complete corner on the world supply of exportable chromium, but a coalition of such nations against the United States is not particularly likely.

This is not to say that there have been no attempts at collective bargaining, but none has achieved anything like the success of the oil producers' cartel, the Organization of Petroleum Exporting States (OPEC). The International Tin Council, which includes both producers and the major consumers, has so far had little effect on prices. Chile, Peru, Zambia, and Zaire are the members of the Intergovernmental Council of Copper Exporting Countries (CIPEC), but the United States, which is a major producer as well as a consumer of copper, does not belong. Copper prices have risen recently, but because of production problems in Chile, not through any action by CIPEC.

If producers lack clout now, that does not mean they will always do so. Third world countries expect a rise in their standards of living but, while their per capita gross national product has increased somewhat, so has the gap between rich countries and poor. Growth in both affluence and population cannot but intensify the competition between industrial nations for a finite quantity of natural resources. In 1970 the United States possessed 5 percent of the world's population but consumed 27 percent of its raw materials, a share that will be difficult to maintain in an increasingly competitive world. "As countries become increasingly interdependent, we face the prospect of a single global society in which the glaring inequalities of world income distribution may not be sustainable," notes the generally unradical report of the National Commission on Materials Policy.

But American dependence on imports is not in all cases as heavy as it may appear. The United States imported a third of its requirements of iron ore in 1971, but only because imports were cheaper. There are sufficient iron ore reserves to last at least a century at current rates of consumption. According to the Department of the Interior, the nation will consume 370 million short tons of aluminum between 1971 and 2000. Reserves were only 13 million tons—but on the assumption of 1971 prices. There are "very large" identified resources of aluminum that could be mined if the world price goes higher. According to Vincent E. McKelvey, chief of the U.S. Geological Survey, the country is in fair shape to supply its needs of most key metals out of its own reserves, if necessary, until the end of the century and beyond. Surveys of the country's mineral resources are far from complete, and there is still the chance that important deposits remain to be discovered. For some commodities, such as manganese, tin, and chromite, the United States must look to foreign sources for future supplies, McKelvey concludes. For others, such as vanadium and tungsten, the ores are there and could be profitably mined with suitable advances in technology and rises in world price. Resources of materials such as iron, molybdenum, copper, lead, zinc, and aluminum are "nearly equivalent to potential demand over the next few decades, and the prospects for new discoveries are reasonably good."

CHANGE IN AMERICAN LIFESTYLE

Improving domestic supply is one major approach to increasing self-sufficiency. Others are recycling and substitution. With each of these strategies the room for maneuver appears to be if anything shrinking as new constraints emerge, such as environmental protection and the rising cost of energy. Increasing production is of course not the only way to achieve a balance, but there is an evident reluctance in government reports to consider the alternative of reducing demand. This gap has been filled by a committee of the National Materials Advisory Board of the National Academy of Sciences. In a report of 1972 entitled *Elements of a National Materials Policy* the board criticizes the entire existing system for materials decision-making as "so biased in favor of production and consumption that one can hardly overstress the need for temperance and foresight in monitoring and controlling wasteful and nonessential uses." Composed mostly of scientists rather than the economists who provide most of the conventional wisdom on this issue, the academy committee makes some comparatively bold statements about the future of the materials situation. "The American lifestyle, insofar as it depends upon materials, is changing and will continue to change in the near future as the nation pays the deferred social costs of past consumption and inequities in distribution and begins to calculate the costs of depletion, replacement of nonrenewable resources, and environmental restoration and protection." Besides improving domestic supplies and reducing waste, the academy committee recommends that technology should be adapted to depend on widespread and abundant basic commodities such as iron, aluminum, magnesium, and the silicates. Failure to adapt will lead, within decades, to the erosion of the mineral position of the United States, "growing economic colonialism, international frictions, steadily deteriorating balance of trade, and a tarnished global image of the nation."

Until a few weeks ago, this kind of prognostication would probably have been dismissed as wild-eyed. But then the experts in these matters were predicting a year ago that the cost of oil would not reach the $4 to $5 a barrel range until 1985; last month it hit $11.65 a barrel. For the immediate future, however, oil seems to be a special case. With the nonfuel minerals the producers do not have the clout to hold consumers to ransom. Moreover, the U.S. government has a powerful weapon against cartels in the form of a massive, $6 billion stockpile of strategic minerals. In the longer term, however, the nonenergy mineral position of the United States seems certain to weaken. Just how much will depend in large part upon continued technological advances to offset increasing scarcity and other constraints. Yet however well the U.S. looks after itself, the global need is to control per capita consumption of materials while allowing more people to approach the Western standard of living.

—NICHOLAS WADE.

By Mr. JAVITS:

S. 2879. A bill to establish in the Department of Health, Education, and Welfare the positions of Deputy Secretary of Health, Education, and Welfare and an additional Assistant Secretary of Health, Education, and Welfare in lieu of the Under Secretary and the Assistant Secretary for Administration. Referred to the Committee on Labor and Public Welfare.

TOP HEW POSITIONS

Mr. JAVITS. Mr. President, I introduce for the administration today a bill to replace present executive level III Under Secretary of the Department of Health, Education, and Welfare with an executive level II Deputy Secretary, to replace the existing executive level V career Assistant HEW Secretary for the Administration with an Assistant Secretary at the executive level IV, and establish a small pool of executive level IV and level V positions for use within HEW.

HEW, Mr. President, has the largest employment of any Government department except for the Department of Defense, and the largest budget of any Cabinet department. Its employment at the end of fiscal year 1975 is expected to be 126,000 and its fiscal year 1975 budget will probably be well over $100 billion. The Department operates over 300 programs, which together affect virtually every aspect of human need, from prenatal care to assistance for the aged, from vocational education to bio-medical research. It is the size, complexity, and importance of HEW which has led the administration to propose the bill which I am here introducing, and which I should like to describe briefly.

First, the bill would upgrade the present No. 2 man in the Department from an executive level III to an executive level II and change the title of the position from Under Secretary to Deputy Secretary. Although, as I have just noted, the Department of Health, Education, and Welfare is the largest Government agency in terms of budget and the second largest in terms of employment, five other Government agencies already have an executive level II Deputy Secretary position. In fact, the Department of Defense has two Deputy Secretaries authorized at the executive level II, and the Department of Transportation has three officials, including the Under Secretary, whose compensation is set at the executive level II.

I include as part of my remarks a table which sets forth the relative employment and budget for these five other Cabinet departments as compared to that of HEW. The No. 2 man in a department like HEW must have a strong role in managing and organizing its activities. In view of the size of that undertaking as well as its complexity and its direct relevance to the lives of so many of our citizens, I believe, Mr. President, that it is a long overdue improvement to upgrade the rank of the position. Managing our human resources programs is no less important than managing the activities of the Department of State, Treasury, Transportation, or Justice, yet the HEW No. 2 man now ranks and is paid at a lower rate than the No. 2 officials in each of these Departments. When viewed against the perspective of what has already been done for the management capacity of other Government agencies, the proposed upgrading of the second ranking official at the Department of Health, Education, and Welfare is appropriate.

Second, this bill would upgrade the existing executive level V Assistant Secretary for Administration and Management to an executive level IV position. Most positions of the Assistant Secretary rank at HEW are already executive level IV positions. In addition, the top management Assistant Secretaryship in the Departments of Commerce, Interior, State, and Treasury are already ranked at the executive level IV. This change would replace the existing Career Assistant Secretary for Administration at HEW with a Presidentially appointed Assistant Secretary, thus enhancing the prestige and visibility of this position. Here again, in view of the practice in other agencies and of the need for strong leadership in organizing and managing the Department of Health, Education, and Welfare the administration thinks that this upgrading is badly needed and long overdue.

Third, the bill would establish a pool of nine executive level IV or V positions for the use of the HEW Secretary. At the present time, the Department's executive level positions are in part authorized by statute and in part drawn from the very limited pool of executive level positions which are available to the President. The Presidential pool has been drawn upon heavily by various executive departments, including HEW. Mr. President, I believe that a department of the size and importance of HEW should not be dependent upon competing for a small Presidential pool for the executive level positions needed for its top management. Moreover, if the HEW Secretary is to manage the Department properly and assure its responsiveness to changing and developing human needs, he must have the flexibility to assign top management as he decides is demanded by new circumstances; hence, the rationale of the proposal to create a pool of executive level IV and V positions which would be available solely to the Secretary of Health, Education, and Welfare.

I should note that such a proposal was made in the four executive reorganization bills which were submitted by the President to Congress on March 25, 1971. The proposal for a Department of Community Development, which was reported favorably by the House Government Operations Committee in the last Congress, did include such a pool for that new Department. Moreover, the Secretary of Housing and Urban Development, who heads a much smaller department than HEW, has already been given the authority by law to assign seven executive level V positions within the Department of Housing and Urban Development at his discretion.

In conclusion, the purpose of this legislation is to make the Department of Health, Education, and Welfare equal to other Government agencies, in terms of top management capacity and flexibility. This bill should receive expeditious consideration based on its merits.

Mr. President, I ask unanimous consent that the table to which I have referred previously, together with the bill, be printed at this point in the RECORD.

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

FEDERAL AGENCIES WITH ASSISTANT SECRETARY FOR ADMINISTRATION POSITIONS AUTHORIZED AT EXECUTIVE LEVEL IV

Position and department	1973 Employees	1973 Budget (millions of dollars)
Assistant Secretary for Administration, State	23,200	683
Assistant Secretary for Administration, Treasury	103,000	32,744
Assistant Secretary for Management and Budget, Interior	57,000	1,652
Assistant Secretary for Administration, Commerce	28,200	1,242
DHEW (proposed)	110,200	87,859

S. 2879

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ESTABLISHMENT OF POSITIONS

SECTION 1. There shall be in the Department of Health, Education, and Welfare, in addition to the Assistant Secretaries now provided for by law, a Deputy Secretary of Health, Education, and Welfare and an additional Assistant Secretary each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such functions as the Secretary may prescribe.

ABOLITION OF OFFICES OF UNDER SECRETARY AND ASSISTANT SECRETARY FOR ADMINISTRATION

SEC. 2. (a) The Office of Under Secretary of Health, Education, and Welfare created by section 2 of Reorganization Plan Numbered 1 of 1953 (5 U.S.C., App.) is abolished.

(b) The order in which officials of the Department of Health, Education, and Welfare act pursuant to law as Secretary during the absence or disability of, or in the event of a vacancy in the office of, the Secretary is modified by substituting in such order the Deputy Secretary of Health, Education, and Welfare for the Under Secretary of Health, Education, and Welfare.

(c) The office of Assistant Secretary for Administration created by section 202 of the Act of July 1, 1960 (42 U.S.C. 3502) is abolished.

(d) The provisions of subsections (a) and (b) shall not apply until such time as the office of Deputy Secretary of Health, Education, and Welfare is filled as provided in section 1 or 5 of this Act. The provisions of subsection (c) shall not apply until such time as the additional office of Assistant Secretary provided for by section 1 is filled as provided therein.

COMPENSATION OF OFFICIALS

SEC. 3. (a) Section 5313 of title 5, United States Code, is amended by inserting after clause (21) the following new clause:

"(22) Deputy Secretary of Health, Education, and Welfare."

(b) Clause (17) of section 5315 of title 5, United States Code, is amended to read:

"(17) Assistant Secretaries of Health, Education, and Welfare (6), in addition to the Assistant Secretary for Education."

(c) Clause (7) of section 5314 of title 5, United States Code, is repealed effective upon appointment of the Deputy Secretary provided for by section 1.

(d) Clause (24) of section 5316 of title 5, United States Code, is repealed effective upon appointment of the additional Assistant Secretary provided for by section 1.

ADDITIONAL EXECUTIVE LEVEL POSITIONS

SEC. 4. There shall be in the Department, in addition to any other officers appointed and compensated at the levels provided here-

in by or pursuant to other laws or by other means, not more than nine additional officers appointed by the Secretary who shall receive compensation at the rate now or hereafter prescribed for offices and positions at level IV or level V of the Executive Schedule (5 U.S.C. 5315 and 5316, respectively), as the Secretary may specify, and who shall perform such functions as the Secretary may specify.

TRANSITIONAL PROVISION

SEC. 5. The President may authorize the person who immediately prior to the date of enactment of this Act occupies the office of Under Secretary of Health, Education, and Welfare to act as Deputy Secretary of Health, Education, and Welfare until that office is filled by appointment in the manner provided by section 1.

While so acting, such person shall receive compensation at the rate now or hereafter provided by law for the Deputy Secretary of Health, Education, and Welfare.

By Mr. McGOVERN (for himself, Mr. ABOUREZK, and Mr. BURDICK):

S. 2880. A bill to amend the Agriculture and Consumer Protection Act of 1973 to provide additional incentives for farmers to produce wheat, feed grains, and cotton, and for other purposes. Referred to the Committee on Agriculture and Forestry.

THE FOOD AND FIBER PRODUCTION INCENTIVE ACT OF 1974

Mr. McGOVERN. Mr. President, events of the past year created major disruptions in our farm and food economy. We saw farm prices take a long overdue sharp increase to a point at which income to farmers could approximate the income of other sectors of the economy.

As a result, not unexpected, consumers protested, especially about meat prices. The administration responded to consumer unrest with an unwise, counterproductive freeze on retail meat prices.

At the same time, other costs increased rapidly—especially costs of fuel, fertilizer, farm machinery, and other production items required for farmers to grow food and fiber.

Congress responded with an Agriculture and Consumer Protection Act of 1973 which, at the time of its passage in August, appeared to be a reasonable approach to satisfying the twin goals of adequate food supplies at reasonable prices. It did so by providing the incentives necessary for farmers to produce the supplies of basic commodities needed to maintain a steady flow of products to market without serious disruptions in market prices.

But inflation has cut heavily into incentives intended by the 1973 farm bill. The cost of propane for crop drying has more than doubled since that bill was enacted. The price of diesel fuel and gasoline for tractors and other farm equipment has nearly doubled and shows every sign of increasing yet further. The price of nitrogen fertilizer is up more than 50 percent when it is available at all.

In the aggregate, the farmer's cost of production, interest, taxes and wages has increased 19 percent from December 15 of 1972 to December 15 of 1973.

The effect is that the target prices established in the 1973 farm act are no longer adequate to assure producers the incentive to produce the volume of food and fiber which our growing population demands.

Should market prices fall to the target levels in the 1973 act, many wheat and feed grain producers would lose substantial amounts of money.

Present law provides a target price of $2.05 per bushel on wheat, $1.38 per bushel on feed grain, and 38 cents a pound for cotton. But research by South Dakota State University shows that cost of production for spring wheat in southeastern South Dakota is $2.25 per bushel, and the cost of production of corn in south-central South Dakota is $1.52 per bushel. And these estimates are based on 1973 average prices for what the farmer buys; they do not reflect the latest, sharp increases in prices of fuel and fertilizer.

Accordingly, I introduce today the Food and Fiber Production Incentive Act of 1974, to amend a generally favorable farm bill enacted less than a year ago, in an effort to provide greater incentive for production of food and fiber.

My bill is relatively simple.

It would increase the established prices for the three basic commodities—feed grain, wheat, and cotton—to the level in the bill reported by the Committee on Agriculture and Forestry and passed by the Senate last year.

If enacted, my bill would provide that a farmer will receive not less than $2.49 per bushel of wheat, not less than $1.67 per bushel of corn or its equivalent in other feed grains, and not less than 47 cents per pound of cotton, on the production of his allotted acreage. If the market price in 1974 should fall below the established price, a direct payment would make up the difference to the farmer.

In addition, my bill would adjust the established price in 1975, to reflect any increase or decrease in the cost of production. While it is likely that production costs will increase rather than decrease, it is essential that a cost-of-production adjustment be built into the law for the 1975 crop year.

The law presently does not provide for adjustment in the established price before 1976. Given the present rate of inflation in production costs, one can conclude reasonably that the established prices will be entirely inadequate by that time.

The Senate passed a bill with target prices the equivalent of 70 percent of parity, with adjustment by the cost-of-production index in each subsequent crop year.

Spirited opposition from the administration led the House and the conference committee to reduce the established price and give up the cost-of-production adjustment for the 1975 crop year.

But supply and demand conditions have changed so drastically in the intervening months that the administration should now support this bill. Certainly it is fully consistent with the administration's announced policy of stimulating production to meet record demand.

So this bill would do just as the Committee on Agriculture and Forestry sought to do last April—provide an established price equal to 70 percent of parity, and permit an annual adjustment in that price to reflect the cost of production.

Finally, my bill would provide that the national acreage allotment for feed grain be set at not less than 100 million acres. For the 1974 crop year, the Secretary of Agriculture has established a national acreage allotment of 89 million acres, which is wholly inadequate to reflect the Nation's real needs for feed grains.

An allotment which is too low creates an addel disincentive for production inasmuch as it substantially reduces the guarantee to farmers of disaster payments in the event of inability to plant or harvest a crop and the acreage on which deficiency payments would be made if market prices fell below target prices.

I do not pretend that my bill is the final answer to the problem of providing adequate production incentives. It cannot assure that farmers will get adequate supplies of fuel and fertilizer, two major question marks which will bear directly on how much food and fiber is planted and harvested in 1974 and in later years.

But it can provide that in the unforeseen event that prices drop below established prices that the farmer will be assured of recovering the sharply increased costs of these and other production items, and realizing a modest profit.

Taken in the context of today's cash market prices for wheat, feed grains and cotton, it cannot be said that this bill is inflationary. The established prices I suggest compare with January corn prices near $3, wheat prices near $6, and cotton prices in the 90-cent range.

And given the outlook for market prices in the years ahead it cannot be said that my bill would significantly add to the costs to the Treasury, inasmuch as it is not immediately likely that market prices would drop to the target levels.

So what it does is to add that extra bit of insurance—so important to farmers and consumers alike—to help assure a continuing supply of food and fiber at reasonable prices.

Mr. President, I ask unanimous consent that the text of the bill and a short explanation thereof be printed in the RECORD at the conclusion of my remarks.

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

S. 2880

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food and Fiber Production Incentive Act of 1974".

SEC. 2. Paragraph (8)(D) of the Agriculture and Consumer Protection Act of 1973 (amending section 107 of the Agricultural Act of 1970) is amended by striking out that portion of subsection (c) beginning with clause (2) and ending with the colon preceding the proviso, and inserting in lieu thereof the following:

"(2) the loan level determined under subsection (a) for such crop is less than the established price per bushel determined by the Secretary for such crop, but such established price shall not be less than $2.49 per bushel in the case of the 1974 crop, $2.49 per bushel adjusted to reflect any change during the calendar year 1974 in the index of prices paid by farmers for production items, interest, taxes, and wage rates in the

case of the 1975 crop, and the established prices for the 1975 and 1976 crops adjusted to reflect any changes during the calendar years 1975 and 1976, respectively, in such index in the case of the 1976 and 1977 crops."

SEC. 3. (a) Paragraph (18)(B) of the Agriculture and Consumer Protection Act of 1973 (amending section 501 of the Agricultural Act of 1970) is amended by striking out that portion of the second sentence of subsection (b)(1) beginning with clause (2) and ending with the colon preceding the proviso, and inserting in lieu thereof the following:

"(2) the loan level determined under subsection (a) for such crop is less than the established price per bushel determined by the Secretary for such crop, but such established price shall not be less than $1.67 per bushel in the case of the 1974 crop, $1.67 per bushel adjusted to reflect any change during the calendar year 1974 in the index of prices paid by farmers for production items, interest, taxes, and wage rates in the case of the 1975 crop, and the established prices for the 1975 and 1976 crops adjusted to reflect any changes during the calendar years 1975 and 1976, respectively, in such index in the case of the 1976 and 1977 crops, times in each case (ii) the allotment for the farm for each crop, times (iii) the projected yield established for the farm with such adjustments as the Secretary determines necessary to provide a fair and equitable yield:"

(b) Such paragraph (18) (B) is further amended by adding at the end of the double quoted paragraph (2) of subsection (b) a new sentence as follows: "In no event shall the national acreage allotment for feed grains for the 1974, 1975, or 1976 crop year be less than 100 million acres."

SEC. 4. Paragraph (20) (C) of the Agriculture and Consumer Protection Act of 1973 (amending section 602 of the Agricultural Act of 1970) is amended by striking out that portion of paragraph (2) beginning with clause (2) and ending with the colon preceding the proviso, and inserting in lieu thereof the following:

"(2) the loan level determined under paragraph (1) for such crop is less than the established price per pound determined by the Secretary for such crop, but such established price shall not be less than 47 cents per pound in the case of the 1974 crop, 47 cents per pound adjusted to reflect any change during the calendar year 1974 in the index of prices paid by farmers for production items, interest, taxes, and wage rates in the case of the 1975 crop, and the established prices for the 1975 and 1976 crops adjusted to reflect any changes during the calendar years 1975 and 1976, respectively, in such index in the case of the 1976 and 1977 crops:".

SHORT EXPLANATION—THE FOOD AND FIBER PRODUCTION INCENTIVE ACT OF 1974

BACKGROUND

Congress last year enacted the Agriculture and Consumer Protection Act of 1973 (P.L. 93-86) which provided a new price support mechanism. The bill set "established prices" for the 1974 and 1975 crops of $2.05 per bushel for wheat, $1.38 per bushel for corn or an equivalent price for other feed grains, and 38 cents a pound for cotton. It provided that, in the event the average market price for a crop year fell below the established price, the farmer would receive a direct payment from the government to make up the difference.

The bill also provided that, for the 1976 and 1977 crops the established prices would be adjusted to reflect any change in the index of cost of production items, taxes, interest and wage rates.

The bill originated in the Senate Committee on Agriculture and Forestry. As reported by the Committee and approved by the Senate, the established prices were $2.28 for wheat, and $1.53 for corn and 43 cents for cotton—equal at that time to 70 per cent of parity. Veto threats from the Administration, however, caused reductions in the Senate version of the established prices and elimination of the cost-of-production adjustment for the 1975 crop year. It was also cut from a 5-year to a 4-year bill.

PRESENT SITUATION

In the six months following enactment of the farm bill, market prices for all three basic commodities have advanced steadily, showing an even greater contrast with the low established prices in the bill.

At the same time, the cost of production items, especially fuel and fertilizer, has increased enormously. From December 15, 1972 to December 15, 1973, the USDA's index for cost of production items, taxes, interest and wage rates increased nearly 19 per cent.

PROPOSED AMENDMENT

The Food and Fiber Production Incentive Act of 1974 would amend the 1973 farm bill in an effort to improve the incentives for farmers to produce an abundant supply of food and fiber at prices which are reasonable to consumers.

The bill would:

1. Increase established prices for the 1974 crop to $2.49 per bushel for wheat, $1.67 per bushel for corn, and 47 cents per pound for cotton.

2. Restore the cost-of-production adjustment for the target price for the 1975 crop year.

3. Give the Secretary of Agriculture authority to set an established price which may be higher than the minimum provided in the act.

4. Require that the national acreage allotment for feed grain, established annually by the Secretary, be not less than 100 million acres.

By Mr. FANNIN:

S. 2881. A bill to amend section 1951, title 18, United States Code, act of July 3, 1946. Referred to the Committee on the Judiciary.

HOBBS ACT AMENDMENT OF 1973

Mr. FANNIN. Mr. President, my bill is prompted by a growing number of news stories of violence in the construction industry. In four 1973 issues of the Reader's Digest there appeared articles by Charles Stevenson, which graphically described many instances of violence in the construction industry. Reader's Digest should be commended for the public service it has rendered in the publication of these four articles and the country is indebted to Mr. Stevenson for the many days of investigation and research that must have preceded their preparation. I ask unanimous consent that the articles be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FANNIN. Mr. President, I have always believed that police matters are best left to the States. However, when it has been demonstrated that the State and local police have been almost completely unable to handle crimes of this nature, we have to seek a Federal law. Violence in the construction industry is growing rapidly and it is not confined to any State or section of the country. I would be the last to attempt to create a Federal police force.

It is true that most of the acts of violence would be unfair labor practices under the Taft-Hartley Act. However, it can be no comfort to the owner of extremely expensive construction machinery to obtain enforcement of a cease and desist order some 2 years after his equipment has been destroyed beyond repair and his business bankrupt.

Mr. President, my bill seeks to amend section 1951, title 18, United States Code, act of July 3, 1946. This law is commonly known as the Hobbs Anti-Racketeering Act. It is a one sentence law which reads as follows:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspired so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of his section shall be fined not more than $10,000 or imprisoned not more than twenty years or both.

Mr. President, the mere reading of this law gives one the impression that it already covers the subject and provides a remedy for violence in the construction industry. However, the original anti-racketeering laws were primarily designed for the purpose of deterring professional gangsterism. While the law has been on the books for a quarter century, it has had little use in labor union violence. Congressman Hobbs, speaking on the floor of the House during debate upon his bill, denied that it would apply to force or violence used in support of legitimate wage demands. He argued that it was designed to correct the deficiencies in the Anti-Racketeering Act which allowed violence and threats of violence to be used to exact payment for services which were neither wanted nor needed. In other words he was trying to stop featherbedding.

In February 1972, a divided Supreme Court in U.S. against Emmons ruled that while blowing up transformers and committing other acts of sabotage might have been Federal crimes under other circumstances, such acts were not Federal crimes if the employees were on strike for legitimate demands. If that is the law it badly needs changing.

Mr. President, I suppose the outbreaks of violence in the construction industry should have been anticipated. It has been a highly unionized industry. Even labor leaders in other industries agreed that wages in construction were excessive. These excessive wages were perpetuated by the Federal Davis-Bacon Act. It was inevitable that nonunion contractors would grow and obtain greater and greater portions of the business. Competition is the American way of life. When union construction workers lost jobs to nonunion workers their reaction was violence. That is not the American way, and it should be stopped.

Congressman ANDERSON of Illinois introduced a similar bill in the House last year and it is pending in the Judiciary Committee.

EXHIBIT 1

[A special report that will shock the nation—Installment No. 1]

THE TYRANNY OF TERRORISM IN THE BUILDING TRADES

(By Charles Stevenson)

At 6:40 p.m. last September 20, in suburban Miami, a fusillade of bullets splintered the doorway to the Upthegrove family's heavy-construction business. "Oh, God, don't

move, anybody!" screamed office manager Yvonne Upthegrove. Under fire were her husband, Lingo, and his brother Howard.

The family had been victims of a campaign of terror for nearly a year, ever since setting up their operation independent of the union. On Thanksgiving Day, 1971, the brakes of a huge crane were mysteriously tampered with, and its 3000-pound boom dropped 30 feet, fracturing Lingo's skull. He was unconscious for a week. Next month the boom fell again, requiring costly repairs. Someone had poured acid on its brake bands. One incident followed another. Shortly after the family borrowed to buy a used $85,000 truck crane, a grinding compound was poured into one of its engines. Damage, nearly $6000. The same thing was done to the firm's floating pile driver. Another crane was firebombed and a security guard's car burned up. Threatening phone calls have come night after night.

After the office was shot up, local police called the FBI, but federal officials decided it was outside their jurisdiction. So life goes on, precariously. "We're not giving in," says Yvonne Upthegrove. "We work hard and pray we'll survive."

The chilling fact is that case histories of similar terrorism are being recorded in city after city across our land. Today, many building-trade unions are getting away with wholesale shakedowns of contractors, while stealing from and cheating their own members. And as these labor bosses carry out a cost-kiting methodology of featherbedding, slowdown, strike and more-pay-for-less-work, they are pricing their unions out of business. Yet companies who offer workers open-shop competition are subjected to strongarm treatment.

It is often difficult to know where the drive for closed-shop unionism ends and the shakedowns begin. In either case, hidden costs are added to the construction industry's already unconscionable cost inflation.

The violence has reached epidemic proportions because our laws—both unenforced and inadequate—allow terrorists and racketeers to hide out in unions, engaging in "legitimate" labor disputes.

Look what has transpired in this one state of Florida.

GET THE WORD

Five years ago, Joseph Georgianni, a college student, died after a bomb exploded under a crane he was guarding at a Miami Beach building site where non-union men were working. But to date, the case remains an "open homicide" and no one has been charged with the crime. In fact, through all the years of intensifying violence, seldom has any culprit gone to jail.

Across Florida, at Marco Island on the west coast, 75 to 100 union hoodlums ganged up on seven non-union men digging trenches at a condominium construction site in May 1972. They grabbed a deputy sheriff's gun and struck him on the head with a foot-long pipe wrench. They also beat the workers, injuring one man severely. They broke three of his ribs, poured steel shavings into his eyes, and made threats to "cut off his hands and put them in his back pockets." His name was withheld from news accounts for fear of reprisal.

Twenty-six attackers were arrested, but none has been prosecuted, and only 12 will be brought to trial. According to one law-enforcement officer, it is just another incident in a continuous stream of violence at Marco Island. The union "claims" the island and, in the past two years, there have been 15 to 20 instances of non-union-construction equipment being damaged or destroyed.

Why such brutality? Simply "to give the man the world," say federal investigators. Some contractors "get the word" in a hurry.

In Miami, for example, builder Maurice G. Bellows basked in labor peace without employing a single union worker—after he agreed to contribute $150 a week to Joseph John Fischetti, who, with Teamster big shot Donald F. Gillette, arranged to obtain a $12,000 payoff from him.

It is quite another matter for those who fail "to get the word."

In 1969, R. Pete Mathews, president of Mathews Corporation, tried to have his own non-union crew erect a hangar at the Fort Lauderdale International Airport. A gang of 30 to 40 men pulled Mathews' crane operator from his machine, injuring him. When Mathews went to the operator's aid, he was himself beaten up. John W. Lloyd, a trade-association director who photographed the action, was also beaten and had to be hospitalized. Only by hiring his own guards and equipping them with dogs was Mathews able to complete the job.

"Despite witnesses, photographs of assailants and a list of their auto licenses," he says, "I could get no action out of local authorities. They shrugged it off as just another labor dispute in which they did not want to become involved."

All too often, officials throughout Florida are reluctant to tangle with powerful union bosses. And federal lawmen find it extremely difficult to halt violence, even when they are sure it is being used as a device to extort.

"Our problem is that violence alone, however heinous, is not now a federal offense," says Dougald D. McMillan, chief of the U.S. Department of Justice Strike Force against organized crime in Florida. "To make a federal case we must prove an actual payoff or payoff demand—and the labor racketeers are smart enough to seldom demand; they just lay on the pressure until the contractor comes across. Of course, some contractors are as willing to buy 'sweetheart deals' as union racketeers are to sell them."

Even when extortion and bribery are proved, penalties may be light. After convictions were brought in in the case of Bellows, the Miami apartment builder the federal court fined the men only $4,000, and sentenced them to six months. In another case the judge imposed a one-year sentence, then immediately suspended it. Many contractors thus find it more expedient to pay off than to fight. Those who resist do so at grave risk.

TRAVELING STRONG-ARMS

In Broward County, Fla., Richard Nell, a twice-convicted felon, operates Local 675 of the International Union of Operating Engineers. Its 2000 members average $15,000 a year. Nell receives a salary and allowances of more than $50,000, a Cadillac, a European vacation for himself and his wife. In addition, for $2, he got union real estate currently valued at more than $20,000.

None of the union rank-and-filers can solicit his own work or even change jobs without Nell's permission, and those who fail to do Nell's bidding may find living hard. Sworn testimony attests to cruel beatings, threatening phone calls, shotgun blasts fired into one worker's home, physical attacks on employees of nonunion companies, and damage and destruction of expensive equipment. When the wife of one of Nell's thugs agreed to tell a grand jury what she knew about beatings and sabotage, a savage pummeling changed her mind.

At least five times in two years, judges across the state have ordered Local 675 to abstain from violence—ineffectually. On Lincoln's Birthday in 1970, several hundred of Nell's strong-arm men squared off against employes of L. E. Meyers & Co. at a construction site in Hallandale, just south of Fort Lauderdale. Nell insisted that *his* men—not Meyers' men, members of another local—should be digging the trenches for electrical conduits. A guard was holding the intruders at bay with a gun when four policemen arrived and ordered him to put his gun away. Whereupon the job superintendent was beaten, rocks were showered on workmen and police alike, equipment was set afire and autos were overturned. Before police reinforcements arrived, the crowd had dispersed but the contractor had suffered some $50,000 worth of damages.

Thirteen persons were injured, including four severely beaten policemen. Yet not one arrest was made by the local police despite the fact that injured officers were able to clearly describe some of their assailants. A state attorney's investigation resulted in indictments against five persons, but no convictions were obtained.

As the mob quit Hallandale, further instructions sent them racing that same day over to Fort Meyers. There at the site of a $1.4 million public-housing apartment project, they staged a repeat performance. They wrecked the construction office, firebombed a crane, and lashed the construction superintendent with a chain so that he ended up a hospital case. Amid threats of further violence, Nell brought in pickets. The purpose was to force the local open-shop prime contractor, Cassius Peacock, to fire his own steadily employed workers and hire union men instead.

The labor boss warned everyone away from the Peacock job so no one, union or non-union, dared touch it. But Paul Prendergast, a union-shop engineering contractor headquartered in Fort Lauderdale who had been driving the pilings for these apartments, was determined to complete his subcontract. So he asked his own field superintendent, 44-year-old Earl Lassitter, to operate the machinery and finish the work. Result: when Lassitter showed up at his next work site—on the Fort Lauderdale beach—one of Nell's goons gave him such a going-over with leather gloves that he suffered a permanent hearing loss, and since has had to wear a hearing aid. When Edward Deeson, a member of Nell's union for 19 years, was subpoenaed to give eyewitness testimony of the beating, he was fined $450 by the local (later rescinded by the International Union of Operating Engineers) for not "cooperating" in discussing his testimony beforehand with Nell and the union.

"What do I have to do for some labor peace?" Prendergast implored Nell. The answer: fire Lassitter and Deeson. When Prendergast refused to, he was so harassed and sabotaged that he had to close his main yard at Fort Lauderdale, hide his machinery, and stop contracting in any area where Nell's thugs are in control.

These facts are on record, from a civil suit brought last year against Nell's union by Lassitter. The jury awarded Lassitter $1.25 million damages, but none of this has fazed Nell. His local has appealed the decision.

AX AND TORCH

One of the most flagrant cases of terrorism involves Richard Spreen. He wanted to construct a large new facility adjacent to his Volkswagen dealership in West Palm Beach, but when union bids far exceeded his budget, he went ahead with mostly non-union men. In retaliation, union bosses mobilized some 1500 men to march on his project. Although warned of a planned confrontation, the sheriff and his deputies were unprepared for a mob of that size.

As one wave of men flattened a high chain fence, another poured onto the metal room of the new structure and ripped it with axes seized from construction equipment. Other platoons used heavy girders as battering rams against concrete walls. Bands of men set fire to construction trailers and trucks. Then they swept into the enclosure, where Spreen had parked rows of brand-new VWs and Audis to protect them when he had learned of the demonstration. They used sledge hammers first, then gasoline, then the torch. An hour and a half later nothing was left but the smoking remains of 60 automobiles—12 of them destroyed completely.

When a grand jury began looking into the holocaust, intimidation and threats were so

blatant that the National Guard was called up. The boss of a union involved, Joey Giardiello, was indicted for conspiracy to bring about the riot. As witnesses were subpoenaed for pre-trial examination, Giardiello and other union men sat outside the prosecutor's courthouse office and intercepted them. "Where the hell you think you're going?" he called. "Come over here and sit down a minute."

At his trial, Giardiello was acquitted by the jury. Of some 50 people arrested, many were freed because witnesses failed to make identification. Others pleaded guilty to lesser charges and were given fines or probation. Of the 12 convictions in the hard-core cases, all are free pending appeal.

There was an uproar in the press. Businessmen, contractors and non-union workers journeyed to the state capital to plead for laws to make such violence a criminal act, and to enforce the clause in the state constitution which guarantees the right of a man to work whether he belongs to a union or not. But the legislature, in the face of a powerful union lobby—in one instance 300 labor officials at a hearing—refused to act, as it has time and again.

This mockery of law and order is a death knell to the cause of free men—union members or not—who are trying to earn a living. "For three months after the riot, customers were afraid even to bring a car in for repairs," Spreen says. "My working capital was so reduced that I felt it best to sell the business and get out."

Florida is not the only state affected. How many businessmen and contractors will be forced to sell out in cities across the country? How much more property must be destroyed in Ohio and Michigan and Colorado? How many more people shot at, beaten or maimed, before public outrage demands that union terrorists be brought to justice?

Clearly, in the face of weak and ineffective state law and local enforcement, the federal government must be permitted to step in and protect contractors and their employes from the abuses of unbridled union power. Declares Florida Sen. Edward Gurney: "What has happened in my state and elsewhere indicates a need for protection from hoodlums, arsonists and killers. It is time for Congress to consider legislation which will stop such actions, so as to help responsible union leaders, and to preserve the rights of contractors and their employes, both union and non-union."

[A special report that will shock the Nation—Installment No. 2]

THE CONSTRUCTION UNIONS DECLARE WAR

(By Charles Stevenson)

Some 150 men sweep down on the $1-million Pointe North professional building, under construction in Lansing, Mich. They knock down walls and destroy machinery, leaving an estimated $50,000 damage in their wake. No arrests are made.

Three weeks later, about 400 more men, many of whom have been drinking heavily, block traffic at the main intersection of little Kalkaska, some 200 miles north of Detroit. The county prosecutor tries to persuade them to leave, and they do—after overturning his automobile. Unchecked, they move three miles down the road to the construction site of a $20-million Shell Oil processing project, where they set fires, wreck equipment, smash vehicles and demolish walls. Outnumbered, state troops seize two of the rioters, but when the mob moves in on them, injuring two officers, the two rioters are released.

The guerrillas depart, and about 150 of them drive 50 miles south to Roscommon, where a school is under construction. After fires are set and some $50,000 damage is done to machinery, tools and supplies, six arrests are made and state police are called in to assist the local sheriff and his deputies in controlling the mob of rampaging men.

Scenes from a grade-B bandit movies? No. These ugly incidents erupted for real last January and February. They opened the 1973 campaign of the AFL–CIO building-trades unions to retain their grip on the construction industry, the nation's biggest. Across the country, the word seems to have gone out: punish those who dare let anyone but union men construct buildings.

MATTER OF MUSCLE

"Those who dare" are becoming numerous. Squeezed by skyrocketing construction costs, wage increases, work slowdowns, featherbedding, jurisdictional disputes and outright corruption, builders in search of a full day's work for a full day's pay are increasingly turning from closed union shops to open, independent shops. Some 5500 contractors, together with their 250,000 workers, have formed the Associated Builders and Contractors, Inc. (ABC), which currently gets at least 35 percent of the nation's construction work. Instead of bucking ABC by making their own services competitive, certain union chieftains are resorting to terrorism—in the belief that their political muscle will discourage any steps to halt the lawlessness. And why shouldn't they think this way?

Item: In two weeks last year, in Baltimore, Md., more than 200 members of building- and construction-trades unions stormed three separate projects, toppling office trailers, beating up the vice president of a contracting firm, setting fires. Twenty-one people were arrested—most of them for "disorderly conduct." A similar attack involved 250 pickets from Ironworkers Local 16 at another site. Union members formed a human wall to block firemen from a burning crane and trailer. One group of firefighters broke through, but found their hose had been axed. Only seven arrests were made. Fire department officials confirmed allegations of arson.

Item: For two weeks during May 1972, building and construction workers in Memphis, Tenn., went on strike and, at one point, virtually paralyzed all the city's construction work. Police reported 70 to 80 separate acts of vandalism, and made 59 arrests. Work was resumed only after a number of contractors submitted to union demands.

Item: During June 1972, union goons in Michigan dynamited shopping-center sites, storage areas and an asphalt plant in one eight-day rampage. More than $250,000 damage was done to a single W. T. Grant shopping plaza under construction in Lapeer. On October 25, 200 construction workers set fires, tipped over a mobile office trailer and tore down a 20-foot cement block wall at a second W. T. Grant site in Grand Blanc. Before enforcements arrived to aid badly outnumbered police, the vandals were speeding to Lapeer, where they attacked the now almost-completed Grant site for the second time. No arrests were made at Grand Blanc; one arrest was made at Lapeer, but the charge was later dropped.

Item: In Rochester, Mich., some 300 building-trades men stormed the construction site of the Walter P. Reuther Junior High School last December 18. They spent about two hours ripping out electric wiring and setting fires. Damage: some $30,000. Arrests: none.

BATTING PRACTICE

Now consider this modern-day "Philadelphia story." Although unions in the City of Brotherly Love once received 100 percent of the work, non-union or open-shop contractors have been steadily winning large contracts in suburban Montgomery, Bucks, Delaware and Chester counties, where most craftsmen do not belong to unions. Displeased, union toughs have been attempting to scare them off by brute force.

At 10:30 a.m. on June 29, 1971, four cars screeched to a halt at a shopping center in Springfield, Delaware County. An estimated 16 men piled out, ran into a building under construction and began hitting the six non-union workers there with softball bats. Several minutes later, they roared off, leaving five men a mass of bloody flesh, broken arms and fractured skulls. One was nearly blinded. In their haste, the union goons left behind some of their bloody bats, several emblazoned with symbol, Local 30 (a Philadelphia roofers' union).

The victims managed to take down one license number, and made positive identification of three assailants. But, at the preliminary hearings, they would not identify the suspects, who were subsequently released. "I think the union got to them," Lt. T. W. Ward, of the Springfield police department, told newsmen. One assailant protested over drinks in a bar that he disapproved of the vicious attacks. Next morning, he was found dead in a ditch, shot through the head.

On February 11, 1972, employes of Kitson Brothers, an open-shop roofing contractor in Montgomery County voted to reject membership in Local 30 (the roofers' union). The following May 7, eight Kitson trucks were set afire. Ten days later, a construction site where Kitson had been hired to do a job was picketed by Local 30. Roofing material was burned, and non-union workers were beaten. The management of the company that had hired Kitson received threatening phone calls, found its own tires slashed and delivery of materials blocked. Finally, Kitson was asked to give up the job, which went to a union firm. Kitson Brothers has since lost several other jobs under similar circumstances.

OPERATION ALTEMOSE

But these chapters in the Philadelphia story have been mere prelude. J. Leon Altemose, an aggressive young contractor engaged in big-time construction in the suburbs, farmed out the bulk of his work to subcontractors who came up with the best prices. But, beginning in 1971, the Building and Construction Trades Council demanded that he sign a contract turning over every job to union-dominated subcontractors—no matter how high their charges.

To soften him up, goons set fires at a school he was constructing, burned five of his trucks and began a campaign of repeated phone threats on his life. Although Altemose offered to assign 70 percent of his work to union contractors, this did not satisfy the Council. Forewarned that big trouble was on the way, he strung nearly a mile of chain-link fence, topped with barb wire, around a $15-million Sheraton Hotel and office complex he was building adjacent to Valley Forge Park, about 20 miles west of Philadelphia. When a demonstration was scheduled against him on June 5, 1972, he told all employes and subcontractors to stay away and requested protection from Upper Merion Township police chief Donald Beacraft. The chief said a show of force would only be provocative.

At 7:30 a.m. on June 5, some 1000 men in automobiles and chartered buses arrived at the Valley Forge site carrying wrecking bars. Molotov cocktails and hand grenades. As 18 local police and state troopers looked on the "demonstrators" rushed screaming at the fence and tore it down. Directed by colored smoke bombs to designated targets they laid waste everything in sight.

"I felt like a war correspondent," reported Al Haas, a Philadelphia *Inquirer* writer. "The scene was right out of Vietnam." More than $300,000 damage was done in 45 minutes. Unable to restrain the rioters, police turned fire trucks away in fear for the firemen's safety.

Suddenly, at a signal from a command group of men in business suits, it was over. Sandwiches and soft drinks appeared, and

the rioters wandered around quietly. Although state troopers finally arrived in force, not one arrest was made.

Fearing worse to come, Altemose and his attorneys prevailed upon Common Pleas Judge Vincent A. Cirillo to enjoin the Philadelphia Building Trades Council from picketing or congregating within a mile of any Altemose building site or his general headquarters at Center Square. Nevertheless, the next morning 200 marched upon his office, shouting that they would burn the building. This time large police forces were on hand. When 129 persons refused to disperse, they were arrested; most were fined $100 each for contempt of court. One of those arrested vowed that he would "get" Altemose and that the contractor should watch out for his wife. (Five months later, the Pennsylvania Supreme Court ruled that the pickets could be enjoined, but changed the one-mile limitation to "200 yards." Declaring that the arrested pickets had not been given their full constitutional rights, the court required all fines to be returned.)

FIRE NEXT TIME

On June 13, local members of the Associated Builders and Contractors, Inc., met at the downtown Philadelphia Sheraton Hotel. That same day, a group of men checked into the hotel under aliases and, once inside, smashed the furniture of eight rooms to kindling, ripped mattresses and pillows, clogged toilets with cement, then fled after inscribing the walls with this message in red: "This is for Altemose. This time water, next time fire."

Two months later, Altemose and his wife emerged from a bank in the heart of Philadelphia's business district to be confronted by a throng of pickets. "Scab!" they screamed. "We'll teach you to show your face in Philadelphia." Fists flew, and Altemose slumped to the ground. "They kicked him in the face viciously," said one eyewitness. Three union hoodlums, identified both by Altemose and by police at the scene, were arrested and charged with assault. Yet a local judge dismissed the three for lack of evidence.

Although Altemose remains determined to complete his project, it is a desperate struggle. The only three ready-mix concrete firms logically situated to serve the Sheraton project have refused to do so; phone calls threatened the lives of their executives if they dared do business with Altemose. When a distant firm did begin to help him, 58 of its trucks' tires were slashed or punctured in the company's own parking lot. "Three informers have told me I am supposed to be dead," says Altemose. "But I can't change the way I live. I'm not giving in." (His company has since joined in filing an anti-trust suit against over 50 Philadelphia building-trades unions.)

ACQUIESCENCE?

In his determination to remain free of union dictatorship, Altemose reflects the feelings of thousands of other open-shop contractors and workers. But the price of their independence is unrelenting, unchecked terror and sabotage. Labor bosses piously disclaim responsibility, explaining that they cannot control those who become unruly when their "rights" are challenged. Yet word has been spread among the unionists that this year, 1973, will bring extermination of the enemy.

The question is: Why does a free society permit such storm-trooper tactics? Obviously, there is an urgent need for new federal legislation. Yet most of our politicians in Washington dare not move against the enormous power of the labor lobby and its millions of dollars in potential campaign contributions. The story of this shameful acquiescence in the face of union terror should arouse every law-abiding American.

[A special report that will shock the Nation—Installment No. 3]

LABOR VIOLENCE—A NATIONAL SCANDAL

(By Charles Stevenson)

In their third show of force there within six weeks, hundreds of AFL–CIO construction men went on an organized rampage of wrack and ruin in Columbus, Ohio, last October 24. Using walkie-talkies, they tied up millions of dollars' worth of building jobs, laying waste four big projects scattered over the city. They battered in walls, cut electric wiring, smashed windows, yanked out plumbing fixtures, set fires.

The excuse? One victim, the developer of a $50-million complex of office buildings, apartments, shopping mall, theaters and restaurants, had refused to shut out non-union contractors. He offered his jobs in open, competitive bidding. Though half his work went to union people, they demanded all of it. When he refused, union spoilers inflicted $500,000 in damage. Nevertheless, city officials declined to condemn the union havoc. Days afterward, the *Citizen-Journal* noted that the public-safety director was still at a loss to explain why police allowed crowds to damage the property. There were only six arrests.

In Pittsburgh, it is worse. George Tomasky's construction firm has gone out of business, unable to complete $30,000 to $40,000 contracts. Last October 23, two gangs of 30 or so plug-uglies closed in on Tomasky and four of his workmen while they were erecting steel in a Pittsburgh suburb. The thugs beat them viciously with steel bars. "There have been no arrests," says an embittered Tomasky, who is still nursing serious injuries. "My pleas for state police to come in have been turned down on the ground that local police have jurisdiction. As if the two patrolmen in that township could cope with those gangs!"

Examples such as these have been piling up in city after city. Many labor bosses, having priced their unions out of the economy by their practices of featherbedding, slowdowns, loafing and jurisdictional hangups, are responding to the resultant open-shop competition with the terror tactics of the racketeer. Rank-and-file members often must go along or find themselves out of jobs.

Here is a national scandal that begs for federal action. Yet Washington looks the other way and next to nothing has been done about it. Why?

COWARDLY CONGRESS

I put the question to many government officials. I asked it in behalf of the Columbus builders and their workers, and of the badly beaten contractor of Pittsburgh. I asked in behalf of Leon Altemose, a Philadelphian whose $15-million hotel project was wrecked and who was himself beaten by union goons. I asked in behalf of Florida's rank-and-file members who have been slugged or barred from work because they displeased a so-called union leader. I asked in behalf of Richard Spreen, a West Palm Beach Volkswagen dealer whose new showroom was wrecked because he dared hire non-union workers after he found union prices beyond his reach.

I got many different answers to my question, but behind all of them was a stark recognition: that labor now wields such power in Congress as to prevent any stern action against union violence.

The last federal law aimed at union violence, the Hobbs Act, passed in 1946, made it a felony for anyone, including a labor union, to obstruct, delay or block the movement of goods in interstate commerce by means of robbery and extortion, and also made threats of violence as well as actual robbery and extortion illegal. Last February, however, the Supreme Court ruled that Congress had intended that this particular statute should *not* punish violence if its purpose is to gain higher pay or a union contract from a company or to achieve other "legitimate union ends." Hard to believe—but true.

Justice Harry A. Blackmun did declare that such acts of violence "deserved to be dignified as federal crimes" and pointed out that Congress has the constitutional power to effect that result. Charles F. Ruff, formerly top attorney for the Justice Department's labor-racket prosecutions, puts it more bluntly: "There is an urgent need to put teeth in our labor laws. Outrages against both builders and workers, union or not, will continue until Congress finds the courage to make labor violence a crime no matter the motive."

But nothing happens.

MONEY VOTES

"The fact is," explains Sen. Peter Dominick (R., Colo.) of the Senate's Labor and Public Welfare Committee, "it will be a rugged, uphill fight to enact any labor-reform legislation so long as union chiefs are permitted to use their members' money for so-called 'campaign contributions' to buy up Congressmen and thus dictate what bills shall be passed or killed."

This is no exaggeration. The labor lobby does influence enough of our legislators to get what they want.

The servility of these beneficiaries of union handouts is underscored by a Washington *Post* description of a hotel meeting at which Big Labor's political-fund dispensers handed Sen. Lee Metcalf (D., Mont.) $10,000 prior to pouring $38,999 into his successful re-election drive last November. "I'm grateful to you fellows," Metcalf was quoted. ". . . they can say Metcalf's campaigns are financed by organized labor, that I'm too close to organized labor. Well, I'm as close to organized labor as I can get, and if I can get any closer or if I start straying away, you guys had better come around and tell me." This, the *Post* states, was not an unusual incident but only "one of countless examples." Indeed, total reported union spending for political purposes amounted to $6 million in 1972, all of it taken one way or another from the pockets of the members.

Most labor legislation ordinarily must clear through the Senate Labor and Public Welfare Committee before the Senate considers it. However, as Sen. Russell B. Long (D., La.) explains, the committee "is oriented toward organized labor." It is not hard to understand why few bills come out of committee which labor doesn't want, even if they would improve the lot of the worker.

For example, Senator Dominick co-sponsored a bill seeking to bar certain criminals convicted of crimes against their membership from returning to union offices. His bill went into the committee's "file-and-forget" basket. He also sought legislation to make it an unfair labor practice for a union to discriminate against its own or potential membership on account of race, religion or national origin. He introduced a bill to prevent sanctions from being imposed on union workers for exceeding production quotas. *These and other kindred measures, 15 in all, were pigeonholed during the last two Congresses without even a hearing.*

Any wonder? It is a matter of public record that the dispensers of union handouts presented the committee chairman, Sen. Harrison A. Williams (D., N.J.), with $150,966 for his 1970 campaign.

The unions have also contributed heavily to the recent fund drives of Senators: Birch Bayh (D., Ind.)—$79,645; John V. Tunney (R., Calif.)—$104,150; Stuart Symington

(D., Mo.)—$103,060; Philip A. Hart (D., Mich.)—$81,521; Adlai E. Stevenson III (D., Ill.)—$70,844.* And these are just samples. In 1971 the Senate defeated, 61–31, a plan to deny tax-exempt status to organizations making political use of mandatory dues or assessments. Why such a vote against the interests of the rank-and-file? It turned out that only nine of the 61 Senators who voted against the plan had failed to receive labor largess in their last campaigns. The rest—more than half of the U.S. Senate—had been labor-financed to the tune of $2,009,686. In some cases the gifts dwarfed what these men received from their own party!

TIME TO INVESTIGATE

Such is the bought-and-paid-for control which union masters exert over Congress. However, there are persons who are challenging this to-hell-with-the-public authority. The Associated Builders and Contractors, Inc. (ABC), consisting of some 5,500 contractors who employ 250,000 workers, union and non-union, joined Altemose Construction Co. and the U.S. Chamber of Commerce in a federal anti-trust suit filed in April against the Philadelphia Building and Construction Trades Council and more than 50 of its affiliated local unions. The suit lists more than 17 instances of violence.

In addition, on May 16, the ABC filed one of the largest suits in recent times with the National Labor Relations Board, accusing 17 building-trades unions and their local affiliates of waging a campaign of violence in an attempt to force them out of business. And since January, ABC members have been making pilgrimages to Washington to buttonhole legislators in behalf of an act specifically making serious willful damage to property during a labor dispute a federal felony. Introduced in June by Rep. John B. Anderson (R., Ill.), this legislation would plug the loophole the Supreme Court found in the Hobbs Act (see page 154). During the last year the White House has been actively courting the political support of organized labor, but that should not now stand in the way of strong executive-branch support of legislation to reform union abuses.

"With 172 separate instances of violence, vandalism and similar harassment reported in 26 states during last year alone, and with nothing much done by local and state authorities, it is inconceivable that Congress has not taken action," complains ABC's executive vice president John P. Trimmer. "We need to make this kind of violence a federal crime so that the FBI can come in with its full resources. Such a law would in no way interfere with legitimate union activities."

Adds Senator Dominick: "Our struggle to bring about any legislation can succeed, but only if all Americans who rebel at tyranny will join in a campaign to bring the full weight of public opinion to bear on Congress. This means not just every contractor. It means every open-shop worker, union or non-union, who lives in fear of being mauled for trying to work as his own man. It means every honest labor leader whose effort to have the unions serve their members and the public is being besmirched by the plunderers. If everyone will bring local abuses to the attention of the press and make plain to our legislators that they'd better get with it or lose their jobs come next election, their loyalty to union subsidizers will evaporate; we'll be able to work for a public investigation and a resulting legislative package that will at last give every American, union and non-union, an opportunity to rejoice."

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*Republican Senators, too, have benefited from labor contributions but in far lesser amounts. Top recipient in 1970, for example, was Hugh Scott of Pennsylvania—$21,150.

[A further report, based on reader response to a recent, controversial series of articles]

YES, CONSTRUCTION-UNION TERRORISM IS REAL

(By Charles Stevenson)

After three articles on the current wave of labor-union violence appeared in the June, July and August issues of The Reader's Digest, readers by the hundreds wrote in. A few were critical. The violence and terrorism, they said, have been committed by only a minority among generally law-abiding workmen, and are therefore not significant. But the overwhelming majority confirmed the facts as reported, or called attention to similar cases.

Delivered by mail, telephone or in person, these accounts come from contractors forced out of business, from rank-and-file union members victimized themselves by strong-arm dictatorship. In broad outline and in detail, they corroborate the story of union bosses who, having priced construction labor out of the market, now find themselves facing open-shop competition—and seek to crush it by guerrilla warfare.

The result is human misery. Imagine how a Southern contractor felt when recently told over the phone: "I am in the union but I want to tip you off as a friend. There's a contract out to kill you." Or an Evansville, Ind., electrical contractor and the manager of his trade association's local chapter—and their families—when shotgun blasts riddled their homes in the middle of the night. Or Houston carpenters, threatened and kept from jobs because they want to know what became of $137,000 missing from their union treasury. Or a member of the International Brotherhood of Electrical Workers who was savagely beaten after he accused union officials of wrongdoing. He sends along photos of himself in the hospital: eyes swollen shut, mouth puffed grotesquely, his jaw and skull torn.

A California businessman writes about the death of Joe Koboski. Koboski and his two sons were working as cleanup men on a residential tract in Anaheim, Calif., when a union representative showed up, demanding that they join the union or get off the tract. Koboski refused and there was a fight. Badly beaten, he was taken to the hospital in a coma, and died the following morning after a four-hour brain operation. The coroner's report, however, listed it as a death from natural causes—"a non-traumatic brain hemorrhage [stroke]"—and police investigation was dropped. (The union man had filed charges against Koboski.)

A New York State builders-supply man who has done business with open-shop contractors reports: "I have received threats on my children's lives, and one son had a near-miss by a hit-and-run driver. Luckily, he got only bruises. They told me next time they wouldn't miss."

Today, when labor thugs are involved, judges and politicians scarcely go through the motions of enforcing the law. Legislators, too, are fearful of offending the unions. Rep. John B. Anderson (R., Ill.) has proposed a bill to set up long-overdue federal penalties against labor violence, and 40 out of 435 members of the U.S. House of Representatives have co-sponsored it. Still, so pervasive is union influence that the measure is far from becoming law. Meanwhile, the crimes of terrorism and intimidation increase.

As detailed in the July Digest article, a thousand hard hats went on a rampage in Philadelphia in June 1972, causing $300,000 damage at the site of a hotel being built by open-shop contractor J. Leon Altemose. Incidents of union violence have continued in the area. There was an injunction forbidding additional picketing at the Altemose jobs. Recently the unions went into court in an effort to lift the injunction—but rather than answer questions about their roles in the more recent terrorism, six of the local bosses took the Fifth Amendment a total of more than 200 times.

On July 27, Altemose, a cousin and two attorneys approached the Federal Building in Philadelphia for a hearing. They had asked that police security be provided but, on approaching, they saw a gang (not pickets, but thugs) screaming obscenities. When a mob of 40 rushed them, they ran in front of a passing police car to stop it, then jumped inside, as a couple of the goons reached the car and pounded the side of it. Thereafter, to attend the hearing, they had to enter the building through an underground area, escorted by federal officers.

Last spring the goon squad from Roofers Local 30 of Philadelphia even invaded an industrial-park construction site in Mt. Laurel Township, N.J., and stopped the work of non-union subcontractor William Hargrove. Windows were smashed, truck tires punctured. Four days later, bricks were thrown through the windows of Hargrove's garage-office in Camden. Two tear-gas canisters were hurled in, then lighted cigarettes, which started a blaze that drove Hargrove and four employes out of the building. Firemen had to wear masks and airpacks to enter the building and extinguish the fire.

In July, other terrorists zeroed in on a Lancaster, Pa., open-shop steel-structures firm. At one of its job sites (in Delaware) they used sledgehammer and gasoline to destroy heavy crane equipment. At another site (in Maryland) they attacked workers with iron bars and heavy copper wires as the crew left a restaurant. Prosecution? Forget it. Witnesses in the Maryland incident, expected to testify, failed to appear.

"CYCLE OF FEAR"

In Kalkaska, Mich. (population 1500), Delta Engineering Co. has been constructing a $20-million Shell Oil natural-gas processing plant. From January to mid-July, men trying to work for Delta were terrorized by mobs of hard hats, brought in—on at least one occasion from 200 miles away—by the Michigan State Building and Construction Trades Council. Last June, 400 state police were dispatched to the area. (This cost Michigan taxpayers well over $300,000.) But despite two court orders to stop mass picketing by the invaders, it was permitted to continue, and virtually all work halted. Union thugs slashed car tires of local people not even employed at the project. Windshields were smashed, businesses vandalized.

Ronald D. Maloney, who said the Shell project gave him the best job he'd had since moving to the area three years ago, writes that union men doctored his auto so it stalled on a country road. Then two carloads of them swarmed around, slashed his tires and warned that if he went back to work, "it would be him the next time." And, he was asked, "Who will take care of your family after you are gone?"

Another Kalkaska resident, when all else failed, wrote President Nixon begging for protection. "Delta got me off welfare," he said. "Now my job, the thing I wanted most for me and my family, is being taken away. Our lives are becoming a cycle of fear. They damaged my car, they told me they would kill me, they threaten my wife on the phone and threaten to burn my house down."

What did the courts do about all this? Incredibly, federal district judge Noel P. Fox ordered the contractor and Shell to appear in his court to "negotiate" with the union—even though neither company was a party to the particular suit pending. The result: a

"vountary settlement." The Building Trades Council called off the picketing and violence but only when the two companies agreed to put up $250,000 pay for the marauders' damage and disruption in the community.

But that was not the end of the destructiveness. In late July, swarms of union goons armed with axes, clubs and knives—some of them the same men who had been at Kalkaska—caused $75,000 damage to a $1-million ice arena under construction in Lansing, Mich.

DYNAMITERS

Following strikes and massive vandalism in Memphis last year (see the July article), a sabotage campaign seems to have been mounted against some Tennessee contractors. Among other things, on a Memphis job site which had been picketed by a union for some time, unknown persons blew apart a $1.6-million Ramada Inn, then nearing completion, with damages of almost $500,000. The most recent "coincidence," Memphis newspapers report, was the discovery, in Mississippi, of the mud-caked, drowned body of the only person suspected to have known the identity of the parties who dynamited the inn.

Last January, Sen. William Brock (R., Tenn.) asked the Justice Department to take action against the Memphis union terrorists who had also dynamited a contractor's home, burned down an elementary school and committed other acts of violence. He further requested the Department "to investigate information that out-of-state professional bombers are being hired to conduct a campaign of terror in the Memphis district. If this is not done, I feel we will see a spread of violence and organized crime into other areas."

But nothing was done. Official response to union violence is lackadaisical.

"It is a standing phrase in construction work that the Mafia has taken over, thus the violence—and the kickback and bullying systems so obvious to the workers," volunteers an Eastern union worker.

As Senator Brock predicted, the destructive crimes are spreading. In recent months, steel cables, bulldozers and wrecking tools have reduced building structures to rubble in Bellingham, Wash., and West Warwick, R.I. Union shortage in Maryland amounts to $500,000 in 1973 alone, the Baltimore *Sun* reports. Yet, when two Maryland saboteurs were convicted of trying to destroy two cranes, Judge John E. Raine of the Baltimore County circuit court fined them just the $3200 actual cost of their damage, and suspended jail sentences.

What is the reaction of the AFL–CIO leadership to all this? In a Labor Day message, president Frank Bonadio of the AFL–CIO Building and Construction Trades Department labels the Digest's documented facts of terrorism "baseless," "absurd," and a "huge distortion of fact." Still, in the same message he finds it necessary to warn members about "the problem of growth of the non-union contractor," to which, he says, "organization" is the best answer. For six years, violence has accompanied the Building Trades Unions' official campaign to stop open-shop contractors. Yet rarely have the leaders of organized labor condemned the violence—or even acknowledged it.

MILK THE MEMBERS

What is needed are union leaders willing to compete for business, to modernize operations and so attract jobs, to open up their unions, and to work *for the benefit of the membership*. Too many today seem to be run for the benefit of the bosses.

The Wall Street Journal details a nationwide "multiple-pay trend" among union bosses. A number are "quietly getting rich" by juggling many jobs. The newspaper reports that Bernard G. Rubin of the Laborers Union, for instance, pulls in $22,000 a year as business manager of the Miami, Fla., Local 478, $51,167 as president of the neighboring Miami Beach Local 666, another $51,167 as president of their southeast Florida Laborers District Council, and an additional $5000 as special representative of the international union—plus a free automobile and $50,000 for expenses.

In addition to their compulsory, but legitimate, dues, readers write of being forced to pay, in cash, for "work permits," "working assessments," "special assessments" and "voluntary contributions" in order to get a job. In Rhode Island, five union officials are indicted for loading contractors' payrolls with nonexistent and no-show workers, then pocketing the resulting $164,570. Who suffers? The rank-and-file union member, because this cost inflation sends more builders to the open shop, and makes union jobs scarcer.

Pension gypping is another major complaint. "Legal larcency," a Columbus, Ohio, brick mason calls it. "You have to pay in so much. Yet, when a 72-year-old member asked for his pension, they turned down his request because at one time he had transferred his card to work in California for three months. I'd like to see employers prohibited from deducting anything out of an employee's paycheck concerning health and welfare or pension funds, unless the employe specifically authorizes it by his signature."

One of the agencies investigating criminal violations of labor-related laws, the U.S. Department of Labor—in spite of inadequate investigating forces—reported 73 convictions for such crimes as embezzlement from union treasuries, welfare and pension funds in fiscal 1972. However, federal judges promptly let 61 of the 73 go free with fines, probation or suspended sentences.

A Michigan policeman says he has locked up his share of union terrorists but is "discouraged because the judges turn loose good arrests without fines or sentences." He sums up with an indictment that recurs in letter after letter: "The unions and their vicious tactics are tolerated by judges, politicians and high government officials because of (1) money in the form of kickbacks, and (2) ultra-legalism, finding loopholes for dismissal of court cases."

HEAD HIGH

Last May, the 5500-member Associated Builders and Contractors (ABC)—who employ a quarter of a million workers, union and non-union alike, on an open-shop basis—filed suit with the National Labor Relations Board. Their charge: that the building-trades unions have conspired to force them out of business and intimidate their employes. If the NLRB finds the charges justified, then the nation's major craft unions could be held liable for acts of violence by their locals. This might be the element needed to bring the terrorism under control.

As the Detroit *Free Press* said, commenting on Kalkaska, "Whatever the merits of arguments against non-union construction work, the unionists' violence is inexcusable. The unions are not only losing public support, but the support of the workers themselves. Getting their public image back up to zero is going to be a difficult task, and must begin now."

Meanwhile, the courage of those who have defied the labor bosses—employer and employe alike—is proof that the battle is not lost. The first article in this series told of Edward Deeson, a member of the Fort Lauderdale, Fla., operating engineers, who shrugged off the threats of his local's boss and told a jury how a union goon had beaten a fellow worker. Since the trial, Deeson has been badgered out of work.

"But I'm holding my head very high," writes Deeson's wife, "to be married to a man that feels 'right is right.' If more people stood up and said, 'Don't let our union leaders get this much of a stranglehold on us,' more justice would be done. Men have got to learn not to be sheep. Let us act like humans."

By Mr. MONTOYA:

S. 2882. A bill to designate May 30 of each year as Memorial Day and to designate November 11 of each year as Veterans Day and to make such days legal public holidays. Referred to the Committee on the Judiciary.

Mr. MONTOYA. Mr. President, during the recent recess, several veterans' groups in New Mexico requested that I submit legislation to designate May 30 as Memorial Day and November 11 as Veterans Day.

The State Legislature in New Mexico passed a bill during the 1973 session designating May 30 as Memorial Day and November 11 as Veterans Day effective upon the passage of similar legislation by the Congress of the United States.

As you know, November 11 was originally selected as Veterans Day, to commemorate the day in 1918 when the Armistice was signed which ended World War I. Memorial Day has been celebrated on May 30 since 1868, when Gen. John A. Logan, first Commander in Chief of the Grand Army of the Republic issued the general order providing for a nationwide observance.

It is my pleasure to introduce this legislation in behalf of veterans in New Mexico and I am hopeful that Congress will act quickly to restore the meaning to these days of tribute to men and women who have served this Nation as members of our Armed Forces in the past.

By Mr. BIDEN:

S. 2883. A bill to amend the Fair Credit Reporting Act. Referred to the Committee on Banking, Housing and Urban Affairs.

FAIR CREDIT REPORTING ACT AMENDMENTS OF 1974

Mr. BIDEN. Mr. President, on November 26, 1973, I introduced an amendment to S. 2360, Fair Credit Reporting Act amendments. The bill I am introducing today is substantially similar to that amendment, No. 703, but it contains a technical change to conform to a revision of the definition of "medical information" made by the Subcommittee on Consumer Credit.

The purpose of this bill is to require, in clearly defined circumstances, automatic disclosure of investigative consumer reports to the individuals on whom they were prepared. This bill is intended to extend the explicit protections of the Fair Credit Reporting Act which I think are necessary both to insure the correction of inaccurate or misleading information in investigative reports and to guarantee the fundamental right of privacy of the individual.

The bill would apply only to "investigative consumer reports," which are written by consumer reporting agencies on the basis of personal interviews with the subject's neighbors, or acquaintances or anyone "who may have knowledge" of the consumer's "character, general reputation, personal characteristics, or mode of living." These reports are prepared unsystematically, and may contain alle-

gations about the most personal aspects of an individual's life. The veracity of the person interviewed or the accuracy of the information supplied may never be doublechecked.

I have copies of actual reports that were randomly selected from the files of the Federal Trade Commission and forwarded to me with the names of the reporting agency and all individuals deleted. While I do not know the purpose for which any of these reports was prepared, knowledge of that purpose is not necessary. Once a report is drafted, it can be, and is, used for any of the purposes for which information may be requested. I expect that you will find these documents as startling and revealing as I did. Indeed, I believe that the structure of the reports, the questions they ask, and the responses they permit, vividly illustrate the need for my amendment.

Unfortunately, because such unverified and unverifiable reports may contain false allegations, they may cause a specific individual substantial harm. More generally, events of recent years have convinced me that our fundamental freedoms are ever more seriously jeopardized by secret invasions of personal privacy, however accomplished. I profoundly believe that individuals have the right to control their own destinies. That right is meaningless, however, if a person can lose a job because of false information that he had no chance to correct. As a nation we value the integrity of the individual; our laws must safeguard that integrity.

The best way to correct the injustice that may result from the investigative procedures I have described is to provide citizens with a practical means to protect themselves. To do this, I propose to give everyone the opportunity to correct any misinformation in his consumer report before it is sent to a third party, before the damage is done. Requiring the investigative agency to make prior disclosure to the consumer is the ounce of prevention that will be worth infinitely more than a cure that will frequently, if not always, come too late.

Although no hard data is available to chart the use of these reports, I understand substantial numbers of them are prepared each year. I have taken into account the burden that providing this protection will impose, and have, therefore, called for disclosure only in those cases where misinformation is most likely to cause irreparable harm. The most acute problems arise in employment situations, which represent a small minority of the cases for which these reports are prepared. According to the testimony on S. 2360 given by the Nation's largest investigative reporting company, which furnishes approximately 20 million investigative consumer reports annually, only 9 percent, or 1.8 million, are furnished for employment purposes.

While investigative reports are most commonly used for credit and insurance purposes, in those cases the consumer is given an adequate chance to correct misinformation in the present legislation and in the additional procedures in S. 2360. Although credit and insurance may be subsequently reinstated when the misinformation is corrected, once a job is lost because an employer relied on false statements, it is almost certainly gone forever. Another job might be secured at a later date, but each position is unique and no one should be denied a unique opportunity because of false reports. Because few things are more important than a person's job, I believe that consumers are entitled to the additional protection that my bill would provide.

However, to further focus the bill, I have limited the applicability of its disclosure procedure to cases of "adverse" information. This term is presently incorporated in the Fair Credit Reporting Act and I intend that it be broadly construed in the context of this bill in order to give individuals the maximum possible protection. The procedural requirements of the bill might be superfluous if a report reflected favorably on a person's character, but I strongly believe that when the information is potentially damaging to an individual's chances for employment, the harm that may result from misinformation is so great that the need for added protection clearly outweighs any burden that might result from disclosure.

I believe that the Subcommittee on Consumer Credit is going to hold further hearings on amending the Fair Credit Reporting Act this session. I hope this bill can be taken up and examined at that time.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at the conclusion of my remarks.

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

S. 2883

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Fair Credit Reporting Act Amendments of 1974."

DISCLOSURE OF INVESTIGATIVE CONSUMER REPORTS

SEC. 2. Section 606 of the Fair Credit Reporting Act is amended—

(1) By adding a new subsection (c) to read as follows:

"(c) If an investigative consumer report contains information which may be adverse to the consumer to whom it relates, a consumer reporting agency may not furnish that investigative consumer report to any third party for employment purposes unless, at least five business days prior thereto, such agency mails or otherwise delivers without charge a copy of such report to the consumer to whom it relates, except that any third-party medical information contained in the report shall be deleted and the consumer shall be advised of the existence of such information and of his right to have such information furnished to a licensed physician of his choice.".

(2) By changing the present subsection (c) to subsection (d).

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1218

At the request of Mr. GRAVEL, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 1218, a bill to amend title II of the Communications Act of 1934 to authorize common carriers subject to such title to provide certain free or reduced rate service for individuals who are deaf or hard of hearing.

S. 2121

At the request of Mr. MONTOYA, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 2121, a bill to authorize the Secretary of the Interior to carry out a program to provide road systems within Indian reservations or provide access to an Indian reservation or Indian trust lands or restricted trust land, for health, education, and the development of industry.

S. 2347

At the request of Mr. BEALL, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 2347, the Historical Structure Tax Act.

S. 2506

At the request of Mr. MAGNUSON, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2506, a bill to amend the Natural Gas Act, to secure adequate and reliable natural gas and oil at the lowest reasonable cost to the consumer, and for other purposes.

S. 2678

At the request of Mr. HATHAWAY, the Senator from Iowa (Mr. HUGHES) and the Senator from South Dakota (Mr. ABOUREZK) were added as cosponsors of S. 2678, a bill to provide for a special election for the Offices of President and Vice President when the Offices of President and Vice President are both vacant.

S. 2861

At the request of Mr. BEALL, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of S. 2861, to authorize the Administrator of the Federal Energy Office to obtain certain information with respect to current supplies of crude oil and petroleum products.

SENATE JOINT RESOLUTION 84

At the request of Mr. SCHWEIKER, the Senator from Kansas (Mr. DOLE) was added as a cosponsor of Senate Joint Resolution 84, the school prayer amendment.

SENATE RESOLUTION 236—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON AGRICULTURE AND FORESTRY

(Referred to the Committee on Rules and Administration.)

Mr. TALMADGE (from the Committee on Agriculture and Forestry) reported the following resolution:

S. RES. 236

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Agriculture and Forestry, or any subcommittee, thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to em-

ploy personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $220,000, of which amount (1) not to exceed $16,900 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman of the Committee.

SENATE RESOLUTION 237—ORIGINAL RESOLUTION REPORTED AUTHORIZING CERTAIN EXPENDITURES FOR THE COMMITTEE ON FINANCE FOR MATTERS AFFECTING FOREIGN COUNTRIES

(Referred to the Committee on Rules and Administration.)

Mr. LONG (from the Committee on Finance) reported the following resolution:

S. RES. 237

Resolved, That effective February 1, 1974, and until otherwise provided by law, the Committee on Finance is authorized to expend not to exceed $3,000 each fiscal year for purposes which assist the committee properly to discharge its legislative activities and oversight responsibilities in matters affecting foreign countries and which facilitate the interchange of views with and reception of members of foreign legislative bodies and prominent officials of foreign governments and international and regional organizations. Expenditures under this resolution shall be approved in advance by the chairman of the Committee on Finance and shall be paid from the contingent fund of the Senate upon vouchers certified by the member of the committee incurring such expenses and approved by the chairman of the committee.

SENATE RESOLUTION 238—ORIGINAL RESOLUTION REPORTED CONTINUING THE AUTHORIZATION FOR CERTAIN ADDITIONAL PERSONNEL

(Referred to the Committee on Rules and Administration.)

Mr. LONG (from the Committee on Finance) reported the following resolution:

S. RES. 238

Resolved, That the Committee on Finance is authorized, from March 1, 1974, through February 28, 1975, to employ two additional professional staff members and two additional clerical assistants, to be paid from the contingent fund of the Senate at rates of compensation to be fixed by the chairman in accordance with the provisions of section 105(e) of the Legislative Branch Appropriation Act, 1958, as amended.

SENATE RESOLUTION 239—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON FINANCE FOR ROUTINE PURPOSES

(Referred to the Committee on Rules and Administration.)

Mr. LONG (from the Committee on Finance) reported the following resolution:

S. RES. 239

Resolved, That the Committee on Finance is authorized to expend from the contingent fund of the Senate, during the Ninety-third Congress, $20,000 in addition to the amounts, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946, and in Senate Resolution 148, Ninety-third Congress, agreed to August 2, 1973.

SENATE RESOLUTION 240—SUBMISSION OF A RESOLUTION AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

(Referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. TOWER (for himself and Mr. SPARKMAN) submitted the following resolution:

S. RES. 240

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Banking, Housing and Urban Affairs, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The Committee on Banking, Housing and Urban Affairs, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed $700,000 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries in accordance with such succeeding sections of this resolution.

SEC. 3. Not to exceed $340,000 shall be available for a study or investigation of—

(1) banking and currency generally;

(2) financial aid to commerce and industry;

(3) deposit insurance;

(4) the Federal Reserve System, including monetary and credit policies;

(5) economic stabilization, production, and mobilization;

(6) valuation and revaluation of the dollar;

(7) prices of commodities, rents, and services;

(8) securities and exchange regulations;

(9) credit problems of small business; and

(10) international finance through agencies within legislative jurisdiction of the committee.

SEC. 4. Not to exceed $230,000 shall be available for a study or investigation of public and private housing and urban affairs generally.

SEC. 5. Not to exceed $130,000 shall be available for an inquiry and investigation pertaining to the securities industry.

SEC. 6. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 7. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 241—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON FOREIGN RELATIONS

(Referred to the Committee on Rules and Administration.)

Mr. FULBRIGHT (from the Committee on Foreign Relations) reported the following resolution:

S. RES. 241

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Foreign Relations, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed 840,000 of which amount not to exceed $75,000 shall be available for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202 (1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 242—SUBMISSION OF A RESOLUTION RELATING TO THE SPECIAL COMMITTEE ON THE TERMINATION OF THE NATIONAL EMERGENCY

(Referred to the Committee on Rules and Administration.)

Mr. CHURCH. Mr. President, on behalf of the distinguished Senator from Maryland (Mr. MATHIAS) and myself, I submit a resolution relating to the Special Committee on the Termination of

the National Emergency, and I ask unanimous consent that it be referred to the Committee on Rules and Administration.

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

The resolution reads as follows:

S. RES. 242

Resolved, That the Special Committee on the Termination of the National Emergency, established by Senate Resolution 9, 93d Congress, agreed to January 6, 1973, is continued for the period from March 1, 1974, through February 28, 1975, except that, commencing on March 1, 1974—

(1) such special committee shall thereafter be known as the Special Committee on National Emergencies and Delegated Emergency Powers; and

(2) it shall be the function of such special committee, in accordance with the provisions of that Senate Resolution 9 not inconsistent with this resolution, to conduct a study and investigation with respect to the termination of existing states of national emergencies proclaimed by Presidents of the United States in 1933, 1950, 1970, and 1971, and with respect to delegated emergency powers.

SEC. 2. In carrying out such functions, the special committee is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) to hold hearings, (4) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (5) to require by subpena or otherwise, the attendance of witnesses and the production of correspondence, books, papers and documents, (6) to take depositions and other testimony, (7) to procure the service of individual consultants or organizations thereof, in accordance with the provisions of section 202(1) of the Legislative Reorganization Act of 1946, as amended, and (8) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 3. For the period from March 1, 1974, through February 28, 1975, the expenses of the special committee under this resolution shall not exceed $166,000, of which amount not to exceed $25,000 shall be available for the procurement of the services of individual consultants, or organizations thereof, as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended.

SEC. 4. The special committee shall make the final report required by section 5 of that Senate Resolution 9 not later than February 28, 1975, instead of February 28, 1974.

SEC. 5. Expenses of the special committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the two co-chairmen of the special committee.

LEGAL SERVICES CORPORATION ACT—AMENDMENT

AMENDMENT NO. 938

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

Mr. FANNIN submitted an amendment intended to be proposed by him to the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation.

EASTERN WILDERNESS AREAS ACT—AMENDMENT

AMENDMENT NO. 939

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

Mr. HUGH SCOTT. Mr. President, on behalf of myself and Senator SCHWEIKER, I am today submitting an amendment, to the proposed Eastern Wilderness Act, which expands the acreage under study and adds a new study for three areas in Pennsylvania's Allegheny National Forest. The forest is located in four of Pennsylvania's northwest counties—Warren, McKean, Forest, and Elk.

The Senate Committee on Interior and Insular Affairs, in the reported version of S. 316, designates Hickory Creek in Warren County and Tracy Ridge in Warren and McKean counties as wilderness study areas. Unfortunately, the committee recommended reducing the acreage to be studied—from 11,200 to 8,200 in the case of Hickory Creek and from 10,000 to 7,900 in the case of Tracy Ridge. The first part of my amendment would restore the higher acreage figures in both areas.

Under section 4 of the bill, each wilderness study area will be subjected to review by the Secretary of Agriculture "as to its suitability or nonsuitability for preservation as wilderness." The Secretary will make his recommendations to the President following such studies and the President, in turn, will forward his own recommendations to the Congress.

In my view, reducing the acreage to be studied in Hickory Creek and Tracy Ridge prior to such studies is prejudicial to those studies. The final recommendations to the Congress can state whether or not the acreage studied should be preserved as a wilderness area. But it is wrong to set an arbitrary limitation on the studies before the studies are made.

The second part of my amendment adds one more area for study—Allegheny Front, also a part of the Allegheny National Forest, located entirely in Warren County. This area, comprising approximately 10,000 acres, has recently been the subject of a preliminary, but still comprehensive, study prepared by the Sierra Club's Pennsylvania Chapter. This excellent study was completed too late for consideration by the committee, but I am advised that the staff has received a copy and is reviewing it. The study indicates that the Allegheny Front area has very high wilderness qualities and thus should be subject to further study by the Secretary of Agriculture.

Senator SCHWEIKER and I previously urged the committee to include a fourth study area, also in the Allegheny National Forest, called Minister Creek which is located in Warren and Forest Counties. However, we have seen no preliminary studies on this area and, as such, we will not pursue it further at this time.

Mr. President, when the Senate proceeds to consider S. 316, I intend to call up this amendment, and I hope that I will have the cooperation of the managers of the bill in seeking to protect some of Pennsylvania's most precious natural resources.

PRISONER OF WAR AND MISSING IN ACTION TAX ACT—AMENDMENT

AMENDMENT NO. 940

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

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

AMENDMENT NO. 941

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

Mr. KENNEDY. Mr. President, the amendment I am introducing together with Senator HATHAWAY to H.R. 8214 is designed to set a deadline for congressional action on the preferential tax treatment of oil companies.

Today, the President sent a message to the Congress recommending action in this area. In the past, I and other Senators and Congressmen have introduced legislation on this subject. Yet there has been no conclusive action by the Congress.

This year, we must act to limit the preferential tax treatment which has produced results antithetical to the national interest. We have seen vast investments made abroad as a result of the incentive provided by the foreign tax credit treatment of oil company payments to foreign governments and as a result of the depletion allowance being applicable to foreign production. At home, we have a highly questionable depreciation procedure, the intangible drilling costs allowance, which result in far more savings to oil companies and losses to the Treasury than in the value of new wells attributable to that incentive.

The effect of all of these provisions is to significantly subsidize the operations of the major oil companies and questions as to their relevance and desirability today are being heard from virtually every source outside the oil industry. Even certain of the oil corporation executives have recognized the need to revise the current preferential treatment.

The cost to the Treasury has been estimated in past years at several billion dollars. The cost in the future, as a result of the recent price increases for crude oil, both here and abroad, has been estimated at more than $5 billion by independent analysts.

In order to provide a deadline for congressional action, a deadline that will insure the enactment into law of more equitable tax code provisions, I have introduced this amendment to repeal the foreign tax credits as they apply to oil companies, the percentage depletion allowance and the intangible drilling costs allowance, as of January 1, 1975.

This will set a specific deadline for action, forcing the President to submit specific legislation in keeping with his

message today and force the Congress to act on his proposals and on the alternatives that various Senators and Congressmen have introduced dealing with the tax treatment of the oil industry.

AMENDMENT NO. 942

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

Mr. STEVENSON submitted an amendment intended to be proposed by him to the bill (H.R. 8214), supra.

AMENDMENT NO. 943

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

Mr. RIBICOFF (for himself, Mr. DOMINICK, Mr. HOLLINGS, Mr. THURMOND, Mr. GRAVEL, and Mr. CASE) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 8214), supra.

AMENDMENT NO. 944

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

Mr. DOMINICK submitted an amendment intended to be proposed by him to the bill (H.R. 8214), supra.

AMENDMENT NO. 945

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

Mr. BUCKLEY (for himself, Mr. RIBICOFF, and Mr. JAVITS) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 8214), supra.

ADDITIONAL COSPONSORS OF AN AMENDMENT

At the request of Mr. MUSKIE, the Senator from Colorado (Mr. HASKELL), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Wisconsin (Mr. NELSEN) were added as cosponsors of amendment No. 920 intended to be proposed to the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes.

COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES HEARING NOTICE

Mr. MOSS. Mr. President, in view of the Democratic conference at 10 a.m., tomorrow, January 24, 1974, the Committee on Aeronautical and Space Sciences will recess the hearing on the NASA equal employment opportunity program at 10 a.m., and resume at 2 p.m

The hearing will begin at 9:30 a.m., as previously scheduled.

NOTICE OF HEARINGS ON INTERNATIONAL PETROLEUM INDUSTRY

Mr. CHURCH. Mr. President, I ask unanimous consent that the press release giving notification of the hearings to be held by the Senate Foreign Relations Subcommittee on Multinational Corporations commencing next week may be printed in the RECORD.

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

SUBCOMMITTEE ON MULTINATIONAL CORPORATIONS

Senator Frank Church, Chairman of the Senate Foreign Relations Subcommittee on Multinational Corporations, announced today that the Subcommittee will begin a major series of hearings next week on the international petroleum industry.

"These hearings," Church said, "will give the American people their first comprehensive explanation of how we got into today's energy crisis. Hitherto secret arrangements among the major oil companies will be discussed. The hearings will examine major U.S. foreign policy decisions made at the highest levels of government which made these secret agreements possible.

"Unless these arrangements are understood," added the Senator, "it will be impossible for Congress to formulate a rational energy policy."

The first phase of the Subcommittee's oil hearings, beginning January 30 and continuing on January 31 and February 1, will examine the inner workings of the industry's little known London Policy Group and the role of this non-governmental agency as the negotiator for the United States and the consuming countries since 1971. Top industry representatives and senior U.S. government officials will be questioned by the Subcommittee on the foreign policy rationale behind the anti-trust protection given by the Justice Department to U.S.-based oil companies. The industry's failure to stand up to the Organization of Petroleum Exporting Countries will be analyzed against the background of the conference of consuming countries, now scheduled to meet in Washington on February 11 to develop a joint approach to the international oil crisis.

The Subcommittee is expected to resume its hearings in late February to explore U.S. foreign policy decisions that sanctioned key inter-corporate production-limiting agreements in the Middle East.

"The evidence produced by these hearings will show that American energy policy abroad has been mainly of, by and for the big oil companies, not the American people," Church said.

NOTICE OF HEARINGS ON BILINGUAL COURTS ACT

Mr. BURDICK. Mr. President, as chairman of the Judiciary Subcommittee on Improvements in Judicial Machinery, I wish to announce a hearing for the consideration of S. 1724, the Bilingual Courts Act. This will be the second day of hearings originally scheduled for last October 11. The purpose of the bill is to implement the right of non-English-speaking persons to have effective oral translation of court proceedings, both civil and criminal, to which they are a party. This legislation also require consideration of the effect of the proposed bill upon judicial proceedings in the U.S. District Court for the District of Puerto Rico, where Spanish is the language most commonly spoken. This latter subject is the principal matter to be considered at this hearing.

The hearing will be held on February 5, 1974, beginning at 10 a.m. in room 1318, Dirksen Office Building.

Those who wish to submit a statement for inclusion in the hearing record should communicate as soon as possible with the subcommittee staff, room 6306, Dirksen Office Building, extension 5-3618.

NOTICE OF HEARING ON INTEGRATED OIL OPERATIONS

Mr. HASKELL. Mr. President, the Special Subcommittee on Integrated Oil Operations of the Committee on Interior and Insular Affairs will resume hearings this session on Tuesday, January 29, 1974.

The specific issue for discussion will be the proposed sale of stock of Signal Oil & Gas Co. to Burmah, Inc., a corporation headquartered in Scotland and owned in part by the British Government.

The hearing will address oil company mergers and their effect on competition and market performance in the petroleum industry.

Spokesmen from Signal Oil & Gas Co., Burmah, Inc., Standard Oil of Ohio, and the U.S. Department of Justice will appear.

The hearing will convene at 10 a.m. in room 3110 of the Dirksen Office Building. The public is invited to attend.

IN SUPPORT OF STEPS TO EASE THE TIGHT MORTGAGE MONEY SITUATION

Mr. TAFT. Mr. President, I was delighted to be informed of the steps taken yesterday by the Department of Housing and Urban Development to ease the tight mortgage money situation which is causing such tremendous damage to the housing sector of our economy.

Although the reduction of one-fourth percent in the maximum allowable interest rate for mortgages insured by the Federal Housing Administration may not provide consumers with much relief in itself, I am hopeful that the reduced FHA rate will serve as a leader for interest on conventional mortgages. New housing starts have fallen so drastically in the past several months largely because mortgage money has been either completely unavailable or available only at unprecedented interest rates. If the downturn in the FHA rate is followed by the conventional mortgage market, and I believe the conditions in that market may be such that this is possible, not only will the housing needs of our citizens be served but the economy will receive a needed stimulus at a crucial time.

The expansion of the tandem plan of the Government National Mortgage Association to provide mortgage interest rate assistance for mortgages totaling up to $6.6 billion could have even a more direct effect than the lowering of the FHA rate, by supporting the construction of 200,000 new housing units. This is an extremely significant commitment to the housing market by the Government and it should be recognized as such.

These new initiatives are not the total answer to the problem of tight mortgage money. Most of all, the Government needs to adopt and abide by an anti-inflation policy that does not rely exces-

sively upon the interest rate structure to stop rising prices. However, I am aware that there are also several specific proposals before the Banking, Housing, and Urban Affairs Committee which are designed to alleviate the situation, mostly by changing some of the laws which constrain the financial institutions providing mortgage money. While I do not agree with every aspect of the proposed legislation, I believe that the bill is very important and that the Banking Committee should consider it fully as soon as possible. Both the Congress and the administration should be willing to take every reasonable step to restore the ability of Americans with modest incomes to afford their own home.

THE NATIONAL ENERGY EMERGENCY ACT OF 1973

Mr. STENNIS. Mr. President, I rise to emphasize very strongly the need for prompt action by the Congress on the National Energy Emergency Act. By prompt, I mean with the absolute minimum of delays. The request of the Finance Committee for 2 days of hearings I consider very reasonable. Then we should act within a very few days.

We have an energy emergency, and it is national in nature. The people are responding to it, but the Congress is not. That is a strong criticism, but I think it is justified by present circumstances.

The Energy Emergency Act was passed by the Senate over 2 months ago. For a month now we have been at an impase over the conference report. There is at present no basis under law by which the administration can put into effect emergency measures—measures which may be necessary for the Nation to meet in an orderly way the difficulties our citizens face in their daily lives as a result of shortages of energy.

The American people have responded. They know they fave a drastic change in their way of life. The voluntary response they have given to what they know will be demanded of them has resulted in economies in electricity and fuel that have exceeded expectations.

Small children are standing at the side of the road in the dark and cold, with their coats pulled up over their ears, waiting for the bus to take them to school. Their mothers and fathers have turned down their thermostats, reduced their driving, adjusted their working hours to car pool, and wait in line for gasoline. This has been done with a spirit of cooperation and resolution. It has been done with a degree of grace and cheerfulness that is a great credit to the American people.

In the meantime the Congress has yet to establish the statutes under which emergency measures can be administered so as to provide for the equitable distribution of the fuel we have, so that shortages can be shared in a way that is as fair to all as can be devised. I say let us get on with it.

There is just one main point at issue that has held up this bill—the matter of windfall profits for oil companies. This is an issue that needs to be met, but is it an emergency in the same sense as the other provisions of the bill?

I come from an oil producing State, but I am prepared to accept a bill that either contains the windfall profits provision or deletes it—just so we get on with the rest of the bill. If given a choice I would like to see the profit question handled as a separate bill. But if it means delaying further the Energy Emergency Act, then I do not want a choice. I will take it either way we can pass it, just so we do it now.

The matter of profits can be handled by Congress in the near future, in another bill. If the profit provision is included in the Energy Emergency Act, and further hearings and deliberations demonstrate that the provision should be changed, then it can be changed. If the provision is not included in the emergency bill, then it can be handled in separate legislation.

Mr. President, the American people are responding to the energy situation. They are setting a good example. They are making sacrifices. They are entitled to action on this National Energy Emergency Act. I urge that this body act, and act promptly.

TRAVELING BY RAIL

Mr. HUGH SCOTT. Mr. President, Mr. Lawrence M. O'Rourke, Washington bureau chief of the Evening Bulletin, shared with us in a recent column the "pleasant surprise" of a holiday rail trip he and his family made from Philadelphia to Chicago, and back. His report recalled for me those days when traveling by rail was convenient, comfortable, and relaxing. And, his account indicated that Amtrak is, indeed, trying to achieve that quality of service at a time when it is also essential, so that passengers will be attracted to travel by rail as an energy conservation measure.

Mr. President, Mr. O'Rourke has a message for those of us who want to save our railroads so that they may best serve our people. I ask unanimous consent that his column be printed in the RECORD.

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

[From the Evening Bulletin, Jan. 4, 1974]

ALL ABOARD FOR CHICAGO! A PLEASANT SURPRISE

(By Lawrence M. O'Rourke)

WASHINGTON.—An elderly porter in Philadelphia's 30th Street Station warned me in October that I should not travel to Chicago over the Christmas holidays in an Amtrak slumbercoach.

"The beds are as narrow as ironing boards, and just as hard," he said.

The children, he warned, would become stir-crazy in the small room. Trains were frequently canceled at the last minute and customarily late, he said. Go by plane or car, he advised, or stay home.

We decided to reject the porter's advice. Perhaps, we reasoned, he was merely echoing what we understood to be the railroads' dedication to the proposition that passengers are a nuisance, an interference with freight, and a commodity to be deterred.

So we went aboard an Amtrak train a few days before Christmas for Chicago.

Back now, we have concluded that it was a very pleasant experience, easily defeating the car for comfort and the airplane for price. With three kids who hate to sit still, we never considered the bus.

We found that the porter in Philadelphia was not representative of the Amtrak employes on the Broadway Limited. They acknowledged the decline of their service, regretted it, but overcame it. Take Matthew the porter who welcomed us in Chicago (on our return trip) with a big smile, amused our infant while we stowed away luggage, and then between Gary and Fort Wayne shifted about the passengers in the slumbercoaches so that families were together. I heard no complaints, even from the single travelers.

Matthew poked his head into our cabins a few times during the night to ask if we were comfortable. He talked to our children about his children, far away in time and space as the train rolled through snow-covered fields and past small towns of Indiana and Ohio.

We were anxious about the arrival at Harrisburg early the next morning. There the New York and Washington sections of the Broadway Limited split. We had to leave our slumbercoaches before 7 a.m., and somehow get three sleepy children and a mountain of luggage onto Washington-bound coaches.

Matthew guided us to the train onto the icy platform at Harrisburg. He had removed our luggage as soon as the train stopped. Making sure that all moved cautiously, he made two trips down a long platform and up a high flight of stairs with heavy suitcases. Then Matthew wished us a Happy New Year and turned back down the stairs to head for home and his children. He had to be called back to accept a tip.

None of this is to say that Amtrak is perfect. The sandwiches in the snack coaches tasted like cardboard and the attendant seemed in no rush to give service. We resented being shuffled onto a side track on the east side of Susquehanna River south of Columbia, Pa., to let a freight train pass. We were late at both ends, but we were prepared for that by horror stories from others.

For about $93 to Chicago and $103 coming back the price difference for exactly the same accommodations remains a mystery), we had transportation free of worry about motel reservations, gasoline shortages and snow storms.

There is the happy memory of sitting in a lower berth with the family, looking through the window at the driven snow, seeing the lights of farmhouses and towns, studying the maps and geography of Eastern America. For that while at least, we were ready to endorse Amtrak's slogan: Tracks are back.

A HELPFUL CHECKLIST: OLDER AMERICANS AND INCOME TAXES

Mr. CLARK. Mr. President, before the deadline date of April 15, millions of Americans will prepare their Federal income tax returns.

For many, it may be a painful process because of the complexities in the tax law, the intricacies of form 1040 with its accompanying schedules, and the numerous calculations.

Others may unwittingly overpay their taxes simply because they are unaware of helpful deductions, credits, and exemptions.

This is especially true in the case of the elderly. Hearings conducted by the Senate Committee on Aging have provided very convincing and alarming evidence that large numbers of older Americans overpay their taxes each year.

Complicating everything else, the elderly are oftentimes faced with a new

set of tax rules upon reaching age 65. And these rules are usually far more intricate than the tax relief measures available during their working years.

It is essential that the Internal Revenue Code be simplified if we are to restore complete sanity to the tax preparation process for the average taxpayer. Unfortunately the complexities of tax preparation can have the effect of imposing a new form of surtax for millions of frustrated Americans—this one being paid to tax accountants and others who are called in to prepare their form 1040.

For these reasons, I am hopeful that effective measures will be adopted this year during the consideration of tax reform legislation not only to simplify tax preparation but also to restore greater equity to the Internal Revenue Code.

Because of the tax problems that often face senior citizens, I also have joined Senator CHURCH, Senator CHILES, and Senator WILLIAMS in introducing the Older Americans Tax Counseling Assistance Act (S. 2868). Through volunteers, the legislation would provide a tax assistance program that would be available to people over 65 across the country.

The program would not be a tax preparation service. But it would enable senior citizens to fill out their tax returns with accuracy and confidence because they will have someone to turn to for help if they need it.

There is a volunteer tax assistance program already in operation under the direction of the Institute of Lifetime Learning of the National Retired Teachers Association-American Association of Retired Persons. Last year alone, the project helped more than 100,000 aged taxpayers. It is staffed by older Americans, trained by the Internal Revenue Service, and it is a program that works well. The legislation that we have offered would build and expand on that foundation. I hope it receives prompt and favorable consideration by the Congress.

Until then there are other things that we can do to alert taxpayers to tax relief measures which can provide major savings. In this regard, the Senate Committee on Aging has provided a very valuable service by publishing a useful checklist of possible itemized deductions to protect older Americans from overpaying their income taxes. This listing is also quite valuable for younger taxpayers as well because many of the tax relief measures apply with equal force to all age groups.

Mr. President, because this summary can be enormously helpful for many taxpayers—whether they be young or old—I ask unanimous consent that the Senate Committee on Aging's checklist of allowable deductions for schedule A be printed in the RECORD.

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

CHECKLIST OF ITEMIZED DEDUCTIONS FOR SCHEDULE A (FORM 1040)

MEDICAL AND DENTAL EXPENSES

Medical and dental expenses are deductible to the extent that they exceed 3% of a taxpayer's adjusted gross income (line 15, Form 1040).

INSURANCE PREMIUMS

One-half of medical, hospital or health insurance premiums are deductible (up to $150) without regard to the 3% limitation for other medical expenses. The remainder of these premiums can be deducted, but is subject to the 3% rule.

DRUGS AND MEDICINES

Included in medical expenses (subject to 3% rule) but only to extent exceeding 1% of adjusted gross income (line 15, Form 1040).

OTHER MEDICAL EXPENSES

Other allowable medical and dental expense (subject to 3% limitation):

Abdominal supports, ambulance hire, anesthetist, arch supports, artificial limbs and teeth, back supports, and braces.

Capital expenditures for medical purposes (e.g., elevator for persons with a heart ailment)—deductible to the extent that the cost of the capital expenditure exceeds the increase in value to your home because of the capital expenditure. Taxpayer should have an independent appraisal made to reflect clearly the increase in value.

Cardiographs, chiropodist, chiropractor, Christian science practitioner, authorized, convalescent home (for medical treatment only) crutches, dental services (e.g., cleaning teeth, X-rays, filling teeth) dentures, dermatologist, eyeglasses, gynecologist, hearing aids and batteries.

Hospital expenses, insulin treatment, invalid chair, lab tests, lip reading lessons (designed to overcome a handicap), neurologist, nursing services (for medical care) ophthalmologist, optician, optometrist, oral surgery, osteopath, licensed, pediatrician, physical examinations.

Physician, physiotherapist, podiatrist, psychiatrist, psychoanalyst, psychologist, psychotherapy, radium therapy, sacroiliac belt, seeing-eye dog and maintenance, and splints.

Supplementary Medical Insurance (Part B) under Medicare.

Surgeon.

Transportation expenses for medical purposes (6¢ per mile plus parking and tolls or actual fares for taxi, buses, etc.).

Vaccines.

Vitamins prescribed by a doctor (but not taken as a food supplement or to preserve general health).

Wheelchairs, whirlpool baths for medical purposes, and X-rays.

TAXES

Real estate, State and local gasoline, general sales, State and local income, and personal property.

If sales tax tables are used in arriving at your deduction, you may add to the amount shown in the tax tables only the sales tax paid on the purchase of 5 classes of items: automobiles, airplanes, boats, mobile homes and materials used to build a new home when you are your own contractor.

When using the sales tax tables, add to your adjusted gross income any nontaxable income (e.g., Social Security or Railroad Retirement Annuities).

CONTRIBUTIONS

In general, contributions may be deducted up to 50 percent of your adjusted gross income (line 15, Form 1040). However, contributions to certain private nonprofit foundations, veterans organizations, or fraternal societies are limited to 20 percent of adjusted gross income.

Cash contributions to qualified organizations for (1) religious, charitable, scientific, literary or educational purposes, (2) prevention of cruelty to children or animals, or (3) Federal, state or local governmental units (tuition for children attending parochial schools is not deductible). Fair market value of property (e.g. clothing, books, equipment, furniture) for charitable purposes. (For gifts of appreciated property, special rules apply. Contact local IRS office.)

Travel expenses (actual or 6¢ per mile plus parking and tolls) for charitable purposes (may not deduct insurance or depreciation in either case).

Cost and upkeep of uniforms used in charitable activities (e.g., scoutmaster).

Purchase of goods or tickets from charitable organizations (excess of amount paid over the fair market value of the goods or services).

Out-of-pocket expenses (e.g. postage, stationary, phone calls) while rendering services for charitable organizations.

Care of unrelated student in taxpayer's home under a written agreement with a qualifying organization (deduction is limited to $50 per month).

INTEREST

Home mortgage and auto loan.

Installment purchases (television, washer, dryer, etc.). Bank credit card—can deduct the finance charge as interest if no part is for service charges or loan fees, credit investigation reports. If classified as service charge, may still deduct 6 percent of the average monthly balance (average monthly balance equals the total of the unpaid balances for all 12 months, divided by 12) limited to the portion of the total fee or service charge allocable to the year.

Points—deductible as interest by buyer where financing agreement provides that they are to be paid for use of lender's money. Not deductible if points represent charges for services rendered by the lending institution (e.g. VA loan points are service charges and are not deductible as interest). Not deductible if paid by seller (are treated as selling expenses and represent a reduction of amount realized).

Penalty for repayment of a mortgage—deductible as interest.

Revolving charge accounts—may deduct the "finance charge" if the charges are based on your unpaid balance and computed monthly.

CASUALTY OR THEFT LOSSES

Casualty (e.g. tornado, flood, storm, fire, or auto accident provided not caused by a willful act or willful negligence) or theft losses to nonbusiness property—the amount of your casualty loss deduction is generally the lesser of (1) the decrease in fair market value of the property as a result of the casualty, or (2) your adjusted basis in the property. This amount must be further reduced by any insurance or other recovery, and, in the case of property held for personal use, by the $100 limitation. You may use Form 4684 for computing your personal casualty loss.

CHILD AND DISABLED DEPENDENT CARE EXPENSES

The deduction for child dependent care expenses for employment related purposes has been expanded substantially. Now a taxpayer who maintains a household may claim a deduction for employment-related expenses incurred in obtaining care for a (1) dependent who is under 15, (2) physically or mentally disabled dependent, or (3) disabled spouse. The maximum allowable deduction is $400 a month ($4,800 a year). As a general rule, employment-related expenses are deductible only if incurred for services for a qualifying individual in the taxpayer's household. However, an exception exists for child care expenses (as distinguished from a disabled dependent or a disabled spouse). In this case, expenses outside the household (e.g., day care expenditures) are deductible, but the maximum deduction is $200 per month for

one child, $300 per month for 2 children, and $400 per month for 3 or more children.

When a taxpayer's adjusted gross income (line 15, Form 1040) exceeds $18,000, his deduction is reduced by $1 for each $2 of income above this amount. For further information about child and dependent care deductions, see Publication 503, Child Care and Disabled Dependent Care, available free at Internal Revenue offices.

MISCELLANEOUS

Alimony and separate maintenance (periodic payments).

Appraisal fees for casualty loss or to determine the fair market value of charitable contributions.

Campaign contributions (up to $100 for joint returns and $50 for single persons).

Union dues.

Cost of preparation of income tax return.

Cost of tools for employee (depreciated over the useful life of the tools).

Dues for Chamber of Commerce (if as a business expense).

Rental cost of a safe-deposit box for income producing property.

Fees paid to investment counselors.

Subscriptions to business publications.

Telephone and postage in connection with investments.

Uniforms required for employment and not generally wearable off the job.

Maintenance of uniforms required for employment.

Special safety apparel (e.g., steel toe safety shoes or helmets worn by construction workers; special masks worn by welders).

Business entertainment expenses.

Business gift expenses not exceeding $25 per recipient.

Employment agency fees for securing employment.

Cost of a periodic physical examination if required by employer.

Cost of installation and maintenance of a telephone required by the taxpayer's employment (deduction based on business use).

Cost of bond if required for employment.

Expenses of an office in your home if employment requires it.

Payments made by a teacher to a substitute.

Educational expenses required by your employer to maintain your position or for maintaining or sharpening your skills for your employment.

Political Campaign Contributions: Taxpayer may now claim either a deduction (line 33, Schedule A, Form 1040) or a credit (line 52, form 1040), for campaign contributions to an individual who is a candidate for nomination or election to any Federal, State or local office in any primary, general or special election. The deduction or credit is also applicable for any (1) committee supporting a candidate for Federal, State, or local elective public office, (2) national committee of a national political party, (3) state committee of a national political party, or (4) local committee of a national political party. The maximum deduction is $50 ($100 for couples filing jointly). The amount of the tax credit is one-half of the political contribution, with a $12.50 ceiling ($25 for couples filing jointly).

Presidential Election Campaign Fund: Additionally, taxpayers may voluntarily earmark $1 of their taxes ($2 on joint returns), to help defray the costs of the 1976 presidential election campaign. If you failed to earmark $1 of your 1972 taxes ($2 on joint returns) to help defray the cost of the 1976 presidential election campaign, you may do so in the space provided above the signature line on your 1973 tax return.

For any questions concerning any of these items, contact your local IRS office. You may also obtain helpful publications and additional forms by contacting your local IRS office.

OTHER TAX RELIEF MEASURES FOR OLDER AMERICANS

Filing status	*Required to file a tax return if gross income is at least*
Single (under age 65)	$2,050
Single (age 65 or older)	2,800
Married couple (both spouses under 65) filing jointly	2,800
Married couple (1 spouse 65 or older) filing jointly	3,550
Married couple (both spouses 65 or older) filing jointly	4,300
Married filing separately	750

Additional Personal Exemption for Age: In addition to the regular $750 exemption allowed a taxpayer, a husband and wife who are 65 or older on the last day of the taxable year are each entitled to an additional exemption of $750 because of age. You are considered 65 on the day before your 65th birthday. Thus, if your 65th birthday is on January 1, 1974, you will be entitled to the additional $750 personal exemption because of age for your 1973 Federal income tax return.

Multiple Support Agreement: In general, a person may be claimed as a dependent of another taxpayer, provided five tests are met: (1) Support, (2) Gross Income, (3) Member of Household or Relationship, (4) Citizenship, and (5) Separate Return. But in some cases, two or more individuals provide support for an individual, and no one has contributed more than half the person's support.

However, it still may be possible for one of the individuals to be entitled to a $750 dependency deduction if the following requirements are met for multiple support:

1. Two or more persons—any one of whom could claim the person as a dependent if it were not for the support test—together contribute more than half of the dependent's support.

2. Any one of those who individually contribute more than 10 percent of the mutual dependent's support, but only one of them, may claim the dependency deduction.

3. Each of the others must file a written statement that he will not claim the dependency deduction for that year. The statement must be filed with the income tax return of the person who claims the dependency deduction. Form 2120 (Multiple Support Declaration) may be used for this purpose.

Sale of Personal Residence by Elderly Taxpayers: A taxpayer may elect to exclude from gross income part, or, under certain circumstances, all of the gain from the sale of his personal residence, provided:

1. He was 65 or older before the date of the sale, and

2. He owned and occupied the property as his personal residence for a period totaling at least five years within the eight-year period ending on the date of the sale.

Taxpayers meeting these two requirements may elect to exclude the entire gain from gross income if the adjusted sales price of their residence is $20,000 or less. (This election can only be made once during a taxpayer's lifetime.) If the adjusted sales price exceeds $20,000, an election may be made to exclude part of the gain based on a ratio of $20,000 over the adjusted sales price of the residence. Form 2119 (Sale or Exchange of Personal Residence) is helpful in determining what gain, if any, may be excluded by an elderly taxpayer when he sells his home.

Additionally, a taxpayer may elect to defer reporting the gain on the sale of his personal residence if within one year before or one year after the sale he buys and occupies another residence, the cost of which equals or exceeds the adjusted sales price of the old residence. Additional time is allowed if (1) you construct the new residence or (2) you were on active duty in the U.S. Armed Forces. Publication 523 (Tax Information on Selling Your Home) may also be helpful.

Retirement Income Credit: To qualify for the retirement income credit, you must (a) be a U.S. citizen or resident, (b) have received earned income in excess of $600 in each of any 10 calendar years before 1973, and (c) have certain types of qualifying "retirement income". Five types of income—pensions, annuities, interest, and dividends included on line 15, Form 1040, and gross rents from Schedule E, Part II, column (b)—qualify for the retirement income credit.

The credit is 15 percent of the lesser of:

1. A taxpayer's qualifying retirement income, or

2. $1,524 ($2,286 for a joint return where both taxpayers are 65 or older) minus the total of nontaxable pensions (such as Social Security benefits or Railroad Retirement annuities) and earned income (depending upon the taxpayer's age and the amount of any earnings he may have).

If the taxpayer is under 62, he must reduce the $1,524 figure by the amount of earned income in excess of $900. For persons at least 62 years old but less than 72, this amount is reduced by one-half of the earned income in excess of $1,200 up to $1,700, plus the total amount over $1,700. Persons 72 and over are not subject to the earned income limitation.

Schedule R is used for taxpayers who claim the retirement income credit.

The Internal Revenue Service will also compute the retirement income credit for a taxpayer if he has requested that IRS compute his tax and he answers the questions for Columns A and B and completes lines 2 and 5 on Schedule R—relating to the amount of his Social Security benefits, Railroad Retirement annuities, earned income, and qualifying retirement income (pensions, annuities, interest, dividends, and rents). The taxpayer should also write "RIC" on line 17, Form 1040.

SUING THE APPROPRIATE PARTIES IN LITIGATION AGAINST FEDERAL DEFENDANTS

Mr. TOWER. Mr. President, a number of us have alleged for some time that legal services attorneys with guaranteed annual salaries have often frivolously resorted to the use of class actions and suits against the Government to advance their personal views. In support of this contention, I wish to insert into the RECORD at the conclusion of these remarks an article entitled "Suing the Appropriate Parties in Litigation Against Federal Defendants," which was published in April 1973 by a legal services backup center and made available to legal services attorneys across the Nation. It seems to me that the publication of this article makes clear that suits against the Government are a matter of regular concern to attorneys employed with legal services projects.

I respectfully ask unanimous consent that the full text of the article be printed in the RECORD.

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

SUING THE APPROPRIATE PARTIES IN LITIGATION AGAINST FEDERAL DEFENDANTS

(By Robert L. Bergstrom, Attorney at Law)

I. INTRODUCTION

One of the first questions facing a public interest attorney in contemplated litigation

against federal defendants is the decision exactly who to name as defendant. Hours are often spent agonizing over whether the suit should be directed against the United States of America, one of its departments, a bureau or agency in the department, the secretary of the department, the bureau head, lower officials, a commission or the members of the commission. Do you name the officer, just his official title or both? Finally, what is the meaning and significance of that elusive dichotomy usually seen in suits against federal officers "individually and in his official capacity?"

One noted reference work in this area suggests as a general rule of litigation that the plaintiff simply sue everybody.[1] Regardless of the prudence of this rule in other types of litigation, I think it is unwise in actions against federal defendants for four reasons. First, it costs more money to serve the summons and complaint on each of the defendants as required by FED. R. CIV. P. 4. Second, it expands the plaintiff's attorney's work since he has to frame in his complaint, and later brief, causes of action against every defendant. Third, it increases the possibility of motions to dismiss because of lack of jurisdiction, sovereign immunity, failure to state a claim, and joinder of improper parties under FED. R. CIV. P. 20. This delays getting to the merits of the case. Finally, if you use the shotgun approach the court may think you really do not know what you are doing—which you probably don't.

A lawsuit in federal court[2] should be made as simple as possible concerning the number of issues and defendants. Toward that end the suit should name as few defendants as possible to get the relief sought. The decision exactly who to sue is often a difficult problem. Issues of federal jurisdiction, sovereign immunity, indispensible, necessary and proper parties abound. It is my general theory throughout that an attorney should frame his lawsuit and select his defendants in a way which best avoids these barriers. Let others tear down or remodel the barriers in situations where they absolutely have to. You have an obligation to your clients to try to get right to the merits of the case and should do so.

II. FIVE GENERAL TYPES OF CASES

In the federal courts there are five general types of cases against federal defendants: (1) statutory review of the orders of regulatory agencies in the circuit courts of appeals; (2) statutory suits against the United States of America; (3) suits in form against a department or bureau head, provided for by statute as a means of reviewing an agency order; (4) statutory review of the actions of agencies and officers under the federal Administrative Procedure Act and the Mandamus and Venue Act of 1952; and (5) common law suits against an individual government officer based upon his action as an officer, seeking a declaratory judgment, injunction, or money damages for his wrongful conduct.[3]

The defendants in the first two actions are clear; the third causes some confusion while the fourth and fifth are an enigma. This article examines who the proper party defendant is for each of the first three types of cases separately, and then deals with issues four and five. This will entail an examination of issues of jurisdiction, sovereign immunity, and requirements of the Federal Rules of Civil Procedure. Questions of joinder of parties and claims, substitution and service of process will be considered where relevant to the main subject.[4]

A. Statutory review of the orders of regulatory agencies

Numerous statutes provide for review of agency action by a petition for review filed in the court of Appeals for the District of Columbia or in another appropriate court of appeals, rather than by suit in a district court. The Federal Trade Commission Act of 1914 is the prototype. It provides that a copy of a petition for review "shall be forthwith served upon the Commission."[5] This provision has been substantially copied in statutes affecting most of the regulatory agencies—the SEC, NLRB, FPC, CAB, FCC, FMB and ICC. Problems of party defendant do not arise—each *agency* is the defendant. The agency's administrative head or the members of the board or commission should *not* be sued, either by name or official title. (For the proper form in common law suits or actions under the Administrative Procedure Act and the Mandamus and Venue Act of 1962 against a board or commission, see page 736 *infra.*)

B. Statutory suits against the United States

A second group of statutes allows suits against the United States itself, usually for money damages. The two principle statutes are the Tucker Act,[6] which allows suits founded upon the Constitution, acts of Congress or regulations of executive departments or express or implied contracts with the government; and the Federal Tort Claims Act,[7] which makes the United States liable for the negligence of government employees if a private person would be liable under like circumstances. Although recovery in both actions is against the United States Treasury, the proper defendant is not the Department of the Treasury or the Secretary, nor is it the agency or officials whose conduct brought about the suit. Rather, it is simply the United States of America.

In addition to these two statutes, there are numerous others of lesser importance by which the United States of America has consented to be sued. These include (1) actions to recover internal revenue taxes; [8] (2) partition actions where the United States is a co-tenant; [9] (3) Indian allotment claims;[10] (4) suits for adjudication of water rights; [11] (5) patent claims; [12] (6) suits in admiralty; [13] and (7) the Public Vessels Act.[14] The consent to suit and the jurisdictional statute may be incorporated in the same statute [15] or they may be found in separate sections of the Code. If in doubt whether an action is in fact against the United States an attorney should read the language of the statute carefully and look at the cases construing it.

C. Statutory suits against certain specified Federal officers

There are a large number of special federal statutory provisions authorizing suits against federal officers to review particular types of administrative action. These statutes provide for review of the agency action by a regular civil suit brought in the district court. An example of this is review of final orders under the social security laws pursuant to 42 U.S.C. § 405(g).[16] Under this statute, the dissatisfied petitioner for a social security award may bring suit in the proper district court for review of the administrative record by filing suit against the Secretary of Health, Education, and Welfare. This all-encompassing statute constitutes a waiver of sovereign immunity, vests jurisdiction of the suit in a particular court, and sets out specifically the nature and scope of review which can be secured. Statutes of this sort eliminate, for the type of suit to which they apply, many problems which otherwise attend suits against the sovereign.

Other statutory provisions for suits against officers appear in miscellaneous federal statutes. The Longshoremen's and Harbor Workers' Act provides for review of workmen's compensation decisions "through injunction proceedings . . . against the deputy commissioner making the order." [17] A statute concerning rulings of the Secretary of Agriculture provides: "The District Courts . . . are vested with jurisdiction in equity to review such rulings. . . . Service of process . . . may be had upon the Secretary. . . ." [18] The Food and Drug Act contains a similar provision for service upon the Secretary of Health, Education, and Welfare.[19] A provision concerning labelling of intoxicating liquors permits "suits to enjoin . . . any final action by the Secretary. . . ." [20] A banking association may "enjoin the Comptroller of the Currency, or any receiver acting under his direction." [21]

These statutes present some problem in that they do not clearly indicate whether the suit must be against the officer by name or against the office. Under the Food and Drug Act, for instance, should a suit be *Fox* v. *Gardner, Secretary of HEW*, or *Ament* v. *Secretary of HEW?* The usual practice seems to be to name the particular officer. But the lack of any sovereign immunity problems [22] and the future possibility of successor officials lead me to recommend that you sue the *office* named in the statute, *e.g., Gant* v. *Secretary of Agriculture*. If there is more than one person with the same title, you should also indicate the officer's name, *e.g., Greenfield* v. *Crowell, Deputy Commissioner*.

D. Statutory review of the actions of agencies and officers under the Administrative Procedure Act and the Mandamus and Venue Act of 1962

The fourth type of action under the APA and the Nature of Mandamus statute is difficult because of the many unresolved issues surrounding the statutes. The Administrative Procedure Act provides for judicial review. Section 10 provides that except to the extent that statutes preclude judicial review or agency action is committed to agency discretion by law:

(a) Any person suffering legal wrong because of any *agency action*, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute, or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate and exclusive opportunity for judicial review is provided by law, *agency action* is subject to judicial review in civil or criminal proceedings for judicial enforcement.

* * * * *

Agency action made reviewable by statute and final *agency action* for which there is no other adequate remedy in a court are subject to judicial review. [Emphasis added.] [23]

The language of this section suggests that the defendant should be the agency (*e.g.*, Department of Health, Education and Welfare) since it consistently refers to *agency action*. Numerous cases permit an agency to be named as defendant in APA cases.[24] But the majority of the cases under the APA are brought against officers and the Supreme Court has allowed this.[25]

On the surface then, the APA seems to allow a great deal of flexibility in the choice of defendant parties. But the use of the APA is complicated by major unresolved issues. It is clear the APA creates a right of action against federal agencies and officials. It is not yet firmly resolved whether the APA vests jurisdiction in the federal courts,[26] and waives sovereign immunity for cases within its purview.[27] Those arguing that the APA is not a jurisdictional statute say that one must find jurisdiction under one of the traditional jurisdictional sections in Title 28 of the United States Code. If there is $10,000 in controversy or the suit is under an act of Congress regulating commerce, no problem exists since 28 U.S.C. §§ 1331, 1332, and 1337

Footnotes at end of article.

do not restrict the defendant parties in any way. However, if you intend to rely on 28 U.S.C. § 1361 [25] as a jurisdictional statute for the ARA then you should sue officers and *not* the agency because Section 1361 speaks only of actions against officers.[29] If you intend to rely upon some other special jurisdictional statute, look at the language of that statute and the cases construing it for a guide to the appropriate defendant. The general problem of sovereign immunity and the APA will be discussed in its entirety below.

The Mandamus and Venue Act of 1962 added 28 U.S.C. § 1361 which provides that:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The writ of mandamus has long existed at common law. Early in the judicial history of the United States, however, it was established that the Judiciary Act did not confer upon a lower federal court outside of the District of Columbia the power of entertaining original writs of mandamus.[30] But the District Court of the District of Columbia had such power because that court inherited the general common law jurisdictional power of the courts of the states from which the District of Columbia was carved.[31]

Rule 81(b) abolished the use of the procedural form of the writ of mandamus, but expressly provided that "Relief heretofore available by mandamus . . . may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules." The 1962 Act extended this nature of mandamus jurisdiction of the District of Columbia courts to all of the federal district courts.[32]

The language of Section 1361 is somewhat ambiguous regarding appropriate defendants. I believe the key word is "thereof." This indicates that the phrase "of the United States or any agency thereof" is read together and refers to "officer or employee." If it was intended to be read to include mandamus against agencies it would have read "officer or employee or any agency of the United States." Yet at least one commentator reads Section 1361 this way [33] and the District of Columbia Circuit has recently assumed that Section 1361 applies to agencies.[34] However, almost all of the cases based on Section 1361 are against officers and the Tenth Circuit has stated firmly that mandamus runs only against an officer and not against the United States or its departments and agencies.[35] Section 1361 creates a right of action and grants jurisdiction to the federal district courts. But like the APA it is still unresolved whether it constitutes a waiver of sovereign immunity for cases within its purview. If it does not, the choice of party is dictated by sovereign immunity considerations, which are discussed in Section III *infra*.

E. Common law actions against Government officials

The fifth type of suit against federal defendants—actions against individual officials not based upon the APA or Section 1361—needs little extended discussion. If the suit is for an injunction, or declaratory judgment to secure judicial review of some alleged wrongfully failing or refusing to perform, you sue the defendant in his capacity as an officer. Whether you name the official and his official title or just the title will be discussed in Section III C *infra*.

If the action is against the official for damages for his personal acts outside the scope of his authority (even though they may be committed while in the course of his employment) the proper procedure is simply to name the officer and omit any reference to the official title. This type of action is based upon the *personal* tort liability of a federal officer and must be distinguished from the liability of the United States under the Tucker Act [36] or Federal Tort Claims Acts. Because of the ever present possibility of a defense based upon the judicially created doctrine of privilege [37] or an argument that the officer has been clothed with the sovereign's immunity to suit, by statute, on the occasion of an assumption of liability by the sovereign,[38] you should carefully avoid any reference to his official status and force the government to prove this as part of the defense.

III. SOVEREIGN IMMUNITY

Although the Constitution does not suggest that the federal government was to be immune from suit, and indeed article III [39] gives the Supreme Court jurisdiction for actions against the United States, very early in American history the immunity of the sovereign from unconsented suit was "derived by implication" by the Supreme Court.[40] The exact source of that implication has remained unresolved,[41] but the doctrine has become strongly established that the United States, its departments and agencies and its officials are immune from suit unless Congress has consented to suit or, in the case of an official, he has acted ultra vires of his constitutional or statutory authority.[42]

A. Sue-and-be-sued statutes

The doctrine of sovereign immunity as it relates to the United States of America was discussed *supra*. In addition, Congress has enacted specific statutes with respect to various federal agencies and federal corporations exercising governmental functions allowing these bodies to *sue-and-be-sued*.

A "sue and be sued" statute constitutes a waiver of sovereign immunity and thus permits suits against the agency or corporation within the limitations set by the statute. It may also specify the courts which have jurisdiction of suits brought under it. The careful pleader must note whether the statute provides that suit should be brought against the agency by name or against its governing board or chief administrative official. Of the cabinet level departments only the Department of Housing and Urban Development has a statute authorizing the Secretary to sue and be sued in his official capacity.[43] Except in the very special circumstances discussed in Section IV B *infra*, the plaintiff should always sue the party named in the sue-and-be-sued statute, if one exists.

B. APA and section 1361 as waivers of sovereign immunity

If no sue-and-be-sued statute exists, you must look elsewhere for consent to sue. Arguments that the Declaratory Judgments Act [44] and the general federal question jurisdictional statute,[45] constitute waiver of sovereign immunity for suits against federal defendants have been rejected.[46] But it is still an open issue whether the Administrative Procedure Act [47] and the Nature of Mandamus Act [48] constitute waivers of sovereign immunity for cases within their purview.[49] The Fourth Circuit says that sovereign immunity and judicial review under Section 10 of the APA are independent issues,[50] while several circuit courts have said that Section 10 waives sovereign immunity for the six grounds for review specified in Section 10(e), 5 U.S.C. § 706.[51] Different panels on the Ninth Circuit appear to have taken different sides on the issue.[52]

A similar issue exists under Section 1361, although most courts have ignored the question of sovereign immunity when a writ in the nature of mandamus seemed to be otherwise appropriate. Several decisions state that Section 1361 is not a consent to sue the United States, its departments,[53] or officials,[54] and in others this principle is assumed.[55] A similar issue arose regarding the writ in the nature of mandamus issued by the District of Columbia federal courts prior to the 1962 statute which added Section 1361 to the Judicial Code. But the question was finally clarified in an exhaustive opinion in *Clackamas County, Oregon v. McKay*,[56] in which the court held that its mandamus jurisdiction was unaffected by the rules set forth by *Larson v. Domestic & Foreign Commerce Corp.*,[57] for injunction suits against officers which may affect government funds or property.[58] If you practice in a jurisdiction such as the Ninth Circuit where sovereign immunity under Section 1361 is a problem, you should definitely avoid attempting to sue an agency or commission under Section 1361 as was done in the *Peoples* [59] litigation in the District of Columbia Circuit. If you lose on the argument that Section 1361 constitutes a waiver of sovereign immunity you can still fall back on the ultra vires argument if the defendant is an official.

C. The ultra vires doctrine

Since early in the history of the Republic the courts have allowed suits for specific relief against federal agents on the theory that they could not be and thus are not authorized to engage in wrongful conduct. Their action was therefore not the action of the sovereign and could be enjoined without encroaching on the immunity of the sovereign to suit. This exception to sovereign immunity is an extremely complex one and very careful research is required in any case where it is involved.[60] The leading case is *Larson v. Domestic & Foreign Commerce Corp.*,[61] where the court reasoned that sovereign immunity was not a bar to a suit for specific relief against an officer where the officer acted (a) in violation of statutory authority or (b) in which the statute or order relied upon by the officer is alleged to be unconstitutional. In order to invoke this rule the suit must be against an officer, not a department or agency, and the rule applies to department heads and all subordinate officers and employees. If you have potential sovereign immunity problems you should always sue officers and not agencies so that you can argue both waiver and ultra vires theories to avoid sovereign immunity.

IV. IMPACT OF THE FEDERAL RULES

A. Pleading under rule 10

Fed. R. Civ. P. 10(a) provides in pertinent part:

In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

Moore states:

"Equity Rule 25 required that the parties' *full* name be stated, when known. The omission of such an express requirement from Rule 10(a) indicates a more flexible handling. Nevertheless, it is desireable [*sic*] for purposes of certainty to state the full name when known." [62]

The summons also must state the names of all the parties.[63] In a damage action, a person's full name should be stated, if known, so that the judgment will identify the judgment debtor with certainty.

B. Necessary and proper parties under rules 19-20

The rules regarding necessary and proper parties are found in FED. R. CIV. P. 19-20. Basically, these rules provide that a party need not be named as a defendant if he is not a necessary party under Rule 19(a). However, under Rule 20(a) he may be made a defendant if the plaintiff can state a claim for relief against him. If a necessary party is unavailable for joinder in the lawsuit for some reason, the case will have to be dismissed if he is found to be indispensable under Rule 19(b).[64]

Rule 19 does not contain any specific criteria for determining whether a federal official is a necessary or indispensable party,[65]

Footnotes at end of article.

and the law developed by the courts is complex and confused.[66] The principle reason for this was that prior to the passage of 28 U.S.C. § 1391 (e) in 1962 a federal district court could not issue process for service beyond its territorial limits. The result was that suits against department secretaries and agency *heads* would only lie in the District of Columbia District Court, an intolerable financial burden and inconvenience to most litigants. The courts were often sympathetic to this difficulty and bent the necessary and indispensable parties doctrine in order that aggrieved persons could sue lower federal officials in their local district court. The Supreme Court offered little leadership, shifting back and forth from cases requiring joinder whenever the suit sought to *review* or control the activities of the superior official[67] to cases requiring joinder only if the decree would *"require him to take action*, either by exercising directly a power lodged in him or having a subordinate exercise it for him."[68] (Emphasis added.)

The passage of Section 1391(e) should eliminate much of the problem in this area. Questions of joinder of necessary parties should be resolved solely through a clear analysis of the relief sought. Cases since 1962 point this way.[69]

If you are challenging a regulation of a federal cabinet level department, find out who signed the regulation when it was published in the Federal Register. Determine whom the statute authorizes to promulgate such regulations. Normally it is only the secretary. If he has delegated the power to someone else who actually promulgated the regulation, you should sue both of them.

If the regulation is valid but a local official violates it, you need sue only the local official. But look at this carefully to be sure that the regulation really is valid, and is being enforced. A department may have a regulation which complies with the statute and favors your clients, but the secretary may have sent letters containing statements of policy or issued interoffce directives that contradict the regulations, or he may have knowingly tolerated a violation of the regulations. Here the Secretary should be made a defendant, since he is also violating the statute.

A sensitive attorney should look for the possibility of different attitudes within the department of agency itself. The federal bureaucracy is not a monolithic whole and should not be so treated. The department head may have promulgated decent regulations and policies which are being subverted or twisted by a particular subdivision, or vice versa. In this situation your lawsuit may add support to the agency faction which leans your way. Omitting them from the suit relieves them of responsibility for the alleged illegal acts, allows them to put more pressure on the defendants, and focuses community and possibly congressional attention on the real culprit(s). The above analysis applies also to situations where it is regional or local federal officials who are creating the difficulties for your clients in derogation of national agency rules or policies. Avoid joining the secretary or commissioner in this situation.

Actions seeking to enjoin the implementation or enforcement of a federal statute because it is alleged to be unconstitutional must name the person charged with implementing or enforcing the law.[70] This is normally the department or agency head.

C. Substitution under rule 25

The problem of substitution arising in suits against officers on changes in office or resignation or death, was simplified by a 1961 amendment to the Federal Rules.[71] Prior to the amendment a plaintiff suffered an abatement of his action in six months if he did not watch for the appointment of a new official and substitute him as a defendant.[72] Under FED. R. CIV. P. 25(d)(1) the successor officer is automatically substituted, and abatement cannot take place.[73] Under Rule 25(d)(2) the entire problem may be avoided by describing the officer by his official title rather than by name.[74] Both subsections of Rule 25 apply to suits against officers in their "official capacity." The Notes of the Advisory Committee state the intended effect of the rule:

"The expression in his official capacity is to be interpreted in its context as part of a simple procedural rule for substitution; care should be taken not to distort its meaning by mistaken analogies to the doctrine of sovereign immunity from suit or the Eleventh Amendment. The amendment rule will apply to all actions brought by public officers for the government, and to any action brought in form against a named officer, but intrinsically against the government or the office or the incumbent thereof whoever he may be from time to time during the action. Thus the amended rule will apply to actions against officers to compel performance of official duties or to obtain judicial review of their orders. It will also apply to actions to prevent officers from acting in excess of their authority or under authority not validly conferred, *cf. Philadelphia Co. v. Stimson*, 223 U.S. 605 (1912), or from enforcing unconstitutional enactments, *cf. Ex parte Young*, 209 U.S. 223 U.S. 123 (1908); *Ex parte La Prade*, 289 U.S. 444 (1933). . . . This provision will encourage the use of the official title without any mention of the officer individually, thereby recognizing the intrinsic character of the action and helping to eliminate concern with the problem of substitution."

The comments to Rule 25(d)(2) do not resolve two potential problems. First, if you sue the office will you increase your sovereign immunity problem? One commentator states that the Rule 25(d)(2) form will probably cause some cases to fall without the *Larson*[75] ultra vires exception to sovereign immunity.[76] Yet his conclusion that it is best to sue an official individually to invoke *Larson* is not supported by the cases he relies upon.[77] Second, if you are suing the members of a board or commission, is the proper form *Allen v. Civil Service Commissioners*, or must you name each individual board or commission member? Because of the possible confusion by the court between an action against a board and an action against the individual board members, I recommend that you name each individual board or commission member. *E.g., Sennhauser v. Clark, Civil Service Commissioner; Davis, Civil Service Commissioner; etc.*

D. "Individually and in his official capacity"

The form for suits against officers allowed in Rule 25(d)(2) is very different from the common practice among litigators of suing named officials "individually and in their official capacity." Why has this practice developed? There are several possible explanations. First, this allows suits against officials individually for money damages. Yet in most actions against federal defendants, this is not one of the causes of action. Second, the official capacity language avoids the rule that where an official was sued individually, his successor may not be substituted—even if timely motion was made.[78] Rule 25(d)(1) should ameliorate some of the problem here.

Third, and most likely, the language probably was developed in response to apparent contradictions in the reasoning of *Larson*[79] and some of the other ultra vires exceptions to sovereign immunity cases. In *Larson* the Court said that the suit was against the officer because of his *official function* as chief of the War Assets Administration. But the Court found that when he acted in excess of his authority, he was acting *individually* and therefore subject to suit. I have been *unable* to find *one* case which was dismissed under *Larson* because the official was sued solely in his official capacity, or solely in his individual capacity. That line of cases has been more concerned with the substance of the action rather than the form of pleading. I recommend that the "individually and in his official capacity" language no longer be used in actions for specific relief against federal officials. The better practice is the form allowed by Rule 25(d)(2). There is one situation where a party might allege individual and official liability. This is a damage action against the defendant individually and an action for an injunction against him in his capacity as a government official. FED. R. CIV. P. 18 allows joinder of these different claims. I recommend that you sue the officer individually by his name only and in addition sue him by his official title for specific relief.

V. CONCLUSION

I recommend that you do not name a department, agency, board, or commission as an institutional defendant unless you are appealing under a judicial review statute which specifically refers to the agency, or you rely upon a sue-and-be-sued clause naming the department or agency. In all other situations you should name officials. Actions for judicial review of agency decisions under the APA should be against the official who made the decision. Officials should be sued not by name but by the name of their office, unless you are seeking to hold them individually liable for damages. Where there are several officials with the same title, they should be sued by name and title. Your lawsuit should be carefully planned to avoid the preliminary jurisdiction and sovereign immunity barriers and to get to the merits. Careful attention to the proper defendant parties will greatly facilitate this goal.

FOOTNOTES

[1] M. Voltz, West's Federal Practice Manual § 7330 (2d ed. 1970).

[2] In the article I assume that the action is to be brought in federal court. Actions against the United States of America under the Tucker Act, 28 U.S.C. §§ 1346(a), 1491 (1970) and the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.* (1970), are required by statute to be brought in federal court.

There is considerable doubt whether state courts possess the power to enjoin the acts of federal officials for acts done under color of federal authority. *See, e.g.*, Alabama *ex rel.* Gallion v. Rogers, 187 F. Supp. 848, 852 (M.D. Ala. 196), *aff'd sub nom.* Dinkens v. Attorney General 285 F. 2d 430 (5th Cir. 1961). *See also* H. M. Hart & H. Wechsler, the Federal Courts and the Federal System, 388–91 (1953); J. Moore, Federal Practice, 247–48 (2d ed. 1966); C. Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345, 357–58 (1930); R. Arnold, *The Power of State Courts to Enjoin Federal Officers*, 73 Yale L. J. 1385 (1964).

[3] Because this is a complex area the reader is urged to scrutinize carefully the pertinent statutes and cases and to use the more exhaustive texts or articles which deal with this area of the law. *See*, e.g., L. Jaffe, Judicial Control of Administrative Action (1965); D. Swartz & S. Jacoby, Litigation With the Federal Government (1970); *Developments in the Law—Remedies Against the United States and Its Officials*, 70 Harv. L. Rev. 827 (1957); H. M. Hart & H. Wechsler, the Federal Courts and the Federal System, 1107–1232; K. Davis, Administrative Law Treatise (1958); J. Moore, Federal Practice (2d ed. 1966).

I do not deal with actions against government corporations in this article. This is a special problem area that a public interest lawyer normally will never be involved in.

[4] In this article I will not deal with third party practice, interpleader, class actions, intervention and problems of joining federal defendants with state or private defendants.

[5] 15 U.S.C. §§ 21(c), 45(c).

[6] 28 U.S.C. §§ 1346(a)(2), 1491.

[7] 28 U.S.C. §§ 1346(b), 2671 *et seq. See also*

28 U.S.C. §§ 1402(b), 1504, 2110, 2401, 2411, 2412, 2671–80.

[8] 28 U.S.C. § 1346(a)(1).

[9] 28 U.S.C. §§ 1347, 2409.

[10] 25 U.S.C. § 345; 28 U.S.C. § 1353.

[11] 43 U.S.C. § 666(a).

[12] 35 U.S.C. § 183; 28 U.S.C. § 1498(a).

[13] 46 U.S.C. §§ 741 *et seq.*

[14] 46 U.S.C. §§ 781 *et seq.*

Other statutes waiving the sovereign immunity of the United States are collected in Callaghan & Co., Cyclopedia of Federal Procedure, §§ 2.32–2.33 (3d ed. 1966, Supp. 1972).

[15] An action against the United States under the Tucker Act may *not* be filed in the court of claims if there is a suit arising out of the same transaction pending in another court against the United States or a federal official. *See* 28 U.S.C. § 1500. An action in the Court of Claims may not be joined with actions against individual officials. *See* United States v. Sherwood, 312 U.S. 589 (1941). But this does not bar such joinder in the federal district courts and the cases allow it. *See, e.g.,* Bees v. Federal Sec. Adm'r, 172 F. 2d 34 (2d Cir. 1949). *See also* Fed. R. Civ. P. 20(a), 21.

[16] The Social Security Act provides that a claimant "may obtain a review . . . in the district court. . . . As part of its answer the Administrator shall file a certified copy of the transcript of the record. . . ." 42 U.S.C. § 405(g) (1970).

[17] 33 U.S.C. § 921(b) (1970).

[18] 7 U.S.C. § 608(c)(15) (1970).

[19] 21 U.S.C. § 355(h) (1970).

[20] 27 U.S.C. § 205(e) 1970).

[21] 28 U.S.C. § 1348 (1970).

[22] For a discussion of the sovereign immunity ramifications, see text at p. 737 *infra.* For a discussion of the successor official problems, see text at p. 740 *supra.*

[23] 5 U.S.C. § 7024 (1970).

[24] Peoples v. Department of Agriculture, 427 F. 2d 561 (D.C. Cir. 1970); Shannon v. HUD, 436 F. 2d 809 (3d Cir. 1970); Stanisic v. United States Immigration & Naturalization Serv., 393 U.S. 62 (1969); Powelton v. HUD, 284 F. Supp. 809 (E.D. Pa. 1968); Environmental Defense Fund v. United States Army Corps of Engineers, 324 F. Supp. 878 (D. D.C. 1971).

[25] Abbott Laboratories v. Gardner, 387 U.S. 136 (1967); Barlow v. Collins, 397 U.S. 159 (1971).

[26] For discussion of this issue *see* C. Byse & J. Fiocca, *Section 1361 of the Mandamus and Venue Act of 1962,* 81 HARV. L. REV. 308, 328 (1967); H. Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code,* 13 LAW & CONTEMP. PROB. 216, 220 (1948); L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 165 (1965). Several of the Circuits have directly held that the APA is jurisdictional, *See, e.g.,* Washington v. Udall, 417 F. 2d 1310, 1319 (9th Cir. 1969); Toilet Goods Ass'n v. Gardner, 360 F. 2d 677, 679 n. 1 (2d Cir. 1966). The Supreme Court appears to have assumed this on at least one occasion, Rusk v. Cort, 369 U.S. 367 (1962).

[27] *See discussion infra* in text at p. 738.

[28] "The district courts shall have original jurisdiction of any action in the nature of mandams to compel an officer or employee of the United States or any agency thereof to perform a duty to the plaintiff." 28 U.S.C. § 1361.

[29] *But see* Peoples v. Department of Agriculture, 427 F. 2d 561 (D.C. Cir. 1970) where the court utilized the nature of mandamus statute as a jurisdictional statute for a suit against a department under the APA.

[30] McIntire v. Wood, 11 U.S. (7 Cranch) 504 (1813).

[31] United States v. Schurz, 102 U.S. 378 (1880).

For a discussion of the federal mandamus remedy *see* Marbury v. Madison, 5 U.S. (1 Cranch 137, 166–171 (1803); H. M. HART & H. WECHSLER, the FEDERAL COURTS AND THE FEDERAL SYSTEM, 1180 (1953); D. SWARTZ & S. JACOBY, GOVERNMENT LITIGATION 581 (1963); *Developments in the Law—Remedies Against the United States and its Officials,* 70 HARV. L. REV. 829, 846–851 (1957).

[32] For a discussion of this act *see* S. Jacoby, *The Effect of Recent Changes in the Law of "Nonstatutory" Judicial Review,* 53 GEO. L.J. 19 (1964); C. Byse and J. Fiocca, *Section 1361 of the Mandamus and Venue Act of 1962 and "Nonstatutory" Judicial Reveiw of Federal Administrative Action,* 81 HARV. L. REV. 308 (1967).

[33] *See* 2 CALLAGHAN & CO., CYCLOPEDIA OF FEDERAL PROCEDURE, § 2.395(a) (3d ed. 1965, Supp. 1972).

[34] Peoples v. Department of Agriculture, 427 F.2d 561 (D.C. Cir. 1970).

[35] Chournus v. United States, 335 F.2d 918 (10th Cir. 1964). *See also* the cases cited in the text and footnotes at p. 738 *infra* which hold that 28 U.S.C. § 1361 does not constitute a waiver of sovereign immunity by the United States, its departments and agencies, which in effect accomplish the same thing as the *Chournus* case.

[36] It is almost impossible to bring a damage action against the United States under the Tucker Act, and if the individual action is based on 28 U.S.C. §§ 1331 or 1332 you must plead and prove a jurisdictional amount of $10,000 *or more.* However, to sue the United States under 28 U.S.C. § 1346 (a) (2) in a district court, you must plead and prove that *less* than $10,000 is in controversy. If you take the claim against the United States to the court of claims where no limitation in amount exists, you will be confronted with 28 U.S.C. § 1500 which bars dual actions. *See* note 15 *supra.* The result is that you must elect which remedy to pursue or attempt to base your tort action against the individual official on some jurisdictional statute other than Sections 1331 or 1332. But, none come readily to mind.

[37] The doctrine of privilege for actions within the officer's legal authority or committed by law to their discretion is related to the doctrine of sovereign immunity. This doctrine is a complex one with many nuances and exceptions and should be carefully considered in framing a lawsuit of this type. *See, e.g.,* Barr v. Matteo, 360 U.S. 564 (1950); Howard v. Lyons, 360 U.S. 593 (1959); 3 DAVIS, ADMINISTRATIVE LAW TREATISE, § 26.01 (1958); D. SWARTZ & S. JACOBY, LITIGATION WITH THE FEDERAL GOVERNMENT, §§ 16.115–16.116 (1970); H. M. HART & H. WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM, 1212–1224 (1953).

[38] *See, e.g.,* Federal Tort Claims Act, 28 U.S.C. § 2679.

[39] U.S. CONST. art. III § 2.

[40] Monaco v. Mississippi, 292 U.S. 313, 321 (1934).

[41] In Keifer & Keifer v. Reconstruction Fin. Corp., 306 U.S. 381, 388 (1938), Mr. Justice Frankfurter wrote:

"For present purposes it is academic to consider whether this exceptional freedom from legal responsibility rests on the theory that the United States is deemed the institutional descendant of the Crown, enjoying its immunity but not its historic prerogatives, *cf. Langford v. United States,* 101 U.S. 341, 343, or on a metaphysical doctrine "that there can be no legal right as against the authority that makes the law on which the right depends." Kawananakoa v. Polyblank, 205 U.S. 349, 353."

The doctrine was also grounded upon the political theory of "Separation of Powers" which underlies our Constitution. *See* Decatur v. Paulding, 39 U.S. (14 Pet.) 497, 516 (1840).

[42] For a general analysis of the sovereign immunity defense *see* D. SWARTZ & S. JACOBY, LITIGATION WITH THE FEDERAL GOVERMENT, § 16.101 (1970); L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION, 155–188, 176–192, 194–196, 222–231, 232–247 (1965); H.M. HART & H. WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM, 1140–1163, 1189–1193, 1203–1212, 1215–1224 (1953); 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE, §§ 27.01–27.10 (1958); Note, *Sovereign Immunity and Specific Relief Against Federal Officers,* 55 COLUM. L. REV. 73 (1955); *Developments in the Law—Remedies Against the United States and Its Officials,* 70 HARV. L. REV. 829, 829–863 (1957); K. DAVIS, *Sovereign Immunity in Suits Against Officers For Relief Other Than Damages,* 40 CORN. L.Q. 3 (1934); K. Davis, *Government Officers as Defendants: Two Troublesome Problems,* 104 U. PA. L. REV. 69 (1955).

[43] *See* Federal Housing Administration v. Burr, 309 U.S. 242 (1940); Sarner v. Mason, 228 F.2d 176 (3d Cir. 1955). In *Burr* the court wrote that in order to limit a sue-and-be-sued clause:

"[I]t must be clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme, that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function 309 U.S. at 245."

The sue-and-be-sued statutes are collected in Callaghan & Co., Cyclopedia of Federal procedure § 2.28 (3d ed. 1966, Supp. 1972); Keifer & Keifer v. Reconstruction Fin. Corp., 306 U.S. 381, 390–391 n. 3 (1938); and United States Code Annotated index heading "Actions and Proceedings."

[44] 28 U.S.C. § 2201–2.

[45] *Id.* § 1331.

[46] Anderson v. United States, 229 F.2d 675 (5th Cir. 1956).

[47] 5 U.S.C. § 701–7–6 (1970).

[48] 28 U.S.C. § 1361.

[49] *See* 3 K. Davis, Administrative Law Treatise, § 27.07 (1958); S. Jacoby & D. Swartz, litigation with the Federal Government, § 16.109 (1970).

[50] Littell v. Morton, 445 F.2d 1207 (4th Cir. 1971).

[51] Stanwell Laboratories, Inc. v. Shaffer, 424 F.2d 859 (D.C. Cir. 1970); Kletchka v. Diver, 411 F.2d 436 (2d Cir. 1969); Estrada v. Ahrens, 296 F.2d 690 (5th Cir. 1961).

[52] *Compare* Washington v. Udall, 417 F.2d 1310 (9th Cir. 1969), *with* Adams v. Witmer, 271 F.2d 29 (9th Cir. 1959).

[53] M.G. Davis & Co. v. Securities & Exch. Comm'n, 252 F. Supp. 402 (S.D. N.Y. 1966).

[54] White v. Administrator of Gen. Serv. Adm'n, 343 F.2d 444 (9th Cir. 1965).

[55] Scholder v. United States, 428 F.2d 1123 (9th Cir. 1970).

[56] 219 F.2d 479 (D.C. Cir. 1954).

[57] 337 U.S. 682 (1949).

[58] For a discussion of the history of this problem *see Developments in the Law—Remedies Against the United States and Its Officials,* 70 Harv. L. Rev. 827, 847–849 (1957).

[59] 427 F.2d 561 (D.C. Cir. 1970).

[60] *See, e.g.,* 3 K. Davis, Administrative Law Treatise, §§ 27.01–27.05 (1958); D. Swartz & S. Jacoby, Litigation with the Federal Government (1970); H. M. Hart & H. Wechsler, The Federal Courts and the Federal System, 1169, 1179 (1953); J. Block, *Suits Against Government Officers and the Sovereign Immunity Doctrine,* 59 Harv. L. Rev. 1060 (1946).

[61] 337 U.S. 682 (1949).

[62] J. Moore, Federal Practice, § 10.02 (2d ed. 1958). Where a name is unknown such specification as circumstances permit is allowed. *See, e.g.,* Fehr Baking Co. v. Bakers Union, 20 F. Supp. 691 (W.D. La. 1937) *See also* Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

[63] *See* Fed. R. Civ. P. 4(b). *See also* J. Moore, Federal Practice, § 4.07 (2d ed. 1958).

[64] Under Fed. R. Civ. P 19(b), when an officer not named as defendant is found to be an indispensable party, the solution is not to dismiss but to add the officer as a defendant by amendment to the complaint, and serve him by mail. Coughlin v. Ryder, 341 F.2d 291 (3d Cir. 1965); McEachern v. United States, 321 F.2d 31 (4th Cir. 1963).

[65] In an action to recover damages, obtain money from a specific fund or recover property from the United States, the United States may be considered to be an indispensable party, and if it has not consented to be sued, then the action must be dismissed. *See* Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949).

[66] For a survey of this problem *see* 3A J. Moore, Federal Practice, § 19.16 (2d ed. 1958). *See also* H. M. Hart, & H. Wechsler, the Federal Courts and the Federal System, 1187–93 (1953); Note, Williams v. Fanning Revisited, 53 Colum. L. Rev. 1128 (1954).

[67] Grierich v. Rutter, 265 U.S. 388 (1924); Webster v. Fall, 266 U.S. 507 (1925).

[68] Williams v. Fanning, 332 U.S. 490, 493 (1947).

[69] Gager & Goldberg, Inc. v. United States, 44 F.R.D. 477 (D. Conn. 1968).

[70] Carr v. Desjardines, 16 F. Supp. 346 (W.D. Okla. 1936); Massachusetts Farmers Defense Comm. v. United States, 26 F. Supp. 941 (D. Mass. 1939); Stroud v. Benson, 254 F.2d 448 (4th Cir. 1958).

[71] *See* Wright, *Substitution of Public Officers: The 1961 Amendment to Rule 25(d)*, 27 F.R.D. 221 (1961).

[72] Snider v. Buck, 340 U.S. 15 (1950).

[73] FED. R. CIV. P. 25(d).

Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

[74] FED. R. CIV. P. 25(d).

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

[75] Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949).

[76] 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE, § 27.09 (1958).

[77] *Id.* n. 29–30.

[78] McGrath v. National Ass'n of Mfrs., 344 U.S. 804 (1952).

[79] Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949).

MOST-FAVORED-NATION TREATMENT FOR ROMANIA

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Indiana (Mr. HARTKE), I ask unanimous consent that the following statement and newspaper article be printed in the RECORD.

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

MOST-FAVORED-NATION TREATMENT FOR ROMANIA

Mr. President, we as legislators should refrain from viewing all of the Eastern European countries as a bloc whose actions and foreign policies are orchestrated by their big neighbor, the Soviet Union. It was some time, however, before our own experts in the field of international affairs recognized the concept of polycentrism. Polycentrism in Eastern Europe is the pursuance of a persistent and carefully independent policy from the Soviet Union by the various nation-states in Eastern Europe.

Since the Soviet invasion of Czechoslovakia, Ceausescu's Romania and Tito's Yugoslavia have been the leaders in the policentristic movement. Their endeavors toward independence should not go unregarded. Yugoslavia was granted MFN treatment in 1881 and has had it ever since. Even Poland received MFN status in 1960.

It certainly seems to me that the political and economic climate between Romania and the United States justifies equal commerical treatment and thus the granting of MFN status to this Republic. Ceausescu as head of the government of Romania condemned the Soviet invasion of Czechoslovakia. He has maintained diplomatic relations with the state of Israel and has encouraged good relations between Romania and Western countries.

We should not let our conceptions of the Soviet Union shade our view of Romania or the other more independent Eastern European countries. I am a cosponsor of the Jackson amendment, and I am convinced that sponsoring most favored nation status for Romania is consistent with my stand on the Jackson proposal. The establishment of closer trading and political ties with Romania can be of enormous benefit to both our countries.

By not granting equal tariff treatment to Romania we are aiding the Soviet Union in its continued economic and political domination of Eastern Europe and promoting the economic policies of our western business competitors in these countries. The West Germans have already signed trade agreements with the Ceausescu government strengthening their trading position there.

We, of course, have not been altogether idle in promoting industrial and technological cooperation between the United States and Romania. On December 5, 1973, a Joint American-Romanian Economic Commission was established which will function to facilitate commercial relations.

Romania also has drawing rights from the Export-Import Bank. Romania has been eligible for Export-Import Bank credits since a Presidential determination was made in November, 1971. Their credits now total $78.3 million. These credit transactions help finance U.S. exports of equipment to Romania which aid our own balance of payments position.

Mr. ROBERT C. BYRD. The following editorial, which appeared in the Baltimore Sun on December 3, 1973, succinctly describes the major issues involved in granting most-favored-nation status to the Republic of Romania:

VOICE OF A NONSUPERPOWER

President Nicolae Ceausescu's state visit to the United States this week will serve more than a ceremonial purpose if it reminds Americans that this is a world not just of two or three or five superpowers but of 150 nations, large and small, rich and poor, each protective of its sovereignty and zealous for its economic betterment. Among modern leaders, the Romanian president has been a visible and creative advocate of these nation-state concepts.

Prickly, persistent and carefully independent, Mr. Ceausescu has done much to loosen the stifling ties that bind in the Soviet bloc. Alone among Warsaw Pact government chiefs he condemned the Soviet invasion of Czechoslovakia, maintained diplomatic ties with Israel and encouraged good atmospherics with Communist China. He was in the vanguard in economic openings to the West. At recent meetings of the European Conference on Security and Co-operation, his representatives vehemently demanded protection for all nations against outside interference and the use of force.

Despite his maverick role in the Warsaw Pact, Mr. Ceausescu has been far from a patsy for Washington. He condemned the U.S. involvement in Vietnam. He denounced Israel's presence on Arab territories. He successfully opposed U.S. efforts to keep Romania and other "flank" nations out of negotiations on troop reductions in Central Europe. His voice was consistently with nations trying to avoid domination by the superpowers—a role that often seemed to parallel France's conduct in NATO.

In sum, however, President Ceausescu's course has been highly useful to the United States. And this country, to its credit, has often responded in a manner beneficial to Romania's interest. President Johnson publicly protested Soviet troop movements near the Romanian border after the Czechoslovak tragedy. President Nixon selected Romania as the first Communist country to be visited by an American chief of state. Romania was favored with U.S. credits and technological assistance early in the detente era.

And yet there is a sticking point that underscores Romania's concern about having its national interests overriden by the big-stakes diplomacy of the big powers. The sticking point is the continuing denial of most-favored-nation trading arrangements that would help Romania correct its current 3 to 1 negative trading balance with the United States. The political-economic climate between our two countries certainly justifies equal commercial treatment. But because the administration is seeking power to grant most-favored-nation treatment to all Communist countries, Romania has become an innocent victim of congressional resentment toward the Soviet Union. It is a classic example of a small nation falling afoul of superpower politics.

President Nixon is expected to sign civil aviation, fishing and dual-taxation agreements with President Ceausescu during this week's visit. Such steps will be in line with his enlightened record in dealing with Eastern Europe. But Mr. Nixon would be making a bigger gesture, and showing sensitivity to the needs of a friendly nation below superpower status, by seeking equal tariff treatment specifically for Romania.

DR. MARTIN LUTHER KING, JR.

Mr. HUGH SCOTT. Mr. President, in an eloquent column of January 15 in Philadelphia's the Evening Bulletin, Claude Lewis assessed the remarkable and enduring legacy of the late Rev. Dr. Martin Luther King, Jr. Had he lived, Dr. King would have been 45 years old on January 15. In the short time he was with us he gave so much to America and to the world.

Mr. Lewis says of Dr. King:

We blacks tried to claim him for our own—But while Dr. King was fashioned out of the black experience and the black community, his heart belonged to the whole world. He would never let anyone put limits on his love.

Mr. President, I believe—as columnist Claude Lewis so aptly expressed it—that Dr. King belonged to all of us. He is still missed, and he will always be remembered where there is anywhere a lack of love among any peoples. And I hope that memory will guide us in filling that void.

I would like to share Mr. Lewis' column with my colleagues, and I ask unanimous consent that it be printed in the RECORD.

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

DR. KING—LEGEND LIVES ON

(By Claude Lewis)

If Dr. Martin Luther King had lived, he would have been 45 years old today.

He marched out of the South to enthrall nearly the whole nation with his extravagant and eloquent colloquies dealing with peace and love and human decency.

In 13 short years, Dr. King became one of the best-known men in modern history. That might sound like an exaggeration but the printing press and the television tube combined to make his name a household world in homes around the world.

Nearly six years have passed since that mournful day in Memphis when his throat was blown apart in an orgy of violence and death. The bullet which took his life also stole the life of the civil rights movement. Though present leaders often deny that the movement has given way to other causes, it is obvious that with the death of Dr. King went the bloodstream of many causes that came out of the strident '60s.

Martin Luther King Jr. was never a consensus leader. He was a man who settled upon an idea, examined it, dissected it, discussed it with Dr. Abernathy and his other aides, took a position and then offered it without equivocation to the world.

Once in a private interview he told me: "If I become the only man on earth wedded to the idea that peace is preferable to war, that nonviolence is acceptable and violence is not, that truth is superior to the lie, I will remain loyal to these concepts to the end because I believe in my heart and my soul that they are just and right."

RISKED HIS LIFE

The words came out of his mouth; not out of a book, or out of a speech. Martin Luther King Jr. talked this way because he believed this way. He believed so strongly in the human potential that he continued to risk his life to get his messages across.

His last 13 years were marked by threats and attempts on his life. They became most real just before he was murdered in Memphis. Indeed, on the eve of his death, at age 39, he offered a grim prophecy that was to briefly haunt his adherents:

"I don't know what will happen now," he said in that famous and final sermon. "We have got difficult days ahead, but it doesn't matter with me because I've been to the mountain top. Like anyone else I would like to live a long life. But I'm not concerned with that. I just want to do God's will.

"I may not get there with you, but I want you to know tonight that we as people will get to the promised land. I am happy tonight that I am not worried about anything. I'm not fearing any man. Mine eyes have seen the glory of the coming of the Lord."

Soon the bullet was in the air and the whole thing became part of history. He had come to Memphis to help the trashmen gain a better wage and a better life. Dr. King wasn't a man who simply went around to preach in the big churches and to help the powerful. Hypocrisy played no part in his life.

NOT JUST BLACK

He never thought that the only cause was the black cause. He was so much bigger than that. He was for women's liberation, and for help for the aged long before these became controversial causes. His was a simple philosophy. He believed that every man, woman, and child was worthy. That's what made him so terribly acceptable all over the world. He convinced the greater part of the human population that love and human decency recognized no political or physical boundaries.

Russia and China were never Dr. King's enemies. Hunger and violence were. He never hated Germans or Arabs or Jews. He hated bloodshed, inadequate housing and discrimination.

We blacks tried to claim him for our own. As someone eulogized at his funeral in Atlanta, he was "our very own Prince of Peace." But while Dr. King was fashioned out of the black experience and the black community, his heart belonged to the whole world. He would never let anyone put limits on his love.

He was as committed to peace in Bangkok as he was to peace in Birmingham. Nonviolence was as important to him in the Middle East as it was to him in America's Middle West, and love was as necessary in North Philadelphia as it was for him in North Africa. Peace was his basic principle and truth was as significant a part of his personal trilogy as was religion and love.

Martin Luther King didn't mind Bull Connors or Sheriff Jim Clark all that much. And he didn't care about the dogs the police used against him, or the cattle prods, the jail cells, and the fire hoses in Birmingham. He didn't mind all of these things, because he was a selfless man.

For all of his pain and trouble, he only sought one thing in return.

"When I die," he asked, "don't build monuments to me. Don't engrave my name. Just say Martin Luther King tried to help somebody. Don't say I won a Nobel Prize for Peace. Just say Martin Luther King was a drum major for justice, and that Martin Luther King tried to love . . ."

H. R. GROSS, OF IOWA

Mr. CLARK. Mr. President, last week, Congressman H. R. GROSS announced that he will retire at the end of the year after representing Iowa's Third Congressional District for more than 25 years. When he leaves Washington, D.C., and returns to Iowa, the Congress will lose one of its most respected and hard-working Members.

The Congressman and I do not share the same political party and our positions on national issues are not always the same, but as the Des Moines Register said in an editorial 2 days ago:

Whether people agreed with H. R. (for Harold Royce) on policy issues or not, they came to respect him as a man of incorruptible integrity and independence.

He will be remembered for that integrity and independence and the remarkable, unique record of public service that he compiled in 13 terms in the House of Representatives. For all of those years, he has been interested in economy and value. He always has wanted to be sure that the American taxpayer was not being cheated, that the public's tax dollar was not being wasted or squandered. H. R. GROSS has been a tenacious watchdog in the House, and when he leaves, he will be missed.

Several years ago, the Washington Monthly carried an article on the Congressman: "H. R. Gross: Conscience in the House." It provides an excellent summary of his record and his work, and I ask unanimous consent that it be printed in the RECORD.

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

H. R. GROSS: CONSCIENCE IN THE HOUSE

(By Jacques Leslie)

The front room of his office gives fair warning of what lies within. One sign on the wall says, "Nothing is easier than the expenditure of public money. It does not appear to belong to anybody. The temptation is overwhelming to bestow it on somebody." Another says, "There is always free cheese in a mousetrap."

Called by some the "watchdog of the federal treasury" and by others the "abominable no-man of the House," Harold Royce (H.R.) Gross, Republican Congressman from Iowa, has built his reputation on uncompromising integrity, a rough-hewn sense of humor and an unquestioning belief in the wisdom of a balanced budget. Estimates of the amount Gross has pared from the federal budget and has therefore "saved" taxpayers during his 23 years as Congressman range from millions to billions of dollars.

Gross cultivates the idea that he is a principled loner, an exception among men who have taken to heart Sam Rayburn's maxim, "To get along, go along." In the 91st Congress, for example, he voted against President Nixon more often than all other Congressmen serving a full two-year term, opposing him on 58 percent of roll-call votes. (The average House member opposed the President 29 percent of the time.) "If I'm convinced that a bill is bad, or enough of it is bad to overbalance the good in it, why I'll vote against it," Gross says. "It doesn't bother me to be in the minority."

Among the programs Gross has unsuccessfully opposed are foreign aid, Peace Corps, all salary increases for Congressmen from the time they received $12,500 a year (they now get $42,500) and the United Nations. Occasionally, when he loses, Gross resorts to sarcasm. When a bill passed to reimburse New York City for its expenses during Khrushchev's 1960 visit to the U.N., Gross said on the floor. "I swear I think that what we ought to do is pass a bill to remove the torch from the hand of the Statue of Liberty and insert a tin cup."

Gross is a slight man with a booming voice. Born on a farm in Arispe, Iowa, in 1899, he never finished high school. After serving in the Army at the Mexican border and in France in World War I, he studied at the University of Missouri School of Journalism but did not receive a degree. For the next 15 years he worked as a reporter and editor, than as a newscaster for radio station WHO in Des Moines. Known as the "fastest tongue in radio," he could speak 200 words a minute in a clear, solid tone.

Gross first ran unsuccessfully in the Republican primary for governor in 1940, then in 1948 was elected to Congress from Iowa's Third District. He has been there ever since.

Some observers think of Gross as a clown, who "has exploited and profited from every rigid prejudice in Iowa." A look at the newsletter he sends out weekly to 9000 Iowa subscribers does not dispel that notion. In it, the United States is referred to as "Uncle Sap," "Uncle Sucker" and "Uncle Handout"; the Pentagon is "Fort Fumble." After mentioning a news account about President Johnson tossing beer cans out of his car as he sped around his Texas ranch, Gross suggested that "Home on the Range," be changed to "Foam on the Range."

Gross himself is the frequent object of barbs from other Congressmen. Observing that he has not left the United States since World War I and is opposed to Congressional junkets, Reps. John Ashbrook (R., Ohio) and Frank Thompson (D., N.J.) sponsored a resolution in 1970 to create a committee, consisting only of Gross, with the task of inspecting U.S. economic and military-aid expenditures throughout the world. Junketing Congressmen often send Gross postcards from the countries they visit. "Paris is great! Wish you were here!" Yet for all the kidding he receives, Gross is praised by a large number of Congressmen on both sides of the aisle.

The conventional wisdom among Representatives is that it is important to have one person like Gross in Congress, but that if Grosses filled the House, it would be unworkable. He introduces few bills and does not play an active role in the shaping of

legislation. Instead, his function is essentially negative.

Gross is the only Congressman who makes a concerted effort to read the entire contents of every bill that reaches the House floor. (This is no mean feat; in the 91st Congress, for example, 1415 bills, many several hundred pages long, were reported to the floor.) He is constantly on the lookout for wasteful appropriations, self-serving arrangements among members and ambiguous legislation. When he is unclear about some bill, he asks a question, and the response is then a matter of record. If the answer does not satisfy him, he may turn to procedural gimmicks to delay or prevent the bill's passage. He is well prepared, a good debater and expert parliamentarian.

The most famous of Gross's techniques is the quorum call—it takes half an hour to read the list of Representatives' names. Gross believes that a Congressman's first responsibility is to be on the floor when the House is in session, and he may well have called for quorum more often than any other Congressman in history. Once, Rep. Tom Rees (D., Calif), angered by two calls (one by Gross), made a speech on the House floor against "capricious and senseless use of quorum calls which have little or no relationship to the important matters which this Congress has at hand." As soon as Rees finished, Gross made a point of order that a quorum was not present.

Another weapon is objecting to unanimous-consent requests. The House handles much of its business by this means, and the objection of one member is enough to defeat a unanimous-consent motion. Gross employs this technique to combat the "Tuesday-Thursday Club"—Congressmen who arrange to have unimportant business scheduled on Friday and Monday so that they can go home four days at a stretch.

Gross has made himself an expert on House procedure, which is codified in four sources: the Constitution, the House rules, Thomas Jefferson's *Manual* and the 11 volumes of *Precedents of the House of Representatives*. "Some Congressmen who've been here for several terms don't even know the working rules of the House," he says. "Some of these people are pitiful. Nobody can tell me that the country wouldn't be better served if more of them knew what the hell was going on."

Because of his willingness to use all the parliamentary procedures at his disposal, many committee chairmen try to iron out possible differences with Gross by notifying him of their intentions in advance. Some Congressmen have changed legislation in committee to anticipate Gross's objections on the floor. Thus, though Gross rarely has the votes to back up his convictions, he does have a veto power over some aspects of legislation.

The basic article of Gross's faith is summed up in his bill, H.R. 144 (a gross equals 12 dozen), which he has introduced annually for more than a decade. It calls for a balanced budget and the gradual retirement of the national debt. (The bill is invariably assigned to the Ways and Means Committee and never heard from again.) Not only is deficit spending responsible for the nation's present economic difficulties, Gross says, but also, "We're plastering the generations to come with mortgages that will never be paid off. And this is having its effect on the moral fiber of the country. The main reason why we will go into a crisis will be financial."

Certainly some of Gross's proposed economies are reasonable. One example is a bill he introduced last year to prohibit junkets by lame-duck Congressmen. In the past such trips have been authorized as a kind of farewell present to non-returning Congressmen. In 1969, Gross blocked a unanimous-consent request to skip a House session on the day of the Apollo 11 launching so that Congressmen could accept free government transportation to Cape Kennedy. Gross said he was "unable to find any reason at all why a substantial amount of money should be spent" to transport Congressmen and their families to Florida. Consequently, the House was forced to meet on the day of the launching.

Gross is also concerned with bigger sums. In 1971, he voted against the appropriation bills for the Department of Commerce, Housing and Urban Development, Interior, Justice, Labor, Post Office, State, Transportation, Treasury, and Health, Education, and Welfare. He voted against appropriations for the Office of Education, foreign aid, the National Foundation on the Arts and Humanities, and the Smithsonian Institution. But he did vote in favor of the largest appropriation bill of all, $71 billion for the Department of Defense. "In this business," he said, "I would prefer to make an error on the side of what I conceive to be national security."

Gross gives the impression of a gruff, hard-bitten, no-nonsense curmudgeon, but this is to some extent a self-protective device. He is known among friends as a gentle, gracious man. By Washington standards he leads a spartan existence. While he labors on Capitol Hill, his wife is at home reading and underlining. By the time he returns home, she has put the material she thinks he should read next to his easy chair. At the end of the evening, if there is time, the couple plays a game of cribbage, then goes to bed. Gross has boasted that he does not own a tuxedo, nor his wife an evening gown.

Rep. Otto Passman, one of Gross's admirers, accurately describes the thrust of Gross's efforts in Congress: "I came out of the free-enterprise system," he says, "but it seems that now we are on the road to socialism. Gross has slowed down the trend to socialism from a run to a walk."

With his constant attendance on the House floor, his careful consideration of every bill, and his desire to truly debate legislation on the floor, Gross probably comes closer to embodying the grade-school textbook's concept of a Congressman than any other member. A literalist, Gross believes he is doing what the framers of the Constitution had in mind. We have gone wrong, he thinks, in allowing an all-encompassing federal bureaucracy to control our lives and diminish our freedoms.

GROSS AT HIS GRANDEST

While much of H.R. Gross's fame comes from his role as Congressional gadfly, his record is replete with solid legislative accomplishments.

Last October, for instance, Democrats were confident they had the votes to override a White House plan to delay for six months a $2.6-billion government pay hike. But Gross forced the vote on a day when large numbers of Democrats were junketing in Europe. The result was a narrow but crucial victory for the President's new economic program.

In 1968, what appeared to be a non-controversial bill boosting State Department retirement benefits actually contained a hidden provision calling for a 33-percent increase in Congressional retirement benefits. Only when Gross exposed the retirement boondoggle was it killed.

During the debate over the elevation of Associate Justice Abe Fortas to Chief Justice, Gross detailed examples on the House floor of the jurist's alleged conflicts of interest. Even after the Fortas nomination was withdrawn, Gross kept up his attack and threatened impeachment proceedings. Finally, Fortas resigned rather than face the Congressional inquiry.

For years the late Rep. Mike Kirwan (D., Ohio), chairman of the pork-barreling Public Works Appropriations Subcommittee, sought $10 million for a huge aquarium in the nation's capital. Despite Kirwan's political clout, it was never built—thanks to constant ridicule by Gross.

Asserts Pulitzer Prize-winning journalist Clark Mollenhoff: "No House member in the last 20 years has exposed more waste and corruption in government than H.R. Gross. Time and again his mere presence on the floor has caused others to stand firm."—THE EDITORS.

LAW REFORM AND THE GAO REPORT

Mr. TOWER. Mr. President, some of my colleagues have in recent months referred to a report of the General Accounting Office to cite supposed advantages of the legal services program. A closer perusal of that GAO report, I believe, will show that instead of doing what Congress has mandated the legal services program to do, namely, represent individual clients, the programs are heavily involved in law reform activities. For the information of my colleagues, I would like to place in the RECORD a statement by Mr. J. Laurence McCarthy, former Acting Associate Director of the Office of Economic Opportunity, and presently consultant to the Director of OEO, Mr. Alvin Arnett. Mr. McCarty's comments and report clearly indicate the degree to which legal services has been improperly involved in law reform.

I respectfully ask unanimous consent that the full text of the statement be printed in the RECORD.

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

STATEMENT OF THE ACTING ASSOCIATE DIRECTOR, OFFICE OF LEGAL SERVICES, CONCERNING LAW REFORM AND THE GAO REPORT

On March 21, 1973, the GAO issued a report on the Legal Services program, stating that legal services attorneys were not adequately involved in law reform because they were devoting themselves to individual casework. Many persons have used the GAO report as conclusive proof of the lack of law reform activity and I have observed that those who have criticized the Legal Services program for excessive law reform activities, have been confronted with the GAO report as proof that their charges are unfounded.

When this report was issued, I had been Acting Associate Director for Legal Services for a few days and was not able to contradict factually the interpretation placed on the GAO Report.[1] Such proof is now available, thanks to an exhaustive study by the staff at OLS. That study "Law Reform and The GAO Report" is attached for your information. It is my opinion that the GAO report does not sustain the conclusion that legal services attorneys are not actively involved in law reform. Rather, emphasis on law reform has been a hallmark of the Legal Services program.

I call your attention, in particular, to the following points in the study:

A. GAO pointed out that OLS had a miserable management information system and that adequate data on law reform was not available at Headquarters OLS. It follows, obviously, that there was no evidence available at a central place to prove or disprove any point about the adequacy or inadequacy of law reform. (I have, incidentally, actively promoted an excellent MIS system to meet this objection.)

Footnotes at end of article.

B. To gather data, GAO visited only seven projects out of a total of 265. No inference of any kind can be drawn from such a sampling. Any conclusion based on the experience of seven out of 265 is logically invalid and must be dismissed by those who care about the reasoning process.

C. *The Seven Projects Studied by GAO:*

The data produced by the GAO concerning three of the projects was stale. Specifically, GAO considered evaluations in 1969 and 1970, to support its conclusions of March 1973, that there was inadequate involvement in law reform. Later independent evaluations of these three projects—done in 1970, 71, and 72—established a significant involvement by them in law reform activities. Therefore, more contemporary data flatly contradict GAO's conclusion and support a finding of significant law reform activity in three projects where GAO found inadequate involvement.

GAO found law reform being actively pursued in three other projects, a conclusion supported by independent evaluations. The seventh project, it is agreed by all, did not engage in much, if any law reform.

The facts require the conclusion that six of the seven projects studied by GAO were and are engaged in active law reform activities.

D. GAO also looked at nineteen project evaluation reports which are on file at Headquarters OLS and found ten of the projects adequately involved in law reform. The only conclusion warranted from this GAO review of the nineteen evaluations is that more than 50% of them were active in law reform activities. The GAO report in the area does not support the position that law reform is an insignificant aspect of legal services work.

E. The OLS has analyzed 93 other evaluation reports on file and finds, by the criteria applied by GAO, one-half are *"adequately"* involved in law reform and one-third are *"heavily"* involved. It is my considered opinion that had time permitted an analysis of all legal services projects, the additional data would yield the inescapable conclusion that the vast majority of these projects are extensively involved in law reform activity.

F. The GAO Report did not evaluate back-up centers. Those who argue that there is no emphasis on law reform in the legal services program omit reference to the twelve national back-up centers and eight state back-up centers, spending over six-million dollars a year. *The back-up centers are almost exclusively involved in law reform activities.* Any conclusion drawn about law reform in the legal services program which omits the back-up center activity must be dismissed as patently invalid.

I bring this study and my comments to your attention in the hope that it will correct the record in important matters and contribute to an accurate and constructive discussion of the legal services program.

Respectfully submitted,

J. LAURENCE MCCARTY,
Acting Associate Director for Legal Services.

LAW REFORM AND THE GAO REPORT

A report of a Study Group chaired by Marshall Boarman, Director of Evaluation, Office of Legal Services, OEO.

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On March 21, 1973, the General Accounting Office (GAO) issued a Report on the Legal Services Program which has been grossly misused in a number of ways by critics of the current effort to restructure the Program. The portion of the Report which has been exploited the most is the finding that Legal Services line attorneys—those working in the 900 neighborhood law offices—were by and large not adequately involved in law reform. A principal reason for this "failure", according to GAO, is the decision on the part of many projects (the 900 neighborhood law offices feed into 265 projects) to give priority in allocating their scarce resources to individual casework. The GAO assessment has been greeted by the Program's liberal sympathizers as a conclusive refutation of the charge that law reform was being overemphasized to the detriment of service to individual clients.

Against this view, this paper contends that (a) the findings of the GAO Report on law reform are totally unsupported by hard data (a point conceded by GAO) and in reality simply impressions which were never intended to be used as a basis for any firm generalizations; (b) a more exhaustive analysis of more recent evaluations reverses the findings of the GAO Report and (c) excessive law reform in the Legal Services Program taken as a whole is, contrary to the inferences drawn by many from the GAO Report, not a myth but a disturbing reality.[2]

The Report defines law reform as "seeking reform of statutes, regulations and administrative practices that unfairly affect the poor" (p. 11). The Report accepts law reform as a principal if not primary goal of the Program:

"One of the principal missions of OEO's Legal Program is to have Program grantees challenge—by class action or test case—that portion of the statutory, regulatory and administrative base of the existing order considered to discriminate against the poor; to research conflicting and discriminating applications or laws or administrative rules; and to propose administrative and legislative changes."

The Report's finding on the extent to which the law reform goal was being realized reads as follows:

"There were indications that most program grantees had not been adequately involved in the program area . . . of law reform" (p. 10, GAO Report).

The question which occurs immediately, of course, is: what was GAO's criterion for adequate involvement? In the words of a member of the GAO team which evaluated the Legal Services Program: "We talked with the people at the Office of Legal Services and they told us they had no criterion for adequacy. They said they had never really attempted to define how much was enough in each goal area." This shortcoming on the part of the Office of Legal Services was covered by GAO in its general criticism that the Office had "neither clearly defined program objectives and priorities nor provided the essential direction and guidance to program grantees on how to engage in activities directed toward law reform" (p. 17, GAO Report).

Although GAO was unable to obtain a criterion of adequacy from the Office of Legal Services, it is obvious that some criterion however crude must have been used by GAO to arrive at its finding of inadequate involvement. The best source for such a criterion is the series of project evaluations performed for the Office of Legal Services by various outside firms, evaluations on which GAO relied heavily in forming its own conclusions. A recent review of 112 such evaluations yielded the following rule of thumb: all things being equal, law reform involvement, from the point of view of quantity at least, can be considered adequate if roughly 25% of the project's resources are allocated to law reform. For example, in a typical medium-sized project manned by four attorneys, adequate involvement might mean one attorney assigned full-time to law reform. Alternatively each of the four attorneys might devote several hours a day to law reform.

The next question is: what was the criterion for settling on this particular criterion of adequacy? How were the evaluators able to determine that 25% of the total available attorney time was not too much or too little time to consecrate to law reform? The GAO Report furnishes a clue to a partial answer when it notes that in the projects which were deficient in law reform, "attorneys were fully occupied with meeting individuals' day-to-day needs and that they were therefore unable to devote more time to law reform."

In other words the attorney's (or project director's) gauge for fixing the limits of his law reform investment was based partly at least on his personal judgment on the extent to which he could, in conscience and in prudence, resist the pressures from potential clients for individual service. He might decide a 10% investment of his time would be sufficient while a team evaluating his project might think 50% to be optimal but 25% sufficient, given the inexorable individual caseload. In short, although opinions as to what is sufficient differ considerably, it seems indisputable that client satisfaction/dissatisfaction is one of the arbiters of adequacy when it comes to law reform.

It is curious therefore that the Office of Legal Services, in developing procedures and criteria for evaluating its projects in the past, never provided for a meaningful client input. Evaluators have been warned away from clients on the grounds that interviewing them might impinge on the attorney-client relationship, although effective procedures for interviewing clients have been worked out elsewhere within the limits of the ethical canons.[3] Possibly the reason for the Office of Legal Services' reluctance in the past to sound out client opinion is the fact that the average client is likely to be much more interested in the satisfaction of his immediate legal needs than in the establishment of a legal principle. If this is the case, the heavier the contribution of clients to the assessment of projects, the lower the adequacy index for law reform involvement could be expected to be.

GAO, it is true, did interview 115 clients of the seven projects to which on-site visits were made. According to the Report: "Most of the 115 . . . stated that they were satisfied with the services they had received." But this can hardly be cited as evidence that clients are pleased with the emphasis on law reform. For one thing, by GAO's own count, four of the seven projects visited were deficient in law reform activity. GAO was told that the reason for this was that the projects were paying more attention to individual clients than to law reform. Hence one would expect the clients to be satisfied. On the other hand, some of the 115 clients who were satisfied must have patronized the three projects which were given high marks for law reform. Unfortunately, the GAO Report does not break down client reaction by projects, nor are we given a glimpse of the interview format, the kinds of questions asked and the manner in which the clients interviewed were selected.

However, even if the clients served by the law-reform-oriented projects were happy, this tells us nothing about the feelings of potential clients who were turned away. As the GAO Report points out elsewhere: If a grantee is concentrating on law reform.

Footnotes at end of article.

the MIS reports would probably show a decreasing caseload" (p. 27, GAO Report). A project in Connecticut, for example, recently decided to take no more cases involving divorce and other family matters so that it could carry on a more extensive program of law reform. It stands to reason that a poor person whose plea for help in obtaining a divorce was turned down would have quite a different opinion of the project than a client who was successfully defended in a landlord-tenant case. One surmises that the GAO sampling of client opinion did not cover those indigent persons who were never allowed to become clients.

It should be noted by the way that discontent over attorney preoccupation with law reform surfaces from time to time even among those persons who have received service. A reference to this problem is found in an article in the *Yale Law Journal* in December 1971 by a staunch defender of the Legal Services Program. He wrote:

"Legal Services attorneys have been known to place a higher priority on some issues . . . that are of less consequence to the client community. Moreover on certain issues the interests of the poor and the attorneys may be in direct conflict . . . Recently for example, there have been increasing complaints from clients about attorneys who 'exploit' clients to launch sweeping law reform actions when the individuals may be seeking much more limited solutions to their problems within existing laws. The clients accuse the attorneys of taking law reform 'ego trips' at their expense. The National Clients Council has begun compiling documentation on this problem and plans to make it a major issue".[4]

The argument is frequently exhumed, of course, that service to clients cannot be separated from law reform since the time and money spent on a test case or class action may pay rich dividends in terms of benefits to many more hundreds of individual indigent persons and at far less cost than would have been the case had the project been restricted to serving clients on a one-by-one basis. There are signs that this facile argument—the short-circuit justification for law reform—is beginning to grow a little threadbare. A number of observers have begun to underline a little-recognized point: that the alleged benefits of so-called "impact litigation" are frequently illusory.[5]

According to one of these observers, Harry Brill, former Director of Research for the San Francisco Neighborhood Legal Assistance Foundation, a very large part of the Foundation's litigative activity—class action suits—produced not only "hollow victories" with no real social or economic gains but were even harmful in diverting scarce resources away from the direct needs of the poor. Brill's article suggests that the time has come for thorough longitudinal research by the Office of Legal Services into the alleged economic benefits of many of the "landmark" decisions resulting from test cases brought by poverty lawyers in the past. Such research ought to greatly facilitate the effort to develop a criterion for "adequate" law reform involvement.

Finally, the question "When is law reform excessive?" requires that the catch-all expression "law reform" be broken down into its various components (i.e. legislative advocacy, administrative advocacy and high impact litigative advocacy), and that each be subjected not only to a cost-benefit analysis but equally important, each be weighed in the scales of political costs in the highest sense of the word "political", the sense in which the term is associated with constitutional issues and questions of public policy. Some elements of law reform (for example lobbying by a special interest group at public expense) have become extremely controversial. Consequently any judgment on a criterion for adequate involvement by legal services attorneys in law reform must take into account the resolution of the issue of the propriety of the various kinds of law reform.[6]

The point of the above digression is simply this: the GAO evaluation of the Legal Services Program was severely hampered by the fact that an acceptable criterion of adequacy in respect to the law reform goal of the Program was nowhere to be found, and that GAO was therefore, in order to make any judgments at all, forced to rely on the fluctuating and subjective perspectives of OEO's contract evaluators who in turn depended, for their view of adequacy, on the personal views of officials who were operating the Program. What was "too little" for these officials, might be criticized as "too much" by others, on grounds equally solid (or equally weak).

To make matters worse, not only are GAO's findings based largely on a kind of hearsay, but, by GAO's own admission, there was no possibility of substantiating the findings with any hard data. For one thing, GAO found the Office of Legal Services' Management Information System (MIS)—the source of hard data—to be in disastrous shape. Not only were many grantees not adhering to reporting requirements (according to one source less than 75% of the grantees were submitting regular reports) but much of the data in the reports that were submitted was incomplete and inaccurate. Secondly, the MIS report format contained, incredibly, no provisions to show the accumulation of grantee accomplishments in law reform! According to the GAO Report:

"The MIS report does not reflect the amount of effort and results obtained by grantees in law reform (p. 27) . . . (Therefore) adequate data was not available . . . to measure achievements in law reform . . . and to compute the average cost for cases handled" (p. 10, GAO Report).

The non-existence of a system for reporting hard data in the area of law reform, combined with the non-existence of any generally acceptable criterion for determining when law reform involvement was adequate should cool the ardor of those who think the GAO Report has settled the factual issue of the degree of law reform in the Legal Services Program. Nonetheless GAO did come up with an estimate based on what it called "indications". These indications consisted of (a) opinions found in previous OEO evaluations of 26 out of a total of 265 Legal Services line projects and (b) opinions elicited directly by GAO from attorneys and project directors working at the seven sites visited.

Of these seven projects, four were found by GAO to be insufficiently engaged in law reform. The following excerpts from the GAO Report cite the "indications" on which GAO based its judgment in each of the four cases:

1. *Project A:* "A 1970 evaluation reported that law reform activities needed strengthening. A grantee official informed us that a heavy caseload in the area of individual services precluded the grantee from emphasizing law reform" (p. 13, GAO Report).

Comment: As noted above, GAO is relying here not on hard data (statistics, records, etc.) but on a 1970 evaluation and on the subjective assessment of a grantee official. It is not unthinkable that a grantee official's self-evaluation might be motivated in part by a desire for increased funding. More importantly, a later evaluation of this same project conducted in March 1971 mentions "considerable law reform work", estimating that about 25% of the project's time is given over to law reform. The GAO assessment is simply obsolete.

2. *Project B:* "A 1969 OEO evaluation reported that grantee corporations had not markedly implemented the national goal. As of October 1971, only four of the eight law reform units required under its grant were in operation." (p. 15, GAO Report).

Comment: Again, how relevant is a 1969 evaluation to a Report issued in March 1973? An evaluation of Project B conducted for OEO by an outside firm in November 1970 indicated that staff attorneys "were heavily involved in community organizing, often at the expense of their caseloads". Community organizing is an activity which is central to such law reform activities as grassroots lobbying. To be sure, in October 1971 someone found that only 4 out of 8 law reform units required by the national Office were operational. But by what yardstick was GAO able to determine that 8 would not have been excessive? Not only is the question of the propriety of law reform begged, but the question of how much is enough. Besides, if it is possible that 4 vigorous and activist units could accomplish more than 8 mediocre ones, ought not a judgment on the effectiveness of law reform to focus on the quality and extent of the activity of the 4 units? No description of Project B's law reform activity is provided, and so the issue is resolved mechanically by the number of law reform units in operation.

3. *Project C:* "The grantee's 1970 self-evaluation report stated that a substantial, effective and organized law reform program was lacking. The grantee's executive director reported in May and August 1971 that the law reform unit was in a state of flux and not able to produce as much as had been anticipated."

Comment: Again (a) a self-evaluation can either exaggerate law reform activity to win praise or underestimate it to win dollars and (b) self-evaluations conducted in 1970 and in August 1971 could hardly be expected to be current as of March 1973, the date of the GAO Report. In December 1972, OEO had an evaluation of a significant portion of Project C performed by an outside evaluator who found that fully one fourth of the attorney staff (3 out of 12 attorneys) were devoting themselves full-time to law reform, with a caseload of approximately 45 current open cases. In addition the project was active in organizing the local Welfare Rights Organization and was serving as house counsel for the National Tenants Union. These latter activities are characteristic of projects which are activist and law-reform oriented.

4. *Project D:* "A grantee official informed us that the project had not been involved in any significant law reform activities."

Comment: Here again there is no reference to a mutually agreed upon criterion of what constitutes "significant" law reform activity, and there is no indication GAO used any additional information, such as an OEO evaluation, as a check on the grantee official's opinion. It happens that an OEO evaluation conducted in November 1970 agrees with what GAO was told: there was little or no law reform. The reason given by OEO's evaluators is that the director wished to run his program like a regular law office with service to indigent clients being the top priority.

The GAO Report concedes that each of the three remaining programs was adequately involved in law reform, and this judgment is borne out by self evaluations and by evaluations conducted by outsiders for OEO.

Project E, the Legal Services Program's second largest, was not only adequately involved in law reform but heavily involved, so heavily that the Project was recently the subject of an article in a national journal of opinion faulting it for excessive involvement.

Project F is credited by a 1971 OEO evaluation with devoting at least 20% of its resources to law reform, in addition to serving as group organizer and house counsel to such

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Footnotes at end of article.

organizations as the National Welfare Rights Organization.

Finally the seventh program, Project G, is lauded in an OEO evaluation dated June 1971 as follows: "Law reform is the most impressive aspect of the project. The number and variety of the cases mounted by this project in its short life is exceptional. The ways in which the Director has developed class actions and legislative reform shows an imaginative approach to poverty law. The project director and the director of litigation provided the basis for their reform program by inviting a number of statewide poverty groups to take permanent seats on the project's board. This has enabled the project to develop cases cooperatively with these groups on broad issues and has provided a feed-in mechanism whenever clients have been needed to bring clients action. It has also greatly facilitated legislative activity and the results to date are documented in the case summary." [7]

In sum, an independent review of the seven projects visited by GAO shows that three were not only adequately but in some cases rather deeply involved in law reform (thus far the GAO Report is accurate), while of the remaining four, only one was clearly lagging, Project D. The GAO judgment on Project A is rendered obsolete by a later OEO evaluation which shows, by GAO standards, adequate involvement. The GAO judgments on the remaining two projects, Projects B and C, are at best equivocal in view of contrary "indications" provided by OEO evaluations.

If GAO's evaluation of the seven programs were intended to serve as a basis for making a generalization about the whole Program, one could infer that 57% of the 265 projects were not doing enough law reform. This would mean that a healthy 43% were meeting the test of adequacy (whatever that is) in the area of law reform. However, due to the limited and ambivalent nature of the evidence, any generalization about the whole program, even apart from the problem of a valid criterion of adequacy, would be unwarranted. The GAO finding, originally put forward as a tentative conclusion, that "there were indications that most programs had not been adequately involved in . . . law reform", has been undermined to a point where it is totally unable to support the inferences drawn from the Report that the charge of excessive law reform has been buried.

In respect to the 19 grantees (of the 27 evaluated by GAO) which were looked at by GAO second hand, i.e. through the medium of evaluations conducted in the past by OEO's contract evaluators, GAO wrote as follows:

"Our analysis of 19 grantee evaluation reports showed that only 10 grantees were reportedly adequately engaged in law reform activities and that 8 grantees were deficient in this goal area. We were unable to determine the extent to which one grantee was involved in law reform because of the limited information in the evaluation report."

If this assessment is accurate and can support a generalization, then "most" program grantees, that is more than 50% of them, contrary to the GAO finding based on their evaluation of the seven grantees discussed previously, are adequately involved in law reform. This is a far cry from the inferences the GAO Report has given rise to that only an insignificant portion of the activity of legal services attorneys is devoted to law reform. The same evaluation reports used by the GAO team in judging the 19 grantees were recently reviewed by the Office of Legal Services and a similar conclusion was reached: more than 50% of the projects were engaged in "adequate" and in many instances, extensive law reform activity.[8]

In addition to surveying the 19 evaluations used by GAO, the Office of Legal Services, employing roughly the same rule of thumb used by evaluators in the past reviewed two other sets of evaluation reports. The first set, evaluations of 29 projects in Region IX, were analyzed to determine the number of projects found to be heavily engaged in law reform—"heavy engagement" defined as an investment of well over 25% of one's resources. Fully one third of the projects were found to be so engaged. A review of the second set of evaluations showed that of 64 randomly selected projects, 33—or approximately 52% of the number reviewed—were involved in law reform and related activities (e.g. group representation and group organizing) to a degree ranging from adequate to very heavy. The following comments taken from the reviewers' summaries are suggestive:

Project A: "42 of 62 cases of impact litigation had been initiated by the specialist involved rather than by the neighborhood attorney or his clients. 'Aggressive, committed and experienced' attorneys spend 25 to 60% of their effort on law reform and representation of poverty groups."

Project B: "This is not a typical legal services program. . . . No individual representation is provided except in those few cases where it will have some impact beyond the individual parties involved, i.e. test cases or class actions. This program, then, is *exclusively* devoted to law reform and the other Office of Legal Services goals are not applicable."

Project C: "The project has a strong law reform unit and acts as house counsel to the Welfare Rights Organization. The project has drawn up a packet of proposed legislation for the state legislature."

Project D: "Seven attorneys are assigned full-time to impact litigation and four are assigned to service work. However 20% of the time of each of the four is to be devoted to impact litigation. The priorities for impact work are: appellate litigation, legislative change, innovative actions at the trial level, group representation and development, and economic development."

Project E: "Approximately 25% of this program's time is devoted to law reform activity. One staff attorney lobbied for two full months to get a bill passed. . . . The program organizes lobbying groups and serves as their house counsel."

Project F: " 'Our law reform activity is so extensive that a full description is difficult'. Evaluators report that almost every attorney participates in law reform. The project even has a Deputy Director for Law Reform."

Project G: "This project is heavily involved in organizing welfare rights groups and tenant unions. Out of 3 lawyers, one devotes himself full-time to law reform."

Project H: "The emhasis on law reform and other impact activity is very heavy and is considered at least as important as individual casework. The program has a law reform unit of two attorneys, while several others consider impact litigation their specialty . . . The project has an ongoing legislative advocacy program and organizes many tenant unions and welfare groups."

Project I: "This project is wholly devoted to law reform activities."

Project J: "The project has allied itself with the ACLU and the NAACP to test various law reform issues . . . The project director has assigned one attorney as a full-time law reform specialist."

Project K: "This program has concentrated its efforts on group representation and applied law reform (i.e. ensuring that results of prior test case litigation are enforced)."

Project L: "This program has a specialised law reform unit, known as the Law Research Unit because of fear of adverse criticism of law reform . . . It feels law reform is the proper approach for a legal services project."

Project M: "Of 5 attorneys, one specialises in law reform and handles no individual casework . . ."

Project N: "This project has engaged in a consistent program of drafting legislative reforms and testifying on same before the state legislature."

The results of all the above analyses can be summarized as follows:

(1) Given the defective character of the data supplied to GAO and the failure of the national Office to produce any evaluation criteria, the finding by GAO that "there were indications that most program grantees had not been adequately involved in law reform" hardly justifies the inference that the ghost of the law reform issue has been laid. GAO never intended its "finding" to be the basis for a firm generalization about all Legal Services line projects. The Report, relying as it does on mere "indications" is at best suggestive only, inviting further research based on harder data and sharper criteria. In fact the real message of the Report is that the Office of Legal Services has been inexcusably remiss in the past and should undertake without delay (a) the development of a system to provide comprehensive and reliable data and (b) the construction of a set of clearly defined criteria for measuring project performance. The Office of Legal Services has finally accepted the challenge, aware that GAO could not care less what goals are selected so long as these goals are in conformity with the Statute, are clearly enunciated and are accompanied by usable performance yardsticks.

(2) In view of the critique which has been made above of GAO's seven on-site evaluations, and in view of the Office of Legal Services' own survey of 93 evaluations over and above the 19 used by GAO, the latter's "finding" is rendered even less capable of sustaining the generalization that most line projects are not adequately involved in law reform. As a matter of fact the evidence points in the other direction: while nearly all of the Legal Services Program's 265 line projects are involved in law reform to some degree, at least one-half are "adequately" involved (i.e. they devote at least 25% of their resources to law reform) and at least one-third are "heavily" involved (i.e. they devote 50% or more of their resources to law reform).

(3) To infer from the GAO Report, as many have done, that there is inadequate involvement in law reform not only among the line projects but throughout the Program as a whole is to commit a flagrant nonsequitur. For one thing, the GAO Report dealt only with line projects and did not touch on any of the other components of the Legal Services Program. Secondly, one of these components is the network of twelve national "backup centers" each specializing in some area of poverty law and each providing (in theory at least) research and litigative help to the Program's 265 line projects and 900 neighborhood law offices. In addition, the Office of Legal Services funds eight State backup centers. The backup center component alone has generated more poverty law reform during the six years this component has been active than all of the nation's legal aid programs combined during the past 50 years. The role of the backup centers was summarized succinctly by David Kirp who wrote in the *Christian Science Monitor* recently: "The heart of the Legal Services law reform efforts is in the backup center program." Hence to talk about the law reform in the Legal Services Program without adverting to the scope and intensity of law reform activity in the backup centers is simply absurd. (This is no reflection on GAO.)

Anyone who takes the time to study the evaluations and work statements of the backup centers is forced to the following conclusions:

1. Backup centers collectively spend the majority of their time and resources in areas properly defined as "law reform" areas.

2. The centers, in general, do very little work for line attorneys which is outside the scope of law reform.

3. There has been a distinct trend among the backup centers taken as a group to provide less and less backup service to line attorneys and to engage more and more in self-generated activity or activity which is in response to private and public individuals and institutions outside the Legal Services Program. In respect to their self-generated litigating and lobbying, the backup centers have become, in varying degrees and imperceptibly to the public at large, federally-subsidized public interest law firms which, as such, have no Congressional mandate.

4. The backup centers' public interest law firm activity is not only in the area of litigation and amicus briefs. They also are heavily involved in legislative advocacy, i.e. in drafting and lobbying legislation at the state and federal level. Such advocacy is in most cases not initiated in response to requests from line attorneys but is usually self-generated and then offered to whomever might be interested, e.g. local, state and federal legislators who, of course, often request such help.

5. A good portion of the activity of backup centers is only indirectly related to the Legal Services Program. For example, many of the backup centers' publications and projects are poverty-related but not relevant to the legal component of the anti-poverty program. Conversely, many other backup center activities, though related to legal programs, are not poverty-related.

The Office of Legal Services is spending approximately $73 million a year on all of its programs: line projects, backup centers and research, technical assistance, evaluation and training activities. Just what portion of the annual budget goes for law reform and related activities carried on by the line projects is difficult to estimate. As the GAO Report notes, not only were no records kept of the performance in any of the major goal areas including law reform, but there is no data available through the Management Information System to compute costs. Assuming that at least one-half of the line projects devote at least one-fourth of their effort to law reform, the price tag for law reform activities in the line projects alone must be considerable. In the case of the backup centers, whose activity is almost entirely law-reform oriented, it may be possible to arrive at a fairly reliable dollar figure. The eight state backup centers are currently spending around $2 million a year while the fifteen national support units (including 12 backup centers properly so-called) are spending $4.2 million. Inferences drawn from the GAO Report to the contrary, the above figures indicate that law reform, from the point of view of both the allocation of resources and the potential impact of this allocation on the nation's institutions, is unquestionably a very major feature of the present Legal Services Program.

The case has been made elsewhere that much of the law reform activity in the Program is either excessive and counterproductive—improper or at least very questionable—and beyond the limits of the Congressional mandate (see p. 24 below). Let it be noted, however, that to maintain that there has been a disproportionate emphasis on law reform (especially of the non-client-initiated variety) in the Program in general, and in the backup centers in particular, is not to impugn the motives or integrity of any of the attorneys engaged in law reform, nor is it to overlook the labors of those hundreds of line attorneys for whom the needs and desires of their clients take precedence over the attorneys' ideological prepossessions. The involvement of these attorneys in law reform has been permitted and even encouraged ("required" might be a better word: see p. 19 below) by previous directors of the Legal Services Program.

Secondly, the opposition of the incumbent leadership in the national Office to excessive or improper law reform should not be construed as a rejection of the need for some law reform activity. As the Acting Director of Legal Services, J. Laurence McCarty, in his reply to the GAO Report, stated:

"Lest my position be misconstrued, let me say immediately that I am not in principle opposed to class actions, suits against the government, test case litigation, legislative advocacy or any other kind of law reform. Properly considered, they are simply some of the tools which the conscientious attorney must employ on occasion in serving a particular client. What I do strongly object to, however, is the elevation of these tools to the status of ends, separated from the goal of service to individual clients and subordinated in turn to some transcendent goal such as social change."

In the same reply, McCarty raised an issue quite separate from the theoretical issue of the propriety of law reform, or the factual issue of the degree to which law reform is carried on by line attorneys. The new issue is a distinctly ethical one, ethical in the sense that it relates to some of the American Bar Association's canons of ethics. The issue is relevant to a discussion of the GAO Report inasmuch as one might be tempted to conclude from GAO's complaint over the failure of the national Office to spell out its policies that the Office was permissive on the amount of law reform attorneys ought to engage in. The facts are quite otherwise. Wrote McCarty:

Equally objectionable as the separation made in the past between the goal of service to individual clients and the goal of "law reform" is the pressure which has been brought to bear on attorneys to divide their time between these two goals and indeed to treat law reform as the primary goal. I happen to believe, as do many others in and outside the legal profession, that it is bad public policy to pressure legal services attorneys to engage in non-client-initiated advocacy on behalf of legislative proposals which may run counter to the preferences of large numbers (and in many cases the majority) of those whose taxes are being used to pay the attorney salaries. I also believe that it is not only bad public policy but a violation of the Canons of Ethics to *push an attorney who is representing a client* to do something in the way of law reform which he might not otherwise have done. This is just as bad, it seems to me, as an attempt to *inhibit* the attorney from doing what his professional judgment tells him ought to be done once he is engaged with his client. In both cases, there is an unwarranted interference with the attorney-client relationship. Yet some of the material (grant conditions, evaluation handbooks etc.) which I have read since assuming my new duties has convinced me that the application of such pressure on attorneys has been a studied policy of the Office of Legal Services for a number of years.

This issue cannot be dismissed by anyone who examines the documents McCarty refers to: the conditions attached to grants, the project evaluation reports and the guidelines issued to evaluators in the past by the Office of Legal Services. There is also some reason to suspect a correlation between a project's record in law reform and the degree to which it was underfunded or overfunded in relation to other projects. There are of course other factors to be considered in accounting for variations in the funding pattern, but the subject merits further study. For the present suffice it to say that there appears to have been a concerted effort on the part of the Office of Legal Services to upgrade law reform activity to a point where the only reasonable interpretation is that law reform had become the principal goal of the program with no amount of law reform being too much. This is perfectly consistent with the rhetoric of some of the past directors such as Earl Johnson who assigned, in no uncertain terms, primacy to law reform.

One of the ways in which this primacy was calculated was through the use of a point system in rating projects and project attorneys. A project was rated on the amount and intensity of its law reform efforts, as contrasted with its involvement in "routine" or "conventional" legal work, i.e. work (to put it in less sneering terms) which focused on the immediate and pressing problems of individual poor persons. Under the present evaluation procedure, the point system has been abandoned but the pressure is still there—or was until recently.

A prime device for exerting this pressure was the *Law Reform Issues List*—a checklist devised by the backup centers for each of the areas of poverty law and furnished routinely by the Office of Legal Services to members of evaluating teams. The following is a sampling of some of the questions on the list (N.B. The comments in parentheses have been added):

Has the Legal Services Program been active in utilizing class actions for consumer relief? (What if a lawyer like Harry Brill had his doubts about overuse of class actions? This would be a point against him.)

Have any of the attorneys in the Program drafted legislation or offered testimony in support of reform legislation? (What if the attorney were too busy trying to do right by his individual clients? What if he were trying to abide by the statutory requirements of Section 501(c)(3) of the Internal Revenue Code? Again it would be a point against him.)

Is the program challenging the segregation of children between and within schools on the basis of race? (What if the attorney deemed this to be a civil rights rather than a poverty issue? Will he be marked down?)

Is the program bringing litigation to compel nondiscriminatory employment practices? (Same question as above. Also, suppose the attorney's philosophy is: litigate only as a last resort?)

Is the program working on dismissal of employees for exercise of political rights? (What if the attorney does not want to trespass on the area monitored by the Equal Employment Opportunity Commission or by the Department of Justice? What if he wants to remain within the limits of the statute he is operating under?)

Is the program working on litigation of constitutional questions of compulsory work requirements? (Again, what if the attorney wants to keep litigation to a minimum—which is the purpose by the way of preventive education so often and so piously invoked in legal services rhetoric? What if the attorney wants to abide by the statutes dealing with work requirements? Are work requirements per se—no matter how defined and no matter what the circumstances—to be deemed always unconstitutional? What if the attorney has a different view of their constitutionality? Must he align himself with the views of the person or persons who drafted the Law Reform Issues List under pain of receiving a demerit?)

Is the program working on litigation to insure that training is actually provided in manpower training programs? (Again, the push for litigation, and a demerit for the lawyer who tries to follow the ethical tradition of keeping litigation to a minimum.)

Has a special unit been established to im-

plement impact strategies on housing? (Suppose the attorney believes this is not a problem in the area he serves, or suppose he believes there are other ways of addressing the problem without establishing a special law reform unit for this one problem? Will this mean a point against him for lack of commitment?)

Are the program attorneys assisting in the formation and development of local tenants organizations and unions? (What if the lawyer should follow the more traditional view that it is not the lawyer's function to organize groups, except for doing such things as assisting a credit union or small business to file papers of incorporation, etc. Why should a legal services attorney who is more traditionally oriented be forced into the activist role in respect to group organizing? Why isn't the lawyer allowed to exercise his own professional judgment on these matters?)

Are the Legal Services attorneys aware of the National Tenants Organization and the possible help he can provide? (Suppose he disagrees with the tactics espoused by the NTO and the NWRO? Reasonable men can differ on these matters. Why should he be forced to get in step with the author of the *Law Reform Issues List* on things of this nature?)

Are the attorneys familiar with the procedures of the local welfare rights organization (WRO) . . . and with legal issues which should be brought to the attention of the WRO as useful for organizing? (What if the attorney thinks it improper to become the house counsel for an organization which can hire secretaries, accountants and other staff? What if he views this—his free services as house counsel—as a diversion of resources? Another demerit?)

Are the attorneys familiar with the procedures for challenging welfare agency action in court? How many cases have they brought? (Suppose an attorney is able to obtain satisfaction for his clients through negotiation? Suppose he doesn't believe the welfare bureaucracy is always wrong in a dispute? Is his competence to be gauged by the number of suits he brings against the government? Surely a legal services attorney ought to be able to bring such suits when his professional judgment dictates. But is it good public policy to urge the attorney to bring as many such suits as he possibly can? Is it fair to assign him demerits if he resists this questionable policy?)

Are the attorneys seeking to correct such problems as (a) requirements that recipients pick up their checks at state employment offices and (b) denial of welfare rights groups access to welfare offices for advocacy and organization? (Suppose the attorney sees nothing wrong with welfare recipients picking up their checks in person? Suppose he has experience with local welfare rights groups which engage regularly in destructive sit-ins and thrashings? Is he not to be allowed to exercise his own discretion in these matters? Must he align his judgment with that of the person who wrote the checklist? What if he doesn't? What if he asserts his lawyer's right to consult his own lights on these things?)

The above are but a few of some 200 questions used by evaluators in the past to assess the quality of a legal services project and the competence of its attorneys. Many of the questions are as slanted and as packed with value-judgments as are those just quoted. Woe the poor attorney who has a different point of view and who believes there are better ways to serve the poor than to stir up litigation and encourage militancy and hostility. Clearly there is a serious ethical problem here. According to Ethical Canons 5–21 and 5–23:

"The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political or social pressures upon the lawyer. . . . A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. *Some employers may be interested in furthering their own economic, political or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with the establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client.*" (Emphasis added.)

The italicized sentences in particular would seem to be applicable to the case at hand: the use of the *Law Reform Issues List* by the Office of Legal Services' evaluators. It was for expressing, in the ABA Journal, sentiments similar to those found in the above-quoted canons that Vice President Agnew was derided. Wrote Agnew:

"The law reform aspect of legal services, however, threatens to turn the relationship upside down. If a client with a problem comes to a legal services lawyer who is imbued with law reforming zeal, the lawyer sees a great deal more than the client's problem in the matter and often expands the case into the broadest legal principle supportive to his social philosophy it will sustain—a sort of Parkinsonian corollary. Instead of resolving the case at the lowest level and earliest opportunity satisfactory to the client, this legal services lawyer is inclined to take it to the highest level possible to win the legal issue and implant the empathic legal principle he has perceived to be involved. In certain circumstances, this zeal is not only acceptable but commendable. However, it is naive not to consider the attendant consequences of this practice."

If it is objectionable for an attorney to put his own agenda ahead of the needs of his clients, it is doubly objectionable for the organization which pays the attorney's salary to pressure him to manipulate clients in order to carry out the organization's agenda. The Canons are a double-edged sword. They strike at those who would prohibit suits against the government but they also strike at those in the national Office of Legal Services who have in the past goaded attorneys to engage in law reform.

Finally there is another way (alluded to at the beginning of this paper) in which the GAO Report has been misused. The argument runs as follows: GAO, in conducting its evaluation of the Legal Services Program, accepted as one of the criteria for evaluation the law reform goal of the Program. But GAO is an arm of the Congress. Therefore the GAO's acceptance of the law reform goal—or rather the primacy and separateness of that goal as reflected in the GAO finding of inadequacy—implies that Congress has accepted and approved same. This puerile argument has been seriously advanced by a number of law reform advocates. The fallacy should be obvious. GAO, as an arm of Congress, could be expected to approve any statutory goals set by Congress. But in the case of goals set by the administrative agency carrying out the statute, GAO simply accepts these as a given and evaluates accordingly. If the administrative agency subsequently changes the goals, GAO, in its next evaluation will "accept" these changed goals as readily as it accepted the previous goals, unless of course they are in conflict with the broader statutory goals. Consequently, GAO's acceptance of the law reform goal and other goals—in addition to the priority assigned these goals by the Legal Services Program—cannot possibly be construed to imply Congressional sanction and intent.

Another text frequently adduced by those who claim a Congressional mandate for law reform is the following passage from a 1970 report of the Senate Committee on Labor and Public Welfare:

"Yet, the legal services program can scarcely keep up with the volume of cases in the communities where it is active, not to speak of places waiting for funds to start the program. The committee concludes, therefore, *that more attention should be given to test cases and law reform.*" (Emphasis added.)

Now the present leadership at the Office of Legal Services has no difficulty in accepting the proposition that there is a significant place for law reform in the Legal Services Program, nor that more attention should be given to law reform by projects that habitually engage in little or no law reform when representing individual clients. A lawyer who is in principle opposed to any kind of law reform activity on behalf of an individual client is as wrong-headed as a lawyer who systematically seeks opportunities to engage in law reform even if it means reducing his caseload and turning away clients with little law reform potential. The present leadership at the national Office does not agree, however, that "paying more attention to law reform" entails or justifies any of the following:

(a) The *privacy* of law reform (and of related activities such as group representation) as a goal separate and distinct from the goal of service to individual clients.

(b) The carrying on of *non-client-initiated and non-client-centered* law reform activities by Federally-subsidized public interest law firms (misnamed "backup centers").

(c) The *pressure* exerted on line attorneys, through the backup center network but in particular by the national Office through its policies and funding preferences, to put law reform ahead of service to individual clients.

Whatever about the propriety or impropriety of the activity mentioned in (b) above, whether considered in itself or in the context of Federal funding, there is as yet no Congressional "mandate" for it. The impasse in the 92nd Congress over the issue of the powers to be assigned the proposed Consumer Protection Agency is proof positive that the concept of a Federally-subsidized public interest law firm is an innovation which has not yet been sanctioned by Congress. If Congress could not agree on an agency which would litigate and lobby on behalf of such a large and politically potent interest group as consumers, how can it be asserted that Congress has already mandated the existence of 20 public interest law firms (the 12 national and 8 State backup centers) for the smaller class of the poor?

To claim that the Economic Opportunity Act authorizes such entities is really to twist that much-abused piece of legislation to the point of absurdity. The terms "law reform" and "backup centers" appear nowhere in the Act, nor, with the one exception noted above, do they occur in any of the documents comprising the legislative history of the Act. The terms were first introduced (as were the activities they describe) by the early directors of the Legal Services Program. Curiously neither term ever found its way into an OEO Instruction or into the Code of Federal Regulations. The fact that the whole case for holding that law reform, in the full-blown sense, has been "mandated" by Congress rests on the single, almost casual reference which appeared in the Senate report is a sign of the extreme weakness of the law reform rationale. When the sentence in the Senate report and the GAO Report of March 1973 are so desperately seized upon to bolster the case for Congressional intent, one can be forgiven for suspecting that there is no case at all

and that Philip Hannon was entirely right when he wrote:

"Congress as yet has not been forced to face the kind of law reform oriented program which OEO now envisions. Some liberal members of Congress have spoken out in favor of this more liberal approach but Congress as a whole has not yet spoken".[9]

FOOTNOTES

[1] In fairness to the GAO they never intended to pass any judgment on the adequacy or legitimacy of the Office of Legal Services' entire law reform effort. They were concerned rather with pointing to certain improvements that could be made in individual grantee operations, given the desire of the national office to emphasize law reform. The improvements recommended by GAO were a more precise definition of goals and priorities and and more specific plans for implementing these goals. Neither did GAO intend their report to present an up-to-date picture of the status of law reform among the line projects. They were simply flagging what appeared to be a problem in 1970–71 and suggesting that the national office address it now, if it had not already done so.

[2] This paper distinguishes between the law reform activities of Legal Services attorneys and their political activities. Politicization of the Legal Services operation, in the narrower and proper sense of the term "political", the sense intended by the Hatch Act, refers to attorney and project involvement in activity on behalf of or against the candidacy of persons running for elective office. Such involvement raises a number of serious issues. The documentation of the charge of improper political activity by legal services projects will be treated in a separate paper. The GAO Report does not touch on the problem of political activity in the sense just indicated.

[3] The Office of Legal Services is presently attempting to overhaul evaluation procedures so as to insure a much greater client role in the construction of a formula for the right mix of law reform and individual service.

[4] "The Legal Services Corporation: Curtailing Political Influence" by Richard Blumenthal, 81 Yale LJ 245 note 49.

[5] See "Social Justice Through Civil Justice" by Geoffrey Hazard, 36 *U of Chic LR* 707, and "The Uses and Abuses of Legal Assistance" by Harry Brill, p. 38, *The Public Interest*.

[6] See Geoffrey Hazard's four articles on poverty law (26 Jour Soc Issues 48; 36 U of Chic LR 699; 37 U of Chic LR 242 and 8 Jour of Law & Econ 1) and Marshall Boarman's two papers "Issues Concerning Legal Services" (Cong Rec March 1, 1973, vol. 119, pt. 5, p. 6013) and "The Problem of the Backup Centers" (Cong. Rec. April 3, 1973. vol. 119 ,pt. 9, p. 11748).

[7] The reference to the "feed-in mechanism" is illuminating. The evaluators do not view this as carrying law reform to an excess but there is an Informal Opinion of the ABA's Committee on Ethics (Opinion 1234 dated July 19, 1972) which specifically prohibits the seeking out of potential litigants for the purpose of establishing a point of law.

[8] It should be remarked that the GAO Report is seriously vitiated by the fact that it offers a picture of what was happening on the law reform front in 1970 and 1971, but tells us nothing of project activity in 1972. Yet involvement in law reform has been moving on a sharply ascending curve ever since the Legal Services Program was initiated. The GAO Report notes that "in our August 7, 1969 report . . . (on the Legal Services Program) we reported there was little activity in law reform . . . (and that) apparently . . . only 6 out of the 34 grantees evaluated were effectively engaged in law reform activities" (p. 17, GAO Report). The Report adds: "We recognize that OEO has increased the degree of grantee involvement in . . . law reform since our 1969 review" (p. 18, GAO Report). As a matter of fact the involvement increased from 6 out of 34 to 3 out of 7 (if one accepts GAO's estimate) and 10 out of 19. If this rate of increase were sustained through February 1973 (the month the new Director, Mr. J. Lawrence McCarty took over), from ⅔ to ¾ of all projects would now be adequately involved in terms of standards used by GAO.

[9] Legal Services and the Local Bars: How Strong is the Bond" by Philip Hannon 6 Cal West Law Review 51

REPLY TO SPECIFIC RECOMMENDATIONS CONTAINED IN GAO REPORT

RECOMMEND

"We recommend that the Director of OEO require program grantees to include in their grant applications statements defining objectives and priorities and indicating how economic development and law reform objectives are to be achieved."

REPLY

The criteria listed [on page 2 of the GAO report] as goals of the OEO Legal Services program, which were used in evaluating program effectiveness, were never questioned by GAO as proper or appropriate goals. The GAO report further indicated the "goals" that were existent were not precise. The report stated, ". . . it is essential for program grantees to have clearly defined objectives and priorities and a plan for achieving these objectives."

After review of the legal services program, OEO has enunciated precise objectives and priorities for legal services programs. The primary objective of the Legal Services program and of all line attorneys and backup attorneys employed in the program is to provide quality legal services in non-criminal matters to eligible individuals. (A complete set of regulations issued by OEO to achieve that objective are attached in the appendix to this reply).

RECOMMEND

"We recommend that the Director of OEO:

"Require program grantees to comply with the reporting requirements of MIS;

"Take steps to insure that revisions in the Legal Services program MIS report are made;

"In improving MIS, insure that consideration is given to including revisions in the report format which provide management with selective meaningful data on grantee accomplishments; and

"Require OEO Legal Services program officials to use the MIS reports in monitoring grantee activities."

REPLY

The purpose of the GAO report as to program data was to review seven grantees' submission of MIS reports in order to 1) test the accuracy of the reported data, 2) evaluate the accomplishment of the grantees, and 3) evaluate the usefulness of the data to OEO. The findings by GAO were in four general areas: a) program grantees were not adhering to the MIS reporting requirements; b) MIS statistical reports on grantee activities were inaccurate and incomplete; c) MIS had not provided management with data needed for monitoring grantee operations, e.g., data on grantee accomplishments in the program goal areas of economic development, law reform and education; and d) OEO had made little use of the MIS reports.

Since its inception the Management Information System (MIS), as established by OEO and applied to the Legal Services Program, has been beset by changes with respect to both the data required from the Legal Services Projects (LSPs) and the diligence of enforcing compliance on the part of National Headquarters.

When OEO terminated MIS as a national reporting requirement, the Legal Services Program was excepted from the termination. By this exception OEO and its Office of Legal Services lost one of its most powerful instrumentalities, viz., the Community Action Agencies, for requiring its delegate agencies to report through OEO grantees. Another difficulty in effecting compliance with the MIS report was the expiration of the OMB approved MIS form in October, 1968. Thus there was no longer a certain legal obligation upon any of the grantees or delegate agencies of the Office of Legal Services to respond in any significant manner. The Office of Legal Services thereupon convened a Task Force which revised the MIS reporting requirements system, but delayed the implementation of that revision pending the results of a feasibility study and pilot computer project scheduled for completion by June 1, 1973.

This computerized system will substitute for the present hand-tallying method of compiling the necessary statistics, a system that captures the information at the first instance, vis., the intake interview. It is believed that by using the pre-existing interview process to capture the MIS reporting information there will be no additional effort (as was necessary with the prior MIS system) and compliance will be thereby significantly improved. After completion of the feasibility study OMB form approval will be sought and the data capture and retrieval system (DCRS) implemented on a nationwide basis in accordance with GSA requirements.

The revised MIS reporting requirement will: a) capture precise client and case characteristics; b) identify trends in the caseload; and c) enable Legal Servies management to use caseload information to provide assistance to management at all levels of the program.

This management tool will not provide a cost per individual case but rather serve as a first step in fully satisfying the Office of Legal Services informational needs. DCRS will accurately portray the number of cases of a particular program for any period of time. From this figure the average cost per case for each program can be calculated. More specifically DCRS will furnish a percentage of total cases allocated to a particular substantive area of the law as selected and identified on the intake document. To assure GAO of our future desires to obtain a per client cost would be premature and would unnecessarily obligate staff time and other resources to a task which will be satisfactorily accomplished by the DCRS.

In summary, then, the GAO recommendations to the Director of OEO will be satisfied by the revised MIS system using the DCRS. The recommendations concerning compliance with the MIS reporting requirement and the revisions to the MIS reports have already been fully discussed and these recommendations are already well on the way to being implemented. The management report format which will provide selective meaningful data has been fully considered. These reports will not only show trends in caseload but will aid in the development of other management techniques for using data.

The recommendations that Legal Services Program officials use the MIS reports in monitoring grantee activities is currently being effected through the implementation of DCRS.

RECOMMEND

"We recommend that the Director of OEO:

"Emphasize to Legal Services program grantees the need to comply with established eligibility income limitations and to obtain and record complete data supporting person's eligibility for legal assistance particularly in cases involving law reform issues, groups of individuals, and nearly poor persons and

"Require that the propriety of grantee attorneys' eligibility determinations be reviewed by grantee officials and be closely monitored by OEO through the annual grantee evaluation and spot checks by OEO regional office personnel."

REPLY

A new regulation concerning eligibility income limitations is being drafted. Present plans are to issue standardized eligibility limitations, the use of which shall be mandatory for local legal services programs (as opposed to the discretionary use of the current income poverty guidelines).

OEO is also preparing a regulation on mandatory recordation of complete data supporting a person's eligibility for legal assistance. Such data shall be open to GAO inspection as well as to frequent monitoring by OEO officials.

RECOMMEND

"We recommend that the Director of OEO require program grantees to comply with OEO Instructions on the allowability and documentation requirements of non-Federal contributions. We also recommend that OEO closely monitor grantee efforts to bring about the needed compliance."

REPLY

OEO plans to more carefully monitor the allowability and documentation of non-Federal contributions so as to insure grantee compliance with OEO Instructions.

RECOMMEND

"We recommend that the Director of OEO require that OEO's accounting requirements for Legal Services program grantees be revised to provide for the maintenance of adequate records and the establishment of procedures for handling client deposits."

REPLY

OEO is currently drafting a regulation on the recording and handling of client deposits.

RECOMMEND

"We recommend that the Director of OEO require that:

"Wisconsin Judicare accumulate accurate and complete MIS data on its operations, including data on its activities in the program goal areas of law reform, economic development, and education.

"A data collection system be established for a standard program grantee for comparison with Wisconsin Judicare.

"Private attorneys become more involved in law reform and economic development.

"The services provided in education, advocacy, and economic development be extended to include diverse segments of the intended beneficiaries.

"Wisconsin Judicare include appellate actions by private attorneys in its legal services."

REPLY

OEO is in the process of setting up a $2.5 million experiment in California to test the Judicare system. This experiment is designed to meet GAO objections by setting up a standard program and system of record-keeping so that Judicare can be effectively evaluated and compared with the staff attorney method of legal services.

In addition, OEO plans to send a representative to Wisconsin to make an on-site inspection as to the type of records which are now being kept and how best to make these records accurate and usable for effective evaluation and comparison with the staff attorney method.

Several similarly situated grantees using the staff attorney approach will be selected (and a standard data collection system established) for comparison with the California and Wisconsin Judicare experiments.

RECOMMEND

"We recommend that the Director of OEO require that:

"Wisconsin Judicare payments to private attorneys be supported by evidence showing that legal services had been furnished to clients.

"Wisconsin Judicare obtain and record complete data supporting client eligibility.

"OEO officials follow up on Wisconsin Judicare's efforts to improve the handling of non-Federal contributions."

REPLY

As to supportive evidence that legal services have been furnished to clients, OEO is planning to consult with private attorneys in Wisconsin and, based on these consultations, establish procedures which are not unduly burdensome or time-consuming.

As to obtaining and recording complete client eligibility data, see earlier comments.

As to non-Federal contributions, OEO plans to more carefully monitor the documentation and allowability of these contributions.

ST. LOUIS ALDERMEN SUPPORT EXPANDED AMTRAK SERVICE

Mr. SYMINGTON. Mr. President, the St. Louis Board of Aldermen has proposed in a resolution that Amtrak establish additional routes which would link Missouri with cities in the West, Southwest and Southeast.

For some time, I have urged upgraded passenger train service to assure an efficient and economical means of travel in this country. In that regard, I supported the efforts in the Senate last year to increase funding for Amtrak to permit the continuation of the important National Limited train between Missouri and the east coast.

We are now confronted with a serious energy shortage, which has caused reductions in commercial airline flights and discouraged many Americans from relying on their cars for transportation, particularly for vacation or weekend travel. With proper management and adequate service, passenger trains can offer Americans an alternative mode of transportation which is reliable and helps conserve energy.

The board of aldermen recommendations for additional rail service between the Midwest and other parts of the country are realistic; and I have written Amtrak President, Roger Lewis, to request his consideration of the board's suggestions.

In addition, I join the board in commending the accomplishments made thus far in improving Amtrak services and hope that Missourians soon will be offered expanded opportunities to travel by train.

Mr. President, I request that the board of aldermen resolution and my letter to Mr. Lewis be printed in the RECORD.

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

RESOLUTION No. 62

Whereas, this country is suffering from a severe energy shortage which promises to continue for the foreseeable future,

Whereas, the creation and operation of the National Railroad Passenger Corporation (Amtrak) has evoked a response from the general traveling public to the degree that empty seats on trains have become as scarce as occupied seats once were, and

Whereas, Amtrak has announced the institution of additional service from St. Louis to Dallas in the near future,

Now, therefore, be it resolved that this Board of Aldermen commend Amtrak for its service improvements and service extensions and requests Amtrak to consider service on the Dallas train to San Antonio and Houston, additional service between St. Louis and Kansas City, between St. Louis and Denver, between St. Louis, Kansas City, and the southeast, including Florida, and urges Amtrak to proceed quickly to acquire new equipment, improve the service of its trains, and answer the demands for additional service from the general riding public.

Be it further resolved that the State of Missouri enter into negotiations with Amtrak to support additional service between St. Louis and Kansas City and other points within the confines of the State.

U.S. SENATE,
Washington, D.C., January 16, 1974.

Mr. ROGER LEWIS,
President, National Railroad Passenger Corporation, Washington, D.C.

DEAR MR. LEWIS: Enclosed for your consideration is a copy of a resolution approved by the St. Louis Board of Aldermen urging increased rail service for St. Louis.

This resolution corresponds with our efforts last year to assure adequate funds for continued and upgraded rail passenger service between Kansas City, St. Louis and the East Coast. Now that the country is confronted with serious energy shortages, it is important that we further expand and improve passenger train routes. With proper scheduling and good service, it is possible the routes proposed by the Board of Aldermen could develop into important and self-sustaining links between Missouri and the West, Southwestern, and Southeastern United States.

Your consideration of the Board of Aldermen resolution, as well as your comments, would be appreciated.

Sincerely,

STUART SYMINGTON.

SAYLOR'S SEAT

Mr. HUGH SCOTT. Mr. President, a recent editorial in the Patriot of Harrisburg, Pa., assessed with wisdom the upcoming election to fill the State's 12th Congressional District vacancy caused by the untimely death of Congressman John Saylor.

The Patriot noted that:

Americans ... generally demonstrate a great deal of common sense when they go to the polls and . . . Watergate falls far down on the list of issues for two candidates totally untainted by the sordid affair.

Mr. President, I say amen to that, and I ask unanimous consent that this editorial be printed in the RECORD.

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

[From the Harrisburg (Pa.) Patriot, Jan. 4, 1974]

SAYLOR'S SEAT—DON'T READ TOO MUCH INTO RACE

Next month's election in Pennsylvania's 12th Congressional District should be interpreted as nothing more than a vote to determine the successor to the late U.S. Rep. John Saylor. It pits two able men, both politically astute and familiar to voters throughout the district.

Saylor's long-time administrative aide Harry Fox, nominated by district Republicans, will oppose State Rep. John Murtha, nominated by the State Democratic Executive Committee. There are several legitimate issues and it would be disservice to the democratic system to allow the impression that the outcome merely will reflect district voters' views of Watergate.

It is a safe assumption that if voters linked all Republicans with the Watergate burglary and cover-up the GOP would be out of business. Americans, however, generally demon-

strate a great deal of common sense when they go to the polls and we suspect that most elections—even this year—will turn on local issues and the personal qualities of the candidates.

One of the most important local factors is a 7,000-voter registration edge held by the Democrats. Saylor, who held his seat in Congress from 1949 until his death last October, overcame this disadvantage by serving the best interests of his Democratic constituents, often to the chagrin of Republican purists in the district.

As Saylor's administrative aide, Fox has fallen heir to many close ties with Democrats in the district. But these will be severely strained by the candidacy of Murtha, who is popular in his own right and has the full support of the State Committee. In addition, State Democratic Chairman Dennis Thiemann has said he believes the Democratic National Committee will take an active role in the campaign.

He suggests as well that the Republican National Committee might take part, but Fox's efforts to get an agreement to limit campaign spending indicates he isn't expecting much outside help.

In the end, the result will depend on party organization, the personal appeal of the two candidates and local issues, particularly economic. And, of course, money. Watergate falls far down on the list of issues for two candidates totally untainted by the sordid affair. It will influence few voters and will be of little importance unless the election is so close that it could have been turned around by the few disgruntled Republicans who may stay home. Going against a popular opponent with active and financial aid coming from State and National committees in a Democratic district, Fox is going to be hard-pressed to hold his own. If he wins it won't be a victory for the Watergate philosophy and if he loses it won't mean that all Republicans everywhere face disaster in this fall's congressional elections.

The 12th District election is very important to residents of the district and to the candidates. It is of interest statewide because it may alter the composition of our congressional delegation. Naturally, only one of 435 members of the House of Representatives will be elected. Let's keep it in perspective.

INFORMING THE MEDICAL CONSUMER

Mr. BIDEN. Mr. President, an article in the Washington Post on January 18 describes Ralph Nader's efforts to publish a "medical consumer directory," which would include information on doctors' specialties, office hours, and fees.

Mr. Nader and his colleague, Dr. Sidney Wolfe, who heads the health research group, met with resistance from medical groups who maintained that any directory including such information would constitute illegal advertising. In spite of this opposition, 115 physicians did cooperate.

The medical consumer directory reveals that ove. half of the participating physicians require a cash fee at the time of the first appointment, that there is a wide variance in fees for this first visit and in charges for the same laboratory tests, and that less than half of the physicians in general practice make house calls.

According to Dr. Wolfe,

The difference in fees for tests that cost a dollar or two to do . . . and the demand for a fee in advance of service, show the degree to which medicine is a business rather than a human service.

Dr. Wolfe contends that consumers are denied access to basic information about the fundamental aspects of a doctor's practice. Dr. Wolfe said in the Post interview:

They are locked out of any information that would allow them to pick one doctor over another. We think this is a conspiracy against the public.

Mr. President, I commend these efforts to inform the consumer of his medical options. Since most of us are not physicians, we can hardly make intelligent decisions about our own health needs. But in areas where options do exist, such as in the initial selection of a physician, we ought to at least know what we are paying for.

I would like to share with my colleagues this informative article in the Washington Post, "Doctors' Fees Publicized." Therefore, I ask unanimous consent that the text of this article be printed in the RECORD at this point in my remarks.

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

NADER DIRECTORY RELEASED—DOCTORS' FEES PUBLICIZED

(By Victor Cohn)

A drive to publicize the widely varying fees and qualifications of every doctor in the nation was started by Ralph Nader yesterday, with release of the country's first "medical consumer directory," which provides information on doctors in Prince George's County.

Because of what two Nader groups called "massive resistance" from state and county medical groups and the advice of Prince George's County Medical Society that doctors not cooperate, only 115 of the county's 463 physicians were willing to furnish any facts for the publication.

The directory shows that:

54 per cent of the 115 doctors who cooperated demanded a cash fee at the time of the first appointment.

Fees of general practitioners—GPs—for a first visit range from $5 to $35. Pediatricians get from $10 to $20; obstetricians, $15 to $30.

Some doctors charge far more for the same lab tests than others—from $2 to $8 for a urinalysis and $3 to $16 for a throat culture, for example.

No pediatricians and less than half of the GPs and internists will make house calls.

Sixty-five per cent of the self-styled specialists in internal medicine, 38 per cent of the obstetricians and 30 per cent of the pediatricians lack certification as qualified specialists by national examining boards.

Sixty-seven per cent of GPs also lacked certification, but a "family practice" certifying board has existed for only a few years.

This information was included in what is primarily a 116-page directory with 115 names of doctors who gave at least some information, followed by a list of the 348 who would not.

Starting with "Dermatology—Schacat, David A.," who would not disclose his fees but listed his office hours, the directory ends with "Urology—Hazig, Mohammed," who gets $22 for an initial visit, $10 for a routine visit, $3 for a urinalysis and does not require a fee at the time of appointment.

Dr. Sidney Wolfe, Nader's health colleague, called the cooperating doctors "a group to be admired for their civil disobedience in respect for their patients."

The directory's publishers, Nader's Public Citizen Inc., and the Health Research Group that Wolfe heads, jointly sued the Maryland Commission on Medical Discipline and the state and Prince George's county medical societies yesterday.

They did so in an effort to force the groups to permit doctors to cooperate in providing information. This will be only the first of a series of attempts, it was indicated, to batter down laws in more than 30 states that forbid doctors to "advertise." Those laws are used by the medical societies, Wolfe charged, to keep information of almost all kinds hidden from the public.

State and county medical society officials said that they must be guided by state law and regulations that forbid most medical advertising. "We aren't really against a directory," said Robert Helfridge, executive director of the Prince George's County Medical Society. "But we don't like publication of fees or prescription practices."

What the citizens' groups are starting, Nader predicted, is "a movement I believe will sweep the country" to publicize information not only on doctors but also on plumbers, electricians, painters, auto repairmen and others. These groups, said Nader, "give billions of dollars in local services but get very little surveillance."

More than 150 groups in 32 states have already told the Health Research Group that they want to compile consumers' medical directories, Wolfe said.

"Doctors who are well trained, accessible to patients, charge reasonable fees and practice good quality medicine are not likely to want these facts hidden," he said. "In contrast, the information we have on Prince George's County—the difference in fees for tests that cost a dollar or two to do, for example, and the demand for a fee in advance of service—these show the degree to which medicine is a business rather than a human service."

This new Nader campaign started with the idea that "consumers pay their doctors, and they ought to have some information on what they're paying for," Wolfe said.

He and lawyers Robert McGarrah and Raymond Bonner told of unsuccessfully trying to get a list of doctors from the Prince George's County Medical Society, after picking Prince George's as "a typical American county."

Getting no list and few facts, they conducted telephone interviews with doctors listed in the yellow pages and other sources, then sent the doctors a copy of their listing for review.

More than 100 doctors asked that their listings be omitted, Wolfe said. What had happened, he said, is that the Prince George's Medical Society sent doctors two letters telling them that "information on fees . . . and some other information is considered indirect advertising and is prohibited in Maryland."

McGarrah also charged that the state medical society—formally called the Maryland Medical and Chirugical Faculty—said that doctors who flouted the law might face revocation of their state licenses.

"Many doctors," he said, "told us they felt consumers should have this information and they had nothing to hide, but they were afraid of getting into trouble."

Both John Sargeant, executive director of the state group, and Helfridge, of the county medical society, denied threatening any loss of medical licenses.

But the state group cited the opinion of its legal counsel, John F. King of Baltimore, that much of the information sought "would constitute advertising," and Dr. William Gunther, Prince George's president, wrote fellow doctors that "apparently publication of information relating to fees or drug prescription is unethical."

The Health Research Group questionnaire also sought some information on drug-prescribing information "as a guide," Wolfe said, "to what doctors do." The results showed that 40 per cent of the 115 doctors who cooperated prescribe erythromycin, which Wolfe said "often damages the liver." Forty per cent prescribe Ritalin as an anti-depressant which Wolfe called "useless for that purpose." Fifty-three per cent prescribe the pain-killer Darvon, which he said "is no better than a placebo" (or sugar pill).

The Maryland law on information about doctors is only one sentence: "No physician shall advertise except as provided by regulations" of the Maryland State Board of Medical Examiners.

This board permits doctors to list their names, phone numbers and specialties in yellow pages and other types of announcements. Some medical societies—the District of Columbia Medical Society, for example—do not even permit that. Maryland and Virginia doctors, but not D.C. doctors, may include their specialties in the telephone book.

"These rules," Wolfe maintained, "are used to keep consumers in ignorance."

"Consumers cannot get information about the most basic, fundamental aspects of a doctor's practice. They are locked out of any information that would allow them to pick one doctor over another. We think this is a conspiracy against the public."

"This country tolerates the very worst along with the best quality of medical care and those who overcharge along with those who charge reasonable fees. This can best be explained by the total lack of information consumers have."

The Nader campaign was backed by Frank Kratovil, president of the Prince George's County Health and Welfare Council, who appeared at a news conference to announce that the group will sell the directory for $1.50 at its headquarters at Hampton Mall in Capitol Heights.

LEGAL SERVICES CORPORATION

Mr. TOWER. Mr. President, I am delighted today to call the attention of my colleagues to a column from the Orlando Sentinel of December 26, 1973, entitled "It's Good News Again From Dixie Filibuster." The astute columnist, John D. Lofton, Jr., pinpoints the real issues involved in Senate consideration of S. 2686, the Legal Services Corporation proposal, and gives much-deserved credit to the distinguished junior Senator from North Carolina (Mr. HELMS) for his outstanding leadership in opposition to this bill.

Mr. President, I respectfully ask unanimous consent that full text of the article be printed in the RECORD.

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

IT'S GOOD NEWS AGAIN FROM DIXIE FILIBUSTER

(By John D. Lofton, Jr.)

WASHINGTON.—More good news from the nation's capital. Another courageous Southern senator has filibustered and delayed a horrendous piece of legislation.

First, it was Sen. James Allen, D-Ala. He talked to death, until next at least, a multi-million-dollar screwball scheme to finance presidential elections out of your pocket and mine. Now, it's Sen. Jesse Helms, R-N.C. He has been verbally victorious in putting off until late January of next year S. 2686, a bill to establish a Legal Services Corporation.

The critical question, Sen. Helms emphasizes, is not whether the poor should or should not have access to legal services. Most surely they should. The question is whether the resources of the federal government should be used to set up para-governmental instituions to effect social change without the usual social change without the usual checks and balances of representatives government.

The proponents of S. 2686 in attempting to write such a revolutionary concept into law, are obviously not bothered by the question. The answer for Sen. Helms, however, is a resounding "No!"

"By using the judicial system and the administrative process to effect social reform, you are making an end run around the constitutional system of our country, and you destroy the popular concensus that is necessary for long-term reform," Helms says.

Any federally funded social program must be responsible and accountable to the public. Once a lawyer goes on the public payroll, he necessarily accepts different standards of independence than if he were economically independent of government money.

"Without the normal economic restraints, the federally funded poverty lawyer faces enormous temptations to raid the federal treasury to support the causes which he espouses."

The record supports what the senator says. The following are examples of abuses under under the present federally funded legal services program, a program less liberal than S. 2686:

In St. Louis, Democratic Gov. Warren Hearnes vetoed a $390,359 legal aid society grant charging that the project had represented rent strikers in a public housing project, black militants in a church confrontation, and black students accused of mutilating an American flag. An investigation proved that a number of the clients were clearly ineligible for aid.

An active Communist party member, found guilty of larceny before he was hired, was found to have improperly provided legal aid to persons associated with the Weatherman faction of Students for a Democratic Society in connection with an interstate dynamite shipping case.

Stephen Bingham, a legal services fellow assigned to the Berkeley program, was paid for a period of eight months although he performed no official work. During his fellowship, he worked closely with a Communist law firm heavily involved in agitating for prisoner rights. Subsequently, Bingham was identified as the man who delivered the gun to Soledad "brother" George Jackson, immediately prior to Jackson's attempted escape from San Quentin.

In at least one case, Sen. Helms' charge of unaccountable legal service lawyers raiding the U.S. Treasury is literally right on the nose. One of Communist Angela Davis' attorneys-to-be embezzled $10,000 from a legal services program he was supervising in Redwood City, Calif.

Sen. Helms also opposes S.2686 because it has received very little debate in the Senate, no hearings have been held on it, there has been no consideration of the measure by the Judiciary Committee and there has been no discussion of the nearly 100 amendments that opponents of the bill have to offer.

Speaking in opposition to the foolishly risky White House strategy of waiting to alter S. 2686 in a House-Senate conference rather than fighting it on the Senate floor, Helms declares:

"Why do we not earn our pay in this Senate of the United States? Were we not elected to help establish national policy? If we're going to let White House staffers and Senate staffers solve our problems for us and just let us ratify their deals, we should go home now."

The job of deciding what government-financed lawyers should or should not be allowed to do is a job the Senate should have a say in, Helms believes.

"Let us decide whether we want local grantees controlled by the ACLU (American Civil Liberties Union) and Common Cause, rather than elected officials. Let us decide whether we want them to draft model abortion statutes or organize prisoner rights groups. Let us decide whether they should represent children without parental consent on issues like abortion and school discipline."

Sen. Helms is correct. The Senate should decide and the White House should help it decide. And the White House can do this by devoting as much energy next year to backing the legal services reform bill sponsored by Helms and Sen. William Brock III, R-Tenn., S. 1990, as it did to suppressing debate on the subject this year.

NATIONAL GROWTH POLICY: DEVELOPMENTS IN 1973

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Indiana, I ask unanimous consent that the following statement and paper be printed in the RECORD.

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

NATIONAL GROWTH POLICY: DEVELOPMENTS IN 1973

(By SENATOR HARTKE)

Mr. President, there is increasing attention being focused on the need for a national growth policy. The energy crisis provides further impetus in this direction. We must take stock in our human and material resources and plan for their best use in the future.

This far-sightedness is the thrust of S. 1857, the National Growth Policy Planning Act, which I introduced during the first session of this Congress.

Mr. President, I ask unanimous consent that a paper prepared by a former member of my staff, Bruce Johnson, on recent developments in achieving a national growth policy be printed in the RECORD.

NATIONAL GROWTH POLICY DEVELOPMENTS IN 1973

(By Bruce Johnson, attorney with the Office of General Counsel, Federal Home Loan Bank Board, former legislative counsel to U.S. Senator Vance Hartke, author of various proposals on national growth policy.)

INTRODUCTION

1973 saw the most constructive developments yet in the effort to construct a national growth policy. A consensus started to emerge that such a policy would be built around seven components dealing with domestic affairs—disparities of race and income in metropolitan areas, population growth, environmental quality, employment location and economic growth, housing, land use, and greater governmental efforts to re-organize inefficient institutions and plan for the future. This article intends to be a supplement to "Toward a National Growth Policy" by Senator Vance Hartke, which appeared in the Catholic University Law Review, Winter 1973. The article summarized historical trends and developments up to the end of 1972, which might provide for the development of such a policy.

THE CONGRESS

To better comprehend the recent events in the Congress moving toward a national growth policy in 1973, a compilation of congressional actions in related areas was necessary. It was done by the publication in January, of a summary of the Congress' accomp-

lishments in the environmental and natural resources areas during 1972.[1]

In February, the first comprehensive proposal in the 93rd Congress for achieving balanced national growth was presented to the Senate by Senator Hubert Humphrey.[2] The proposal took the form of draft legislation to be circulated and commented upon with the hope that it would become "a national working document for the entire nation to reflect its concerns and desires concerning national goals, priorities and policies." Title I stated the bill's purpose. Title II created an Office of Balanced National Growth and Development in the White House. Title III provided for the transfer of certain functions from the Office of Management and Budget with respect to review of Federal projects and liaison with state and local governments. Title IV created multi-state regional planning and development commissions. A program of comprehensive planning assistance is provided for in Title V. Title VI provides for Federal requirements for the receipt of such grants. A National Citizens Council on the American Future is embodied in the seventh title of the Act. Title VIII creates a Joint Congressional Committee on Balanced National Growth and Development and a Congressional Office of Policy and Planning. Title IX lays down requirements with respect to the locational impact of Federal facilities, activities, and procurement. Title X creates a Foundation on the American Future. The eleventh title establishes an agency for population and demographic analysis without the Bureau of the Census of the Department of Commerce.

On March 19, 1973, the remarks and legislation of Senator Vance Hartke provided the high water mark of the year for the development of a national growth policy. In introducing the National Growth Policy Planning Act of 1973, S. 1286, the Senator criticized the Administration's domestic policy, and offered a new alternative for guiding domestic growth.[3]

The comprehensive Hartke bill provides grants to states and metropolitan agencies to plan for growth in their areas. It establishes a National Growth Policy Council in the Executive Office of the President, abolishes the inept Domestic Council and joins several executive agencies into one concise agency to plan and coordinate a national growth policy. The bill also provides for the consolidation of some federal comprehensive planning and planning assistance programs and provides for possible study of other programs. The bill would transfer Office of Management and Budget Circular A-95 functions to the Council. The bill also provides for regional multi-state commissions as a link between planning and development initiatives. It would offer incentives for the development of regional planning development agencies. The bill endorses with certain conditions, the principle of community development block grants for more flexible urban funding. It establishes a national development bank to underwrite the financial needs of the underdeveloped and overdeveloped areas of our country. The concept of the bill later received the support of the American Institute of Architects, the American Institute of Planners and the Advisory Commission on Intergovernmental Relations.[4]

On March 20, one day later, Senator Adlai Stevenson, with words endorsing the concept of a national growth policy for America, placed in the record a copy of a comprehensive law review article on National Growth policy by Senator Vance Hartke.[5]

In the early months of 1973, the Library of Congress' Congressional Research Service, at the request of the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking, Housing and Urban Affairs, conducted a seminar on national growth policy issues. The seminar was developed in cooperation with the National Planning Association and Resources for the Future.

In April, Senator Muskie's Subcommittee on Air and Water Pollution of the Senate Public Works Committee held hearings on the impact of the nation's growth on the environment and on S. 792 relative to the granting of environmental protection permits.[6]

On May 9 and 10, a Congressional Conference was held on "Rural and Urban America—Conflicts and Common Ground." The conference focused on several propositions: 1) The central cities continue to decline physically, fiscally and in the quality of life . . .; 2) The present forces of urban development are helping to create an apartheid society; 3) present forms of urban development are squandering our natural resources and contributing to environmental pollution and inflation; 4) the city dweller—laboring person and consumer—has a long standing psychological conflict of interest with the rural citizen—food and fiber producer; 5) rural areas have economic, social and physical problems comparable to those of the cities; and 6) at the present time, we have neither a national urban policy nor a national rural policy. In the Congress, in the state legislatures and in the public arena, we simply have a hodge-podge of rural and urban interests.

Also, in May, hearings were held by the Special Subcommittee on Human Resources of the Senate Committee on Labor and Public Welfare on S. 1708, the proposed Family Planning Services and Population Research Amendments of 1973.[7]

On May 21, Senator Vance Hartke introduced S. 1857, the National Growth Policy Employment Act of 1973.[7a] Title I provides for full public employment opportunities as a priority in developing a national growth policy. Title II is identical to H.R. 5808, the Urban Employment Act of 1973 introduced by Congressman James Stanton of Ohio. Title II provides for a land banking program to assist communities in attracting and maintaining an industrial base by amending the Public Works and Economic Development Act of 1965. The land banking approach would entail land being purchased by municipalities for resale to manufacturing plants and business enterprises that otherwise might move from central cities leaving their working force behind.[8]

Land use legislation was probably the most important component of a national growth policy considered in the last session of Congress.[9] Most of the action in the Senate began and finished early in the session.

S. 268 as reported out of committee, authorizes the Secretary of the Interior Department to make grants to assist states in development and execution of land use programs and to coordinate land use planning in interstate areas. The bill also directs the Interior Secretary to coordinate Federal programs that have a land use impact. Under the bill's provisions each state would be required to develop an adequate statewide land use planning process as a condition of continued eligibility for grants. The process would have to include an inventory of land and natural resources as well as compilation of basic economic social and population data. State plans would also have to include, among other things: projections of areas of critical environmental concern; the nature, quality and compatibility of land needed for recreation and open space; and consideration of urban development, including the revitalization of existing communities and the development of new towns. In addition, states would have to develop an adequate land use program after five years to continue to receive Federal funds and would have to show good faith efforts to carry out the plan.

A provision inserted in the bill by Senator Gaylord Nelson required the state land use planning process to include a program for regulating land sales and development projects. The bill requires that such a program include measures for identifying projects subject to control, a procedure for considering each proposed project, and an evaluation of the consistency of the project with statewide land use goals. Under the Nelson amendment, states would have to include procedures in their plans to issue cease and desist orders and other appropriate remedies for violations. Projects subject to the provisions of the Nelson amendment would have to consist of 50 or more lots or contain more than 50 dwelling units and be located ten miles or more beyond the boundaries of a standard metropolitan statistical area (SMSA). S. 268 would make $100 million available to states to implement planning processes over a period of eight years. For the first five years, the Federal government would pay 90 percent of the cost of such programs and for the last three years would share two-thirds of the cost.

The bill would also make $15 million available for eight years of interstate planning efforts and $10 million over the same period to Indian reservations for planning and management. In addition, S. 268 would establish an office of Land Policy in the Interior Department to be administered by the Secretary of the Interior. However the Executive Office of the President would be responsible for issuing policy guidelines to carry out the act.

Both the administrator of the Environmental Protection Agency and the Secretary of the Department of Housing and Urban Development would have sign off rights in all state plans. To be eligible for funding under the Act, states would have to participate in HUD's 701 comprehensive planning program and HUD would have to so certify. S. 268 also authorizes the Council on Environmental Quality to conduct a national feasibility study on the appropriateness of a set of national land use standards. The study would be submitted to Congress within three years with a view toward developing legislation in this area.

Final Senate action on the bill took place on June 21. Defeated by only eight votes was an amendment introduced by Senator Henry Jackson which would have withheld Federal funds for airports, highways, and land-water conservation programs from states that did not adequately implement their land use planning laws. Among the key amendments included in the bill as a result of Senate floor action are an amendment by Senator Edmund Muskie to insure that state land use programs are coordinated with the regulatory activities of all state agencies enforcing air, water, noise and other pollution standards, and three amendments by Senator John Sparkman. One requires states to include land needed for housing in their development of a state land use plan. A second directs states to make any land use planning activities consistent with plans developed under the HUD Section 701 program for comprehensive planning. A third, described by Sparkman as an amendment of a conforming nature, requires states to include housing in planning programs for public facilities.[10]

In the House, action on the land use bill was more judicious. There was excessive debate on several proposals.[11] While the legislation in the House was basically the same as the Senate version, its final form would be much watered down. However, one key benefit of the House Interior Committee debate was the proposal of some interesting amendments. In the "Findings" section of Title I of the bill, subcommittee members voted overwhelmingly to include language that land use planning should advance "social and economic well being." This was interpreted

Footnotes at end of article.

by staff members as reflecting the concern of the committee that the legislation not be solely a "natural resource" bill.

Representative Thomas Ashley, proposed an amendment to create a Joint Committee on National Growth and Land Use Policy.[12] He was supported by the American Institute of Planners, the National Association of Counties, the American Institute of Architects, and the Advisory Commission on Intergovernmental Relations. The Committee was to be modeled on the present Joint Economic Committee. It would have four major functions: make a continuing study on matters relating to the biennial reports required by both the land use bill and the Urban Growth and New Communities Act of 1970; file an annual report on its findings as a guide to the standing Committees of Congress; provide oversight for all major Federal and Federally financed programs dealing with land use and urban growth—the Council on Environmental Quality and the Domestic Council would be directed to report to the Joint Committee each year on the extent to which Federal policies in these areas were coordinated; and conduct special studies to improve land use policies, allocation of natural resources, environmental protection and promote balanced growth.

Similar language was suggested by Senator Humphrey in his proposal for a national growth and development policy. A senate Select Committee on National Growth Policy has also been proposed behind the scenes.[13]

Language was proposed by Rep. Yvonne Burke that "the comprehensive land use planning process provide for a full range of housing opportunities on a regional basis." Language was also proposed to provide for national growth policy considerations. However, the House bill did not get out of Committee and land use legislation died with House adjournment.

In November the House Public Works Committee held hearings on National Growth Policy. The focus of the hearings was the development of a national public works investment policy as a blueprint for national growth. The Committee heard four witnesses describe demographic and land use trends and recommendations for Federal policy in response to them.[14]

Late in November, the Office of Management and Budget (OMB) released a revised Circular A–95, defining evaluation, review and coordination procedures for Federal and Federally assisted programs and projects.[15]

In December, the movement for development of a National Growth Policy received another push from the Senate side as Senator Edmund Muskie, in a speech before the Planning and Conservation League in California, called for "a national growth policy and a Federal land use policy that would guide the management of our land resources in conforming with the national growth policy." Muskie said state land use plans should meet Federal criteria, including prohibition of development in flood plains; a requirement that major development provide open space for recreation; prohibition against a development which violates either federal or water pollution laws; and exclusion of industrial, residential or commercial development that would exceed the capacity of existing systems for power and water supply; waste water collection and treatment; solid waste disposal; and transportation.

The revised circular extends A–95 coverage to HUD–FHA and FMHA programs involving subdivisions of 25 or more lots, multifamily projects having 50 or more units and mobile home courts with 50 or more spaces. These limits are provided for urban locales. Another revision adds clearinghouse review for so called "multi-source" programs including EPA program grants.[16]

Footnotes at end of article.

The housing and community development component of a national growth policy received extensive attention during the last year. On September 19, President Nixon unveiled the Administration's new housing proposals, the product of six months of study and nine months of moratorium; shortly thereafter they were translated into legislative form in the Housing Act of 1973 (S. 2507). Two weeks earlier William A. Barrett (D-Pa) and Thomas L. Ashley (D-Ohio), respectively the chairman and key member of the Housing Subcommittee, introduced in the House their housing proposal. In July, Senator John J. Sparkman (D-Ala) had presented to the Senate his ideas as to the future shape of housing in America. The three major proposals boil down as follows:

Senate Proposal (S. 2182).—The Senate proposal is the most traditional, although it has several innovative aspects. Like the aborted housing legislation introduced since 1970, the Senate bill would simplify and consolidate the HUD-FHA insurance and subsidy programs into four basic sections. (Section 401-insured, non-subsidized homeownership; Section 402-insured and subsidized homeownership; Section 501-insured multifamily; Section 502-insured and subsidized multifamily). Basically, Sections 235 and 236, although renumbered as 402 and 502, would remain the same in concept.

However, the Senate bill contains a significant new feature allocating 60 percent of the Section 402 and 502 funds to standard metropolitan areas pursuant to a population, poverty, and housing overcrowding formula. The Barrett-Ashley House Proposal (H.R. 10036) is the most far-reaching of the three; indeed, some observers term it the most novel piece of housing legislation of the last 25 years. The House bill would scrap all three existing housing programs—Section 235 and 236, and Public Housing—and substitute a housing block grant similar in concept to the community development block grant proposal. $2.2 billion (over three years) in housing block grants would be divided between metropolitan and non-metropolitan areas (75 percent and 25 percent respectively) taking into account population, poverty, and housing overcrowding.

Communities would make an application based on a thorough survey of housing needs. They could utilize funds for rehabilitation loans, interest reduction payments on owner occupied units, rent supplements for multifamily units, seed money loans, and rehab grants and loans. Long-term projects could be financed from federally guaranteed state or local bonds. Although new public housing units would not be allowed under the proposal, $45 million of contract authority would be made available for modernization and renovation of existing public housing units.

The Administration's Proposal.—In reality, the Administration has made two sets of proposals—short term and long term. Short term, the Administration proposes to revive the Section 236 Program, greatly expand the Section 23 Leasing in both its existing and new construction aspects, and introduce a new type leasing program whereby HUD would deal directly with the developer.

Long term, the Administration, at least tentatively, asks for a drastic change in the way low income housing needs are met. Production oriented programs would end, and be replaced by a modified housing allowance. Under that concept, low income families would receive direct cash payments with which they would secure their own decent, safe, and sanitary housing. Under the proposal, in its ultimate form, there would be universal entitlement—every needy family would get such an allowance, in contrast to the present system where only a relatively small percentage live in federally subsidized units. Although the President has stated that housing allowances are the most "promising" alternatives available, his endorsement is well hedged by references to "unforeseen factors" that could rule out the program on a permanent basis.[17]

The Congress sought this year to separate community development legislation from housing legislation.[18] The three major community development proposals are: 1) the Better Communities Act, H.R. 7277, the Administrations' special revenue sharing plans for community development; 2) Community Development Assistance Act of 1973, S. 1744—block grants for Community development; and 3) H.R. 10036 the combined package of housing and development legislation proposed by Congressmen Ashley and Barrett. The last proposal also would encourage the formation of state development corporations similar to New York's successful Urban Development Corporation.

Two bills were also introduced this past year to revamp the Federal government's 701 comprehensive planning program. The most extensive bill, S. 854, was proposed by Senator Adlai Stevenson. The other less adequate proposal was the Administration's S. 2490, the Responsive Governments Act.[19]

Other miscellaneous bills were introduced this year have to do with the elements of a National Growth Policy. They include:

S. 792 (national system of environmental protection—Muskie)

S. 10 (unique rural development bill—McClellan)

H.R. 4767 (population control—Esch)

S. 834 (Intergovernmental Cooperation Act. of 1973—Muskie)

S. 1708 (population control—Cranston)

H.R. 7481 (housing discrimination and dispersal of low and moderate income 7836 housing—Rangel)

S. 232 (national development program—Montoya)

H.R. 7735 (population control—Ashley)

H.R. 3220 (rural development—Alexander)

S 2414 (Demonstration Housing Location bill of 1973—fair share housing effort—Taft)

The Federal Executive.—In 1972, the Task Force on Land Use and Urban Growth was created by the Citizen's Advisory Committee on Environmental Quality, a body established by presidential executive order in May, 1969. In 1973, the task force issued its report.[20] The report evaluated the current American scene, made conclusions and recommendations. Its major conclusions: "A new move in American attitudes has emerged that questions traditional assumption about the desirability of urban development. The motivation is not primarily economic. It appears to be a part of a rising emphasis on human values, on the preservation of natural and cultural characteristics which make for a humanly satisfying living environment."

It's major recommendations: 1) In newly urbanizing areas, both recreation and social needs will best be served by establishing a public policy that the limited natural supply of prime recreational open spaces, particularly coastal and waterfront areas, should, to the maximum feasible extent, be acquired by government, preserved and made publicly accessible; 2) Federal estate tax laws should be amended to permit the transfer to the Federal government of land determined by the secretary of the Interior to be of national significance with the fair market value of the land offset against Federal tax liabilities; 3) State as well as local governments should establish protective regulations to prevent incompatible development of critical agricultural and environmental areas; 4) Where protected areas are carefully selected as the result of a comprehensive planning process, states should authorize and encourage, in appropriate cases, very low density zoning, including for example, requirements for 50 or more acres per dwelling unit permitted; 5) Enactment of a national land use policy is urgently recommended as a means to encourage state and local regulations in a framework that adequately recognizes both

regional environmental protection and development priorities; 6) The Federal government should encourage open space protection by formulating mapping and publicizing a set of advisory national open space classifications for consultation by Federal agencies in the planning of development projects for use in support of state and rural plans and regulations, and for consultation by private land buyers and sellers; 7) Decisions to construct sewers and to provide other public services should be taken only after carefully considering whether these decisions will stimulate or discourage the development of designated open spaces; 8) Plans for the location of Federally assisted sewers should conform to a comprehensive land use plan; 9) We see the need for a National Lands Trust to be established either within the Interior Department or by Federal charter and with Federal funding of $200 million annually to be made available in a matching basis with a 75 percent Federal share to assist public bodies, particularly state land use agencies, in the designation, planning and conservation of extensive green spaces in and around major urbanizing areas. The National Lands Trust would advise on regulatory and acquisition measures and make funds available for acquisition of strategically located lands and partial interests in lands within the green spaces; 10) To reduce conflicts of interest, state and local laws should disqualify local and state officials from voting or otherwise participating in any regulatory decision whose outcome could confer financial benefit, or could appear to the public to confer financial benefit, to themselves, their families, or their business or professional associates. All persons having any responsibility for land use regulation, including elected and appointed officials and employees, should also be required to make periodic public disclosures of their financial interests and real estate holdings within the jurisdiction over which they exercise responsibility; 11) Governments should use all acceptable means to channel as much development as possible into new communities or to the extent that these are unachievable, to channel as much development as possible into "growth units" as recommended by the American Institute of Architects. It should be recognized that the success of this policy will be contingent upon the effectiveness of the implementing measures in overcoming the several obstacles that now deter developers from operating on larger scales; 12) Loan guarantees now available under Title VII of the Urban Growth and New Community Development bill of 1970 should be expanded and made available also for development of "growth units"; 13) The states should establish government entities, comparable to New York's Urban Development Corporation, responsible for assisting and when necessary, directly undertaking large-scale projects. These entities should have the full range of powers including the power of eminent domain, the power to override local land use regulations and the power to control the provision of public utilities whenever necessary to overcome the barriers that now prevent most developers from operating on the larger scales the public interest requires; 14) States should enact legislation requiring environmental impact analysis in connection with major actions of state and local governments which significantly affect the environment; and 15) The congress should amend Federal securities legislation so that the sale of lots (in any project containing more than 50 lots) will, unless all obligations of the seller are performed before any payments by the buyer, be regarded as a securities transaction subject to the prospectus and other requirements of the Securities and Exchange Commission.

This last year saw the development, by the Federal government's Department of Housing and Urban Development, of a $1.5 million community development research program aimed largely at how to control growth. One major effort being funded by HUD is an Urban Institute project to enable local municipalities to develop tools to evaluate the local import of land use decisions. The Urban Institute will be looking at cost-revenue implications of land use decisions as well as social employment, and environmental saves. Six other HUD funded research projects will examine development and growth in different situations. HUD also engaged in other studies, dealing with growth to a lesser extent. One concerns tax policy and its impact on community development; the other looks at a broad area of land use controls and land banking in particular. HUD will fund other projects, most probably, in the areas of capital improvements policy as a guide to growth and advanced land acquisition.[21]

1973 saw a drastic cut-back in Federal planning programs and at the same time the development of some new ones. Congress reduced the spending for HUD's section 701 comprehensive planning program by 25 percent because of the Administration's failure to use the money in prior years. Meanwhile, a program which would give participating states the responsibility for administering grant allocations to metropolitan area wide planning agencies and large cities with populations exceeding 50,000, handled in the past directly by HUD, is being developed by HUD's office of Planning and Management Assistance.[22]

In September, we saw the release of the Council of Environmental Quality's fourth annual report which focused on land use and growth policy. However, the issuance of the report did reveal that three major land use reports were being done by the Council to be completed early in 1974. One is a study of the environmental and social costs of sprawl, another deals with the environmental import of the boom in second homes, and the last examines the land use effects of deep-water ports.

One key area of executive responsibility which developed in the last year was the development of air and water quality standards to limit growth in areas with excessive air and/or water pollution. The Environmental Protection Agency issued final regulations to help states and localities in identifying areas with water quality problems requiring an area-wide approach for corrective action. The new regulations provide guidelines for identifying areas with need for regional planning and procedures as well as for designating the agency responsible for such activities. Such water quality management programs according to the regulations, should provide for cost effective point source and non-point source treatment and control for areas of urban industrial concentrations and for coordinated waste treatment management in these areas. Non-point sources in particular can involve housing construction activities.[23]

A most important debate that will effect how the development of a national growth policy will proceed ensued this past year over the Environmental Protection Agency's proposed air quality regulations. The proposed regulations would require states to review local construction plans to determine if activities associated with the completed facility, mainly auto traffic, would have an impact on air quality standards. If the review, to be made prior to construction, shows that the associated activity will not permit air quality standards to be maintained, the regulations will require that the state must have the authority to prevent such construction.

Such facilities are generally designated "complex sources" by EPA. A complex source is defined as "a facility that has or leads to secondary or adjunctive activity which emits or may emit a pollutant for which there is a national standard". These sources include, but are not limited to: shopping centers; sport complexes; drive-in theaters; parking lots and garages; residential, commercial, or institutional developments; recreational areas; highways; and sewer, water, power and gas lines.[24]

The week after the proposed regulations were published, President Nixon in his energy message, asked Congress to grant him authority to exempt stationary sources from Federal and state air quality laws and regulations if such a waiver is warranted by the energy crisis. The Congress failed, as of the end of the first Session, to grant the President's request, but the regulations may yet become stillborn ones.

1973 saw the myriad of amorphous growth policy ideas developed into a basic framework by the nation's courts and court commentators.

In the Supreme Court case of *Ruckelshaus* v. *Sierra Club*, U.S. Law Week 4825 June 11, 1973, it was held that the Environmental Protection Agency administrator's authority under the Clean Air Act would require state implementation plans to prevent any substantial degradation of existing air quality even if present air quality exceeds Federal standards. As a result of this area residential and commercial projects will be seen as air pollution sources much like industrial developments. Any project which would allow "significant deterioration" of air quality would become a victim of what has now become a slow growth measure as interpreted by the court.

Two analyses of Federal and state court decisions also give us insight into the role courts will play in developing growth policy. After evaluating a decision of *Golden* v. *Planning Board of Ramapo*—30 N.Y. 2d. 359, 285 N. C. 2d. 291 (1972) which upheld the legality of a "development timing" or "controlled growth" ordinance passed by the New York town of Ramapo—a recent publication made the following conclusions of recommendations as a result of that case.[25] They were: 1) Strengthening public control over the timing of development of vacant land is highly desirable; 2) the essential element of development timing control is a plan and commitment for public investment to assimilate growth; 3) development timing controls should solidify plans for regulating the spatial character of growth; 4) regulating development timing control at regional or metropolitan levels of government is preferable to allowing its exercise by localities; 5) local development timing ordinances should be considered exclusionary devices unless the locality can demonstrate responsiveness to regional housing needs; 6) a local development timing ordinance should be considered exclusionary if it does not provide for housing for employee households with existing or anticipated jobs in the jurisdiction; 7) development timing ordinances that apply only to residential development are inherently suspect as selective growth policies; and 8) local development timing ordinances should be considered exclusionary if the resulting tax effort is reduced below the average for the metropolitan area.

Another recent commentary on court decisions outlined the various forms of anti-growth policies that have been the subject of court decisions in the last few years.[26] Examined were the undeclared moratorium,[27] the temporary but indeterminate moratorium,[28] the environmental moratorium,[29] population caps,[30] transfer of "spillover" of costs to subdividers,[31] and development timing.[32]

PRIVATE CONTRIBUTIONS

This year saw much substantive work done in the area of growth policy by private groups and individuals as private citizens. The most monumental new effort is Governor Rockefeller's National Commission on the Future

Footnotes at end of article.

of America in its Third Century,[33] which just got off the ground this year. The commission will focus on broad social goals.[34]

Among its 35 or so working members are Ivan Allen, the former Mayor of Atlanta; William Goher, the president of Bell Labs; Clare Boothe Luce; Daniel Patrick Moynihan, now Ambassador to India; Sol Linowitz, former head of the National Urban Coalition; and Bess Meyerson, formerly New York City's advisor on consumer affairs.[35]

In May of 1973, a most exciting development occurred in the field of measuring the effect of a national growth policy. For the first time a quality of life index in the United States was set up to measure a large assortment of factors that help evaluate how good a life can be had depending on which state one lives in.[36]

In the same month the National Association of Homebuilders (NAHB) created a $200,000 legal defense fund to fight "no growth" ordinances and laws in courts throughout the country.[37] The fund is being used to assist state and local homebuilders association in legal suits having "national impact". The NAHB specifically earmarked funds to assist the homebuilders contesting a California growth control ordinance, to challenge to state environmental laws in Maine and Massachusetts and to set up a computer data bank on court decisions relating to growth control.

In September, some 400 planners and local officials attended a National Conference on Managed Growth sponsored by the Urban Research Corporation. The emerging theme of the conference seemed to be that slow-growth policies must consider both environmental and social issues. Specific discussion focused on land banks, state land use legislation, environemntal impact statements, and local initiatives. The conference also heard the results of a poll taken by George Gallup which indicated that 55 percent of Americans think their communities have done only a fair or poor job in planning for future growth.[38]

The past year also saw a new assortment of private publications in growth policy.[39]

STATE AND LOCAL DEVELOPMENTS

In 1973 many states and localities responded to the congressional impetus to control growth and land use by action that sometimes went beyond what was even envisioned as possible by Congressional pragmatists.

Almost every state in the union saw some of its localities enact measures of some kind to restrict growth, including moratoriums in sewer line tap-ins, building permits, zoning applications, and multi-family construction.[40]

Several states either enacted statewide land use legislation, debated it in their legislatures or had statewide commissions set up to develop possible legislative alternatives to control growth.[41]

During 1973, the Office of Policy Planning of the U.S. Department of Housing and Urban Development requested the Academy for Contemporary problems and the Council of State Governments to make a major effort to explore the linking of state and local approaches to controlling growth with a national growth policy.[42]

To give states, counties and cities more clout in developing priorities in our nation's Federal domestic programs, a coalition of state and local leaders was formed. Under the leadership of Governor Daniel Evans of Washington, who is Chairman of the National Governors Conference, Mayor Norman Gribbs, head of the National League of Cities, and Gil Barrett, President of the National Association of Counties, the organization will lobby Congress on matters that concern national growth policy.[43]

CONCLUSION

In 1974, the Nixon Administration will submit the second report to the nation on urban growth policy under the mandate of the Housing and Urban Development Act of 1970. But constructive alternatives most be found elsewhere. They must, for growth policy is the key to the nation's domestic future.

FOOTNOTES

[1] Committee Print, Senate Committee on Interior and Insular Affairs, Congress and the Nation's Environment—Environmental and Natural Resources Affairs of the 92nd Congress, 93rd Cong., 1st Sess., January 20, 1973.

[2] Committee Print, Joint Economic Committee, A Proposal for Achieving Balanced National Growth and Development. 93rd Cong., 1st Sess., February 26, 1973.

[3] 119 Cong. Rec., 8376–8389, March 19, 1973.

[4] See correspondence file in Office of Senator Vance Hartke.

[5] 119 Cong. Rec. 8785–8797, March 20, 1973.

[6] 119 Cong. Rec., D181, daily ed., April 2, 1973.

[7] 119 Cong. Rec., D281, daily ed., May 9, 1973.

[7a] 119 Cong. Rec., D329, daily ed., May 23, 1973.

[8] 119 Cong. Rec., 16260–16211, May 21, 1973.

[9] See generally J. Noone, "Congress Considers Bills Increasing, State, Federal Role in Land Use Decisions," National Journal, May 5, 1973; Committee Print, Senate Committee on Interior and Insular Affairs, National Land Use Policy Legislation, 93rd Congress, and Analysis of Legislative Proposals and State Laws, 93rd. Cong., 1st Sess., April 1973.

[10] See Bureau of National Affairs (BNA), Housing and Development Reports, June 27, 1973.

[11] See generally Hearings on Land Use Planning Act of 1973, before the Subcommittee on the Environment of the House Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., 1973. See also various land use bills—H.R. 2942, H.R. 4862, H.R. 6460, H.R. 7233, H.R. 10294, 93rd Cong, 1st Sess. See BNA, Housing and Development Reporter July 25, 1973, August 8, 1973, September 19, 1973, October 3, 1973, November 14, 1973, and December 12, 1973

[12] See 119 Cong. Rec., 32113–32119, October 1, 1973.

[13] Memorandum from Bruce Johnson, Legislative Counsel to Sen. Vance Hartke to Jim Thornton, Senate Agriculture Committee staff dated May 18, 1973, concerning proposed Senate Select Committee on National Growth Policy.

[14] BNA, Housing and Development Reporter, November 14, 1973.

[15] Federal Register, November 25, 1973.

[16] BNA, Housing and Development Reporter December 12. 1973.

[17] See J. Phillips, "HUD proposes cash allowance system as link to broad plan for welfare reform," National Journal, August 25, 1973.

[18] Not supplied by author.

[19] BNA, Housing and Development Reporter, October 3, 1973.

[20] Task Force on Land Use and Urban Growth, The Use of Land: A Citizen's Policy Guide to Urban Growth—A Task Force Report Sponsored by the Rockefeller Brothers Fund.

[21] BNA, Housing and Development Reporter, November 28, 1973.

[22] BNA, Housing and Development Reporter, November 14, 1973, and December 12, 1973.

[23] 38 Federal Register 25681, September, 1973.

[24] 38 Federal Register 29893, November, 1973.

[25] 25 The Potomac Institute, Controlling Urban Growth—But for Whom?, March, 1973.

[26] H. Franklin, "Slow-Growth and the Law," BNA, Housing and Development Reporter, June 27, 1973.

[27] Under conventional zoning practice, many localities will zone areas of vacant land into what are in fact holding zones even though they may be called zones for agricultural use or very low densities. These zones enable the land owner to obtain some beneficial use of the property—thereby avoiding a claim of unconstitutional "taking" under the due process clause. But in reality such zones at the urban fringe are "wait and see" zones that enable local authorities to permit rezoning for development proposals that they approve of turning down all others. The ad hoc nature of this process and the tenuous connection with any plan make an unannounced slowdown of approvals practically unchallengeable as a legal matter. If some approvals are granted as time passes—slowly—it is virtually impossible under the system legally to accelerate the rate of approvals.

[28] In these situations, a locality may announce a "temporary suspension" of rezoning or subdivision approvals or the issuance of building permits. Usually this is accompanied by declared initiatives to "re-evaluate" existing policy or to draw up "new plans."

[29] Where development has been allowed without regard to environmental impact, ecological damage to land and water has without question, resulted. The public failure to provide sewers or sewage treatment plants to support private development has contributed to the deterioration of ground or surface water quality.

[30] It would appear that a purported population cap or limit unsupported by planning rationale cannot stand the test of reasonability. Zoning and other development control are not contraceptives. Their proper role is to channel and guide growth to avoid undesirable and discordant relationships flowing from the use of land.

[31] Although it is common under subdivision statutes to require the dedication of land for streets and utilities, as well as the improvement of such land for these purposes, some communities are adopting policies that transfer additional costs to subdivider for facilities that benefit more than the land being subdivided.

[32] The most sophisticated anti-growth technique that has emerged is sequential development controls or development timing—these add the new dimension of time to the spatial controls associated with zoning.

[33] Press Release, State of New York, Executive Chamber, Nelson A. Rockefeller, Governor, May 14, 1973.

[34] "(1) A review of fundamental philosphical and moral considerations as to the nature of man and his institutions; the impact of his natural and man-made environment; and the development of goals to improve the quality of life of mankind. (2) A projection of present trends in the United States and other major nations and areas of the world to the years 1976 and 1989. These projections would include political, economic, social and military developments and the problems they would create if nothing were done to shape these emergency forces. (3) An evaluation of the impact of these problems on our security and our political, economic and social life, and in the Judeo-Christian moral and ethical values in which this country was founded. (4) In the light of these findings it will be possible to develop alternative conceptual approaches necessary to deal with these emerging forces. From this we can develop a clearer sense of national purpose for the United States, both at home and abroad. (5) Within the framework of this clearer sense of national purpose—it will then be possible to develop new concepts relating to the structure of our federal system and our domestic and international institutions. (6) Only then can we as a nation make a realistic reappraisal and reshape specific policies and programs to make them more effective in meeting human needs."

[36] Ben-Chieh Liai, Midwest Research Institute, The Quality of Life in the United States—Index, Rating and Statistic. 1973.

[37] See BNA, Housing and Development Reporter, May 30, 1973, and October 3, 1973.

[38] BNA, Housing and Development Reporter, September 19, 1973.

[39] Anthony Downs, *Opening Up the Suburbs—An Urban Strategy for America* (1973); "The No-Growth Society", Daedalus, Journal of the American Academy of Arts and Sciences, Fall 1973; Clawson and Hall, *Planning and Urban Growth—An Anglo-American Comparison* (1973): "National Growth Policy," 1973, Urban L. Ann. 59; Tweeten, unpublished paper on Emerging Issues for Sparsely Populated Areas and Regions Under a National Growth Policy, (1973); Moguluf, "Federally Encouraged Multi-jurisdictional Agencies," Urban Affairs Quarterly, September, 1973; Cahn, "Where Do We Grow From Here," series of six articles in Christian Science Monitor, May 21, May 23, May 25, May 29, June 1 and June 8, 1973; Clark, unpublished paper on population redistribution and urban water supply, (1973).

[40] See generally, BNA, Housing and Development Reporter—Growth Control Monitor, May 30, 1973, June 27, 1973, July 25, 1973, August 22, 1973, September 19, 1973, October 17, 1973, November 14, 1973, and December 12, 1973.

[41] Washington Post, June 24, 1973, Page C–1.

[42] Hartley Patton, Widner, unpublished study entitled "Experiments in Growth Policy." A Reconnaisance of State and Local approach to the Problems of Growth", 1973.

[43] BNA, Housing and Development Reporter, September 5, 1973.

A MINISTER SPEAKS OUT ON WATERGATE

Mr. CURTIS. Mr. President, there is a constant flow of thoughtful letters in support of President Nixon coming to my office. On January 16, 1974, a Methodist minister from the Eastern Seaboard wrote me a letter which I would like to share with my colleagues. I ask unanimous consent to have the letter printed in the RECORD.

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

JANUARY 16, 1974.

Hon. CARL T. CURTIS,
U.S. Senator,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: After hearing you over the T.V. on the "Today" Program I want to send you this word of thanks for speaking honestly and cautiously about the President and the troubles we are experiencing.

For months it has been so apparent that the enemies of the President who never wanted him in the White House, don't want him there now, and will do anything and everything to get him out have waged an all out effort to this end. So blatantly partisan is it that even the stupidist person must surely see what is taking place.

Unfortunately those who should be trying to honestly help the President, and our Country, have either kept quiet or have added fuel to the enemies fire.

We all know that many things have happened that are very seriously wrong. Men we felt were very strong and above reproach have failed us. High office has been abused along with the trusted occupants who have failed in their serious responsibilities. But we cannot let these who have been discovered be the cause of the downfall of our Nation. I feel we have a question to answer. Should we destroy the President of the United States, the Presidency as a whole and with it our Nation? Or shall we do all we can to correct the shortcomings and go on and assure our continued standing as a leader of free people. If we permit the liberals in Congress and out, the Nixon haters, and the misled people to destroy our leadership we will surely be guilty of destroying our world. I feel a little like the Disciple who asked the Lord "To Whom shall we go?". The World has no other place to go but to the U.S. Why do we allow the U.S. to be destroyed?

Surely it is time for the Republican members of Congress to rally and say we will not destroy the President and thereby the Presidency and the Nation.

I have never felt the old saw, attributed to the late Peter Marshall one time Chaplain of the Senate," that Dr. Marshall took one look at the Congress and then prayed for the Nation." My respect for our Congress is great. I appreciate the constant stress and pressure brought upon them. The honesty and sincere compromises are needed. Still they do not resort to dishonesty. My prayers for the Congress in these troublesome times.

Sincerely,

——— ———.

GUTZON BORGLUM AND MOUNT RUSHMORE

Mr. McGOVERN. Mr. President, the January issue of the American Legion magazine contains an article which I think will interest and even amaze many people. The article chronicles the construction of the Mount Rushmore National Memorial located in the Black Hills of South Dakota. Most particularly it pays tribute to Gutzon Borglum, the man who made the mountain into a monument.

While many millions of people have visited the monument, and many millions more around the world know of its existence, the man who made it all possible seems to have faded into relative obscurity over the years. For that reason, I was pleased to see an article that recognizes the tremendous amount of individual initiative and courage that went into what can only be described as one of the wonders of the world. I ask unanimous consent that this excellent article, superbly written by Lynwood Mark Rhodes, be printed in the RECORD.

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

GUTZON BORGLUM AND HIS COLOSSAL STATUARY

(By Lynwood Mark Rhodes)

In describing South Dakota, the current World Almanac notes that "Mt. Rushmore in the Black Hills has an altitude of 6,200 ft. Sculptured in its granite face are the heads of Washington, Jefferson, Lincoln and Theodore Roosevelt. These busts by Gutzon Borglum are proportionate to men 465 feet tall. Rushmore is visited by about 2,000,000 persons annually."

The Encyclopaedia Britannica notes that the Rushmore statuary comprises the "most colossal sculptures ever attempted by man."

Most Americans have forgotten the sculptor's name today, but those who annually gaze up at Borglum's monumental work are only increasing. In 1972, about 2½ million people looked up at Rushmore and most of them counted it among the high points of their travels. Geologists estimate that nature will not smooth the works away for at least a half million years, or for more than 100 times the present age of the oldest great works of the Pharaohs of Egypt.

It is a pity that Borglum's name is beginning to be forgotten. The story of Rushmore only adds to the appreciation of looking at it. In his time, Borglum's name was probably as widely known as Michelangelo's was in his. In the 1920's and 1930's every American schoolchild was involved in contributing pennies to his project, while to raise money Borglum exercised a flair for publicity which made certain that news of himself and his work was on everyone's lips.

Borglum was first involved in what became the Mt. Rushmore monument in 1924. Until 1927, the most he got for his pains was $250. He then estimated that the work would take four years, and cost "between $400,000 and $800,000." Timewise, he was seriously off, but largely because of financial delays. The last bit of stone was cut away in October 1941 by his son, Lincoln, a few months after Gutzon Borglum died at the age of 74, having devoted most of his energy to Rushmore since he was 57.

His cost estimates weren't bad. He set $800,000 as the top figure, and Rushmore actually cost $989,992.32. Borglum himself received about an even $170,000. As he had given the monument his almost undivided attention from 1925 to 1941, his reward averages out to about $10,000 a year for prodigious, creative labors. There was one period of a year and a half (and many shorter periods) when no work was done at all because the money had run out. During such delays Borglum worked on fund raising as hard as any of his sponsors.

The builders of the Egyptian wonders commanded the artisans and the laborers of a nation. After two years of planning, Borglum began with a 16-man crew in 1927, and—as he told a crowd of 5,000 come to see Lincoln's face unveiled in 1937—his project was being executed "without proper tools, without adequate power, without funds, without any trained assistants. . . ." His chief source of manpower was unemployed Depression-time miners. "I have been compelled," he once said, when criticized for the slowness of the project, "to take the forgotten men in the mining camps, acquainted with rough drilling for mines, and train them as best I could." This was a slight exaggeration, since he had great use for those skills. All told, 450,000 tons of rock were removed from Mt. Rushmore. If Borglum was the only true artist on the scene, the skills of those "forgotten men" with their drilling and dynamiting techniques were the perfect complement to his own artistry in turning a mountain into a work of art.

Gutzon Borglum was the only living man who knew anything about carving mountains, and he was one of only two competent sculptors of his time who had any great interest in making Americana a subject for statuary. The other was his brother, Solon Borglum.

Born in Utah and Idaho in the decade after the Civil War, the sons of Danish immigrants, by 1910 Solon and Gutzon were famous for their statues of great Americans, of horses, Indians and other American themes. Though Paris trained, they disdained the usual "schools" of sculpture—especially the imitation of classic forms in modern works. To this day, their works grace many an American park, public building, cathedral, memorial and museum.

Gutzon early turned to large works whenever he could, including the head of President Lincoln (Borglum's favorite subject) in the National Capitol, cut from a six-ton block of marble.

In 1915, he was invited to Georgia to carve a Confederate memorial on the side of Stone Mountain, the great piece of granite 16 miles from Atlanta. Stone Mountain is a story in itself. By 1924, Borglum had completed an

enormous head of Lee, as part of a much larger work he had conceived across the face of the mountain. An unfortunate and bitter quarrel broke out that year between Borglum and his Atlanta sponsors. It ended in Borglum being fired in 1925 and stalking off, after destroying his models. The Stone Mountain project petered out in a few years as a result, and nothing further was done on it until 1958. But Borglum had gained experience and worked out original techniques by trial and error, whereby workmen with dynamite and pneumatic drills could—under his direction—turn mountains into duplicates of his models. He was the only man with such experience when he moved on to Rushmore.

Stone Mountain was also, beyond doubt, what had by 1923 inspired Doane Robinson, state historian of South Dakota, to conceive some sort of gigantic statuary on one of the granite masses of the Black Hills. Robinson imagined great figures of western American history—mountain men, Indians, explorers—peering out of the mountains.

Robinson interested South Dakota U.S. Senator Peter Norbeck in the idea, and in the end it was Robinson, Norbeck and Borglum who schemed and toiled to get the money that made Mt. Rushmore possible. It did not occur to Robinson to contact Borglum at first, as it was known he was busy in Georgia. He first queried Lorado Taft, who had carved The Fountains of Columbus in front of Union Station in Washington, D.C. But Taft was too ill to consider Robinson's epic proposal. On Aug. 20, 1924, Robinson invited Borglum, who had not yet broken with the Stone Mountain project, to come and look at the Black Hills and see if he could devise something appropriate for a massive sculpture.

Borglum made a quick trip in September and looked at several mountains from the summit of Harney Peak (a visit which added fuel to the Stone Mountain quarrel). On his return to Georgia the acrimony increased and, in February 1925, Borglum was fired, to the tune of nationwide headlines.

Borglum's temperamental part in the breakup didn't upset any of the Dakotans. You can expect that great artists are temperamental, they said. But plenty of the folks thought the Black Hills project itself was preposterous. The Rapid City Daily Journal said the Black Hills could sell themselves "without any alteration in nature's handiwork." Another paper had called the whole project ludicrous, bunk, incongruous. And it asked: Where is the money coming from?

Where, indeed? In March 1925, Senator Norbeck had no trouble getting Congress to approve the carving of a memorial in the Harney National Forest, but with no mention of money.

Robinson had told Borglum that he "was sure" they could raise the money, though there was exactly none in the till and nobody could estimate the cost. Perhaps it was the money, perhaps not, that persuaded Borglum that the sculpture should be a *national* memorial, not simply a western one. By mail, he persuaded Robinson that the project should personify the whole sweep of American history, and include the men who had given the most to the "nation's creation and preservation." Without this decision, the money would probably never have been forthcoming. With it, Borglum returned to the Black Hills on Aug. 25, 1925, to select a mountain. On the second day of a horseback tour, guide Theodore Shoemaker told him to close his eyes as he led him to a certain spot. "Now open your eyes," said Shoemaker.

There stood Mt. Rushmore, capped with a granite head almost 1,000 feet long and 400 feet wide, its east side presenting a 300-foot perpendicular slab. Borglum was breathless. After scaling the mountain several times he felt it was ideal. Rushmore is one of the oldest granite outcroppings in the world, smooth-grained and swept clean of the rocks that once overlaid the Black Hills. The bold chunk of granite on the southeast shoulder was especially perfect, for it caught sunlight most of the day. The area was still wild. The nearest settlement was Keystone, a tiny mining village three miles away. Borglum bubbled with enthusiasm. "No mountain of granite in the United States is comparable to Rushmore," he exclaimed, as he boarded the evening train east. Robinson handed him a check for $250 from the Rapid City Commercial Club—the first money he'd been able to raise for the memorial.

Borglum returned, and by September 25 had established a camp at Rushmore's base. He and his assistant measured and tested the granite, he dangling in a chair in midair, 250 feet over the cliff, shouting instructions to the tackle operator above, moving up and down the mountainside like a human fly while waiving to photographers. "The dimensions are highly satisfactory," he predicted, "there being twice as much face space as will be needed for the heroic figures."

He had long since decided who the figures would be. "Washington represents our independence," he explained to his son, Lincoln, during a driving trip through Texas. "Jefferson personifies 'government by the people' and also by his purchase of the Louisiana Territory portrays the growth and expansion of our country. Lincoln preserved the Union for us. And Theodore Roosevelt saw, in the building of the Panama Canal, the completion of the dream of Columbus and he knew the value of the West in the development of our nation."

Lincoln Borglum remembered that his father was silent for several miles, then pounded the steering wheel with his fists and vowed in a voice as firm as it was unmistakingly sincere, "Nothing but the hand of the Almighty can stop me from completing this monument."

The way to parlay the $250 investment into the needed hundreds of thousands, he decided, was to end all debate about whether there *should* be such a monument by going right ahead with it. On Oct. 1, 1925, he and his friends boldly held a public dedication of the penniless project. More than 3,000 people came out from Rapid City. Bands blared. Cavalry fired salutes. Politicians made patriotic speeches, Huge historic flags out of the nation's past, ending with Old Glory, were hoisted atop the mountain. The enthusiasm was infectious. Newsmen rushed to their desks to hail "the most stupendous undertaking of its kind in history"—in the words of the once antagonistic Rapid City Daily Journal.

But when Borglum said that $50,000 would be needed just to get started, the new warmth chilled off. One South Dakotan said that $50,000 might be a molehill to Borglum, but it was a mountain to most Rapid Citians.

The sculptor went right ahead. He moved his family to Keystone in 1926, while he and engineer Maj. Jesse G. Tucker busied themselves with preliminary work. Borglum then told the small handful of the faithful in the Mt. Harney Memorial Ass'n that four faces, five stories high, could be scaled to men 465 feet tall with faces about 60 feet long. The total cost he said, as he left on a nationwide tour at his own expense to publicize the project, should be between $400,000 and $800,000.

For the better part of a year, those figures simply stunned most of the local supporters. But in May 1927, President Calvin Coolidge announced that he would open a summer White House in the Black Hills. Senator Norbeck promptly spread the word in the right circles that if they would just get the project going he would get the President to dedicate it—which could result in easier fund raising and possibly federal aid. From several corporations and a group of local businessmen he raised the whole $50,000 Borglum said he must have to get started. The Association then plunged ahead and gave Borglum a contract to get to work and finish the job in about four years. Borglum well understood that his sponsors might be close to a million dollars short of being able to keep the agreement, but it was just what he was after.

By the time Coolidge arrived in Custer State Park in June, the monument was a going thing in the eyes of a world which little suspected that only $50,000 was on hand.

Soon, Borglum arrived with a 16-man crew. From a plane he dropped a welcoming wreath on the summer White House lawn. He and his crew went into a flurry of camp construction, road-building and material assembly. Some 1,400 feet of air line were run up the mountain to operate jackhammers, and Coolidge was invited to dedicate the first drilling on Aug. 10.

There weren't enough horses to carry all the people up the trail on this second dedication day. Thousands, including Gov. William J. Bulow, walked it. Coolidge, looking ill-at-ease in cowboy boots and a ten-gallon hat, arrived on horseback to a "21-gun salute"—the blasting of 21 stumps to help clear a road to Mt. Rushmore.

Calvin Coolidge was always a man of few words. "We have come here to dedicate a cornerstone that was laid by the hand of the Almighty," he said, "a memorial [in which] the people of the future will see history and art combined to portray the spirit of patriotism." Then he added the welcome words: "This great monument deserves the sympathy and support of the national government."

Coolidge handed Borglum a set of drills. As he took them, Borglum said: "As the first President who has taken part, please write an inscription to go on that mountain." He shrewdly added: "We want your connection known in some way other than by your presence." Then, as rapidly as he could go up the mountain and be lowered in a saddle seat over the cliff by Major Tucker, he began boring out the first master points for the face of Washington. Returning to the platform, amidst enormous cheers, he gave one of the four drills he'd used to Coolidge, one to Norbeck, one to Robinson and kept one himself.

Actual sculpting on the mountain began two months later. In three months time, the job consumed the first $50,000. On Dec. 7, work stopped and was not resumed for a year and a half. There was little more than a gash on Mt. Rushmore, where workers had drilled 25 feet into the rock from the top of Washington's proposed forehead to the point where his eyes would be.

But the sponsors had sold the project to the nation very well and were (correctly) certain that once started the country couldn't bear to have it go unfinished.

Senator Norbeck's bill to get federal help died in committee in 1928. But there was little opposition to the monument *per se*. Opponents preferred Democrat Woodrow Wilson's face to that of Republican Teddy Roosevelt—a matter of partisan politics. But in 1929, Democrats agreed to Borglum's plan, provided that no admission fee would ever be charged to see the monument. On Washington's birthday, Feb. 22, 1929, Congress passed Public Law 805. It replaced the private Mt. Harney Association with the federal Mt. Rushmore National Monument Commission, and provided $250,000 in federal money on a matching fund basis. By then, the old association had in hand another $50,000 raised by public subscription. It was turned over to the new Commission, freeing $50,000 of the federal money. Now $100,000 was immediately available to resume work, while to get the remaining $200,000 in federal funds, an equal amount would have to be raised elsewhere. The way to get it was to keep working and keep begging.

By far the hungriest years of the project were those from 1929 to 1934, when a dollar had to be found elsewhere in order to get a government dollar.

In 1929, Borglum proceeded on Washington's head. His plaster models were five feet high. On the model, the "most protruding points" were expressed in mathematical descriptions of three-dimensional space derived by dropping plumb bobs from the level of the top of the head to brows, nose-tip, etc. The measurements describing these points were then expanded on paper to the scale of the actual monument. The points of most protrusion were then located on and within the mountain by dropping a similar plumb line from a huge boom. The point of the nose was first located, and the rock drilled and dynamited away until this rough work was close to the actual tip of the nose within the mountain. Slowly, keeping shy of the final surface, an oval somewhat bigger than the face was cut away with key points marked in paint. The big ovals allowed room within the rock to alter the final face, if need be, and imperfections discovered in the rock continually changed the final sculpture from the plaster models. In the end, several heads were even relocated.

Much of the "pointing" and crude cutting had been done on Washington in 1927. Now the sculptor began the more careful work of having the rock chipped away from Washington's forehead to his chin. By November 1929, the forehead was nearly done, while the brows, nose, eyelids and eyeballs were drilled within a few inches of the intended final surface. The face, though still crude, was suddenly recognizable. Borglum liked to tell people that the faces were always there in the mountain, he was just getting the excess rock off of them.

At year's end there was not $9,000 in the kitty. And to jump ahead, at the end of 1931 there was less than $11 on hand when winter shut down the work. But Norbeck and a growing army of friends worked like mad on money. South Dakota school-children chipped in small change. Many people bought $100 memberships in the Mt. Rushmore Memorial Society. Thousands of handsome booklets describing the project were peddled by the commission. And, in 1932, Gov. Warren Green and Norbeck between them found a way to apply $50,000 of Depression relief money to the monument. It could only be used to hire the unemployed. By spending it on drillers' pay, another $50,000 was freed from the matching funds. The work continued each year by the skin of its teeth until 1934, when President Franklin D. Roosevelt put Rushmore under the National Park Service. Congress then rescinded the matching funds provision and gave the commission all that remained of the 1929 appropriation. A little arithmetic will show that even with this, the project was still short of what it would finally need by almost half a million.

There is no doubt that the money kept coming in because Borglum kept hard at work as long as there was a cent available, thus creating faith and credibility in his work. It was the same philosophy that had led to the two dedications when nobody knew where the money was coming from. America never doubted that Borglum and his friends were for real.

On July 4, 1930, a crowd of 2,500 people, including President Herbert Hoover, gathered to see a huge flag draped over Washington's face slowly pulled aside while rifles fired salutes and planes zoomed overhead. Spectators gasped, radio commentators described the scene to the nation with genuine awe and newsreels recorded it for posterity. The Father of Our Country loomed out of the mountain, with a nose 20 feet long, eyes 11 feet across and a mouth 18 feet wide.

For several years, Borglum did more work on Washington—he intended to carve down to the waist and finish the coat lapels—while eight drillers roughed out Jefferson's face.

Borglum's first plan was to place Washington, Jefferson and Lincoln together from left to right as seen by a viewer. But after he placed Washington's head, he decided to put Jefferson and Lincoln on either side of Washington, with Jefferson on the viewer's left. In 1933, drillers started cutting away to place Jefferson on the viewer's left of Washington, and reported that there wasn't enough granite there for a head. So Borglum had them start over to the right of Washington, as originally planned. To his horror, the rock was imperfect here. The only solution was to cut deeper into the mountain. The crew drilled 90 feet into Rushmore before finding solid rock. It turned out to be a blessing. The entire appearance was improved by setting Jefferson, and later the other figures, deeper, though the farther in they went the higher the cost and the slower the progress. The abandoned Jefferson face was dynamited away in 1934, kissing off $10,000 worth of work and materials.

The second Jefferson was a time and labor consumer. A natural crack showed up in the stone where one nostril was to be, which, said Borglum, might have left a head without a nose in 500 to 5,000 years. He reset the head five degrees to the north, tilted it about 18 inches and moved it back into the mountain another four feet. The crack is still there, but misses the nose. To this day, it and any other cracks that form are scouted by National Park "beauty squads" and filled against frost with special caulking.

By the time Jefferson began to look like himself in 1935, rough work was under way on Lincoln, while Borglum continued to refine Washington. With the project well into its third American Presidency, the time for another unveiling approached. On Aug. 23, 1936, Franklin D. Roosevelt attended a typical piece of Borglum showmanship. A great flag was pulled aside again, this time to reveal Jefferson, while a small plane dropped tiny parachutes carrying souvenir bits of granite chipped from Rushmore.

It was 12 years since Borglum first surveyed the Black Hills from Harney Peak. He was now 69 years old. Lincoln was under way but unfinished. Teddy Roosevelt hadn't been started. The plans called for much more work on Washington and Jefferson below their shoulders. The monument had gone through $402,659, including the whole 1929 grant and $152,000 besides.

More than $500,000 was still needed—much more if Borglum's entire plan were to be fulfilled. But there was increasing hope that the thoroughly committed federal government would see it through, lest the whole world be disappointed. More than 197,000 visitors had come to watch the work in 1935. They came from every state and 22 foreign lands. At first, visitors were allowed to climb 500 steps to the top, amidst the sheds, shelters, scaffold supports and dynamite, but the Park Service finally barred this as too dangerous. Visitors were amazed at such sights as pygmy figures of workers walking across Washington's lower lip. In fact, the full sense of the grand scale of the monument was more obvious back then when men were working on its face than it is now. Some visitors didn't correctly understand what they saw. An old lady asked Borglum what paint he used to make Jefferson's eyes so blue. "There is no paint," he said, "I just sprinkled a little bit of sun in each eye."

One day, Borglum talked to a man who rented out a telescope that let people view the mountain from four miles away. "What question is asked the most by visitors?" the sculptor asked. The man hesitated, but when Borglum pressed him he said the commonest question was: "How much concrete did it take?" Borglum laughed and asked how the telescope man answered the question.

"I tell 'em I don't know," he said, and added, "how much did it take?"

Congress considered an additional money grant in 1936, though there was growing impatience at how long the work was taking. "When is this thing going to stop?" asked Rep. Marion A. Zioncheck, of Washington. A Congresswoman was trying to get the head of Susan B. Anthony added to the monument as a condition for further grants, and Zioncheck feared demands for more heads to satisfy various interests. A. E. Demaray, of the National Park Service, assured the House appropriations committee that Borglum had told him that there was no more room for another face in the Rushmore group. "Well, I hope so," Zioncheck sighed—and in 1936 Congress approved an additional $200,000.

By 1938, more was needed. When Congressmen asked the total cost or how long the work would go on, Demaray said the answer was "difficult." But Borglum retorted: "Was God a creative artist or a bureau engineer? A million years from now, who is going to care how many hours it took to carve Teddy Roosevelt's mustache?" He did appear before a Congressional committee and outlined the difficulties. His rhetoric and his detailed descriptions of past difficulties and future problems never failed to leave listeners with a sense of the daring and immensity of the work, and the 1938 Congress voted $300,000 more to finish the job.

Always temperamental, Borglum slowly became involved in conflict with the commission. By 1936, several members offered to resign, and in 1938 they did. Rep. Francis Case, of South Dakota, was anxious to prevent a replay of the Stone Mountain quarrel. He decided that temperament went with genius, and Case was instrumental in creating a new commission setup, hand-picked by Borglum. It made the sculptor virtual dictator of every aspect of the monument at the same time the last $300,000 was approved.

A small canyon to the right of Lincoln made it almost impossible to locate Teddy Roosevelt anywhere but between Jefferson and Lincoln. Borglum had left space between the two for TR, which would have him boxed in if trouble should arise in actually placing Roosevelt there. By 1936, trouble did arise. There didn't seem to be enough suitable rock for Roosevelt in the niche saved for him. The sculptor had to think of leaving Roosevelt out "for a time." But he took a chance and put 50 men to work. They penetrated 120 feet to find reliable stone, and at that point there was only a 30-foot depth of granite left behind the planned finished face, which was cutting Roosevelt pretty thin. But the gamble paid off and work began on pointing up Roosevelt's face. Further refinements on Washington and Jefferson continued, while in 1936 and 1937 Lincoln was pushed ahead for another dedication. Practically no work was done below the necks of any of the figures, but much rock was removed.

As Lincoln progressed while Roosevelt was being roughed out, Borglum had moved down from Abe's forehead, but hadn't decided whether to put a beard on him. Norbeck felt that Borglum's beardless Lincoln in the Capitol rotunda was his finest work, and urged a clean-shaven rail-splitter for Rushmore. The sculptor never explained why, but he finally decided on a beard.

Lincoln was dedicated on Sept. 17, 1937—the 150th anniversary of the adoption of the Constitution. "What we have accomplished in this cracked cliff, as a purely mechanical feat, is little short of phenomenal," Borglum informed the 5,000 spectators. "To even dare to do this work at all lifted it forever into the realm of great

pioneer and cultural adventure. In its execution—without proper tools, without adequate power, without funds, without any trained assistant—it is an accomplishment without parallel in this or the old world. . . ." He then ordered a dynamite blast. A cloud of gray granite dust rose lazily across the mountain, and the flag slipped from Lincoln's face.

During the 1938 season, Borglum concentrated most of his carvers on the Roosevelt face. He also began hewing out stone on a new idea, a Hall of Records located deep inside the north wall of the mountain which would house "all the important records of our civilization" and contain 25 large busts of the nation's great men and women. (His long-time friend, Frank Lloyd Wright, agreed to help with the design.) "I will even give Susan B. Anthony a place with the gods in the Great Hall," he declared. "Her friends should be happy." The commission persuaded Borglum to halt those operations in July 1939, after he'd already blasted a 14-by-20 foot tunnel some 75 feet into the solid mountain. It was time, they said, to dedicate Theodore Roosevelt, the fourth and last figure.

Nothing appealed to Borglum more than dedicating his handiwork. On the night of July 2, 1939, in conjunction with South Dakota's 50th anniversary of statehood, Sioux Indians in full regalia entertained 12,000 guests with singing and dancing while silent-picture cowboy star William S. Hart rode circles around the performers. Suddenly, the music stopped. Fireworks and aerial bombs began bursting in the clear night sky and just as the glittering sparklers faded away, the beams from a battery of powerful searchlights homed in on the mountain wall. There, in a vivid profile under a bright moon, gleamed the four majestic faces that Borglum had worked on for 12 long years.

The pressure of world affairs, on the eve of WW2, cooled Congress' interest in the project—except to provide funds for finishing and refining the faces. It was just as well. Borglum was tired and unhappy for, shortly before the last dedication, FDR had ordered Mt. Rushmore returned to the administration of the National Park Service under a governmental reorganization program.

"You are a sorry old warrier—all scarred and bleeding grandly," architect Frank Lloyd Wright touchingly wrote his friend. He wasn't far from wrong. On the morning of March 6, 1941, following an operation in Chicago, the 74-year-old sculptor unexpectedly died of a heart attack. He was laid to rest in Forest Lawn cemetery in Glendale, Calif., beneath a memorial plaque inscribed by writer Rupert Hughes that reads in part: "He made a mountain chant."

Lincoln Borglum did the final work on the mountain following notes and instructions left by his father. Nothing more was ever done on the Hall of Records. Nor was an inscription ever carved on the west wall of Rushmore. Coolidge did write one, but the sculptor blue-penciled it because, in his opinion, "it wasn't beautiful English." The face of Roosevelt was never completely finished. Lincoln's head was refined and brought out more fully. Jefferson's collar was blocked out, but no work on his hand was undertaken because of the poor quality of the rock. Washington's collar and lapels were finished, however.

The last bit of work—a final drill blast—was done on Oct. 31, 1941.

"I do not think any more should be done on the figures," the younger Borglum wrote in his final report. He believed that the memorial as it stood was just as effective as if it had been carried down to the waists as shown in the models.

The elder Borglum, however, had never been really satisfied with the faces during his lifetime. He went over Washington's features constantly, refining and retouching them. "Nobody ever knows the difference," he admitted, "except that they say it is more wonderful." Often, he viewed the faces at different times of the day through powerful binoculars from atop Iron Mt. four miles away. Then he would view them from his studio and, swinging over one of the faces, he'd note what small piece of rock needed to be removed and mark the spot with paint. The pupils in Lincoln's eyes are jutting pieces of granite about 22 inches long, for example. At close range they do not look like pupils, but by studying the effect of light and shadow from a distance, Borglum gave them life and vitality instead of making them appear unnatural and cold.

No final dedication of the whole memorial was ever held. (This was due to the coming of WW2.) But under the National Park Service, the grounds around the monument have been cleared of rock and landscaped, and in 1950 floodlights were installed to illuminate the faces at night. The steps up the mountain rotted away years ago, so visitors can no longer climb to the top.

"My dream has come true," Borglum wrote in his memoirs in 1940. "There, on the mountain top, as near to Heaven as we could make it, we have carved portraits of our leaders, that posterity and civilization may see hundreds of thousands of years hence what manner of men our leaders were, with a prayer and a belief that there among the clouds they may stand forever, where wind and rain alone shall wear them away."

As Borglum also once said, "I want to create a monument so inspiring that people from all over America will be drawn to come and look and go home better citizens." One wonders if he dared imagine more than 2 million awed visitors a year three decades later, coming to view heroic stone faces visible from 60 miles away—faces on the scale of living men who would stand 15 feet taller than the Great Pyramid of Cheops.

THE USES AND ABUSES OF LEGAL ASSISTANCE

Mr. TOWER. Mr. President, for the information of my colleagues who have had doubts about the accuracy of charges that legal services offices have engaged in efforts to use class action suits in a manner which most often serves their own objectives rather than those of their clients, I commend to their attention a recent article from the Public Interest, entitled "The Uses and Abuses of Legal Assistance." The author is Harry Brill, associate professor of sociology at the University of Massachusetts, Boston, and former research director of the San Francisco Neighborhood Legal Assistance Foundation—OEO's second largest legal service agency.

Mr. President, I respectfully ask unanimous consent that the full text of the article be printed in the RECORD.

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

THE USES AND ABUSES OF LEGAL ASSISTANCE

(By Harry Brill)

Those of us who subscribe to the ideal of equal treatment under law for all citizens must agree that public money is well spent when it effectively reduces the disadvantages that the poor suffer under our present legal arrangements. Judged by this standard, the legal assistance program sponsored by the Office of Economic Opportunity (OEO)—whose uncertain fate will soon be determined in Washington—has been a success. By providing free legal services, its 265 agencies with their more than 900 neighborhood offices have improved the ability of poor people to defend their interests. Whether as defendants or as plaintiffs, the poor can now have highly dedicated and skilled lawyers to represent them.

In their role as tenants, many poor people can for the first time confront their landlords with dignity. As consumers, they are in a position to challenge unreasonable overcharges and other unscrupulous business practices; in fact, their chances of winning consumer cases have multiplied tenfold. Moreover, welfare departments and housing authorities—to cite just two kinds of public agencies that the poor encounter—can no longer anticipate that their practices will be passively accepted. Almost unheard of a decade ago, it is now quite common for a poor person to exclaim, "I will see my lawyer."

OEO lawyers are handling more than a million individual cases each year and winning the overwhelming majority of them. Their actual achievements, though, are even greater than the record shows, for pouring legal services into low-income communities does not merely win individual cases, it also has a deterrent effect. Faced with the possibility of legal action, people have begun to think second thoughts about mistreating the poor. Of course, the availability of legal services alone by no means eliminates the legal disadvantages of being poor. Other institutional sources of inequality persist—not least, certain characteristics of the laws themselves. Nevertheless, there does exist considerable law on the books to protect the poor, and by providing them with legal services, OEO has appreciably reduced a major source of inequality.

Not only is the program successful; it has also attracted wide support. And its supporters are by no means all liberal reformers or the poor themselves. Conservatives who believe the poor should have access to legal and peaceful means to cope with their individual problems consider it a worthwhile public investment. And the American Bar Association has also given the program a hearty endorsement—though, to be sure, the Association speaks partly from self-interest, since it realizes that under an adversary system the provision of legal assistance to those who are unable to pay also creates business for lawyers who serve paying clients. But however diverse the motives of the various endorsers, it remains a noteworthy fact that the program is approved by most of its attentive publics.

THE QUESTION OF CLASS ACTIONS

The legal assistance program, then, might seem to be that rare and heartwarming case of a public program that does good, does good well, and does good without arousing fierce opposition. Yet since its uncertain beginning the program has in fact been embroiled in controversy. The controversy has not centered on the "traditional" individual case services which aid clients on a one-to-one basis, which are intended to resolve the legal problems only of the clients who are actually represented, and which make up the bulk of the program's work. Instead, almost all the debate has focused on the program's support of class action suits, which challenge general practices and policies of both private and public institutions. The few clients directly represented in these class action cases are said to be only a "legal sample" of larger numbers of people who are similarly situated. The few, then, may win major reforms on behalf of many others as well as themselves. OEO's class action cases have been instrumental—or so it is said—in righting a long series of wrongs: in overturning welfare residency requirements, restoring Medicaid cuts, and forcing business establishments to change consumer practices.

On the face of it, the controversy about the class action aspect of the OEO program hardly seems surprising. Conservatives, so the logic goes, and those with vested interests

in our current political arrangements might well support a program providing legal aid only in individual cases of no broad impact; but that support would surely evaporate if OEO ever attempted changes posing a fundamental threat to the Establishment. And conservatives have indeed complained loudly about OEO's sponsorship of class action suits. Even those who have supported or learned to live with the idea of federally subsidized legal services find the use of public funds for large-scale attacks against any arm of the government itself a bitter pill to swallow. Moreover, some public officials whose agencies are threatened by class action have been outspoken in their opposition to such suits. The discomfort on the part of the Establishment has alone been sufficient to win class action a high repute among liberals, and to make its list of accomplishments seem especially significant. In addition, even apart from the howls of conservatives, many legal-minded reformers view class action as a quick and powerful tool for peaceful change in the system. So the class action controversy would seem a fairly straightforward debate between those who are willing to change the system for the benefit of the poor and those who are not.

But neither the moral outrage of the Establishment nor the vigorous defense of class action by liberals should in itself be taken as evidence of the success of this part of the program or of its benefits to the poor. The Establishment, for good reason, has by no means always criticized class actions so vehemently in private as it does in public. And liberals have ignored the various direct and indirect costs to the poor that class action suits have entailed. The activities of the San Francisco Neighborhood Legal Assistance Foundation—OEO's second largest legal service agency—are a case in point. Since the beginning of the poverty program, the Foundation has been a favorite child of the city's liberal constituency. To raise a serious criticism of any of the Foundation's activities has been taboo for anyone who does not wish to be labeled an arch-conservative. In this atmosphere—the atmosphere of many other cities as well—it has been virtually impossible for reform-minded citizens to consider the dark side of class action suits.

While serving as the Foundation's research director, I learned first-hand how great the disparity can be between an organization's reputation and its actual accomplishments. What the Foundation has done poorly, unsuccessfully, or not at all must be tallied along-side its real accomplishments. And such an accounting unfortunately reveals that the effects of the San Francisco Foundation's class action suits have been minimal or even harmful. It may be instructive to explore how this is so and why the organization has pursued these actions nonetheless.

THE NEIGHBORHOODS VERSUS THE MAIN OFFICE

The Foundation, like other man-made entities, operates on limited resources. An organizational commitment to pursue certain approaches must necessarily entail some sacrifice of other approaches. Since the Foundation is serving clients whose low income makes it virtually impossible for them to obtain legal services elsewhere, it is appropriate to weigh the costs to the poor of the services that are sacrificed.

The Foundation is composed of five neighborhood offices and a main office. The main office in San Francisco might have adopted any one of several notions of its proper role. It might, for instance, have served as a source of *ad hoc* and supplementary staff for the neighborhood offices. But instead, the main office chose to become a branch specializing in organizational advocacy. Its lawyers would devote their expertise to helping community organizations solve their problems and become stronger politically. Whether these organizations needed to be incorporated, advised on the legal implications of their actions, assisted in negotiations, provided with legal representation on behalf of their individual members, or rendered any other service that the Foundation could appropriately perform, the lawyers would be ready and willing. As time went on, and for reasons we will explore later, the range of functions that the main office lawyers actually performed for their organizations narrowed sharply. "Organizational advocacy" became a euphemism for class actions.

The neighborhood lawyers were not unaware of the implications these main office decisions had for the allocation of legal service benefits; indeed, this issue was a major source of conflict within the Foundation. The neighborhood offices, handling conventional individual cases, are deluged with clients. Anxious to give sufficient attention to each client while maximizing the number of cases they could process, these local branches consistently urged the main office to provide them with staff assistance—assistance which, because of main office preoccupation with class actions, was not forthcoming.

The local branches' obvious lack of interest in class actions convinced main office staff that their colleagues were legally provincial and that a few might even be committed to the status quo. Conversely, the neighborhood lawyers were irritated by this main office concentration on class action. Not only did the main office lawyers refuse to relieve the pressures on the local branches; they also attempted to persuade the neighborhood offices to assist *them* in generating class action suits. To their outrage, the branch offices were advised to cut or limit their caseloads and to develop antennae that might alert them to opportunities presented by their own clients for innovative class action cases.

The neighborhood lawyers considered their main office colleagues opportunists and publicity hunters. They were troubled that the pace of the main office was leisurely while their own was often frantic. Nor could they understand why the main office devoted so much time and energy to public relations. Most irksome of all was the great discrepancy between the number of cases they handled and the number handled by the main office. While a community-based office would process a few hundred in a given month, the main office might still be in the midst of preparing a single class action suit.

The main office repeatedly argued that even though in the short run resources were being shifted away from direct benefits to the poor, and even though fewer cases were handled than might have been otherwise, the class action suits justified themselves in the long run through the widespread benefits they conferred. But in fact this argument is by no means a conclusive justification. As the neighborhood lawyers realized, at least several hundred cases were being traded off for each class action suit. The investment in time and resources for a class action suit, particularly for research, is considerable. A single case may wholly occupy a few lawyers for an entire year. And just as important, the Foundation, like other legal assistance agencies, won extremely few of its class action suits but well over 75 per cent of its individual cases. Thus in terms of the likelihood of winning a legal victory, a single class action suit is equivalent to at least several thousand individual cases. These numbers alone leave a heavy burden of proof on the proponents of class action.

Moreover, it is not so clear that the objectives of class action suits are necessarily of greater value than, say, taking a landlord to court to rectify a dangerous safety hazard. And even the strongest argument in favor of class action—the wider nature of its benefits—is seriously open to question. Even in a conventional individual case, the client himself is not the only beneficiary. Word travels fast, and the legal activity of the neighborhood offices has already had a considerable deterrent effect. Still greater penetration of neighborhood legal services into the community through more individual cases would further sensitize the poor to their legal rights and also serve to warn others that the poor have legal protection. For these reasons the high costs of class action to the individual poor cannot be justified by any abstract argument; they must instead be justified by a showing of the actual social and economic gains that these large cases produce.

HOLLOW VICTORIES

Unfortunately, a very large proportion of class action legal victories do not in fact lead to actual social and economic gains. Unlike individual cases, in which favorable legal decisions are readily translated into real gains, class action involves more difficult hurdles—often insurmountable ones. The Foundation won several paper victories in which court orders were ignored because of an inability to comply. For example, the Foundation obtained a favorable decision against the Welfare Department's low rent allotment to recipients. The court ruled that it must be increased to a more realistic figure. The Department, however, was unable to comply without receiving assurances of additional funds from the state legislature. Though the Foundation made legal headway, no concrete gains were achieved for the people on welfare.

There were even instances when favorable decisions *were* enforced but still yielded little or no net gains for the poor. Take, for example, the Foundation's very important and celebrated participation in the defeat of the one-year residency requirement for welfare. This "victory," along with other developments in California, triggered austerity measures by the legislative and executive branches. Eligibility requirements were more vigorously enforced and tightened to exclude many poor people who had formerly been eligible; the new restrictions were so severe that, despite an increase in unemployment, the total number collecting welfare in California actually dropped. So the victory for the recently arrived poor in California simply came at the expense of those poor who had lived there longer.

The main office lawyers responsible for these welfare cases had followed a plan of action that backfired. They had argued that inundating the courts with class action suits was the best route to achieving welfare reforms. The idea was to force a crisis situation that would prompt the legislature and governor to liberalize welfare and provide more funds; the actual consequence was the opposite. Curiously, the lawyers had never considered this possibility.

A one-track commitment

Their preoccupation with class action has also led the lawyers to divert resources from other, probably superior ways of attacking the problems at hand. In general, the main office lawyers proceeded as if class action were always the best vehicle and sometimes the only one for improving the social and economic conditions of the poor. In a highly publicized case, one which was eventually lost, the Foundation brought a class action suit against the San Francisco Housing Authority to compel it to physically upgrade one of its projects. The liberal public applauded this action because it had been unhappy about the inadequate physical conditions of these projects. But its enthusiasm would have soured had it understood that the suit could not have changed these conditions one iota.

The operation of public housing is financed mainly out of collected rents. (Though some federal subsidies are available for project rehabilitation, they are woefully inadequate for the purpose.) Because the costs of operating the projects have been rising more rapidly than rents, the Housing Authority has been thrown into a financial crisis. Like many other public housing agencies, it has been in the red. Its debt has been growing largely because the soaring costs of material and labor for maintenance and repair have been rising without comparable increases in rent. It was not likely that the Housing Authority could free substantial additional funds for rehabilitation by streamlining its operation: the agency is considered among the more efficient ones in San Francisco. Nor was the agency wasting money as a result of corrupt practices. Not even the lawyers believed that the Housing Authority was guilty of such excesses. What then could a court order to the Housing Authority accomplish? To rule that it spend even more, and thus further increase its debt, would be like ordering its executive director to jump out of a window and fly.

The response of the lawyers to such criticism of their activities is that to do nothing changes nothing. But to point out that the Housing Authority alone is financially incapable of the massive rehabilitation and maintenance needed is not to argue for inaction. Rather it poses the issue of where energies might be more appropriately directed and whose energies should be primarily involved. Since San Francisco's public housing, like that of most other cities, is a federal program, Congress could appropriate funds for it. In fact, the lobbying activities of tenant organizations and their allies have been somewhat successful in this regard. The judicial route, on the other hand, is an ineffective one because the courts have no legal power to compel Congress to spend millions of dollars against its will. Instead of filing a class action suit, the main office lawyers could have assisted community groups to prepare a bill and advised them on lobbying strategies. This plan would have been consistent with the commitment they expressed to organizational advocacy; but it was not a plan that they chose.

The general question of whether to pursue the legislative or the judicial route to reforms is of course a subject of legitimate debate. The point here is simply that the Foundation tended to channel organizational clients toward the courts even when—as in the public housing case—there was nothing to gain, and, by diverting resources, a great deal to lose. There were other occassions when the judicial route was more appropriate but still less expedient than other actions would have been. Issues were translated into class action suits even when there were strong indications that a bill introduced into the state legislature and supported by a minimal amount of lobbying would have accomplished the same end more directly and swiftly. The lawyers on several occasions convinced community organizations to drop their lobbying plans in favor of court action. Yet it is almost axiomatic that legislative action offers a more enduring basis for reforms, since they are written into the law and marked with a clear stamp of public acceptance, rather than left to court interpretation.

The lawyers pursued this strategy even where it jeopardized the specific goals and the autonomy of the community organizations they presumed to serve. One community organization that was attempting to halt a major redevelopment project finally had to threaten the Foundation to get it to withhold legal action in the matter. Against the advice of one of the main office lawyers, the Western Addition Community Organization (WACO) was trying to pressure the Board of Supervisors to stop the project. WACO feared that a legal suit filed at this time would thwart its attempts to win a political victory. It argued that if the courts refused to hear the case, the Supervisors would be under less pressure to support WACO's demands.

The lawyers nevertheless insisted that the suit be filed immediately. Many difficult months had been consumed in preparing it, and they wanted to bring it to court as soon as possible. They were not moved by WACO's argument that a political strategy at the moment made better sense. Tempers were high. The lawyers seriously contemplated filing the case without WACO's permission; they would argue that WACO had already assented to the suit. WACO prevailed—but only by threatening to drop the services of the Foundation. Subsequent events justified WACO's strategy. The Board of Supervisors voted to stop the project. Though this decision was later vetoed by a lame duck mayor, the battle greatly strengthened WACO as an organization. Consequently, it was eventually able to force a considerable number of concessions from the redevelopment agency.

This episode was typical of Foundation behavior. The one-track commitment to class action, even when it might harm organizational clients, was characteristic of the main office lawyers. In a way, then, the Foundation itself became a barrier to social change.

MAIN OFFICE MOTIVES: THE PROBLEM OF AUDIENCE

Why did the main office pursue this strategy, a course of action that was certainly not forced upon it by any obvious external constraints? It was not that they were indifferent to the fate of the poor; indeed, one reason for their persistence was that they were genuinely committed to reforming the Establishment and believed that class action was an all-purpose tool to achieve their goals. In fact, class action was eulogized and idealized by them with as much enthusiasm as direct action evokes among militants. The lawyers believed that, whatever its short-run limitations, the long-range consequence of continually battering the courts and the system would be to force changes favorable to the poor. This perspective made them much less prone to consider the various problems each particular suit presented, and made their faith in class action largely immune to defeat or criticism.

This ideological commitment to class action suits led the lawyers to go beyond their role as organzational advocates providing technical assistance in support of policies set by their clients. Community organizations did not normally propose class action. The services that they did demand more often than not seemed either self-defeating or inconsequential to the lawyers who thought that change was too crucial to leave to the inexperienced. Rather than acceding to their clients' wishes, they believed that they had a responsibility to educate them. In practice, this meant taking the lead and persuading community organizers of the merits of class action. The lawyers themselves had faith in the tool; changing their clients' minds, therefore, was justified.

But an ideological belief ir the merits of class action does not explain everything the lawyers did. It is hard to imagine the simple belief in one legal tool causing them to be so indiscriminating in their choice of cases, so willing to rescind their immediate commitment to the organizations and the individual poor that class actions are supposed to serve. So it is not surprising that a further explanation for the lawyers' behavior lies in the way it enabled them to meet the various expectations of four different audiences—their client organizations, the Establishment, their professional colleagues, and the liberal middle-class public.

LAWYERS AND CLIENTS

These lawyers and their clients, first of all, were each other's captives. The lawyers were obligated to serve all clients that they could who were classified as poor. And since the Foundation had committed itself to serving organizational clients, the main office lawyers had to assist all poor peoples' organizations that sought legal aid. Moreover, the lawyers' special interest in class action made community organizations even more important to them. Though individuals directly represented in class action cases need not have organizational links, community organizations serve as a natural vehicle for developing these suits. They provide ideas and leads, they are able to produce the individual clients and assure their availability, and they can be actively enlisted in collecting data for cases. Moreover, to bypass community organizations on issues that directly concern them involves very serious risks.

Conversely, because they were generally unable to afford fees, organizational clients often had no choice but to deal with the Foundation. So although clients enjoyed the advantage of receiving free legal assistance, and the lawyers were able to earn a reasonably good income doing work they regarded as both socially important and professionally productive, neither side enjoyed free market relations and each side paid heavily for this. There were no easy ways of disposing of one another if they wanted to—and they often did want to.

A great many organizations that approached the Foundation were militant, and the relations that developed between their organizers and the lawyers ranged from the tense to the explosive. The militants had very definite ideas on how lawyers should behave. When illegal activities were planned, they admonished the lawyers about their responsibility to keep them out of jail. If the organizers were seeking more time, perhaps to organize their forces for battle, they wanted the lawyers to deter the Establishment from acting before they were ready. If they wanted the lawyers to assist in harassing public agencies for various political reasons, the lawyers were expected to conform. And no matter what the organizers demanded, they insisted that the lawyers respond right away. This was not at all a minor matter to the lawyers, as various militant organizations would sometimes contact their office several times per day.

The organizers expected conformity in style as well. If they walked out of public meetings they would be furious if the lawyers did not tag behind. If the organizers wished to impress their members in court they demanded that the lawyers behave dramatically. Similarly, if they chose to ignore their enemies, they insisted that the lawyers do likewise; organizers were frequently angry with the lawyers for being on friendly terms with those who represented their opponents. To the organizers the city was a battlefield, and the lawyers were almost always expected to prove in one way or another that they were on the right side.

The lawyers who without except were more moderate politically, had very different aims in mind—aims that brought them into serious conflict with their clients. The lawyers were anxious to help militant organizations which they believed had legitimate grievances by reducing tensions between them and their opponents. Their strategy was to provide militant organizations, with access to the system by way of the courts. By translating social and economic issues into legal ones they would make possible the peaceful settlement of potentially volatile disputes. All sides would gain: Both disruptive activities and the stern countenances often resorted to by the Establishment could be avoided. The lawyers frequently boasted to public officials and others about how they intervened to prevent disruptive and illegal activities as sit-ins and even riots. To the militants, the lawyers proudly recounted how they were able to convince various Establishment representatives to listen, negotiate, and

be more conciliatory. This incidentally was characteristic of how the lawyers believed. They always attempted to show each side how successfully they were able to deal with with the other.

ADVOCATES OR MEDIATORS?

The lawyers, then, defined their role primarily as that of mediators. Rather than representing only their organizational clients, they took a middle-ground position by acknowledging the legitimacy of some of their opponents' concerns and demands. Instead of seeking compromises only when they represented the best their clients could expect, they often sought compromises in order to be fair to both sides. At negotiating sessions they articulated the demands not only of their clients, but also of the adversary parties, and in the interest of reaching an agreement they were quick to call to their clients' attention what they felt were reasonable proposals from the opposition. Organizers frequently interpreted this behavior as a betrayal. It seemed to them that without prior permission the lawyers were diluting their demands, and that as a result they would eventually have to settle for much less than a firmer strategy would have won.

The mediating stance of the lawyers also came into conflict with the expectations of the organizers when the lawyers would offer their own separate formulas for settling disputes. To break a stalemate they often met among themselves to develop a program that they believed might be acceptable to both parties. Instead of first consulting with their clients, they occasionally met initially with the opposition to present their ideas. The lawyers naively believed that if they extracted and agreement from the Establishment first, they would be in a better position to persuade their clients. Also, they wished to communicate a message to public officials, many of whom wondered whether the lawyers would permit themselves to be controlled by the militants. Aware of these suspicions, the lawyers wanted to show that they had ideas of their own, and that these ideas represented efforts to settle rather than polarize disputes.

The organizers objected so strongly to the way the lawyers proceeded that they often rejected proposals they might otherwise have found acceptable. The organizers always resented the lawyers for initiating proposals, and they were usually horrified whenever they learned that the lawyers had first met with the opposition, without the organization's prior knowledge and approval. The good intentions behind the lawyers' attempt to absorb the militants into the legitimate political arena would backfire, and the organizers would have their worst fears about liberals confirmed. Many of them accused the lawyers of belonging to the enemy camp, and it became almost routine for the lawyers to have to defend their integrity as well as their actions.

The lawyers adopted a variety of strategies to cope with the differing expectations of these two audiences, but they did not have much success. They regularly spoke very differently to different people. They attempted to reestablish their credibility with their clients by expressing in strong language, both publicly and privately their outrage over Establishment abuses. At the same time, they attempted to maintain their links with the Establishment by privately reassuring public officials of their conciliatory intentions. Also privately, they would on occasion make derogatory comments about their clients and decry their extremism. They believed that to be effective mediators they had to indicate to each side their sympathies for its position.

When their militant clients wanted to initiate legal actions that were highly charged politically, the lawyers sometimes refused to go along. They felt that suing the mayor for dereliction of duty, subpoenaing official documents to show evidence of corruption, and other extremely sensitive legal activities would impede rather than promote social change by increasing tension and possibly inviting retaliation. But not believing that community organizers would respond favorably to these considerations, the lawyers tried to convince them by means of their technical legal expertise. In other words, they gave their clients professional rationales for decisions that were really made on political grounds.

None of this stopped the organizers from accusing them of being tools of the Establishment—a label the lawyers appreciated no more than they enjoyed being viewed by the Establishment as lackeys of the militants. The absence of a true market relationship had created this dilemma. It permitted an unusual diversity of view and action between lawyer and client, by encouraging the organizers to make extravagant demands upon their lawyers, by giving the lawyers considerable independence in dealing with their clients, and by preventing either party from withdrawing from the relationship. If the lawyers were to build a workable relationship with their organizational clients while bound by these constraints, they had to find their way out of what seemed like an impossible dilemma: how to be militant and moderate simultaneously.

THE CLASS ACTION STRATEGY

Class action was the perfect strategy. It eventually won over many of the militants because it seemed to challenge basic practices and policies of Establishment institutions. They began to see parallels between what the lawyers were attempting to accomplish in court and their own activities in the street. The lawyers did what they could to reinforce this impression. Class action provided the lawyers with a politically militant language that justified their bypassing other legal alternatives, yet could still persuade the organizers that they were serious about their anti-Establishment convictions. Though the lawyers almost always initiated the idea of class action, the organizers tended to believe that in so doing the lawyers were responding favorably to their pressure for radical action. This made class action even more palatable to them.

What is more surprising is that—despite the public outcries of some officials—the local Establishment was not antagonized by the lawyers' class action strategy. Of course, public officials preferred not being attacked at all; but if being on the firing line seemed inevitable, they viewed class action as the least undesirable way to be attacked. In fact, there were numerous officials who, though publicly criticizing the Foundation, privately praised it. They thought that class action suits provided militants with a legitimate outlet for their dissatisfactions and frustrations. Many San Francisco institutions had been the object of direct action assaults, and to the extent that the Foundation was believed to be diverting the volatile energies of the militants into legitimate legal battles, it was regarded highly for playing a constructive role.

Many of those in power found class action relatively benign compared to the traditional case approach for two reasons. First, while the strategy favored by many militant organizers was to batter their various enemies with one case after another, class action was generally a one-shot affair. Even when the outcome was appealed, there was a considerable time lapse before the next trial. Public agencies did not have to be forever devoting their resources to litigation, nor were they as vulnerable to the bad publicity that a continuous barrage of individual cases could have precipitated. Furthermore, class action suits were less likely than a rapid-fire succession of individual cases to agitate a whole community, and thus build up the strength of militant organizations.

A second advantage of class action to the local Establishment was the Foundation's tendency to use it in ways that either avoided or minimized political pressures on the city. Community organizers tended to believe that a broad cross-section of the city's officials, agencies, and private interests held responsibility for almost any abuse the poor suffered. As they saw it, the failure to enforce housing codes, for example, reflected not only landlord negligence but also malpractice in the Department of Public Health, Fire Department, District Attorney's office, and the office of the Mayor as well. They thought that if the lawyers would legally pester these agencies with the individual complaints of community residents, the political motion these activities would stir could then be used to change conditions. The lawyers, who for good reason believed this approach would be a fruitless one from a legal point of view, generally attributed responsibility for abuses more narrowly. Thus the class action cases cited far fewer culprits than organizers originally identified. As a rule, then, the local Establishment was relieved by the decision of the lawyers to pursue a class action strategy.

THE OTHER AUDIENCES

Two other audiences—their professional colleagues throughout the country, and the liberal middle-class public—exerted a considerable influence on the actions of the main office lawyers. Side by side with their idealism, the lawyers possessed a great desire to develop their reputations. Class action was a powerful tool that could win them the respect and admiration of these audiences. To other lawyers they were able to display their legal acumen by skillfully preparing and presenting innovative and potentially precedent-shattering cases to the higher courts. And to the liberals, the highly dramatic anti-Establishment aspect of class action had great appeal. It offered the potential of bringing about major reforms without engaging in political excesses.

But these audiences are not reliable judges of the real merits and benefits of class action. The middle-class public, who were neither directly affected by the outcome of the Foundation's class action suits nor knowledgeable about legal issues, were readily impressed by the visible and superficial. The mere fact that the Foundation filed a class action suit on behalf of the poor, along with the strong tone and content of its public statements, was sufficient to win their enthusiasm and unqualified support. Lawyers across the country, on the other hand, understood the various legal issues involved in the class action suits. But, perhaps for reasons related to their training, the actual social and economic implications of these cases were often not clear to them.

Yet these were audiences the lawyers chose to act for, and this choice had serious consequences. For the main office lawyers, image making had a top priority, and it consumed a disproportionate amount of their energies. During the aftermath of press conferences, meetings, and other public encounters, the lawyers talked among themselves not about the issues they had addressed but almost solely about the impressions they had created. Whether they believed each other to be persuasive, sufficiently dramatic, or clever—these were more often the topics of discussion than the substantive issues they were being persuasive, dramatic, or clever about. In fact, their vanity was so routinized that the lawyers were unaware of anything unusual about their behavior.

This concern with image was also manifested in their highly competitive spirit, which in turn produced its share of envy,

anger, and anxiety. On several occasions the competition grew so fierce that it provoked a great deal of verbal abuse. In one instance, a lawyer physically attacked a colleague who accused him of deliberately omitting his name from a press release. It is not that warm relations were absent among the lawyers; but along with their collegiality there was considerable tension. Mutual distrust was rampant. They readily suspected each other of seeking personal advantage—for example, by not sharing credit fairly.

Even the attention received by other OEO legal service programs provoked their jealousy. Publicly they praised the accomplishments of OEO's largest legal assistance agency, Cal-Rural, but among themselves they were indignant about Cal-Rural's better reputation, which in their view reflected only its superior public relations efforts. Amazingly, they claimed that Cal-Rural was too obsessed with public image. They seemed to be unaware of how image-oriented their own behavior was.

IDEALISM AND DECEPTION

The lawyers' absorption in image-building might have been merely amusing and of no great consequence, except that it frequently conflicted with the best interests of their clients. Clients needed services that were custom-made. Image building promoted class action on an assembly-line basis. The specific needs of clients and the question of whether or not they really could gain from class action were incidental to the lawyers. They were concerned only with filing as many dramatic class action cases as possible. Among other things, this meant that they were constantly seeking out interesting issues and organizations that might help generate them. So they had little time or patience for community organizations that sought other, less dramatic kinds of legal service.

As might be expected, community organizations that were already mature and independent often refused to deal with the Foundation. The Mission Coalition, a powerful Alinsky-influenced grass roots organization in the Latin community, carefully defined the terms under which it would be willing to accept the Foundation's offer of legal assistance. Knowing the Foundation's reputation, it insisted that the Foundation provide whatever technical aid it needed without ever intruding on policy matters. Predictably, the Foundation lost its interest in working with the Coalition.

But a great many organizations that were neither strong nor sophisticated tended to become enveloped by the Foundation's activities. Whether they were battling against the lawyers, or assisting them in numerous ways (such as gathering material for class action suits), or doing almost nothing pending the disposition of a case, these community organizations were caught up in a process that was stunting their development and eroding their autonomy.

Corollary to this process, and perhaps as important, was the miseducation foisted on community organizers and their followers. Rather than assisting their clients to overcome their ignorance about the law, the lawyers were continually reinforcing it. No matter how irrelevant their clients' needs were to their choice of a legal strategy, the lawyers always tried to show how their actions or inactions were in the clients' best interest. So the lawyers developed an expertise in presenting distorted and falsified explanations to account for their behavior.

Miseducating the organizers about their legal options was fundamental to the selling of the class action strategy. Organizers were generally interested in improving conditions primarily for their own neighborhoods. The primary concern of the lawyers, however, was not the poor in a specific community but the poor who shared a common legal problem no matter where they resided. To sell the organizers on class action, the lawyers, for reasons they regarded as idealistic, misled them into believing that these suits were aimed primarily toward improving conditions in their own community, and that the suits offered the best possible means for doing so.

The lawyers believed that they had a mission—to devote themselves to bettering the conditions of the poor not only locally but across the state and nation. So if in service to their idealistic aims they breached professional standards of conduct, they experienced no remorse. Though they often felt unappreciated, the lawyers also felt proud of their efforts. They seemed unaware that in the process of doing what they did—falsifying, distorting, and withholding information—these idealists were becoming cynical operators who paid little attention to the means they employed. So the class action strategy the lawyers pursued victimized not only the poor and the organizations that served them; ultimately, the strategy also made casualties of the lawyers themselves.

It is important for those who debate the fate of legal assistance to separate in their minds class action from more conventional legal services. It would be tragic for those who are outraged at government-funded class action to assess and determine the future of the program as a whole on the basis of one of its weakest components. On the other hand, the poor and their representatives, who often tend to regard any attack on existing social programs as an attack on themselves, should realize that, just because something describes itself as a service to the poor, it doesn't follow that, in actuality, it is.

DROUGHT IN WEST AFRICA

Mr. BIDEN. Mr. President, one matter that all of my colleagues here in the Senate would join me in lamenting is the tragedy to human life of natural disaster. I would like to take this opportunity to call attention to the continuing problem of the severe drought in West Africa. The area affected by this drought is home to about 25 million people. Not only have humans lost their lives to the drought, but, it has also had the effect of devastating the nations' economies. I support the continued and increased extension of aid to this region to support a recovery program. I have recently read an article by Jeffrey L. Hodes that provides some hindsight into the problem as well as poses some questions that we might all consider.

Mr. President. I ask unanimous consent that an article from the New York Times of January 9, 1974, discussing West Africa be printed in the RECORD.

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

WEST AFRICA: NEITHER RAIN NOR FAST RELIEF

(By Jeffrey L. Hodes)

After five disastrous years of declining rainfall that culminated in drought, desolation and death, the tragedy of the sun-scorched region of former French West Africa has come to public attention. It is a tragedy that could have been avoided.

The region is losing its struggle against the environment to maintain self-sufficiency. Its fragile ecological balance is being devastated by the encroaching Sahara Desert at the rate of thirty miles per year; the livestock, on which the economy is based, are dead or dying, and unknown thousands of people have died of starvation of diseases resulting from malnutrition.

About 25 million people live in the drought area, which covers six of the world's poorest and perhaps least-known countries—Chad, Mali, Mauritania, Niger, Senegal and Upper Volta. Together they cover an area in a semiarid zone south of the Sahara the size of the continental United States.

Large-scale death was averted in 1973. But the crisis demonstrated that there was no international mechanism for effectively responding to natural disasters when simple humanitarian considerations were more immediate than those of political advantage.

Indeed, the international response to the region's needs offers a distressing example of the low premium placed on life in black Africa, the slowness of the United Nations in mobilizing itself to respond to a natural disaster, and Washington's stinginess when there is no immediate political gain in giving sustenance to the "humanitarian" aspects of United States foreign policy. Uncertainty now remains whether the international community will find the political will to deal with the region's long-range rehabilitation problems.

Unlike a flood or earthquake, drought does not immediately capture the attention. Much of the public awareness about the West African crisis dissipated last fall when newspapers reported that the crisis had passed its peak with the monsoons' arrival. Nothing could be further from the truth. In October the summer rains ceased. What rain fell was late and totally inadequate to overcome the drought's effect on crops and cattle. Despite desperate attempts to spare the crops, they withered, necessitating a continued emergency relief operation in 1974.

How extensive was the threat to human life? Statistics are hard to come by in such a desperately poor region. Last month there were reports that the drought took 50,000 lives in nearby Ethiopia. The countries of West Africa said that six million people faced starvation last summer, but some aid experts said that the figure was inflated. Shortly afterward, the League of Red Cross Societies estimated that perhaps 10 million nomads and farmers could starve in the near future.

As the drought came to public attention, there were charges in Washigton that the affected countries had not heeded disaster warnings and had been slow in reacting. When the governments recognized the gravity of the situation, they did seek outside help. Diplomats representing the affected countries in Washington have said that the United States was approached for aid as early as September, 1972. They were displeased by the reception given to their requests and then by the size of aid shipments that first started arriving in early 1973.

However, the Africans' major appeal was to France, since they are former French colonies, and the European Economic Community, which is tied economically to West Africa through the Yaounde Convention, a commercial treaty.

The United Nations assumed responsibility for coordinating the global response to the drought. But its Food and Agriculture Organization did not treat the disaster as an emergency until it was well-advanced, and it failed to marshal international support at an early stage.

The F.A.O. was a poor choice to coordinate the emergency relief, because it had had little experience in dealing with emergency operations. Headquartered in Rome and primarily a technical agency, it does not have the managerial expertise necessary for such an operation.

The organization had been working in West Africa since the brief rainfalls in the late nineteen-sixties. Yet when its own early-warning system reported "an acute emergency" in September, 1972, nothing significant was done to mobilize the international community until February, 1973. And a major appeal was not made until May!

By the time of the appeal, the United Nations agency's mishandling of relief operations had so alienated the major donors, especially the United States and France, that for all practical purposes, the appeal was an embarrassing failure. The agency asked for $15 million in a month; only a $2.6 million was pledged.

Lacking confidence in the F.A.O., the major donors chose to give their aid bilaterally—France via the Common Market, and the United States through the Agency for International Development.

That agency, which usually supplies 70 per cent of the world's food assistance under the Food for Peace program, provided only about 42 per cent of the emergency food contribution. By midsummer, the most severe period of the famine, the United States had contributed only 156,000 metric tons of grain, and by October, 100,000 more metric tons had been delivered, out of a total 625,000 donated by the international community.

In addition, over $38.5 million was given in cash and services by the community, of which the United States share was $4.6 million.

Could the United States have done more? Last year, Washington gave black Africa $307.5 million in aid, of which West Africa received $11.9 million, mostly in food. The emergency drought-relief funds came from a separate source, an Agency for International Development contingency fund that covers catastrophes. But in fiscal 1973 only half of the fund was spent on disaster relief. Among its grants were $10 million for livestock research in the Bahamas.

Under political pressure in the last quarter of the fiscal year, the Agency for International Development shifted $2 million from $10 million in funds that had been set aside for Nicaraguan relief and found another $2.6 million in reserves for West Africa.

In Congress, the black legislator Charles C. Diggs Jr. argued that if the United States committed $318 million to fight famine in Bangladesh, no less could be done to assist 26 million black Africans.

Last month, Mr. Diggs, working with Senators Edward M. Kennedy and Hubert H. Humphrey, won his point. The new foreign aid bill contains $25 million for continued emergency relief and a $50-million supplemental grant for a medium-term recovery program.

FEDERAL SPENDING

Mr. HUGH SCOTT. Mr. President, in a news story on January 5, the New York Times pointed out the need for Congress to hold down Federal spending. I have said time and time again that we have got to act—and act quickly—to accomplish those fiscal reforms that would set reasonable boundaries on spending by the Federal Government.

On March 22 of last year, 33 Republicans, a third of the Members of the Senate, adopted a policy position pledging support for a spending ceiling and fiscal prudence. Five Democrats voted with the Republican Senators in the first test of the declaration shortly afterward—by voting to sustain President Nixon's veto of the $2.6 billion vocational rehabilitation bill, a bill that would have been not only overly expensive but duplicatory of existing programs.

In the Times article, written by Mr. Edwin L. Dale, Jr., the views of a budget expert, Mr. Eugene F. Rinta, are spelled out on the job—as he sees it—that needs to be done, if we seriously want to prove our commitment to fiscal integrity.

Mr. President, I think all of us could be reminded of the need to become budget experts ourselves for the sake of the economy, and therefore I ask unanimous consent that Mr. Dale's articles be printed in the RECORD.

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

CONGRESS FOUND TO ERR IN CLAIMS

(By Edwin L. Dale, Jr.)

WASHINGTON, January 6.—Although Congress claimed to have cut the President's proposed appropriation total by a net $3-billion in the session just ended, it actually added $4-billion to total Government spending, a well-known budget analyst concluded today.

The analysis was made by Eugene F. Rinta, research director of the Council of State Chambers of Commerce, who has examined budgetary details for many years.

The single most important reason for the massive $7-billion discrepancy—which is not understood by many members of Congress itself—is that Congress passed various bills adding $3.2-billion to spending that is essentially outside the appropriations process.

Good examples are the increased Social Security benefits just signed by the President and bills increasing veterans benefits and food-stamp availability, for which the subsequent appropriations are automatic.

DISCREPANCY SOURCES

Other explanations found by Mr. Rinta for the discrepancy between what Congress did and what it thought it did include the following:

About $1.3-billion of the claimed appropriation reduction was of a purely "bookkeeping" type, in that it had no effect on Government program levels or spending.

Another $1.2-billion of the reduction is "real" but will not affect spending until future fiscal years. Much of the sizable defense reduction is in this category.

Congress declined to act on Presidential proposals aimed at saving $1.4-billion. An example was a proposal to make Medicare patients pay a higher portion of hospital costs for short stays.

On the opposite side, Congress declined to act on some Presidential proposals that would have increased spending. Mr. Rinta estimated "inaction savings" in this category at $600-million.

CURE IN PROGRESS

Proposals for Congressional budgetary reform—a bill has passed the House and a similar one has been approved in committee in the Senate—are aimed at curing much of the problem identified by Mr. Rinta.

The bills would establish early each year a spending total and new mechanisms by which Congress would be enabled to keep within the ceiling. All "back-door" measures that increase spending while bypassing appropriations control would be covered.

There is no chance that these new procedures can be effective in 1974. But an agreed-on version of the legislation may pass this year to take effect in 1975.

SKYJACKING

Mr. BIDEN. Mr. President, due to the vigilant efforts of individuals like Gen. Benjamin O. Davis and his colleagues in charge of safety at the Department of Transportation, the United States has not been the setting for one skyjacking attempt in almost 2 full years. Americans in particular and travelers in general regardless of nationality who pass through any of our airports appreciate these efforts. Our thanks extend to all individuals locally who help to screen passengers and luggage. I think that the United States might try to extend its influence and techniques to other countries that still risk terrorist attacks and hijacking attempts.

Mr. President, I ask unanimous consent that an editorial from the Washington Post of January 12, 1974, be printed in the RECORD.

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

DOUBLE STANDARD ON HIJACKING

In 1970, more than 30 airplanes were hijacked in American skies. In 1971, the same. In 1972, the same. In 1973, none. Indeed, last year only one American skyjacking was attempted, on Jan. 2. It failed. Three days later, Gen. Benjamin O. Davis, who is the Department of Transportation official in charge of safety, put into effect rigorous procedures to screen the half-million passengers (and their luggage) who take commercial flights every day. This was the first move, taken to prevent potential skyjackers from bringing aboard the weapons which alone emboldened them to attempt their crimes. The second key move, taken a month later, in February 1973, was to block off the likeliest remaining haven for skyjackers. This was done by an American-Cuban agreement requiring each country to prosecute or extradite individuals who commit violence in order to reach the other country. Thus was the prospect of a successful skyjacking diminished at both ends.

One hastens to add that crossed fingers and continued vigilance remain essential. But the fact is that, in American skies at least, aerial hijacking has been completely snuffed out for a year. This is an accomplishment which does credit not only to Gen. Davis and those involved in carrying out his programs, but to the American air industry and the flying public. At first, many in the industry and public were slow to give safety its due. It took two especially frightening skyjackings in the fall of 1972 to break the final resistance to sensible screening. But there are no arguments any more.

Given the irregular procedures in effect in some foreign airports, however, flying can still be hazardous. Only last month, five Palestinians flew from Spain to Rome, there grabbed up pre-positioned weapons, and set off on a murderous spree which left 32 people dead and the five killers safe in an Arab haven. With few exceptions—Greece, which refused to yield two previously arrested terrorists to the "Rome five," is one—Europeans are unwilling to employ consistently tough police and legal measures against Arabs. Indeed, rather than make life tough for Arab terrorists, Germany and Italy reportedly paid some of them off a year or more—an arrangement that the terrorists eventually, of course, betrayed.

In the Arab world, it goes without saying, no American plane or passenger can be considered safe. In Europe, American planes and passengers are constantly exposed to the Europeans' negligence. For instance, shoulder-mounted Soviet anti-aircraft missiles, evidently meant to be fired at Israeli or American aircraft, are reported to have been brought into a number of European countries; this is why the British Army put tanks at the ready at London's Heathrow Airport earlier this week.

Just what further inducement the United States could offer Europeans to observe reasonable safety standards is uncertain. But suppose the United States said it would not allow any plane to land on its soil if the passengers and cargo had not cleared a weapon screen fully as tight as the screen

in use at American airfields. Suppose, in other words, a lax double standard on safety was no longer permitted to foreign planes using American facilities. Thus the United States could use its influence—and its particular experience—to promote a higher standard everywhere while making service to and from this country safer. After all, the plane on which the "Rome five" began their journey started from Spain and went from there to Rome. It could as easily have been bound for New York.

MAJORITY OF SKILLED NURSING HOMES DO NOT COMPLY WITH GOVERNMENT'S LIFE SAFETY CODE

Mr. TAFT. Mr. President, I was quite disturbed by two newspaper articles which appeared last week in the Washington Post. One of the articles notes that in a study yet to be published, the Department of Health, Education, and Welfare has determined that 59 percent of the skilled nursing homes in our country do not comply with the Government's Life Safety Code—27.8 percent of these had incomplete or no plans to correct their deficiencies, but nevertheless were State-certified to receive Federal medicare and medicaid money. Nearly 50 percent needed better sprinkler protection systems and 36.5 percent had no sprinklers.

The human aspect of these figures is that the very safety of a considerable portion of the million patients in our Nation's 8,000 nursing homes is presently imperiled. Although the Government has decided to give nursing home operators another 2 years in which to make the required safety improvements, these operators must recognize their responsibility to the public and to our elderly citizens by making these improvements as soon as possible.

In that respect, I urge our Nation's nursing home operators to take advantage of a new Federal law, which I cosponsored, to facilitate the elimination of fire hazards in their facilities. The new law, signed by the President December 28, 1973, would allow HUD to guarantee loans to be used to provide fire safety equipment for nursing homes and intermediate care facilities. The provision of the Federal guarantee would result in a lower rate of interest for these loans than the nursing home operators could otherwise obtain.

If these operators will use the tool which has now been created, the safety of their patients could be assured to a much greater extent than it is today.

I ask unanimous consent that the articles be printed in the RECORD.

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

MOST NURSING HOMES STILL BREAK FIRE LAW

More than half the nation's 7,318 certified skilled nursing homes failed to meet fire safety requirements two years after President Nixon declared war on "warehouses for the unwanted . . . dumping grounds for the dying," according to an unpublished federal survey.

The Department of Health, Education and Welfare examination of the skilled nursing homes between June and September, 1973, found that 59 per cent did not comply with the Life Safety Code adopted by the Government.

Faye G. Abdellah, assistant surgeon general and director of HEW's Office of Nursing Home Affairs, wrote the report. She said in an interview that she presumes non-compliance is even more widespread among the nation's 8,500 intermediate care facilities.

Among the 59 per cent of the 7,318 homes found out of compliance, HEW discovered that 1,199, or 27.8 per cent, had incomplete or no plans to correct their deficiencies, but were state certified to receive federal Medicaid and Medicare money.

Waivers of six months to one year were approved for 2,120 homes, but 450, or 21 percent, had incomplete or no justification for waivers, HEW said.

In addition, 3,694, or nearly 50 per cent, needed better sprinkler protection systems; 1,347, or 36.5 per cent, had no sprinklers.

"The data indicates that there are serious administrative problems in the survey and certification process," concluded Dr. Abdellah's report.

Skilled nursing homes and intermediate care facilities receive more than $2 billion a year in federal funds—about two-thirds of their total revenue. They have the capacity to care for nearly 1 million patients.

Dr. Adbellah said HEW must continue to rely on enforcement and technical assistance programs to upgrade the quality of nursing home care rather than cutting off funds.

"Obviously, we couldn't close 59 per cent of them," she said. "Where would you put the patients?"

Alarmed by the survey's findings, HEW Under Secretary Frank C. Carlucci told his regional directors in a memorandum earlier this month to "initiate immediately appropriate measures" to assure that all skilled nursing homes are certified or have corrective plans by March 15.

Those in violation should be notified of the department's intention to terminate contracts under Medicare and Medicaid, his memo said.

CYNICISM AND THE COUNTRY

Mr. MOSS. Mr. President, with the beginning of a new session and having just returned from my State, I feel compelled to advise the Senate of the feeling of cynicism I encountered among many of my constituents.

There is distrust and lack of belief in Government and its institutions and these feelings are relatively new to the state of mind of a U.S. citizen.

There is a very thought provoking note and comment on this subject in the January 21 issue of the New Yorker magazine, and I am asking unanimous consent that it be printed in the RECORD for the use of the Senate, calling particular attention to the last sentence.

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

THE TALK OF THE TOWN: NOTES AND COMMENT

Over the last decade or so, two standard reactions to bad news seem to have developed in our country. One reaction is "It didn't happen," and the other is "They all do it." In the early Vietnam years, when the bad news about the war was just starting to come in, the tendency was to react in the first way. In those days, since the citizenry still had what politicians often call "faith" in our institutions, we tended simply to reject the bad news. It was not until about five years ago that the second reaction began to emerge. The historical moment when "They all do it" eclipsed the theme of denial may have been the indictment and conviction of William Calley. On that occasion, the public tended to believe, simultaneously, that there had been no massacre of innocents at My Lai and that there were massacres of innocents in all wars. In the press of the day, the theme "They all do it" took the form of the statement that all wars are equally brutal. A modish pessimism about human nature itself was revived for the occasion. Now the Watergate disclosures appear to have buried the inclination to believe "It didn't happen," and "They all do it" reigns supreme. (The President, who seems to grasp such changes instinctively, has gone to considerable lengths to spread the idea that Presidents before him engaged in illegal wiretapping, took questionable tax deductions, and secretly taped conversations. He seems to be saying that all Presidents did what he has done.)

The two standard responses—the one denying abuses, the other seeing them as universal and probably eternal—seem to be at opposite poles, but the fact that they often crop up at the same time and on the lips of the same people (for instance, the President's "I didn't do it"/"They all do it" defense) is a clue that the public, in its heart of hearts, means the same thing by both of them. Rendered roughly, the meaning is something like "Go away!" The man who sees no massacre and no Watergate and the man who sees massacres and Watergates as the inevitable lot of all societies in all times have one thing in common: neither of them can be expected to take any action. If "they all do it," only a fool would exert himself to stop them. There would be no need even to take the trouble to try to distinguish between people who did it and people who didn't. What's more, one might reason, "If they all do it, maybe I can do it, too." And if "they all do it," that leads on to a still more attractive idea: that "they" are responsible for everything, and "we" are responsible for nothing. The conviction that the energy crisis (which is going to change our lives for the indefinite future no matter what games the oil companies may be playing with the present shortage) is the product of a corporate or governmental conspiracy is only the latest example of the spreading half-baked shrewdness that sees the conspiracy of an omnipotent "them" behind every headline.

The world of undiscriminating cynicism, where no one is trusted and nothing is believed, is in many ways a comfortable one. Every citizen enjoys the automatic right to a sly, knowing, and superior attitude toward all authorities but has no obligation to do anything about them. What is the use of changing one for another when they are all the same? In this world of cynicism, the people complain about the authorities the way they complain about the weather. Everyone grumbles, but it leads to nothing. Politics is everyone's cross and no one's responsibility. "They're all crooks," the people say to one another, and go about their business. This state of mind is new to us in the United States. But it is all too familiar to anyone who has spent some time in Eastern Europe or in South America, or in any of the countless other places in the world where people have lost the bold, sometimes innocent spirit of the free and adopted the easy sophistication of the powerless.

CURTIS SISCO

Mr. HUGH SCOTT. Mr. President, Columnist Peter H. Binzen, who reports on the "Human Side of Business" for Philadelphia's Evening Bulletin, wrote of the remarkable career of Mr. Curtis Sisco in an article January 10. Mr. Sisco, a much decorated police of-

ficer for the city of Philadelphia, was injured in the line of duty and retired from the force in 1969. He is today the owner of the Nation's largest black-owned department store.

Mr. President, it is inspiring to read of the efforts of a man to whom a personal tragedy, because of his deep faith, was the beginning of a highly successful new career. "If you trust in God and work hard the opportunity will come," Columnist Binzen quoted Mr. Sisco as saying.

I salute Mr. Sisco for his fortitude, and all who helped him establish his new career. It is my hope—and one that I feel certain my colleagues share—that we are always diligent in helping individuals, especially those of our minorities, in opening up the kind of "opportunity" that changed Mr. Sisco's life.

I ask unanimous consent that Mr. Binzen's column be printed in the RECORD.

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

EX-POLICEMAN'S CAREER SOARS IN DEPARTMENT STORE FIELD

(By Peter H. Binzen)

Ten years ago, a Philadelphia policeman named Curtis Sisco patrolled the Germantown business district on traffic duty.

Now and then, Officer Sisco would park his motorcycle at Germantown and Chelten Aves. and catch his breath in the shadow of Rowell's department store.

Sisco, 43, works that corner now but he's swapped his police uniform for a business suit. He's got an office on Rowell's seventh floor. In fact, he owns Rowell's.

His purchase of 70-year-old Rowell's for an undisclosed sum last week puts the ex-Cop in a class by himself, according to the U.S. Department of Commerce's Office of Minority Business Enterprise.

FROM BIRDSNEST, VA.

OMBE says that Rowell's, with annual sales of about $2.5 million, is now the nation's largest black-owned department store. Sisco's rise in retailing has been meteoric. He talked about it—and about an accident that changed his life.

The youngest of 12 children of a Birdsnest, Va., sharecropper, he came to Philadelphia at 19 after graduating from high school. He spent four years in the Army, attended a tailoring and design school in North Philadelphia and then, in 1962, joined the city police department.

He was picked for the highly regarded highway patrol and won two official commendations, one a hero award for rescuing a woman from a burning building. He expected to make a career of police work.

While on highway patrol in September 1968, however, he was injured in a motorcycle mishap. A cartilage was removed from his knee. In 1969 he retired on pension from Frank Rizzo's force. (Of the police-chief-turned-mayor, Sisco now says: "He was a very fine boss. I worked for several police commissioners. I feel he was the strongest.")

Sisco terms the motorcycle accident "a turning point in my life. It forced me out on my own."

While on the force, Sisco had done some moonlighting as a clerk in a menswear store at 134 S. 52d st. The store came up for sale. Sisco had only modest savings but the police pension guaranteed him a small income.

His solid record as a policeman, his determination and promise in retailing helped him get a loan from Philadelphia National Bank to buy the store. The loan was guaranteed by the Small Business Administration.

Sisco's Menswear did well. Morton Barish, a former employe, stayed on and helped the new owner. "He was a key person," Sisco says of Barish.

Nineteen months later, Sisco bought a second store at 7 S. 60th st. That one also prospered. He persuaded a former red-car partner, David Johnson, to quit the police department after 14 years and join him as general manager.

In 1972, Provident Mutual Life Insurance Co. foreclosed on a group of four stores at 5701–07 Germantown ave., directly across Chelten ave. from Rowell's. It looked for a purchaser and found Sisco.

In July 1972, he bought the four stores plus second-floor office space for $160,000, with the insurance company granting a mortgage for half that amount. Sisco opened his third menswear store at 5703 Germantown ave. and rented out the other facilities.

Last August, he sold his S. 60th st. store at a profit. And then came the Rowell's deal. He purchased the name and inventory from Wanger Bros, a Chicago retail chain. He rents the building from the Rowell Estate.

Rowell's has about 100 full- and part-time employes. Sisco said he plans to keep them all except those already scheduled for retirement.

TURN AROUND

Germantown's shopping district has slipped in recent years and so, says Sisco, has Rowell's. But he believes the turnaround has already begun.

He said Rowell's will continue to attract whites and blacks. "We're not going to emphasize 'white-oriented merchandise' or 'black-oriented merchandise,'" he said. "We're stocking quality merchandise.

"Blacks want quality merchandise that is in step with the times. Whites do, too. A few years ago there were black fashions, but a dramatic change has occurred. All men's fashions are coming back to the middle ground."

Sisco has four buyers and all of them are white. But he hired three new buyers and retained one not because of their pigmentation but because he thinks they are talented buyers.

Sisco plans to make Rowell's a community hub, with space for public meetings. He plans to involve himself in Germantown affairs. He thinks the section has stabilized and now has an unlimited future.

The former policeman has been honored by the Menswear Retailers of America as its minority businessman of 1972. He's solidly built with graying hair and a mustache.

He and his wife have three children and live in West Philadelphia. Sisco, an Episcopalian, had this advice for young people: "Trust in God, work hard and think big. All three are very important to succeed. If you trust in God and work hard the opportunity will come. But if you don't think big it'll go right over your head."

SUPPORT FOR ADOPTION OF S. 2754

Mr. PELL. Mr. President, reports of deteriorating political stability in Greece and the continued disregard of the Greek military junta for human rights and a rule of law demand swift passage of S. 2754. This bill which I introduced with the distinguished junior Senator from Washington (Mr. JACKSON) calls for cutting off military assistance to the Greek Government pending a Presidential determination that Greece is able to fulfill its military obligations to NATO and is complying with its politcal obligations under the preamble of the North Atlantic Treaty.

That preamble calls for each member of the NATO Alliance "to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law."

I am sad to note continuing indications of the failure of the Greek Government to abide by these commitments. It is, in any case, only prudent to study the situation thoroughly before we make further military assistance available to a regime that may use it for purposes contrary to NATO objectives.

This bill, with one exception, is identical to the amendment to the foreign military assistance bill, which the Senate adopted last June by a vote of 46 to 41. That amendment, however, was deleted in conference committee just prior to the November uprising in Greece and the coup d'etat.

The exception is a Presidential waiver authority contained in S. 2754, which would permit the President to continue aid, despite a negative review, if justified by overriding national interests as reported to Congress.

I am convinced that the Senate has all the more reason for adopting S. 2754 now than it had in July.

Subsequent events, including the bloody suppression of the student-worker uprising and the toppling of the Papadopoulos regime by a group even more opposed to the restoration of constitutional government, make the bill all the more relevant and necessary.

The strong popular reaction in Greece against these tragic events has further undermined the ability of the Greek armed forces, especially the Navy and the Air Force, to play an effective role in the defense of NATO's strategic southern Mediterranean flank.

There has been growing bitter anti-American feeling in Greece because of U.S. identification with the oppressive Greek junta.

Greece did not respond positively to help us cope with the situation arising out of the recent Israeli-Arab hostilities.

The report of the Committee of Nine for Improving NATO has stated that the failure of any NATO member to abide by the democratic principles in the NATO Treaty preamble inevitably weakens the moral and political position of the alliance as a whole. This is a situation which exists in Greece where the government uses force of arms to suppress its people, having denied them time and again the promised opportunity to express themselves in democratic elections.

Our position in Greece has been substantially weakened in a situation where the cries of the Greek people are, "Out with the Americans."

The reasons for the adoption of S. 2754 are compelling. I urge the Senate to approve the bill.

UKRAINIAN INDEPENDENCE DAY

Mr. BEALL. Mr. President, yesterday, January 22, marked the 56th anniversary of Ukrainian independence, as well as the 55th anniversary of the Act of Union, the two acts which officially established the Ukrainian National Re-

public. Certainly, these milestones encourage us to reflect for a moment on the value of freedom and what it means not only to Americans, but to all the peoples of the world.

The life of the Ukrainian Republic was unfortunately short-lived, but the flame of liberty which was kindled in the hearts of Ukrainians everywhere was not extinguished. They continue their untiring efforts for human rights and for independence, in spite of overwhelming odds.

Mr. President, I commend the brave spirit of Ukrainians, and offer my deep hope that freedom will someday return to their land.

SENATOR ROBERT C. BYRD REVISITS STATE LEGISLATURE WHERE HIS CAREER STARTED; DISCUSSES NEED FOR RESTORING GOVERNMENT CREDIBILITY

Mr. RANDOLPH. Mr. President, when my esteemed West Virginia colleague, Senator ROBERT C. BYRD—our distinguished assistant majority leader—returns to the halls and the chambers of the West Virginia Legislature it makes for a significant occasion. It was in the West Virginia House of Delegates in 1947 that ROBERT C. BYRD had his official beginning in politics and public affairs, followed by election to the West Virginia State Senate in 1950.

BOB BYRD is admired by the legislators of West Virginia, not only because he was one of them but also of his achievements in having been elected and reelected to the U.S. House of Representatives in 1952, 1954, and 1956, and then to the U.S. Senate in 1958, 1964, and 1970.

Thus, our diligent colleague has proved himself to be so competent as a legislator that he has the record of having campaigned without a single defeat through two elections to the house of delegates from his home county—Raleigh—one to the State senate, three to the U.S. House of Representatives, and three to the U.S. Senate—over a span of 24 years—and, I reiterate, without a defeat. When Senator BYRD presents himself to the electorate in 1976, he will have extended his legislative service record to embrace a period of 30 consecutive years during which he has progressed to achievement of the significant leadership role of majority whip in this body.

On Thursday, January 17, 1974, Senator BYRD spent most of the day at the West Virginia capitol building and spoke to both houses of the State legislature.

In his speeches, he spoke, as reported by the Associated Press and United Press International from Charleston, on the need for credibility restoration, urging that Government officials must work to restore credibility in the face of a multitude of national problems.

Mr. President, I request unanimous consent to have printed in the RECORD portions of a UPI wire service story by Karl C. Lilly for Friday morning, January 18, 1974, media.

There being no objection, portions of the wire service article were ordered to be printed in the RECORD, as follows:

CREDIBILITY RESTORATION IS TOPIC OF BYRD'S TALK

(By Karl C. Lilly)

CHARLESTON, W. VA., January 18.—Government officials must work to restore credibility in the face of a multitude of national problems, Sen. Robert C. Byrd declared Thursday.

The U.S. Senate assistant majority leader spoke to both houses of the West Virginia Legislature, where he served as a delegate beginning in 1947 and later was elected to the State Senate before moving up to Congress.

He was introduced by Senate Majority Leader Lafe Ward, D-Mingo, as "West Virginia's brightest star on the political horizon."

Senate President W. T. Brotherton, D-Kanawha, pointing to Byrd's humble beginnings, made reference to recent speculation in some circles that the senator may be a presidential contender in 1976.

Brotherton said Byrd was an example of the old adage that every mother believes her son might "some day be President of the United States."

Byrd later termed it "an overgenerous introduction."

Asked about the reports concerning his presidential potential, his only comment was, "I am very flattered."

House Speaker Lewis McManus, a Democrat from Byrd's home area of Raleigh County, introduced the guest as a man both parties admire.

In his speeches to both houses, where he received standing ovations, Byrd said:

"It is no secret that the art of politics and those of us who practice it are now going through a period in which we are being subjected to some rather harsh criticism.

"I believe that a major task that confronts all of us, whether we serve in Charleston or in Washington, is to conduct ourselves and our affairs, that we make a visible contribution toward the re-establishment of political credibility in the eyes of the American people."

RETIREMENT OF MARK TRICE

Mr. JAVITS. Mr. President, at the end of 1973, Mark Trice announced his retirement as secretary to the minority, a post he had held with distinction since 1950. His retirement marked the end of a 53-year career in the Senate in various posts starting as a page in 1916.

All of us on the Republican side of the aisle will miss him. He was always patient, helpful and dedicated to serving the Republicans, the Senate, and the country in the highest manner.

Mark has indicated that he will be active in his retirement and he may even practice law on a part-time basis. I wish him and his lovely wife Margaret the best of everything and know he will continue to lead an active and productive life.

DR. RONALD BERMAN, CHAIRMAN, NATIONAL ENDOWMENT FOR THE HUMANITIES, HONORED

Mr. PELL. Mr. President, the job of the public servant is very often a thankless one. It seems that the only time we hear of a civil servant is when he has done something questionable or when programs which he is responsible for have gone awry. How often does one pick up the paper and read of the accomplishments or of an award given to a government official?

Therefore, it was with great pleasure that I learned that Dr. Ronald Berman, Chairman of the National Endowment for the Humanities, received the Distinguished Service Award from the Phi Beta Kappa Association of Chicago.

Dr. Berman has been Chairman of the Endowment for 2 years. As Chairman of the Special Subcommittee on the Arts and the Humanities, I have noted with delight the forceful and dynamic manner in which he has directed the ongoing activities of the Endowment. Even more impressive is his innovative approach and his willingness to question and, where necessary, go against the popular vein of scholarship.

The honor accorded to Dr. Berman is one which has also been received by individuals such as the late Carl Sandberg. It was given to him in recognition both for his administrative abilities, as well as his intellectual distinction as a professor of the humanities, and an author of books ranging from Shakespeare to the contemporary social scene.

My congratulations to Dr. Berman.

THE OPPOSITION TO COMPULSORY BUSING

Mr. TOWER. Mr. President, polls show that over 80 percent of the American people are opposed to compulsory busing of public school children to achieve racial balance. Nevertheless, our Federal courts continue to impose busing orders on local school districts across the Nation, and the Congress refuses to act. I find this situation intolerable; however, what is more unconscionable is the fact that in many instances the American people are not only defending themselves against such suits, but are also financing, through their taxes, the prosecution of their school districts.

Congressman WILMER D. MIZELL of North Carolina has provided me with evidence obtained from the Office of Economic Opportunity which shows that an OEO grantee for legal services, the Harvard Center for Law and Education, has participated extensively in the prosecution of at least eight cases over the last few years, including the landmark Detroit case, Bradley versus Milliken, now pending before the Supreme Court. Furthermore, an average of $500,000 a year has been awarded by OEO Legal Services to the Harvard Center over the last 3 years to help finance these activities.

The eight cases I refer to specifically here today involve the school systems of Indianapolis, Ind.; Boston, Mass.; Stamford, Conn.; Dayton, Ohio; suburban Pittsburgh, Pa.; Stockton, Calif.; El Paso, Tex.; and Detroit, Mich.

Mr. President, I am exceedingly curious to know whether the citizens of Indiana, Massachusetts, Connecticut, Ohio, Pennsylvania, California, Texas, and Michigan are aware of the fact that their tax dollars are being used to impose compulsory busing on their children. If they were in fact aware of this situation, there is little doubt in my mind how they would expect their elected representatives to vote on the Legal Services Corporation proposal, S. 2686, which would

provide for continued funding of this kind of activity.

OEO files contain a status report on several of these cases, indicating beyond doubt the extent of the involvement of legal services attorneys in these cases.

Mr. President, as a taxpayer as well as a Member of this distinguished body attempting to represent the 82 percent of the American public opposed to compulsory busing of school children, I object most strenuously to Federal funding of this litigation and I shall do whatever is necessary to see that this practice is stopped.

For the information of my colleagues, I respectfully ask unanimous consent that the status report I referred to earlier be printed in full in the RECORD.

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

(f) *United States and Bradley* v. *Indianapolis School Commr's* (V.A.No. IP 68–C–225, S.D. Ind.)

This is a school desegregation case which was brought by the government in 1968 and culminated in a favorable judgment, looking toward desegregation on a metropolitan basis, in August of 1971. When it appeared that the government was not going to push for effective relief, we assisted the NAACP to intervene on behalf of local black plaintiffs. We have completed substantial investigative work, primarily involving adjacent and suburban school districts. Further district court proceedings are awaiting decision on the defendants' appeal of the original judgment (argued in the 7th Circuit this month) and decision on defendants' motion for a three-judge court, which they assert is required because a metropolitan desegregation order would conflict with Indiana's statewide redistricting arrangements. We expect to participate actively in further discovery and the trial of this case. (Dimond)

(g) *Bradley* v. *Milliken* (C.A.No. 35257, E.D. Mich.)

This is the Detroit metropolitan school desegregation case in which we are co-counsel with the NAACP on behalf of black and white children. The case was begun in August of 1970, and after 50 days of trial and two trips to the courts of appeals the district court found, in September of 1971, that Detroit is as alleged an illegally segregated school system. Further hearings were held this spring as to relief, and on June 14 the district court held that a plan limited to Detroit proper would be constitutionally inadequate and educationally impracticable—thus necessitating metropolitan relief affecting approximately 780,000 pupils in Detroit and 52 neighboring districts. The court of appeals stayed implementation of the district court's order in July (but directed that planning as prescribed should proceed), and the appeal on the entire case was argued on August 24 pursuant to an expedited schedule. In our view, the state is constitutionally responsible for providing equality of educational opportunity, including "just schools" in place of racially identifiable schools, and certain educationally justified state policies contributed to rendering Detroit a racially identifiable system (65 percent black) compared to its neighbors (98 percent white). Therefore, the state, which has no compelling interest in existing school district lines, is obliged to provide just schools for disestablishing the inter-district segregation. The state and suburban defendants contend that such relief is unauthorized unless it can be shown that suburban districts themselves have actively discriminated. To note that this is a landmark case on these issues is to labor the obvious. Cert. petitions are virtually inevitable following decision by the court of appeals. It should be noted that the NAACP is paying the litigation costs and out-of-pocket expenses in this case (as in Boston and Indianapolis), enabling the Center to engage in important work without quickly expending our modest litigation budget, which otherwise would be a consequence of this case alone.

(h) *Moss* v. *Stamford (Conn.) Board of Education* (C.A. No. B–586, D. Conn.)

We are assisting Norwalk-Stamford Legal Services (primarily Steve Hershey) with his action which was filed earlier this month. Our role so far has been to consult on the theory of the case and to advise on discovery and trial strategy. Stamford adopted and has largely implemented a pupil racial desegregation plan which imposes the burden of desegregation (in terms of pupils transported and schools closed) almost exclusively upon black and Spanish-speaking families. The plaintiffs are supportive of desegregation but they view it as illegally discriminatory to adopt a plan—in the presence of equally effective, more equitable alternatives—that is one-way in accommodating majority community convenience at the expense of the minority. More than a year ago, when Stamford was weighing its options, the federal (HEW) authorities expressed similar reservations to Stamford about this plan. School authorities have tended widely to adopt one-way plans, usually to gain white acceptance of desegregation itself. Although some courts have disapproved such plans, the issue is relatively underdeveloped and important in that the objectives of desegregation are not fulfilled where the plan is perceived by the minority community as the latest manifestation of "white is right." (Van Loon)

(i) *Brinkman* v. *Gilligan* (C.A. No. 72–137, E.D. Ohio)

We are cooperating with the NAACP and local counsel in this case which challenges alleged de jure segregation in Dayton, including that system's rescission of its own voluntary desegregation plan for reasons related not to education but to white community opposition. We have been assisting with discovery and will participate in the trial, which is tentatively scheduled for the 3rd week in November. The rescission of voluntary plans in districts not previously found to be illegally segregated is recurring and presents relatively novel issues warranting our attention. (Dimond)

(j) *Greenhouse* v. *Greco* (C.A. No. 17741, W.D. La.)

We are cooperating with University Legal Services, Washington, D.C., in this action which challenges racial segregation of parochial schools in the Roman Catholic diocese of Alexandria, Louisiana. We have participated in the preparation of pleadings and discovery and we shall help at trial, which is scheduled for December 1. The case involves some 10,000 children in 35 schools, of which all but two are practically all-white or all-black. The case is novel (a previous one like it in Louisiana ended when the schools desegregated before trial) and significant in that the schools receive substantial federal support and are segregated despite Title VI of the 1964 Civil Rights Act, and the parochial system is impairing public school desegregation by accommodating fleeing whites. (McClung)

(k) *Hoots* v. *Commonwealth of Pennsylvania* (C.A. No. 71–538, W.D. Pa.)

This case, filed in 1971 by Pittsburgh Legal Services, challenges the school consolidation process in suburban Pittsburgh. It is alleged that racially identifiable districts were created, despite the availability of feasible, less segregatory alternatives. It is also alleged that the district in which the plaintiffs reside is not viable economically or educationally. Upon request of the director of the Pittsburgh Legal Services Office, we have, on several occasions, given advice on the case. In July 1972, we met here with local counsel to discuss a proposed pretrial statement. (Pressman)

2. DEVELOPING CASES AND MATTERS

(a) *Hernandez* v. *Stockton Unified School District* (No. 3 Civ. 13621, Sup. Ct. Calif.)

We have been asked by California Rural Legal Assistance to file an amicus curiae brief in the California Supreme Court. The appeal urges that the lower courts erred, under California law, in denying desegregation relief, and we are asked to address certain broader desegregation considerations. We are considering participation.

3. CLOSED OR INACTIVE CASES AND MATTERS

(a) *Alvarado* v. *El Paso Independent School District* (C.A. No. EP–70–CA–279, W.D. Texas)

This case was brought by El Paso Legal Services on behalf of Mexican-American children and involves the inadequacy of desegregation and educational programs in that system. The bilingual-bicultural programs have been substantially improved for 1972–73, and the local office is not pressing for an early trial date. We have consulted here and in El Paso concerning discovery and trial preparation. The district may go farther voluntarily on the basis of the 5th Circuit's recent *Austin* and *Corpus Christi* decisions; if not trial will be necessary.

WHO REPRESENTS THE PEOPLE ON THE ENERGY PROBLEM?

Mr. MONTOYA. Mr. President, more than 175,000 men and women are "laid off" due to the energy crisis.

An elderly couple dies in an unheated home because their fuel is cut off.

A gallon of gas costs 59 cents in one station and 36 cents in another—in the same city.

The National Petroleum Council says in November that "inventories will be depleted" early in 1974, but the oil companies who are part of that council admit that their reserves are higher now than they were last year.

The same administration who promised to cure inflation with higher unemployment, and delivered instead both unemployment and an 18 percent rise in the wholesale price index last year, now tells us they plan to cure the oil crisis with higher prices. We get the higher prices, but we get the oil shortage too—and promises of worse to come.

Is it any wonder that the American people are angry? They are demanding to know what is going on, and they are asking for some action from the men and women who represent them.

There seems to be an information gap which we cannot close. I have received, as I am sure each of my colleagues has, facts and figures from lobbyists, from various Government agencies, from the administration, from the Cost of Living Council, from the office of Energy Czar Simon. The figures are not always the same, but the interesting thing to me is that when I search out the root source of all this information, I always arrive back at the same place—the oil industry itself.

Mr. President, as I listened to the hearings begun yesterday by Senator JACKSON and his committee, I was struck by one thing. The Government of the United States is in the uncomfortable position of having to ask these questions.

No other government seems to be. How did we come to this situation?

There are governments in the world who know the oil answers. They are oil producing nations, of course—but the United States is one of the great oil producing nations. Men in the governments of the Persian Gulf nations know the oil facts. They know how much oil they have in the ground. They know how much they have in reserves. They know—to the drop—how much is pumped daily. They know how much is exported, how much is produced. They know because they are part of the decisionmaking process in this vitally important business.

Their actions in cutting off oil to us or raising prices to the world are taken in what those governments believe to be in the interest of their people. They have the facts to work with, and they acted.

The great international companies who produce, transport, refine and sell oil all over the world—they know the facts, too. They represent their stockholders—as they should—and take the actions they believe to be in the best interest of their companies. High profits, low costs, future expansion, good business practices are all part of their goals. We should not be foolish enough to be surprised when we discover that fact. Whatever the truth of the oil crisis today, these international businessmen were not elected to represent the interests of the American people.

We were.

We represent the American taxpayer. That taxpayer is the man who has supported the exploration for oil all over the world. He is the man who has subsidized the oil industry in every new venture. He is the man who has, by his industry and ingenuity, created the great market for oil which exists today in the industrial world.

The question which faces us today is whether this man—the American taxpayer—has someone who is acting in his interest. He is demanding fast and immediate action now, and he should be. He wants the facts, and he wants to know they are the facts.

Mr. President, I am convinced that we face a serious energy crisis. I am not yet convinced that we have all the information we need to solve that crisis.

We know that windfall profits in the last half of 1973 were as high as 80 and 90 percent more than the same period in 1972. Yet during the same period independent dealers were being forced to close down because of limitations on the gasoline they could purchase.

We know that more gasoline was sold last year than in 1972—and more in 1972 than in 1971. Yet we are told that "voluntary" cutbacks by the consumer have made rationing unnecessary and oil reserves are high again.

We know that the oil inflation is severe and is sparking another serious rise in prices of other commodities. Yet there seems to be no valid explanation for higher prices for domestic oil—the large bulk of what we consume in this country.

We must have the facts. If the recent price hikes are not justified and the profits have been exorbitant, as now seems possible, then we must roll back prices in the United States to a fair and reasonable level.

If it is necessary to freeze prices immediately in order to control the gasoline price spiral, as has been suggested by Senator JACKSON and others, then let us do it.

If we must spend taxpayers' money through tax credits and other subsidies to explore for new energy sources, then let us find out first which energy source subsidy will be most sensible for the American people in the long run.

The Chase National Bank estimated in 1970 that the oil industry would require $1 trillion between that year and 1985. Six hundred billion of that money would go for capital investment and exploration expenses. The industry figured they could generate $200 billion of that exploration and investment money. You and I know that the American taxpayer would, either through tax subsidies or higher prices, be expected to come up with the other $400 billion.

This body is now trying to decide if we can afford $20 billion for research and development of coal gasification, solar energy, gas exploration, other forms of energy for our use.

Mr. President, I think we need some hard answers from the oil producers before we encourage them to plan on help from the American taxpayer in providing that $400 billion.

And surely, Mr. President, we must not hesitate to spend the small comparative amount needed to search for additional energy sources immediately. We must enact legislation to create the long-term energy solutions the American people are entitled to expect. We must enact legislation to control the excess profits resulting from immediate short-term shortages. We must enact legislation to provide this Government with the true information we need to make decisions about supply and demand of an essential commodity—oil.

We must stop being the supplicant of special interests, begging for facts from an industry the taxpayer has subsidized. We represent only one group of people—the American people. Let us start acting for them.

LEGAL SERVICES

Mr. BROCK. Mr. President, I wish to offer for the consideration of my colleagues a letter which I received from the Chief of the Exempt Organizations Branch of the Internal Revenue Service, dated July 31, 1972. In that letter, I was advised by the Internal Revenue Service that an organization which envisaged the possibility of lobbying activities of the sort permitted in S. 2686 would not likely qualify for recognition of exemption for Federal income tax as an organization described in section 501(c)(3) of the code.

Mr. President, for the information of my colleagues I ask unanimous consent to have printed in the RECORD the full text of the letter.

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

INTERNAL REVENUE SERVICE,
Washington, D.C., July 31, 1972.

Hon. BILL BROCK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BROCK: This is in response to your letter of July 12, 1972, requesting information concerning the tax status of the National Legal Services Corporation. We apologize for our delay in replying, and hope that it has not inconvenienced you.

You state that the Corporation will be established as a private non-profit federally-funded organization under the Economic Opportunity Amendments of 1972. The proposed charter of the Corporation contains a provision relating to lobbying or legislative activities, which you have asked us to review to determine whether the Corporation meets the requirements of section 501(c)(3) of the Internal Revenue Code.

The lobbying provision provides that neither the funds nor the personnel of the Corporation can be used to promote lobbying or legislative activities except where an attorney is acting on behalf of a client, and the activity is conducted in a manner that does not identify the Corporation with such activity, or where the activity is being conducted at the request of a legislative body. In both instances in which the charter permits legislative activity, it requires that it be conducted in a manner consistent with the Code of Professional Responsibilities and Canons of Ethics of the American Bar Association.

Section 501(c)(3) of the Code describes organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

The Income Tax Regulations, section 1.501(c)(3)-1(b)(3), provide that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to devote more than an insubstantial part of its activities to attempting to influence legislation.

The Code and the regulations provides that an organization which otherwise qualifies for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, will not be entitled to recognition of exemption if it engages in or is empowered to engage in more than an insubstantial amount of legislative activities. Therefore, it appears unlikely that the Corporation could qualify for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, if its charter contained the proposed lobbying provision.

This letter should not be considered a ruling of the Internal Revenue Service, since we can rule only when a request for ruling is made by the organization affected, or its legal representative.

We appreciate the interest and concern that prompted you to write Commissioner Walters in this matter, and hope that we have been helpful to you. If we can be of further assistance in this matter, please let us know.

Sincerely yours,

—. —. ————,
Acting Chief, Exempt Organizations Branch.

Mr. BROCK. Mr. President, it seems to me that if legal services concentrates on delivering high quality representation to individual poor clients, it will be better able to maximize its resources, inasmuch as it will then clearly qualify for tax-exempt status from the Internal Revenue Service. By engaging in lobbying and

working for law reform, legal services' attorneys would be shortchanging the poor.

TRICOLOR TAILLIGHTS

Mr. MOSS. Mr. President, many recent new issues are before the Congress which are critical to the economic health and well-being of the Nation. The urgency of some of these matters has tended to thrust active and pending issues into the background that have previously enjoyed high priorities.

Particularly vulnerable have been matters dealing with motor vehicle transportation. Already we have seen postponement of effective dates for emission control standards. New and stricter safety requirements may also be imperiled due to pressures for improved technology in areas such as fuel economy.

We must not make it easy for authorities in Government and industry conveniently to neglect previously established objectives by brandishing new diversions.

I call specific attention to Senate bill 1166 which I introduced in March 1973. This bill calls for amendment of the National Traffic and Motor Vehicle Safety Act of 1966 to require establishment of a Federal Motor Vehicle Safety Standard with respect to rear lighting.

I am informed that authorities at the NHTSA who are responsible for taillighting are favorably disposed, in fact enthusiastic, about such legislation and that proposed rulemaking consistent with S. 1166, though prepared and ready and thoroughly reviewed, has been suffocating in the redtape of the endorsement system at NHTSA for nearly a year.

I suggest that since the merits of this traffic safety measure have been validated, and that since approximately 50 percent of our traffic accidents and 10 percent of traffic fatalities are associated with rear-end collisions, that these delays are not in the best interests of the American public.

I further call attention to this report published in the Detroit Free Press on November 9, 1973, to wit:

Rear-end collisions on Michigan legs of the interstate highway system have gone up dramatically. State police won't blame that rise on more slow drivers, but accidents on a whole rose about five percent in the last year, while rear-end collisions went up 18 percent.

In view of these compelling considerations, I urge NHTSA to cease its neglectful treatment of this matter and publish its notice of proposed rulemaking forthwith.

THE CASE FOR JUDICARE

Mr. TOWER. Mr. President, I am delighted today to call to the attention of my colleagues a recent article by Samuel J. Brakel, entitled "The Case for Judicare," which appeared in the December 1973 edition of the American Bar Association Journal. As is made clear in Mr. Brakel's article, client choice is a far preferable system for the delivery of legal services than is the discredited salaried staff attorney system. What a mistake it would be to lock in, as S. 2686 would do, the unfortunate staff attorney system before the judicare approach has been given the chance it deserves. The Brock-Helms substitute proposal, which I am supporting, would allow a choice between judicare and the staff attorney system, with preference given to approaches for the delivery of legal services which vest the power of purchase in the low income "consumer" rather than in the salaried "provider" of legal services.

Mr. President, I respectfully ask unanimous consent that this excellent article be printed in full in the RECORD, in order that my colleagues may have the benefit of an explanation of the advantages of alternative delivery systems.

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

THE CASE FOR JUDICARE

(By Samuel J. Brakel)

(The reliance of the national legal services program on the staffed office for the delivery of legal services is misplaced, an American Bar Foundation study has concluded. Instead of playing a secondary role, the judicare system, which uses private lawyers to deliver legal services, should become the primary vehicle of the national program, with staffed offices supplementing it.)

The American Bar Foundation recently completed a two-year study of the judicare method of delivering legal services to poor people. The study compared programs in Wisconsin and Montana (the only judicare programs of significant duration in existence) with the staffed office system in the Upper Peninsula of Michigan, an area very similar to northern Wisconsin in geography, demography, economy, and culture.

Wisconsin Judicare operates in the twenty-eight northernmost counties of that state. Montana judicare covers only five northwestern counties. The Upper Michigan program covers all fifteen counties of the peninsula by way of six regional offices. The Montana judicare area, despite some obvious differences, still shares many characteristics—especially demographic and economic ones—with northern Wisconsin and Upper Michigan.

The method of study was a combination of field work—personal interviews with program participants such as clients, lawyers, and eligibility certifiers—and an examination of the existing literature on legal services, evaluative material, theoretical pieces, position papers, and proposals, and the official program information forms and statistics.

Judicare seeks to deliver legal services by using private lawyers who practice in areas where the poor clients live. Eligible clients select lawyers of their choice and go to their private offices for service. The lawyers, if they accept and complete the cases, are compensated by the government via the program's administration on a per case basis. Judicare activity is usually only a small fraction of each lawyer's total practice.

The staffed office model, by contrast, employs salaried attorneys to work full time on the delivery of service to poor clients from strategically located special poverty law offices.

Since the mid-1960s, when as part of the general war on poverty effort, the federal government committed itself significantly to the problem of providing legal services to poor people through the Office of Economic Opportunity, the staffed office model has been the dominant approach, the prototype. Judicare has been in the position of a weak challenger, to put it in competitive terms. For example, in 1972 there were some three hundred legal services programs of the staffed office variety drawing roughly $60 million in federal funds, but only two judicare programs (Wisconsin and Montana) receiving about $300,000 combined. Other, less tangible indications of the national commitment to the staffed office approach over judicare have been apparent. Reports, speeches, and resolutions to the effect that judicare is less effective or more costly than the staffed office model, or both, have issued with regularity from the legal and legal services establishments.

The thrust of the conclusions reached by the American Bar Foundation study is that the national legal services program preference for the staffed office system is neither well founded nor well conceived, and that a precise reversal of roles allocated between the private and public legal sectors is called for, with the private bar assuming the dominant part in the delivery of legal services to poor people and staffed office lawyers playing an ancillary and specialized work.

THEORETICAL POINTS NEED CONSIDERATION

Some nonempirical issues merit discussion first.

Oversimplification

It has become commonplace to hear persons speak of "changing the condition of the poor through law" or even of "eradicating the causes of poverty." The theory has emerged that one cannot leave the job to the average practicing lawyer; instead one needs a corps of idealistic, professional, poverty law experts to work in neighborhood or regional offices and use novel legal strategies. The private bar, often mistrusted and viewed as incomplement or at the least thought to be inefficient and insufficiently committed to this cause, is to be relegated to an incidental and negligible role.

The trouble with this theory is that it is based on an oversimplification of what poverty is and underestimation of its complexity, resulting in an undue optimism of what can be done about it. And just as the goals are unrealistic, the means—the staffed officers and their specialists—are less than apposite to the real problems of providing legal service to the poor. In fact, the unreality of goals and means has made a degree and sense of failure inevitable. The staffed office system has not been able to meet its own goals and standards or the expectations of those who never shared the institutional optimism.

While the national legal services program has done much good and received due recognition for it, it has at the same time been open to serious criticism from all parts of the ideological spectrum. It has been faulted on the one side for having grandiose goals and for attempting to attain them and on the other for failure to attain them. It has been accused of wasting public funds in some areas and of being too efficient in others.

History

Another reason for the staffed office dominance in the national legal services effort is the historical one that private legal aid to the poor in the decades preceding the national governmental effort had come to rely primarily on the legal aid society model, which closely resembled the staffed office system. Perpetuation of the "traditional" was a motive. O.E.O. simply adopted the existing system. Other than its prevalence, there was little in the evolution or the level of performance of the legal aid society model that supported its adoption as the national model for government-financed legal services to the poor. To the contrary, it can be argued that the model was necessitated by the lack of a firm and unified financial or philosophical commitment to serve the poor, and that once that commitment was made through the Economic Opportunity Act of 1964, the legal aid society model became obsolete.

While private legal aid did provide worth-

while services, one cannot ignore its serious quantitative and qualitative shortcomings, and the automatic adoption of that model is the kind of mystery for which there is no simple explanation.

Other analogies

Analogous experiences with delivery of other services to the poor hardly provided a better basis for favoring the staffed office approach for civil legal services. Several studies of the public defender system have been made, but none presents any evidence, let alone persuasive support, for the proposition that it is preferable to methods using private lawyers. Experiences with medical services programs for the poor and the aged have brought the problem of cost to public attention and have created public alarm. Inferences have been drawn that services of any type are delivered uneconomically by the private sector.

There are some serious problems with that reasoning, however. In the first place, it is debatable whether easy analogies between medical and legal services can be drawn safely. It appears doubtful, moreover, that the cost problems of the medicare-medicaid programs are attributable to inherent or even latent properties of private sector participation. More likely, they resulted from the lack of cost controls and were destined to result, under any circumstances, in the face of spiraling costs.

Various other assumptions and arguments must have played a role. The fact that the national legal services movement came at a time when many persons seeking reform had an unduly optimistic view of the assured success and economic advantages of direct federal intervention where local resources had proved deficient—amounting to a perception of imperative need for interventions—probably figured heavily. This posture of Washington omniscience is also characterized by a profound cynicism about private lawyers (especially rural lawyers), who often are viewed as incompetent and as little more than reactionary bigots out to rob the poor. This provides the justification for creation of the new order of professional problem solvers, pure of motive, without prejudice, and free from the pull of personal ambition or other human weaknesses.

The sum of it all is that it is difficult to find either historically comprehensible or normatively valid reasons for the national program's overwhelming commitment to the staffed office model.

Matters of logic

The fundamental perspective from which the entire legal services controversy must be examined can be stated as a procedural rule, although it has crucial substantive implications. It is that the burden of proof should be on those who advocate the inherently astounding position that poor persons, perhaps a quarter of this country's population, should receive legal services by way of a system that virtually precludes participation of the existing private bar. If the discredited analogy between legal and medical services be made, one is tempted to make it in this context to bring home the full force of the point. Imagine a system that attempts to meet the medical needs of the poor by extending private medical practitioners!

There are many dimensions to this intuitive perspective, including questions about volume of legal need, manpower resources, quality of service, expertise, specialization, and so forth—in sum, the problems that were dealt with concretely in the American Bar Foundation study. But one proposition is clear. The proponents of the staffed office model have not met this burden of proof, or even recognized its existence, in framing their arguments or presenting their explanations of the present order. The performance of the staffed office has not met, and cannot meet, this burden. The empirical conclusions of the study demonstate that point.

EMPIRICAL CONCLUSIONS REINFORCE THE THEORETICAL

The empirical data from the Foundation study reinforce the theoretical arguments that the judicare system is more responsive to the problems of delivering legal services to the poor than the staffed office.

Reaching the poor

Judicare, through its use of existing lawyers distributed throughout counties and local communities and its use of social service agencies as eligibility certifiers, is well designed to reach the poor. Under a judicare system, poor people are likely to become aware of the services available earlier, easier, and at less expense of attorney time that under the staffed office model. The disadvantages of involving social service agencies in eligibility determination are minimal and are offset by concrete and psychological advantages of judicare card distribution.

The lawyers

The choice of lawyer that clients have under judicare is a very significant advantage over the choiceless staffed office. Judicare clients in many instances exercise that choice intelligently and effectively. Private lawyers—even in the comparatively small and homogeneous areas of rural northern Wisconsin or western Montana—are a diverse group in terms of legal and philosophic habits and attitudes. These characteristics and the reputations of private lawyers—especially in rural areas—are well known among the target population and enable clients to make meaningful choices.

Private lawyers in the judicare areas studied were well distributed on the whole, although a few counties had problems in this regard. Few lawyers in a given county meant limited choice and access for clients. More significantly, it increased the likelihood that no lawyer with adequate commitment to serving the poor could be found. The attitudinal commitment of the bar to the judicare program is one of the crucial elements in the performance of the judicare system. That commitment translates directly into the volume (and the type and probably the quality) of service provided and influences the total shape of—including client demand for—legal services. In a few counties, even some with a good number of lawyers, adequate commitment is lacking and the judicare performance suffers.

The staffed office, however, is hardly preferable in this respect. Since there is no other recourse for clients under the staffed office model, any flaw in staff attorney attitude or practice—even if only subjectively valid—is essentially fatal from the individual client's standpoint. That being the case, staff attorney inexperience and the pressures of caseload, time, and money caused by the typically massive geographical and substantive problem areas to be covered by one or two staff attorneys assume a special seriousness. Staffed office statistics showing very large volumes' of cases handled and balanced geographical distribution of clients bringing cases are largely illusory. These statistics do little more than reflect insufficiency of analysis or differences in recording practices between staffed office and judicare programs, rather than disparities in substantive accomplishment.

The cases

Often criticized for failing to provide an adequate range of legal services, judicare in fact—from examining the performance of both the private lawyers and the central office—compares favorably to the staffed office. A high proportion of domestic relations cases appears to characterize all legal services programs for the poor, regardless of model or location. Beyond that, the private attorneys under judicare as a group are involved in as diverse a range of services, whether measured by impact or by the standard type of case categories, as the group of regular staffed office attorneys we studied. High turnover of and the consequent lack of experience among staffed office attorneys negate any advantages of "expertise" and "commitment" sought in staffed offices.

Under both models, much of the obvious impact work, by definition perhaps, is left to the central office. Centralization has an undesirable aspect because it means remoteness from local perceptions of local problems and resolutions. The staffed office model is more susceptible of the criticism of central remoteness than the judicare model, which has the local private attorneys distributed throughout the communities as a buffer against overcentralization.

Neither model comes close in practice to living up to the more excessive rhetorical demands for impact work. The concrete experience of attempting to meet the legal needs of real, individual clients does much to undermine the validity of the substantive, strategic, or evaluative emphasis on "law reform."

Quality of service

Poor clients themselves exhibit a pronounced preference for judicare over the staffed office. They are more satisfied as a group with judicare experiences than with staffed office service, and in addition they show a strong nonempirical preference for judicare when asked which of the two they favor. The individual's choice of lawyers plays a large part in the judicare preference, but the clients' favorable attitudes toward and experiences with local private lawyers are also crucial. The clients' views on these issues are important not only because clients are the central participants, the beneficiaries, in legal services programs, but also because their views are often objectively persuasive and cogent. The quality of judicare services and the emphasis on individual, local problem perceptions and responses are also supported by the high rate of favorable outcomes of individual clients' cases.

Cost of service

There is no credible evidence that judicare is more costly than the staffed office. Wisconsin Judicare operates on a budget that is considerably lower in dollars per eligible family than the budgets of comparable rural staffed office programs. An item-by-item examination of the Wisconsin Judicare and the Upper Michigan staffed office budgets shows that while judicare professional services are somewhat more costly than staffed office professional services, this is more than offset by judicare savings in nonprofessional service and management (space and equipment rental, travel, and various miscellaneous items), the costs of which are typically absorbed in a large part by private lawyers under judicare but fully charged against the staffed office program.

WHY IGNORE THE OBVIOUS

Throughout the course of this study we often were struck by the obviousness of the case for judicare. The case for the staffed office model was essentially one of objection to the obvious, although this was not perceived by the staffed office proponents themselves. As it turned out, the objections to the obvious were projections about the deficiencies of the nonobvious: that is, most of the criticisms of the judicare model applied as much, and sometimes more, to the staffed office model. This was true whether one judged by "reasonable" and "realistic" standards and expectations or whether the more grandiose and unrealistic criteria (the O.E.O. institutional standards) were applied.

We are convinced that the judicare method for delivering legal services is sound and should be the basis for the national attempt to help the poor use legal resources. The central office, the staffed office, and the staff attorney should function to supplement judicare, fill in the gaps, supervise, co-ordinate, and in exceptional circumstances perhaps intervene in (by prohibiting or activating) lo-

cal judicare problem resolution. The role of the central offices and staff should vary with the performance of the primary judicare component. Perhaps in some areas no office would be warranted or necessary, and a staff attorney would ride circuit, whereas in regions with different geographic or demographic characteristics, offices manned by several staff attorneys would be desirable. The functional scope and activism of central offices also will vary. The fundamental change from the prevailing situation is that the staffed central offices would be ancillary to the primary role played by private lawyers under the judicare system.

DETAILS IN URBAN AREAS ARE CRUCIAL

The implementation of this reversal will involve details beyond the scope of the Foundation study. Some staffed offices can be eliminated, others reduced in staff, some relocated, others left on location. There will have to be drastic reallocation of funds. There will be a need for far fewer staff attorneys per area than now, and those that remain will do entirely different work. They no longer will be dealing with massive caseloads of routine problems or dabbling in self-generated "law reform." Instead their roles will be largely administrative and supervisory, with perhaps an occasional foray into "impact work" when local conditions dictate it. This, incidentally, does not downgrade the staff lawyer's role.

Today continued experimentation with judicare—especially in California, which is about to embark on several years of large-scale experimentation—provides the opportunity for supplying the detailed data required to implement the fundamental reversal advocated here. This opportunity should not be squandered through politics or thoughtlessness. Details on judicare in the large urban centers, where nonempirical doubts about the feasibility of judicare are strongest and empirical data the thinnest, are especially crucial.

Note, however, the word "details." That judicare should be operative in the big cities is beyond question. The involvement of private urban lawyers, especially minority lawyers, is essential to the success of legal services in the urban areas.[1] Only a question of degree remains: How large, where, and how active should the supplemental staffed offices be in urban areas?

Judicare is fully consistent with poor people's entitlement to and need for legal services. In fact, in terms of political strategy, judicare is advantageous in that it undercuts those who use opposition to the staffed office system as a guise for opposition to the concept of providing full legal services to the poor. That opposition and its implementation in the form of drastic curtailment or emasculation of the concept of legal services is not an imaginary prospect, as is attested, for example, by the form of the legal services corporation bill passed by the House. That bill includes prohibitions on providing legal assistance in school desegregation cases, abortion cases, selective service matters, and in cases of desertion from the Armed Forces.

A recent *American Bar Association Journal* editorial (May, page 522) stated—with good reason—that these limitations "would impair professional responsibility . . . [and] . . . run counter to the general principle that the poor should have the same right to resort to the courts as the well-to-do and also raise problems of professional ethics." The advocates of these limitations frequently have raised the largely imaginary specter of "radical, irresponsible" O.E.O. lawyers to support these prohibitions. Under judicare, the private bar will be engaged in these activities. It becomes somewhat more difficult to support the prohibitions under that circumstance.

NEW BOOK ON LAW OFFICE EFFICIENCY

The American Bar Association has recently published *Law Office Efficiency*, which contains edited speeches presented at the first Joint American-Canadian Economics Conference held in Toronto on June 1–4, 1972. It features noted experts from the United States and Canada discussing new developments and changing needs in the area of law office administration. Subjects included are: "Law Firm Growth"; "Practical Training for Young Lawyers"; "The Legal Assistant Concept"; "Legal Assistants in Specific Fields"; "Structuring for Efficient Management"; "Time Utilization and Management"; "Financial Management for Law Firms"; and "Commentary on a Technological Society."

Copies may be obtained for $10.00 each from Circulation Department 3025, American Bar Association, 1155 East Sixtieth Street, Chicago, Illinois 60637.

NEW BOOKS ON ENVIRONMENTAL LITIGATION

The section of Insurance, Negligence, and Compensation Law of the American Bar Association is publishing a three-volume series entitled *Environmental Litigation*. The first volume, which costs ten dollars, is now available.

Volume I, II, and III will be subtitled, respectively, "Planning, Environmental Science and Aviation," "Environmental Systems Science," and "Toxic Substances and the Environment."

Copies of volume I are available from Circulation Department 6066, American Bar Center, 1155 East Sixtieth Street, Chicago, Illinois 60637.

The final product of the American Bar Foundation's judicare study is a book "Judicare: Public Funds, Private Lawyers and Poor People," which is scheduled for publication in February of 1974. Other publications growing out of the study, both by Samuel J. Brakel, are "Wisconsin Judicare: A Preliminary Appraisal" (1972, $2.50), and "Free Legal Services for the Poor: Staffed Office vs. Judicare: The Client's Evaluation," 1973 Wisconsin Law Review 532, reprinted as American Bar Foundation Research Contribution No. 3 (1973, 50c), both of which are available from Publications, American Bar Foundation, 1155 East Sixtieth Street, Chicago, Illinois 60637.

(Mr Brakel also is the author of "The Trouble with Judicare Evaluations," 50 A.B.A.J. 704 (1972).)

[1] Clark, *The Minority Lawyer, Link to the Ghettos*, 55 A.B.A.J. 61 (1969).

INCREASED BENEFITS FOR VIETNAM VETERANS

Mr. BENTSEN. Mr. President, in this morning's New York Times there appears an article by the senior Senator from Hawaii, DANIEL INOUYE. Senator INOUYE makes an eloquent appeal for congressional action this year to provide increased benefits for Vietnam veterans.

He makes a clear case that veterans of this war are in danger of being forgotten. Vietnam era veterans are being shortchanged in their efforts to get a college education or technical training and we in the Congress have a special duty to remember the sacrifices that the Government demanded of these young men, and to make sure that those sacrifices do not go unrewarded. Senator INOUYE points out that Vietnam veterans are receiving less than $2,000 each academic year to pay for their tuition, books, and living expenses and that this figure often falls $700 to $2,000 short of the actual cost of their education.

That, Mr. President, is unconscionable and we owe a debt to the illustrious Senator from Hawaii for reminding us of this shameful situation and for proposing legislation to deal with the problem.

The Vietnam veteran could have no more effective supporter than the Senator from Hawaii. He is a man who shares their cause in a special way. He served his country valiantly in World War II and, as he points out, he benefited greatly from the programs initiated for veterans of that conflict.

I hope that my colleagues will give special heed to this statement by Senator INOUYE and that the second session will be the time that the Congress moves to treat the Vietnam veteran with fairness, compassion, and the equity due those who have carried the burden of war.

I ask unanimous consent that the article by the senior Senator from Hawaii be printed in the RECORD.

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

[From the New York Times, Jan. 23, 1974]

A FAIR DEAL FOR VIETNAM VETERANS

(By DANIEL K. INOUYE)

WASHINGTON.—One year ago today, President Nixon announced we had achieved "peace with honor" in Vietnam as a cease-fire agreement was reached. He called on us to be proud of the two and a half million young Americans who served in Vietnam. Later in his State of the Union message the President asserted: "A grateful nation owes its servicemen and women every opportunity it can open to them when they return to civilian life. The nation may be weary of war, but we dare not grow weary of doing right by those who have borne its heaviest burdens."

When I returned home from World War II, like millions of other veterans, I was able to go to the college of my choice under the G.I. bill of rights. A "grateful nation" provided for my tuition, books and fees at the University of Hawaii and George Washington University Law School and a monthly subsistence allowance of $115. With my disability pension of about $200 and my wife's salary, our income was about $800 a month. I don't think many students could have matched that, and such high living was a new experience for us.

Seven million World War II veterans used the G.I. bill. The lives of each of us were changed by the opportunities provided to us. I do not believe I would be in the Senate today without having been a beneficiary of the bill.

Unfortunately, the homecoming of the Vietnam veterans is far different. President Nixon's words ring hollow in the ears of hundreds of thousands of Vietnam veterans who can't find work and can't afford to go to school. These brave young soldiers who gave up the comfort of peaceful homes and years of economic and educational advancement to answer a call to duty are denied benefits or receive benefits not at all comparable to those received by veterans of World War II and Korea.

The Administration has fostered the illusion that today's veteran is as well-treated as his father was. He is not. Presidential impoundment of funds designed to aid student veterans and Administration opposition to increased educational benefits despite misleading rhetoric, has caused the Vietnam veteran to feel that he fought the wrong war at the wrong time.

Today's veteran is eligible for a lump sum of $220 per month or $1,980 for each academic year. Out of this he must pay for tuition, fees, books and living expenses. Two separate studies, by the prestigious Educational Testing Service for the Veterans Administration and by the Special Veterans Opportunity Committee for the National League of Cities and the United States Conference of Mayors, have documented that present benefits are inadequate.

The Vietnam veteran has less purchasing power for four years in college than did the veteran of World War II after adjustments are made for cost-of-living increases. He is priced out of the private-college and graduate-school market. Unless he lives in a state with a large number of community colleges or inexpensive four-year public colleges, it is unlikely he can afford a college education. A young veteran attending an average four-year public institution falls $700 to $2,000 short of the amount needed to pay for tuition, books, fees and living expenses each year.

The unemployment rate among Vietnam veterans, especially minority and undereducated veterans, remains consistently high. The veteran is squeezed from both ends: Because he lacks education and training he cannot get a job; yet without a job to supplement inadequate G.I. benefits, he cannot get training or an education. Part-time jobs are not available. And as the energy-crisis job cutbacks have begun, the Vietnam veteran who lacks training and seniority has been the first to be fired. Present state and Federal job programs for ex-servicemen just don't do enough to offset depressed job markets.

All the men who fought in World War II and Korea returned as heroes. But Vietnam was the war nobody liked, and everybody now wants to forget. Yet although we disagreed over the motives, methods, and purpose of American involvement in that tragic war, I believe the great majority of Americans agree that the Vietnam veterans deserve something better than what they are getting.

Over a fourth of the Senate has joined in co-sponsoring the proposed comprehensive Vietnam era veterans education benefits act. The legislation would bring educational, job and monetary benefits for Vietnam veterans to a level more equal to the benefits enjoyed by veterans of previous wars.

"All we want is the chance that the guys got who didn't have to go," said a returned veteran. It will be a national tragedy if those young Americans who did go to Vietnam, many as involuntary draftees, are now denied the opportunity to be trained and educated to their fullest capabilities because this nation has grown weary of doing right by those who did its fighting.

FAA ADMINISTRATOR BUTTERFIELD SPEAKS ON ENERGY CRISIS IMPACT ON AVIATION

Mr. PEARSON. Mr. President, the American people and the National economy depend upon mobility. The unique capacity of our integrated national transportation system has been of singular importance in our successful efforts to promote a balanced, vigorous economy.

The American aviation community is vital to our transportation system, as it has developed in the marketplace over the past quarter-century. Aviation, considered as a single industry, is the Nation's largest employer and a major factor in our balance-of-payments position. The airlines are, by far, the most important public carriers. In 1973 the airlines carried more than 200 million Americans intercity and abroad. The general aviation community, including about 140,000 utility and personal aircraft, transported another 70 million persons. General aviation made incalculable contributions to our agricultural production, and moved freight and people to less populated points not served by the scheduled air carriers.

Mr. President, the energy crisis has posed a particularly challenging problem for aviation. I am pleased to note, however, that Government officials and representatives of the aviation community, under the leadership of FAA Administrator Alexander P. Butterfield, have been meeting and exchanging ideas and information in a common, and mutually rewarding, effort to meet the challenge.

At the Wings Club in New York, on January 16, Mr. Butterfield outlined the FAA's efforts to work with the aviation community, and the successes which have been recorded. The goals of Government and the industry include maximum fuel economy. But they also include survival of the aviation community upon which all of us depend for personal services and economic progress in the difficult years ahead.

Mr. President, I ask unanimous consent that the text of Mr. Butterfield's remarks to the Wings Club be printed in the RECORD immediately following this statement.

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

REMARKS PREPARED FOR DELIVERY BY ALEXANDER P. BUTTERFIELD, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION TO MEMBERS OF THE WINGS CLUB, NEW YORK, N.Y., JANUARY 16, 1974

I was delighted to accept Harding Lawrence's invitation to meet with you today. It gives me the unusual opportunity of talking about the business of aviation with aviation businessmen. Of interest to you all, I'm sure, are the prospects for our industry in this new year and the steps government and industry jointly are taking to lessen the impact of fuel shortages on aviation transportation.

Events of the past year have bordered on the paradoxical for all segments comprising aviation, the largest of American industries. It has not been, by any means, a vintage year, yet business has never been better.

According to the Aerospace Industries Association, 1973 manufacturing sales climbed to $24.9 billion—more than ten percent greater than 1972 sales. And, looking toward the future, industry's authoritative publication, data marketing service (DMS), following an exhaustive analysis of business indicators, is confident that aircraft production will rise by 41 percent during the next ten years. In its world forecast for the period 1973–1982, the DMS estimate is that some $134 billion worth of military, commercial and general aviation aircraft will be built.

As for the airlines during the year past, the Nation's scheduled carriers boarded more than 200 million passengers, and the switch to air travel over other public transportation modes continues to climb.

Air freight movements are growing dramatically, too. During 1973, the airlines set a record of more than $1 billion in freight revenues for a single year. Last, but by no means the least, general aviation manufacturing—industry's belwether—has also boasted dramatic increases in units sold as well as net billings. During 1973, the industry sold 13,645 aircraft with wholesale factory billings exceeding $826 million. This represents a 40 percent increase in sales and a 48 percent increase in billings over 1972. Especially noteworthy is the fact that more than one-fourth of these sales, a quarter-of-a-billion dollars, were sold abroad—in the face of an increasingly stiffening international market.

Right now, the Soviet Union is greatly interested in our air traffic control system equipment and procedures.

In July, I travelled to Moscow to discuss this. They're interested, and if they buy, their purchase of U.S. air traffic equipment during the next ten years might well top a billion dollars.

So prospects for 1974 are good. But as the aviation industry has moved into the economic climate of the New Year's first quarter, the incursive threat of petroleum shortages, unless we plan carefully, may disrupt this most vital aspect of transportation, slow the nation's business dangerously, and impact the entire economy. To give perspective to the economic impact of the fuel shortage and its associated increase in fuel prices, each one-cent rise in the price of fuel costs the airline industry $100 million annually.

Needless to say, the Federal Aviation Administration, acting as the catalyst with industry, is planning carefully—perhaps as never before—to avert an aviation crisis in both private and commercial transportation. And, we are, I am confident, succeeding.

It's a challenge. It affects everyone in the nation, all 210 million of us. No one can escape it, and each of us has an important role in meeting it. Much of our energy has been used wisely to make our lives more comfortable and to improve our standard of living. Nothing wrong in that. But we Americans over the years have looked upon energy, petroleum supplies in particular, as an unlimited economic resource almost like air.

For some time, President Nixon has been determined that we change our habits and attitudes to conform with energy realities. In April 1973, he launched a major program to deal with our energy problems as they then existed. At that time marginal shortages were predicted but they could have been handled with minimum impact. The middle east war, of course, changed all that. The war turned a petroleum problem into a full-fledged crisis. I won't recite the statistics of fuel shortfalls since Arab embargoes became effective. You are as familiar with them as I am.

Some of what you've heard about shortage of petroleum products for the aviation industry is accurate; some is exaggerated; some misleading; and much of it simply not true.

Admittedly, there remains considerable confusion as to the exact nature, depth and extent of the petroleum shortage for all users, including aviation. Bill Simon's office is working hard at this moment to obtain better data on the problem. FAA is working with the Federal Energy Office, with the department of the Interior, other agencies of the Department of Transportation, and with industry trade organizations to develop workable, practicable fuel conservation allocations, flight procedures, and air system management techniques.

In late October, and again last Friday, January 11, FAA held consultative conferences with major elements of the industry to seek solutions to the energy problem.

The meetings were invaluable because they placed FAA and the transportation industry somewhat ahead of the power curve in meeting both short and long-range effects of fuel shortages now emerging. Follow-on action responsibilities for industry, the FAA, and mutual FAA/industry actions to meet the emergency have been identified.

As a result of these meetings, a number of very significant fuel saving programs and

activities were determined. The use of aircraft simulators for pilot training and flight checks is both a good and a typical example. At the time of our October conference, FAA had already taken steps to increase the use of simulators as a conservation measure.

Spurred on by conference suggestions, FAA finished processing comments and published the final rule 22 days after the comment period closed on December 6. This single step will save 3,300 barrels of fuel daily. What's more, we anticipate that the increased use of flight simulators will result in a considerable improvement in training efficiency without the slightest derogation of safety.

Taxiing with fewer engines is also a promising fuel conservation measure. This procedure is currently under study by FAA, the Air Transport Association and the Environmental Protection Agency. If safety and environmental considerations of taxiing on reduced engines prove acceptable, voluntary compliance will be launched this month.

We're also moving along as quickly as possible to improve our current area navigation system (RNAV). For those of you not entirely familiar with RNAV, this is a technique that permits more direct routings with a resultant saving in fuel. We are now running a complete cost-benefit analysis to determine the payoffs stemming from RNAV use. For your information, as of January 1, 1974, there were 164 RNAV jet routes and about 150 RNAV instrument approach procedures.

On November 20, again as a result of intelligence developed during FAA's October 24 consultative conferences with industry, I announced a seven-point program for increasing aircraft operational efficiency and designed to save up to 20,000 barrels of jet fuel per day.

The savings, incidentally, would amount to 2.7 percent of the total amount of jet fuel consumed daily in the United States and, moreover, will be accomplished without compromising aviation safety. Some of these actions include: Revision of gate-hold procedures; revision of air traffic flow procedures; the increased use of optimum aircraft cruising speeds; holding aircraft at higher altitudes to effect greater fuel savings; and taxiing aircraft with fewer engines.

On November 21 air traffic controllers throughout the system were issued the following instructions:

1. Relax the requirements for preferential routings, which frequently impose fuel penalties, during periods when there is no valid operational need.

2. Assign the most economical altitude.

3. Approve direct routes through use of direct radar vectors whenever possible.

4. Discontinue standard terminal arrival routes and standard instrument departure routings when not warranted.

5. Honor requests for direct radar vectors to reduce time and distance flown. Also, volunteer this kind of service when the opportunity presents itself.

As the result of these instructions, FAA traffic flow control procedures have been streamlined and the airlines have achieved substantial improvements in optimizing cruise speeds. We are hopeful of still more improvement in flow control with FAA, air carriers and the Air Line Pilots Association working together.

To be candid we're not winning them all. For example, we worked very hard on studies to accelerate runway and taxiway improvements as a further means of fuel conservation by improving ground movement procedures. We found that little could be accomplished this winter. Indeed, our analysis determined more fuel would be used in speeding some few projects over a 90-day period than would be saved. So, in this project as with several others I won't bother detailing here, we shifted our attention to conservation efforts that could be achieved over the next two years.

Among these intermediate term programs is the towing of aircraft from gate to takeoff point. The description of the plan presents no obstacle. Actual accomplishment, however, is quite another matter.

For one thing, there is very little equipment available at most airports to accomplish this task. Whether development and introduction of such equipment will prove to be a cost effective conservation item is now under study and will be decided upon within the next thirty days. Another project under intensive study is the problem of mechanically/electronically sensing and predicting dangerous wake vortices caused by larger jet aircraft.

Hopefully, a system of sensing and predicting the wake vortex of large jets, eliminating thereby the threat to smaller aircraft on the same flight path, will see the development of computerized metering and spacing of air traffic. This development, inevitably, will conserve fuel since it will increase system capacity.

At the present time, the FAA is holding to a first-come first-served arrival at airports. We believe that the fuel conservation efforts of *all users* of the system are best served by this method. However, an exhaustive analysis of a possible priority system for large, heavy fuel-using transports versus small aircraft is under study. As you can readily understand, fuel conservation is as important to, say, a business aviation pilot flying a single engine aircraft as it is to the pilot of a 747. In this connection, I am pleased to say, all elements of the aviation community, the air carriers, business aviation and the private pilots alike, are working in harmony toward solving the problem.

We have also taken specific action within the FAA to conserve fuel.

In FAA's aircraft operations program, we have reduced training and proficiency flight hours for an annual fuel savings estimated at 220,000 gallons (5,300 barrels). We are using visual simulators. We have considerably tightened up on our in-house flight training requirements. We are modifying the frequency of our flight inspections. Overall, we estimate this will save, on an annual basis, approximately 2,000,000 gallons of fuel (48,000 barrels).

FAA is also deeply involved in the mandatory fuel allocation program, particularly the notice of proposed rule making issued on December 13, 1973, by the Federal Energy Office. The FAA and the other modal administrations of the Department of Transportation conducted a comprehensive analysis of the NPRM.

Especially gratifying to me during this period were the extensive and important contributions all segments of aviation made to provide workable conservation solutions. This is not rhetoric. The FAA and, I know, other Government agencies involved in the fuel allocations process were gratified at industry's constructive inputs.

As some of you know, the Federal Energy Office accepted, and incorporated to some extent, practically all the recommendations. The adopted mandatory fuel allocation regulations were issued by FEO on January 2, 1974. Shortly thereafter, the changing fuel crisis impelled FEO to amend the rule, increasing allocations, where possible, and revising procedures to minimize the impact on industry.

FAA's principal objection to the proposed new fuel allocations was that aviation was not being treated equitably compared to other transportation modes. For example, the proposed regulations for public surface transportation of passengers allocated 100 percent of current requirements, up to 150 percent of base period fuel consumption, and 110 percent of 1972 consumption freight, cargo, and mail transportation. By contrast, air carriers would have received only 85 percent of base period consumption. Naturally, we strongly recommended increasing the air carrier allocation. We also pointed out, for example, the economic penalties resulting from cutbacks in agricultural aviation and the disruption to communities presently served by air taxis.

The fuel allocation regulations printed only yesterday in the Federal Register admirably reflect the successful joint efforts of the FAA and the aviation industry in achieving some measure of equity.

For example, the allocation proposed for agricultural flying, emergency activities, manufacturing and test flight was originally 90 percent of the 1972 base. This has been raised to 100 percent of current requirements. Air taxi, commuter and local service operations which would have been allocated 90 percent were also raised to 100 percent of the base period. Air carriers have been raised from 90 percent to 95 percent of base. Business flying, which would have been allocated only 80 percent of base, was raised to 90 percent.

Fuel for public flying, both Federal and State, was raised from 75 percent to 85 percent; and fuel allocations for personal and instructional use and travel clubs, too, were raised from a proposed 70 percent of base to 75 percent.

As you can see, the final allocations are significantly larger than those proposed in almost every case. In addition, the FAA asked that the definitions section be revised and expanded to include aviation segments previously excluded, such as air travel clubs and scheduled helicopter service. Other aviation segments were also shifted to higher percentage figures.

Throughout all phases of the development of the mandatory fuel allocation program, FAA has served as an effective catalyst.

By consulting with the aviation industry and pooling our talents and resources, we have been able to convey an accurate assessment of what aviation could sensibly absorb in fuel cutbacks.

The new regulation, I believe, is sensible and provides a more equitable distribution of available fuel supplies. Many complexities, of course, remain. Allocation regulations cannot guarantee deliveries at the pump. Undoubtedly, there may be a measure of uncertainty as the new regulations take hold across the Nation. But be assured, all of us in Government—FAA in particular—are working to solve the problem. As I said earlier, industry and Government are planning carefully and working in closest harmony as never before to avert a crisis in transportation in both commercial and private aviation transportation. We are succeeding.

In closing, I would like to pay particular tribute to the mature understanding and judgment displayed by all elements of aviation—particularly, private aviation. The private aviation fleet, as well as the fixed base operators serving them, are the heart of this Nation's aviation industry. The most succinct definition I've heard in describing private aviation is quite simple: air transportation on demand. The fleet comprises some 140,000 business, commercial and personal planes. They serve all of the Nation's 12,000 airports. They carry the benefits and mobility of air transportation to virtually everyone, including the millions of Americans who live outside of the metropolitan areas which the airlines serve through less than 800 airports.

The energy crisis has struck hard at this segment of aviation. For the most part, their reply has not been one of resentment but a concerted effort to devise workable solutions. They've planned their work and are working their plan. Their attitude is right on. They deserve a special commendation. This segment of industry has mine. I'm sure it also has yours.

In this regard, I might add, one of the complexities for the Federal Aviation Ad-

ministration has been in trying to deal fairly with the many disparate elements comprising private aviation. What is good for the AG pilot and his industry is not necessarily appropriate for, say, the commuter industry, corporate aviation, or personal aircraft use.

I pledge that no longer is FAA going to treat private aviation as a single segment. We are now carefully considering the specialized needs of each as a separate entity, as we have with the air carrier industry.

In the future, aviation in all its varied dimension will be assured of careful assessment tailored to their needs so as to create a viable industry able to make a continuing contribution to this Nation.

Thank you.

A NEW PANAMA CANAL TREATY

Mr. BIDEN. Mr. President, the issue of the negotiation of a new Panama Canal treaty once again occupies our attention following negotiations resulting in a preliminary agreement between Ambassador at Large Ellsworth Bunker and Panama's Foreign Minister, Juan Antonio Tack. This agreement is regarded as "a very important step" to the eventual negotiation of a treaty to replace the 1903 treaty. The possible negotiation and subsequent ratification of a new treaty have vociferous opponents and advocates. Some support Panamanians in their quest for a new treaty representing U.S. good will and the sense of partnership and cooperation. Others insist that maintenance of the present treaty is essential to the protection of U.S. strategic—defensive—and commercial interests. I have had the opportunity to read an article by Richard Hudson that affords valuable historical perspective as well as an investigation of some opposing viewpoints in the treaty issue.

Mr. President, I ask unanimous consent that an article from the New York Times of January 6, 1974, discussing the canal issue be printed in the RECORD.

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

A GATHERING STORM OVER THAT OTHER CANAL

(By Richard Hudson)

The Panama Canal is part of the coastline of the United States. Its protection is just as important in the defense of the Western Hemisphere as is that of the Chesapeake or San Francisco Bays.—Representative Daniel Flood, Pennsylvania Democrat, on the floor of the House of Representatives.

Let the ambassadors of the friendly republics and the members of the foreign press here present answer: What nation of the world can withstand the humiliation of a foreign flag piercing its own heart? Brig. Gen. Omar Torrijos, Panama's strong man, in a statement in the five official U.N. languages on a huge signboard across the street from the meeting place of the Security Council sessions in Panama City in March, 1973.

These two quotations illustrate the poles of opinion in a conflict that is simmering slowly but which could boil over into violence if new negotiations on the Panama Canal now under way do not succeed. To complicate the problem further, the Nixon Administration finds itself becalmed in the middle, with a position that will satisfy neither the Panamanians nor the Congress-Pentagon alliance represented by Congressman Flood.

Into the imbroglio has stepped—who else?—Ellsworth Bunker. The Panama Canal situation seems made to order for him, since he has long specialized in problems apparently without solutions. At 79, Mr. Bunker has perhaps been directly involved with more intractable international issues than any man alive, having been concerned with strained U.S.-Peron relations as Ambassador to Argentina in 1951, with the Trieste dispute as Ambassador to Italy in 1952–53, with the West New Guinea conflict between the Netherlands and Indonesia as U.N. mediator in 1962, with the U.N. effort to get Nasser to withdraw Egyptian troops from the Yemen in 1963, with the Panamanian riots and rupture of U.S.-Panama relations in 1964 (when he was Ambassador to the Organization of American States), with the messy aftermath of the U.S. invasion of the Dominician Republic in 1965–66, and, of course, with the Vietnam war, having served as Ambassador to South Vietnam from 1967 until last year.

The rule seems to be if it's hopeless, give it to Bunker. The outcome of his involvement usually seems to be a partial success, with the eventual emergence of a solution, or semisolution, that is far from perfect. Now it's Panama's turn—or at least half-turn. For no sooner had Mr. Bunker immersed himself in the Panama Canal question and made a trip to Panama for talks with high officials there than President Nixon named him to head the U.S. team at the current Middle East talks in Geneva. No doubt Mr. Bunker will have to give priority to the Middle East, but since he feels that the Canal negotiations are at a sensitive point, he will press ahead with them at the same time.

The impetus for the current negotiations came 10 years ago this month, when students sought to raise the Panamanian flag over the Canal Zone. American forces killed about two dozen of them and wounded more than 200 others. Panama broke relations with the U.S., and after the patching-up process, in which Mr. Bunker took part, President Johnson named Robert Anderson, an international banker who had been Secretary of the Treasury and Navy under Eisenhower, to head a team of negotiators to draft a replacement for the 1903 treaty under which the U.S. runs the Canal. Mr. Anderson tried until last year, when he resigned to be succeeded by Mr. Bunker.

To understand the present situation it is necessary to go back to that treaty of seven decades ago and see how it came about, for that is still the heart of the argument. The Americans entered the Panamanian picture after the French effort to build the Canal had collapsed. Having started construction in 1881, the French ran into insuperable medical, engineering and financial problems. More than 20,000 workers died, mostly from yellow fever. In one stretch of the Canal, the walls kept caving in as fast as they were dug. Besides the tremendous actual costs of construction, the company building the Canal was rocked by charges of high-level corruption.

Then in 1898 during the Spanish-American War, the battleship Oregon had to sail almost 13,000 miles around Cape Horn to get from the Pacific to the Atlantic; had there been a canal, the ship would have had to travel only 4,600 miles. This prompted Congress to set up a commission to study various canal routes. At first, the commission seemed to favor Nicaragua, where a route would have required less digging than in Panama. But Panama became more attractive when the successor to the original French company put up for sale its Panama rights and property and the transisthmus Panama Railroad, which had been operating since 1855, at a bargain-basement price of $40-million.

In 1903, when Panama was still part of Colombia, Secretary of State John Hay signed a treaty with Colombia under which the U.S. would pay Colombia $10-million plus $250,000 a year for use of the canal zone. But the Colombian Legislature turned down the treaty; not enough money.

Some curious events followed shortly. On Nov. 3, 1903, Panama revolted and proclaimed its independence. Colombian troops set out to put down the revolt but found their way blocked by U.S. Marines dispatched to the scene by Teddy Roosevelt. Three days later, Washington recognized the Republic of Panama, and less than two weeks after that, the U.S. and the new nation of Panama had signed the Hay-Bunau-Varilla Treaty authorizing the U.S. to construct the canal. Later, Roosevelt bragged that he "took" Panama.

Philippe J. Bunau-Varilla, who negotiated the treaty on behalf of Panama, was a worldly Frenchman with a waxed mustache, who by 1903 owned most of the shares of the company holding the Panama Canal rights. Like Teddy Roosevelt, Bunau-Varilla as well as many Panamanians had a special interest in wanting Panama to secede from Colombia. To the Panamanians, secession was an opportunity to develop their only resource, their strategic geographic location; Bunau-Varilla wanted to get his $40-million sale price.

It seems odd that, once independent, Panama chose not one of its own people but Bunau-Varilla to be its negotiator with Washington on the canal treaty. But presumably they were impressed by his smooth manner and good connections in Washington as well as his own preference to have the canal built in Panama instead of Nicaragua. They also believed he would produce a treaty along the lines of the earlier one Hay had signed with Colombia.

That's not what happened, and 70 years afterward Panamanians still call Bunau-Varilla a traitor, the prime cause of their present problem. On Nov. 15, 1903, Hay transmitted to Bunau-Varilla a draft treaty that indeed was similar to the earlier one with Colombia, but in some ways it was tougher on Panama. Two days later Bunau-Varilla sent a counterdraft to Hay that was *even more disadvantageous* to Panama. The reason, apparently, was that he wanted the treaty to be appealing enough to win U.S. Senate ratification without difficulty. Hay, happily surprised, invited Bunau-Varilla to his home the next day and the two men signed the French promoter's counterdraft. When a few hours later a three-man Panamanian advisory committee arrived on the scene, Bunau-Varilla presented the treaty to them as a *fait accompli*.

In Panama, there was talk of turning down the treaty. However, a letter arrived from Bunau-Varilla, stating: "If the Government is thinking about not adopting this little resolution, I do not want to be responsible for the calamities that could follow." Meanwhile Colombia suggested that if it could get back its lost territory of Panama, it would be content with the old treaty after all. Then Bunau-Varilla intimated that if Panama refused to ratify the treaty he had negotiated, the U.S. Marines would not be there if Colombia marched to regain its loss. Subsequently the Panamanians learned that two Colombian gunboats were headed their way. Weighing their unhappy options, they decided to approve the treaty, and it was officially ratified in February, 1904. Thus the Panamanians maintain that the treaty was imposed on them, and they have been complaining about it ever since.

There were two basic changes made by Bunau-Varilla from the earlier treaty with Colombia and both are central to the U.S.-Panama confrontation today. First, the Panama treaty provides that "Panama grants to the United States in perpetuity" rights in a 10-mile-wide, ocean-to-ocean strip of land through which the Canal was dug. The Colombia treaty had provided for an American departure in a century—by 2003. Although the Panamanians are asking for a U.S.

departure by 1994, it is clear that they would now cheerfully accept 2003—so that problem would not exist today if Bunau-Varilla hadn't changed the date.

The other seriously disputed point in Bunau-Varilla's treaty is a provision by which Panama gives to the U.S. powers in the Canal Zone "which the United States would possess if it were the sovereign of the territory." And the U.S. does indeed exercise full, effective sovereignty over the 500-square-mile zone.

Thus, although there are many other points at issue, the primary questions are who is sovereign and for how long?

In building the Canal, the Americans profited from the mistakes of the French in three ways: first, they decided against a sea-level route and constructed a lock system instead, with an elevated lake in the middle; then they found ways to wipe out the mosquitoes that transmit malaria and yellow fever, and last, they used Government instead of private financing.

What they produced remains a romantic marvel, essentially unchanged from the day the first official transit was made on Aug. 14, 1914. It works this way: a ship comes in at one end—Atlantic or Pacific—is hoisted through three locks, travels across the man-made lake 85 feet above sea level and then is lowered through three locks to the level of the other ocean. The locks are fed by water from the lake, which in turn is replenished by the heavy tropical rainfall. An oddity of the canal is that, because of the S shape of the isthmus, a ship going from the Atlantic to the Pacific actually moves east instead of west while in the Canal.

Should the United States relinquish control of the Canal as Panama demands?

Economically, the Canal is still important even though the big new supertankers can't go through it. The number of transits runs more than 14,000 a year and the income from tolls is over $100-million. Seventy per cent of the Canal's traffic either originates or terminates at a U.S. port, yet this represents only 14 percent of total U.S. foreign trade—and foreign trade in turn makes up less than 10 per cent of the American G.N.P. Only 2 per cent of our coast-to-coast trade moves through the Canal; the rest goes by truck, rail or air.

As for Panama, the question of whether American operation of the Canal is in its interest has been vehemently debated. New York's Representative John M. Murphy, one of the small but dedicated band of Congressmen against any negotiations at all with Panama, puts it this way:

"One hundred sixty million dollars goes into Panama's economy annually as a result of U.S. Canal operations. One-third of Panama's gross national product, 45 per cent of its foreign exchange earnings and one-third of its national employment are a result of the U.S. presence."

The Panamanians see the matter altogether differently. One reason, although they are reluctant to talk about it, is that if they had full control over the Canal, they would probably jack up the tolls. A descriptive pamphlet put out by the Panama Canal Company states: "A ship which would otherwise have to sail around the Horn can easily save 10 times the amount of her toll by using the Canal." With toll income running $100-million a year, one can imagine the effect of the small Panamanian economy were it to have the revenue resulting from a doubling or tripling of the tolls.

Amazingly, the tolls have never been raised since the Canal opened 70 years ago, although just last month the Panama Canal Company asked President Nixon to raise the basic transit rate by 20 per cent. Income has steadily risen over the years, however, because more and bigger ships have been using the Canal. (Tolls are based on tonnage.) This revenue has paid not only for the Canal's operation but has financed the Canal Zone government and provided savings for U.S. military installations there—one of the better deals for the American taxpayer.

The Panamanians argue that the net effect of all of this is that one of the weakest countries of the world is giving a large subsidy to the strongest. The United Nations Economic Commission for Latin America, in a 200-page study, "The Economy of Panama and the Canal Zone," gave its estimate that if the tolls had been slightly more than tripled, this "would provide additional income calculated at $1,845,000,000 during the nineteen-sixties and would result in a hypothetical reduction in traffic of barely 14 per cent." It concluded: "To sum up, the Canal Company's rate policy amounts to an implied and substantial subsidy of international traffic, a sizable proportion of which accrues to the United States economy, since it is the major user of its services."

Another question that is basically economic is whether, in order to accommodate more and bigger ships, a third set of locks or a completely new sea-level canal should be built. A study made under Robert Anderson's supervision and presented to President Nixon in 1970 reported that a sea-level canal would be feasible and suggested a site 10 miles west of the existing Canal. It advised against the use of nuclear explosions in the excavation and said the job would require about 15 years and $3-billion. The transit capacity of the present Canal, it estimated, would be reached about the end of this century.

The Panama Canal buffs in Congress led by Pennsylvania's Representative Flood oppose the sea-level canal on the grounds that it would be too expensive and would require negotiations with Panama. They also argue that it would be ecologically dangerous because differing forms of marine life exist on opposite sides of the isthmus; these could easily swim through a sea-level canal from one ocean to another, and in such an intermingling, some species might attack and wipe out others. Particularly exotic is the fear of a deadly poisonous sea snake which is native to the Pacific and which could cause havoc in the tourist industry if it migrated to the Caribbean and Atlantic resort areas.

Congressman Flood and his colleagues advocate what is called the Terminal Lake-Third Locks plan. This would move the site of one of the locks at the Pacific end of the present canal and create a third and wider channel.

Militarily, the Panama Canal and the Canal Zone have a variety of uses for the United States, all of which the Panamanians say, are quite dispensable. To get the military viewpoint on Panama, this writer asked for and received briefings both in the Canal Zone and in the Pentagon. In both places a feeling of defensiveness seemed evident in the response to the questions: "Is the Panama Canal vital to the security of the United States? Or is it only a convenience?" No one would say flat out that it is vital. One major general put it this way: "Vital. Of tremendous importance. These are subjective terms."

The primary mission of the U.S. Southern Command headquartered in Panama is the defense of the Panama Canal, according to U.S. military spokesmen. (Panamanians joke that the U.S. military is there only to defend the Canal against the Panamanians.) Other responsibilities are to oversee U.S. military-assistance groups currently stationed in Latin American countries, carry out combined military exercises with Latin American forces, represent the U.S. military in Latin America, and engage in disaster relief. All told there are now 13 major U.S. military installations in the Canal Zone, at which are based some 10,000 members of the U.S. Army, Navy, Air Force and Marines and about 6,000 Department of Defense civilians.

The most controversial military installation in the Canal Zone is the School of the Americas, where Latin Americans get training in counterinsurgency warfare. Although most of the courses are on mundane subjects like office procedures and vehicle maintenance, two are devoted to operations against urban guerrillas and one to tactics for use against rural guerrillas. There are also Special Forces ("Green Berets") in the Canal Zone, although a military spokesman there insisted that they are employed only in training programs. At the request of Latin American Governments, he said, the Special Forces are sent to various countries, but they do not act as advisers to, or participate in, specific operations. "The Special Forces did not take part in zapping Che," he said, referring to the manhunt in Bolivia that led to the death of guerrilla leader Che Guevara. The inference seemed clear that those who had zapped Che had profited from Green Beret training.

The Pentagon makes no secret of its preoccupation with counterinsurgency warfare. A paper provided to this writer and dealing with the mission of the United States Southern Command states: "While not discounting the possibility of general war, inter-American defense planners consider the most urgent military need of Latin American countries to be internal security. The armed forces of each Latin American country should be able to cope with Communist-supported insurgency and guerrilla infiltration with our assistance but without our direct participation. In recent years most of the military efforts have been toward this end. Successes in meeting the threat of guerrilla bands in such countries as Bolivia, Colombia, Guatemala, Peru and Venezuela illustrate that these efforts are bearing fruit."

The results of the policy of giving U.S. support to Latin American military establishments are sometimes bizarre. The Peruvian military used American tanks to oust a Government friendly to the U.S. and replace it with the present regime, which has nationalized American companies. On the other hand, in Chile the U.S. cut off economic aid to the recently deposed Allende Government while continuing aid uninterrupted to the military—so presumably the generals have some good friends now at the highest levels there. In fact, some high officers in the Panama Canal Zone were recently quoted in The New York Times to the effect that the military, because of its common background with those who are now running so many Latin American Governments, may be able to exert more influence on these Governments than civilian diplomats. The ultimate irony may come if Panama's boss, Brig. Gen. Omar Torrijos, who himself is a graduate of the School of the Americas, achieves his aim of eliminating the headquarters for the entire U.S. military operation in Latin America.

On the strategic level, the military spokesmen did not dispute that the Panama Canal would be irrelevant in a nuclear war, since one well-placed warhead would put the waterway out of commission for the duration. One colonel, however, did raise this novel theory: that the real winner in a nuclear war would be the nation that could recover fastest, and that the Panama Canal, if not knocked out, could be of importance in the reconstruction phase.

On the conventional side, the military is caught in a dilemma of logic. Having argued that a two-ocean navy is necessary because the Canal is so vulnerable in time of war, it is now difficult to sustain the case that the Canal is vital to U.S. security. Aircraft carriers can't, and don't need to, pass through the Canal, since the U.S. has a two-ocean fleet with carriers in both the Atlantic and Pacific.

The Panamanian position is that the U.S. Southern Command should be folded down completely, with the Canal area neutralized and "not to be used for military activities

unrelated to the strict protection of the Canal." The Panamanian armed forces would assume responsibility for security of the Canal, and "in case of international conflagration or a real threat of aggression to the permanent neutrality of the Canal . . . both countries shall agree, without delay, to take the necessary measures. . . ."

Politically, the Panama Canal issue centers around national pride—for both parties. The U.S., as a great power, can look out from its heartland at a kind of protective arc for its soft underbelly, an arc running from Panama to Guantanamo in Cuba and Puerto Rico—even though this vision seems based on pre-World War II geopolitics. The national honor of Panama, on the other hand, is offended by a 10-mile-wide belt across the country over which a foreign power is sovereign.

Time, it would seem, is on Panama's side. The way the wind is blowing was evident at the U.N. Security Council meeting in Panama City last March. Taking advantage of its term of membership on the Council and its turn at the presidency, Panama invited the Council to an on-the-spot discussion of the Canal issue. The meeting was long and bitter, with many delegates developing the theme that U.S. control of the Canal was an anachronism. Finally came the vote on a resolution that called on the parties to "conclude a new, just treaty concerning the present Panama Canal which would fulfill Panama's legitimate aspirations and guarantee respect for Panama's effective sovereignty over all its territory." Australia, Austria, China, France, Guinea, India, Indonesia, Kenya, Peru, Sudan, the U.S.S.R. and Yugoslavia all joined Panama voting in favor, while Britain abstained and the U.S. cast its third veto in U.N. history.

Panama could have put a similar resolution on the agenda of the U.N. General Assembly last fall and undoubtedly would have seen it pass by a heavy majority. But having turned the propaganda screws on the U.S. early in 1973, it has now changed its tactics in the hope that the new negotiations with Mr. Bunker will produce an acceptable result. When Henry Kissinger came to the United Nations immediately after assuming his new post as Secretary of State, he, Mr. Bunker and other U.S. concerned officials met with a Panamanian group headed by Foreign Minister Juan Antonio Tack, and by all accounts it was very cordial. Noting that negotiations had already been under way for nearly a decade, Mr. Kissinger quipped that "Ambassador Bunker is interested in job security" and got a good laugh. On the serious side, he praised Mr. Bunker lavishly and called for early progress toward an agreement. He seemed to give Mr. Bunker wide leeway with the problem, yet he also told Mr. Tack to feel free to approach him personally at any time.

Mr. Bunker, now sworn in as Ambassador at Large and settled into a handsome wood-paneled office on the seventh floor of the State Department, says of his new assignment: "It's difficult and complicated, but I am hopeful." So far he has formed no definite opinions and says he is "learning, getting the views of the Pentagon, the State Department, Congress and also views of interests other than the Government, such as labor."

He plans to spend some time in Panama (he has made two trips there since late November)—but not too much. "My wife and I have lived apart for six years, and we are not about to do it again," he said in a recent interview with this writer. He was referring to the time he was in Saigon and his career-diplomat wife, Carol C. Laise, was Ambassador to Nepal. Recently she assumed the post of Assistant Secretary of State for Public Affairs, so both are in Washington. Mr. Bunker has made a deal with Mr. Tack that negotiations on the Canal will alternate between Washington and Panama, thus keeping the disruption of the Bunker home life to a minimum. But now, wearing his Middle East hat as well as his Panama hat, he may find it difficult to keep his resolve.

Mr. Bunker is conducting the Panama negotiations "quietly and secretly," as he always has done. "Once the parties take public positions, they can't recede," he says. "There must be private give and take." In the present case, he is going to need plenty of give and take, for he is in the middle and there is a lot of distance around him on all sides. The Panama Canalists in Congress and probably the Pentagon don't think he should be negotiating at all; to them the 1903 treaty is fine and the hell with the Panamanians. The Administration, so embattled at this point that it may not even remember where Panama is, has up to now taken a position that the U.S. is willing to give Panama the Canal in 50 years, although the period would be 85 years if the U.S. were to build a third lock and 90 years if a new sea-level canal were constructed. The Panamanians want the U.S. out in 20 years.

So the tall, patrician, white-haired gentleman has his work cut out for him. If he fails, Panama's strongman Omar Torrijos and the 1½ million Panamanians, virtually all of whom share his passion to take title to the Canal, may cause trouble. As it stands today, his well-trained, 8,000-man National Guard might well be able to storm the 2,400 U.S. ground troops there and capture the Canal, although they probably couldn't hang on to it when the U.S. Marines started landing. And the Panamanians understand this. Nevertheless, Torrijos is talking tough. As Mr. Bunker was en route by jet to Panama on Nov. 26, the Government-controlled evening newspaper in Panama ran a long headline: "If the negotiation fails, we will be left with no other recourse but the battle." The Panamanians are determined to reclaim the Canal, and there will surely be some kind of explosion—big or small, sooner or later—if they don't.

SENATOR BENNETT'S ADDRESS TO THE AMERICAN COLLEGE OF RADIOLOGY

Mr. BENNETT. Mr. President, I ask unanimous consent to have printed in the RECORD the remarks I made before the American College of Radiology on January 11.

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

REMARKS OF THE HONORABLE WALLACE F. BENNETT

It's a pleasure to visit with you this morning to discuss the Professional Standards Review Organization provision of Public Law 92-603. I won't bore you this morning with all of the events leading to enactment of the PSRO Amendment, which as you may know, I sponsored.

I would like to briefly summarize the reasons why the Amendment was enacted and then to focus on the reaction of various segments of organized medicine to the PSRO provision. Since this is the first opportunity I have had to talk with an important medical group since the American Medical Association's Anaheim convention in December, I thought this might be an appropriate forum in which to respond to the resolutions passed by the AMA House of Delegates at that meeting.

As you may know, in 1969, the Senate Finance Committee, of which I am the ranking Republican member, began a detailed study of the Medicare and Medicaid programs as they had operated up to that time. The staff of the Committee prepared an extensive report on the programs in 1969, and in 1970, the Committee held an extensive series of oversight hearings with respect to Medicare and Medicaid.

That report and other information developed in subsequent hearings, led to the preparation of a series of amendments to be offered to the Medicare and Medicaid programs. These amendments were first considered in 1970, and then reconsidered and revised in the next Congress in 1971 and 1972. Finally, a number of major Medicare and Medicaid amendments, including the PSRO Amendment, became law as part of Public Law 92-603, the Social Security Amendments of 1972.

Perhaps the most important of these Medicare and Medicaid amendments was the PSRO provision. The Committee's work from 1969 through 1972 had indicated clearly that there was a need for improved review and audit of the quality of the medical care purchased by the Government through the Medicare and Medicaid programs. It was clear that the skyrocketing costs of the Medicare and Medicaid programs were due, in large part, to the lack of effective utilization controls. But perhaps more importantly, it was clear from our studies that too many of the services reimbursed under the programs were failing to meet quality standards which you gentlemen would find acceptable in your own practice. Although the original Medicare law contained a requirement for hospital utilization review committees, it was obvious that, for a number of reasons, these committees were largely ineffective. Additionally, these committees focused primarily on facility utilization and there was really no formal mechanism in the original program to review the overall quality of the services rendered to the patient.

My colleagues on the Finance Committee and I were not alone in seeing the need for an effective quality and utilization review mechanism. The AMA also recognized a need for improved professional or peer review. In fact, the AMA had developed a proposal of its own for a peer review organization to deal with the problems I have just described.

Working from that proposal and consulting extensively with a number of medical groups and many individual physicians, the PSRO Amendment was drafted in 1970. The amendment was drafted with one major thought in mind. With Government spending more than $20 billion to purchase medical care—a sum which will only increase in the future—it was clear that we, as responsible legislators, would have to develop some mechanisms to audit and review the quality and necessity of the medical services our tax dollars purchased.

This, then, was the fundamental issue: would this review be carried out by Social Security and insurance company personnel, or would the review be carried out by physicians themselves, working through local organizations composed solely of practicing physicians in their area? The entire thrust of the PSRO Amendment was to establish local physician-operated review mechanisms. I believe that this basic concept was then, and remains today, the best way for American medicine to continue to control its own destiny. If any of you were sitting on the Finance Committee, I believe that you too would recognize, first, that expenditures as great as $20 billion must be reviewed, and, secondly, that where such review and audit involves medical judgment and decisions, it should be conducted only by physicians rather than Government or insurance company personnel.

After extensive hearings and consideration in two Congresses—the 91st and 92nd—the PSRO provision was passed and signed into law in October, 1972.

The physician-review concept was developed, as I said, in consultation with many, many physicians and medical organizations. Since it has taken a definite shape in the law, a number of state medical societies went

on record in support of the PSRO Amendment. Similarly, a number of large national medical organizations such as the American Association of Foundations for Medical Care, and such specialty societies as the American Society of Internal Medicine and the American College of Surgeons have become supporters of the PSRO concept.

Unfortunately, the American Medical Association's position, especially as enunciated by its House of Delegates, has not been as supportive. I think this is due, in large part, to two factors. First, a lack of understanding of the amendment itself, and secondly, a lack of full understanding of the social and political realities surrounding health care in the times in which we live.

The apparent lack of understanding by the majority of the AMA Delegates at the Disneyland meeting is not difficult to explain. With respect to the purpose and substance of the amendment itself, I have rarely seen a situation in which any single feature of any law has been as distorted and misrepresented as this piece of legislation has. This has been due in large part to the active efforts of a group of extreme right-wing physicians, many of whom are opposed not only to peer review, but to Medicare and Medicaid themselves. An example of the kind of distortion and misinformation stimulated by these gentlemen was a recent Wall Street Journal editorial in opposition to the PSRO program. I have responded to this editorial in full, and presumably that response will be printed by the Journal in the near future. The point here is that it is hard to blame the House of Delegates of the AMA for being opposed to the PSRO law when much of the information available to them on the law has been so grossly distorted.

Similarly, the Delegates' lack of full understanding of the social and political realities surrounding health care in these times is understandable. As I mentioned before, I am certain that the vast majority of you and the vast majority of the AMA Delegates would, if they had ever served on the Senate Finance Committee or House Ways and Means Committee, recognize the need for review and audit of any and every kind of massive Government expenditure. Obviously, all of the Delegates have not nad this kind of exposure to the problems of health care as a federal program, as opposed to private medical service to the individual.

In any event, fueled by these twins of misinformation and misunderstanding, the AMA House of Delegates, meeting at Anaheim last month, adopted an amended report on PsRO. That report declared that the best interests of the American people would be served by the outright repeal of the whole PSRO section of the law. Having done that, however, rather than instructing the organization's officers to work solely for repeal, the report asks for efforts to inform the public and legislators of what it termed the law's potential deleterious effects on the quality and cost of medical care. Secondly, the report called for the AMA to seek amendments to the program. Finally, the report instructed officers of the organization to continue to exert leadership in implementing the PSRO law.

I think the confusion which created this self-contradictory tripartite policy speaks for itself. One AMA official was quoted in the AMA News as saying, "I know the new policy may seem like some sort of multi-headed hydramonster."

Because of the confusion revealed by the House of Delegates' resolution, I think it would be worthwhile to analyze each of the three courses of action encompassed within the resolution, briefly because I am hopeful that the officers, the trustees, and particularly the Delegates of the AMA, as they grow more familiar both with the substance of the legislation and the social and political realities surrounding health care, will tend to put more emphasis on exerting leadership in implementing the PSRO law, while working for constructive amendment rather than putting forth any major effort for repeal.

Let us then analyze the three aspects of the AMA House of Delegates' resolution. First, let us look at that part of the resolution which called upon the AMA officials and members to continue to exert leadership in implementing the PSRO law. I think that this represents a very constructive position. I have been pleased during the last year by the constructive action taken by many AMA members in working toward implementation of the PSRO activities. As you may know, the AMA established an advisory committee on PSRO's, chaired by Dr. Robert Hunter from the State of Washington. This advisory committee and a number of subcommittees which they established have worked diligently throughout the year and they have developed a great deal of material which will be helpful in the implementation of the PSRO program. I think it is a very positive sign that the AMA advisory committee on PSRO has not only not been abandoned since Anaheim, and that, indeed, that it's work has been specifically continued.

Another aspect of the resolution adopted by the House of Delegates called for the AMA to seek amendments to the PSRO law As I have said on numerous occasions previously, my colleagues and I on the Finance and Ways and Means Committee are openminded about future amendments to the PSRO legislation. None of us pretend to have all the answers nor are we set in concrete against any changes in any of the various features of the amendments I do think it is fair to say, however, that it would seem to make sense to wait until at least a small number of PSRO's are operational so that any proposed amendments can be viewed in the light of their actual experience with the effects of the law

I recently received from the AMA a list of 18 possible amendments to the PSRO law which have been drafted in a preliminary fashion by the AMA staff A number of these amendments may well prove to have merit although, frankly, a number of others seem somewhat self-serving in that they call either for reduced review responsibilities or increased control of the review process by the medical societies themselves as opposed to the amendment's basic concept that the review process should be undertaken by all physicians in an area regardless of their affiliation with any medical organization

Interestingly enough, one of the amendments suggested by the AMA staff has already been approved by the Finance Committee and the full Senate, and if finally adopted by a conference committee would become a part of the law. This amendment would call for the creation of statewide PSRO councils in all states. Also, it is interesting to discover that a few of the amendments suggested by the AMA staff merely reiterate what is in the law already. For example, the fact that any norms or criteria utilized by the PSRO's are to be used only as guidelines or checkpoints for review and not as barriers to further care is already clearly stated in the law and committee report.

Yet another amendment suggested by the AMA staff suggests the PSRO review be applied to other federally-financed health care programs such as the Veterans Administration and Public Health Service programs. I have already stated by support for this proposal and would be glad to assist in getting such legislation through the appropriate Congressional committees.

In summary, I think that the work of the AMA and its staff in beginning to consider possible amendments to the legislation can be very worthwhile in focusing attention on the substance of the legislation itself. This work will be increasingly valuable in the future when a number of PSRO's are operational and amendments can be considered in the light of their experience.

Finally, and in spite of the AMA's willingness to try to help make the law work, the House of Delegates made a declaration that the best interests of the American people would be served by the repeal of the PSRO law. This, although not a clear directive to the officers of the organization, is an obvious acknowledgement that a good deal of negative sentiment still exists in the minds of some AMA Delegates. As I mentioned previously, I can understand the reasons for this negative sentiment, but I am convinced it will decrease as both the legislation itself and the social and political considerations surrounding federally-financed health care become better understood. However, I do not think we can afford to ignore these continuing calls for repeal. Even though I am confident that efforts to repeal the PSRO provision will not succeed, I think we would be remiss if we failed to stop and consider the consequences of repealing the provision. As I stressed earlier, although some physicians may want to do so, the Medicare and Medicaid programs cannot be wished away. In fact, within the next few years, it seems clear that the overall federal participation in all health programs will expand. With federal expenditures of ever-increasing magnitude, there will be a parallel increase in the public demand for an effective audit and review mechanism. The issue is not whether there will be review, but how that review will be structured.

Even if physician-based PSRO were eliminated, some kind of review would have to be used. Two other mechanisms suggest themselves immediately. One might be a strengthened version of the type of review we have already had with Medicare and Medicaid in the past. This would be review after the fact carried out in the main, by non-physicians working for the Social Security Administration and for the insurance companies which serve as carriers and intermediaries. This type of review, because it is carried out by non-physicians, is bound to involve the use of increasingly more rigid guidelines and parameters which could not be susceptible to modification and adaption by the application of personal medical experience as is the case with the PSRO concept of rotating physician participation.

The other alternative would seem to be the type of review mechanism which has already been approved by the full Senate in connection with another bill. Although it did not become law, Senator Kennedy's HMO Bill would provide for the establishment of some sort of a National Quality Care Commission, a monolithic federal commission which could, conceivably, consist entirely of consumers. It would operate from Washington and be given broad responsibility for monitoring and regulating the health care delivered throughout the country. I cannot think that either of these alternatives would be more to your liking than the PSRO provision. However, it would be naive to think that were the PSRO provision repealed, there would be no review at all.

Well, that's off my chest.

We who believe in the PSRO concept look forward, in the future, to enlisting the professionalism and expertise of the American College of Radiology in developing and refining, on a continuing basis, appropriate parameters for radiologic services for the use and guidance of all radiologists who may serve as PSRO reviewers in their own localities.

Thank you again for giving me this opportunity to share these thoughts.

CHARLES E. BOHLEN

Mr. PELL. Mr. President, on January 2, during the recess period, a singularly competent and able public servant died, Charles E Bohlen.

His service to our Nation in the field of diplomacy and international affairs spanned 40 years. He served as our Ambassador to the Soviet Union from 1952 to 1957, and our Ambassador to France from 1963 to 1968. He also served as Ambassador to the Philippines and as Special Assistant to Secretary of State Dean Rusk in Washington.

Perhaps he was most noted for his ability to inspire respect and understanding for our policies among Russian leaders in the decade following World War II. In large measure this achievement stemmed from the respect "Chip" Bolen engendered as a person, and as a personality, among these same leaders. It stemmed as well from his dedication to his career in Foreign Service and from his early mastery of the Russian language, which he spoke with such fluency that he could explain American baseball in Russian to Joseph Stalin or engage in complex linguistic innuendo and debate in Russian with Nikita Khrushchev.

He first rose to prominence in 1943, when both Ambassador Averell Harriman and Harry Hopkins, Special Adviser to President Franklin Roosevelt, sought to utilize his talents. Both were impressed by his breadth of understanding and knowledge of Russian affairs.

In his book, "Roosevelt and Hopkins," Robert Sherwood describes that period in world history and he writes—

From then on Bohlen's star was very much in the ascendant.

That star radiated great brilliance, and it reflected both the wit and the wisdom which Chip Bohlen possessed in such marked degrees.

Despite the heights to which he rose in the world affairs and diplomacy, he always remained a human and down-to-earth man. And the same mix of acumen and intuition that made him a winner at the negotiating table served him likewise at the poker table.

He represented, too, the very best of those ideas and ideals that made our Foreign Service the excellent one that it is. His subordinates both loved and respected him. And I recall his interest and friendship for one young Foreign Service officer who was contemplating resigning—that Foreign Service officer being me. I consider myself fortunate to have had Chip Bohlen's advice and friendship.

I regret his passing from us. I join with so many others in expressing my sympathy and my condolences to his wonderful family.

But we will remember him with abiding affection and high regard; and in the annals of our history, when we think of an individual epitomizing the best in diplomacy, we will think of Charles Bohlen and of the distinguished contributions he made to international understanding in our times.

THE LEGAL SERVICES PROGRAM

Mr. TOWER. Mr. President, I have repeatedly stated my most strenuous objections to the provision of legal assistance under the federally funded Legal Services program in any proceeding arising from a violation of the Selective Service Act or of desertion from the Armed Forces of the United States. Section 222(a)3 of the Economic Opportunity Act of 1964 specifically prohibits representation in any criminal proceeding.

Nevertheless, inspection reports indicate that staff-attorneys in a number of local offices ignored the needs of the poverty community they were designated to serve in order that they might spend the majority of their time and resources in counseling draft evaders and deserters on ways of avoiding military service and encouraging anti-war activities.

An article which appeared in the May 28, 1972 issue of the Chicago Tribune entitled "Legal Aid Foundation Opens Office for Draft Counseling," calls particular attention to this blatant disregard of a congressional mandate, and underscores the critical need for major reform of our legal services delivery system.

This fact is further emphasized by the practice of awarding Reginald Heber Smith Community Lawyer fellowships to individuals who have previously served in university or community-based draft counseling programs. It is clear that draft counseling activities were not only tolerated in Legal Services projects, but, in fact, were encouraged through the "Reggie" program. I feel this is in direct contravention of the will of Congress and it reenforces my commitment to work for a program which will be responsibly administered and will be accountable to the public.

Mr. President, for the information of my colleagues, I respectfully ask unanimous consent that the full text of the article "Legal Aid Foundation Opens Office for Draft Counseling" be printed in the RECORD.

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

[From the Chicago Tribune, May 28, 1972]

LEGAL AID FOUNDATION OPENS OFFICE FOR DRAFT COUNSELING

A new draft counseling service has been opened by the North Shore office of the Cook County Legal Assistance Foundation, 828 Davis St., Evanston.

George Martin, communications coordinator for the foundation, said the service is the most complete yet offered. "The foundation not only will offer advice but will follow each man's case until it is ultimately resolved," he said. Lawyers also will be found for men who need them.

The program, which is directed by Jerry Olsen, a member of the federal Volunteers In Service To America, also will conduct draft education sessions in North Shore high schools, according to Martin.

AGNEW SCANDAL SHOULD CAUSE SECOND LOOK AT BIDDING ON ARCHITECT-ENGINEERING DESIGN CONTRACTS

Mr. PROXMIRE. Mr. President, former Vice President Agnew's decision to plead guilty to income tax evasion and to permit the release of a statement linking him with widespread political corruption has brought to light the potential for shady political maneuverings implicit in the current system of bidding on architectural and engineering—A-E—design contracts.

As a column by Richard Wilson that appeared in the Washington Star points out so well, the current system of A-E contracting made the sort of corruption involved in the Agnew case not only possible but likely. This system, which some of us have opposed strenuously over the years, virtually eliminates price competition as a factor in awarding contracts. As a result firms are judged, by and large, simply on their ability to do the job. When 5, 10, or 15 firms can all do a particular piece of work it is logical to suppose that the firm which greases a few palms or tips the balance in some other questionable way will get the inside track.

This is exactly what happened in the Agnew case. And this is why the Congress should take another look at the current law. In my estimation we should reinstate a competitive pricing standard in accordance with Comptroller General Staats' views. He has strenuously fought against congressional efforts to water down the law over the years. I have been pleased to join him in that fight.

Legislation to correct these abuses by injecting true price competition into the picture would not only reduce the chances of influencing peddling in the future. It would also reassure the public that the Congress is concerned over political corruption at a time when public confidence in our political institutions is at a low ebb.

I ask unanimous consent that the excellent Wilson column be printed in the RECORD so that my colleagues can consider the points made:

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

THE A-E FIRMS AND CORRUPTION

(By Richard Wilson)

Spiro T. Agnew, according to the government's case against him, was on the take for 10 years. But the resigned vice president thinks he did no wrong, at least by accepted standards.

There is a point in following through on this contradiction because it leads in a direction suggesting that accepted standards create conditions for graft, payoff and collusion on a much grander scale.

Not just in corrupt state capitals, either. The U.S. government has been letting out hundreds of millions in contracts on the same general basis that led to Agnew's disgrace.

According to the evidence against him, Agnew as governor of Maryland solicited and received continuing financial support from officers of architectural and engineering firms (called "A-E's") in consideration of their favorable treatment on state contracts. The classical function of an A-E firm is to act for the government in creating plans, drawings, designs and specifications for construction projects.

An established A-E firm considers itself a creative force, a professional group whose services should not be bargained for in the marketplace. Would you put an advertisement in the medical journal asking sealed bids on your needed appendectomy? Until very recently, the professional societies in this field held themselves equal to doctors and lawyers in denouncing as unethical the offering of their services for competitive bidding.

The way it worked in Maryland, a half

dozen or so A-E firms were considerered of equal professional ability. Agnew's agents picked them for specific jobs on a basis which took into consideration their cooperative attitude on political financing. Agnew, according to the government's case, got a 50 percent cut of the proceeds.

The federal system makes that kind of thing harder, but not much. Comptroller General Elmer B. Staats has been fighting a losing battle since 1967 to get Congress to tighten up the system so that there will be real price competition and a federal agency head can't select an A-E merely because of its reputation, popularity or coziness with government officials.

With sympathetic regard for the proud professionalism of the A-E's, Rep. Jack Brooks, D-Tex., shepherded through in 1972 a bill making favoritism and arbitrariness a little harder. But since then a heavyweight commission on government procurement procedure has said the new law is far from enough and does not provide for adequate competition.

Theoretically, agency heads are required to negotiate with more than one A-E. The way it has worked most of the time, it wasn't necessary to go beyond the first firm selected.

Many people in the profession wring their hands in shame over the vices the Agnew incident exposed. It was all the more embarrassing that so-called "ethical" considerations covered up corrupt practices in financing politics and politicians.

Comptroller General Staats cites no examples of corruption but speaks of rumors of payoff and political corruption. He notes the $25- and $50-per-plate fundraising dinners for politicians while the inadequate changes in the law were under consideration. The 6 percent arbitrary fee for A-E firms is ready-made for collusion.

Nothing in the whole process increases confidence that A-E firms are being selected solely because, in contrast to their competitors, they are best fitted to do a particular job at the least cost and with the greatest utility, longest life and aesthetic value.

Take for example, the new FBI building, a monstrous construction on Pennsylvania Avenue. In its present unfinished stage it represents a 100 percent cost overrun from original estimates. Now it will cost well over $100 million to put a roof over the late J. Edgar Hoover's G-men, complete with morgue and gymnasium.

There are some 200,000 A-E firms in the big professional societies. They have been a powerful lobby against the comptroller general's insistence on more competition on both price and qualifications. But the stink which has arisen from the Agnew affair has been nauseating enough to change the mind of any true professional.

ANNE ARMSTRONG DESCRIBES BICENTENNIAL PLANS

Mr. HRUSKA. Mr. President, earlier today it was my privilege to be a special guest of the National Press Club to hear Presidential Counselor Anne Armstrong present a progress report on the planning for America's celebration of its Bicentennial.

As one who has been directly involved in the legislation concerning the celebration of our 200th anniversary, I was gratified at the sound, yet imaginative approach, Mrs. Armstrong has taken in the fulfillment of the assignment the President has given her in this field.

As Sam Fogg, of United Press International, pointed out in his introductory remarks, Mrs. Armstrong is the first woman to serve as cochairman of a national political committee and she was the first woman to deliver a keynote speech to a national political convention, as she did at Miami Beach in 1972.

Among her many and varied duties as White House counselor, Mrs. Armstrong heads a Cabinet-level task force on the Bicentennial. The report she gave today is typical of the energy and drive she brings to that assignment. She is witty, charming, and thoroughly gracious. I wish there were more Government officials like her.

Although born in New Orleans, Anne Armstrong considers Texas her home. It was there that she began her career in the Republican Party serving as State vice chairman and National Committee woman. Her abilities, charm, and energy brought her to the attention of the National Committee. In January 1971, she was elected cochairman of the Republican National Committee. In January 1973, President Nixon appointed her counselor to the President, again the first woman to ever receive such an appointment.

In her remarks, there are two points which deserve special mention. To those skeptics of the Bicentennial Mrs. Armstrong stated unequivocally:

I can tell you what the Bicentennial is *not* going to be. It is not going to be invented in Washington, printed in triplicate by the Government Printing Office, mailed to you by the U.S. Postal Service and filed away in your public library. The Bicentennial is human, it is alive, and everyone will have an opportunity to be part of it.

Her second point is even more appropriate.

One of the questions I am most often asked is, "Where is the Bicentennial going to be?"; and my answer is, "The Bicentennial is where you live. It will be in your own backyards, your neighborhoods, on every Main Street and every rural route in the country." It isn't going to be one big splash, a single central celebration where a few people do the work and the rest have no part. It is a combination of tens of thousands of smaller celebrations planned and executed by people across the country.

Mr. President, I ask unanimous consent that Anne Armstrong's speech be printed in full in the CONGRESSIONAL RECORD. While it will lack the charming and effective delivery by its speaker, it is certainly worth the reading of every Member of this body.

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

SPEECH BY THE HONORABLE ANNE ARMSTRONG

President LaMotte, officers, members and honored guests of the National Press Club, I want to thank you for this opportunity to appear before your time-honored organization to present my first major progress report on the American Revolution Bicentennial celebration.

I was particularly honored when President Nixon asked me several months ago to head Bicentennial coordination in the White House. I don't know how George Washington would have taken the President's move, but I am sure that Martha would have approved.

In early 1974, we began a new and hopeful Bicentennial era. Yes, the Bicentennial has had its problems in the past. It's had big problems such as an organizational structure that allowed for only part-time volunteers to perform a gigantic task that really called for time and a half. It's had some not-so-big problems such as a tempest in a tea party in Boston last month. But now I am convinced the big problems are behind us.

New legislation has given us a sound structure with a full-time Administrator whom the President will announce within a few weeks. Senator Hruska and my other friends in the Senate assure me that the Administrator's confirmation hearings will be given top priority.

At this point, let me take the opportunity to thank the Members of Congress I worked so closely with for the many hours of hard work and effort that went into structuring the new American Revolution Bicentennial Administration. And I am most pleased and highly honored that some of them are with me here today.

Under the ARBA we will have a new, streamlined eleven-member Board of Directors and a twenty-five member Public Advisory Council.

The old Commission has left us some fine legacies: The three Bicentennial themes allow for both focus and flexibility:

(1) Heritage—reaffirmation of the principles of our Founding Fathers.

(2) Festival—a celebration of the present, of the goodness of America.

(3) Horizons—a continuation of our revolution, to make America better in the future.

The Commission also left us a Bicentennial which is national in scope rather than limited to a single city or the thirteen original colonies. We now have Bicentennial Commissions in all fifty States, the District of Columbia, Puerto Rico, Guam, American Samoa and the Virgin Islands.

The basic planning is behind us, it's sound, and now we are at the takeoff era for the Bicentennial.

It seems particularly appropriate that we should gather here to talk about the 200th anniversary of the American Revolution since it was the early media—the newsmen and pamphleteers—just as much as the politicians, soldiers and philosophers, who fomented, fought and won that revolution.

In celebrating the Bicentennial, we want to give full recognition to the importance of the free press in America. Today I express the hope that you, for your part, will do all you can to recognize and publicize the importance of the Bicentennial itself as a major milestone in America's proud history and as an instrument of enormous potential for bringing out the best in our vast, fortunate, but sometimes perplexed and troubled country.

I can tell you the story, but only you can tell it to America. I realize that you will be busy with many important issues that will come before Congress this year, and I also realize that the fall elections will take up a great deal of your time. But I hope that you will report on the Bicentennial as well, because it is important, too. I pledge the full cooperation of my office and that of the Bicentennial Administration in helping you to get out this important story.

And I have no doubt that you can get the story to the people. If Paul Revere could do the job with a horse and a couple of lanterns, think what you can do in the next months with the full resources of modern printed and electronic journalism. The more people know about what we are doing—and the part that they can play—the more completely our 200th birthday will reflect the fullness and variety of American life.

How we celebrate and commemorate America's 200th birthday will have a large influence on the manner and the spirit in which we enter our third century as a nation. It can have a profound impact on our future. The Bicentennial offers us a unique opportunity—a time to rekindle the spirit that in 200 years built thirteen small dependent colonies into the strongest nation in the world.

The spirit is still there—the energy crisis

offers us one example. Total consumption of gasoline in the United States during the month of December was nearly 9 percent below expectations. A remarkable response by a Nation of more than 200 million people. A few could not have done this. It required mass participation.

And that is what the Bicentennial celebration is really all about—a rediscovery of our spirit, as well as a rediscovery of our strength and potential as a free people working together.

I can tell you what the Bicentennial is *not* going to be. It is not going to be invented in Washington, printed in triplicate by the Government Printing Office, mailed to you by the U.S. Postal Service and filed away in your public library. The Bicentennial is human, it is alive, and everyone will have an opportunity to be part of it.

The Bicentennial Commission has been in touch with more than a thousand national organizations and associations of every imaginable kind. Hundreds of cities, towns, counties and Indian tribes have been invited to join the Bicentennial Communities Program since it was inaugurated last summer. As of today, 370 communities have been designated as Bicentennial communities. Applications from another 600 communities are currently under review, and more designations will be announced shortly.

While hometown America was catching the Bicentennial spirit, progress was accelerating at the Federal level. A Domestic Council Cabinet-level Committee, which I chair, has approved the Goals for Federal Participation in the Bicentennial, established an Interagency Bicentennial Task Force and approved 277 Bicentennial projects of the Departments and Agencies.

These Federal programs range from the Department of the Interior's dramatically successful "Johnny Horizons '76" with its slogan "Let's Clean Up America For Our 200th Birthday", to the Smithsonian's Folklife Festival, to the Department of Commerce's world weather watch with its goal of precise long-range weather forecasting and modification.

Our 200th birthday observance could not possibly realize its full potential or meet the high expectations we all have without the support of the private sector, of the free-enterprise system which has made our country what it is today—the best and strongest nation in history.

Interest among private groups and organizations is quickening, and we welcome their involvement. Let me give you some examples of what they are doing:

I am pleased to announce today that as of this week plans have been concluded for one of the major private sector projects. The Freedom Train is on the track. It will be powered by a steam locomotive pulling twenty-five decorated cars which will take the basic treasures of America, such as the Liberty Bell and the Declaration of Independence, or replicas of them, to all fifty states and at least seventy-six cities in a twenty-one-month, 26,000-mile journey beginning in the spring of 1975. Its stops will be within easy reach of 90 percent of the American people.

The Public Broadcasting System is beginning a distinguished lecture series on the Bicentennial, sponsored by the American Enterprise Institute, in which sixteen scholars from our great universities will take an intellectual look at our revolution.

A hopefully major private sector initiative which is still in the planning stage is that of the John D. Rockefeller III Foundation. Mr. Rockefeller came to talk to me last spring about his desire to spearhead a Bicentennial project to support and enhance the ARBC. Since then, we have discussed his plans, and I am hopeful that in the near future he will announce an outstanding Bicentennial program.

I am particularly proud of the role women will play in the Bicentennial; 48 national women's organizations, including leaders of minority women's groups, organized labor, business and civic organizations, and churches, have bound together to complete three major tasks: a Women's History Research Center, Community Resource Centers, and International Women's Arts Festival.

One of the questions I am most often asked is, "Where is the Bicentennial going to be?"; and my answer is, "The Bicentennial is where you live. It will be in your own backyards, your neighborhoods, on every Main Street and every rural route in the country." It isn't going to be one big splash, a single central celebration where a few people do the work and the rest have no part. It is a combination of tens of thousands of smaller celebrations planned and executed by people across the country. To me, this is by far the most exciting part of the Bicentennial, and I'd like to tell you about some of the plans in progress in our cities, towns and crossroad junctions.

Inevitably, the big urban centers of the East that played a major role during America's early history will play a major role in the Bicentennial.

New York City, New York, is concentrating on the redevelopment of the South Street Seaport, one of the nation's oldest ports and the restoration of several historic ships; a Showboat Children's Theater will tour waterfront areas with entertainment and instruction by drama and dance. In July of 1976, New York and its South Street Seaport will play host to "Operation Sail '76" with more than thirty tall, full-rigged sailing vessels arriving from around the world to honor the United States on her 200th Anniversary.

Philadelphia, Pennsylvania, will have several focal points, including Independence Hall and the Liberty Bell, restoration of historic buildings in Fairmount Park, new programs for the city's cultural institutions, and looking to the future as well as the past, the development of a model system for providing health care.

Boston, Massachusetts, is creating a network of paths, freedom trails and walking tours throughout the historic city, developing a Center for Urban Action, and restoring such historic structures as Fanuell Hall, Quincy Market and the Old State House.

Washington, D.C., as befits the Nation's Capital, is preparing for unprecedented influx of foreign and domestic visitors with such projects as a new National Visitor Center, Constitution Gardens on the Mall, the Eisenhower Civic Center and the National Air and Space Museum of the Smithsonian.

Miami, Florida, is constructing a 1,700 acre Inter-American Trade and Cultural Center, including the opening on New Year's Day, 1976, of the new 4,000 student Florida International University. That area's own Bicentennial organization, Third Century USA, in addition to the Bicentennial activities at Interama is sponsoring a 1976 Hemisphere Conference for 10,000 to 12,000 women, a national youth conference and the renovation of Martin Luther King Boulevard through the city's primarily black neighborhoods.

Charleston, South Carolina, with one out of every dozen citizens actively participating, has scheduled hundreds of projects and events, including the construction of a naval museum complete with an aircraft carrier, development of a Bicentennial park, and extensive and continuing restoration of the city's many buildings going back to pre-Revolutionary days.

Denver, Colorado, which celebrates its own Centennial in 1976, is driving to complete a 2,400-seat Performing Arts Center, a new sports arena and $9.3 million worth of residential units for its low income families and its elderly. $87 million in bonds has been raised to finance these projects.

Tucson Arizona, is going forward with a ten-year, $350 million public transportation system, a permanent Arizona-Mexico institute, the restoration of historic monuments and structures, and publication of documents tracing the city's history from its founding in 1775.

Sparks, Nevada, in a massive community effort, is restoring the city center to its original character as a railroad town which helped to build the West.

In California, plans include separate programs depicting the Spanish-American, Black, Chinese and Japanese contributions to California's ways of life. California is also creating a program entitled "The Creative Americans: Two Centuries of American Culture, 1776–1976." This program will be presented in San Francisco, San Diego and Los Angeles and will include mini-exhibitions in a bazaar-like atmosphere which will illustrate both the historical and modern aspects of California living.

Iowa is planning a World Food exposition and is restoring its old State Capitol. Kansas is restoring Fort Scott, and Nebraska the Old Oregon Trail sites. The state of Texas is commissioning an opera, and in Arizona, Indians are developing projects highlighting their role in our Nation's history.

Dorset, Vermont, a community of 300, is compiling and publishing the papers that led to Vermont's statehood.

Clarendon, Texas, is building an amphitheater with bricks made by school children and signed with their names.

Thus we see that the Bicentennial will be as diverse, as colorful, and as varied as America itself. It can be a banner under which all Americans can march, however disparate their views on other subjects. It will be a reaffirmation of the enduring principles that have made this country unique and great. And, most important of all, I believe that it will be a continuing revolution that will be remembered years from now not only as a birthday party but an actual rebirth. It will be festivals and fun—sparklers and fireworks—but even more important, it will be ideas that will not sputter and die, but whose glow will last and improve our quality of life as we enter our third century.

GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, today I want to discuss the meaning of the word "genocide" and the significance of that crime throughout history.

The term "genocide"—formed from the roots geno—meaning race and cide meaning to kill—is relatively new, but the phenomenon itself has been present since the beginning of mankind's history.

The history of the world is replete with examples of wars of annihilation and extermination. From the genocide committed by the Assyrian hordes to the massacre of 6 million Jews in this century, the heinous crime of genocide has been an ever-present occurrence.

Prof. Raphael Lemkin coined the term "genocide" in a report to the fifth international conference for the Unification of Penal Law in 1933. Lemkin maintained that this crime against humanity actually involved two separate acts of terror. The first was barbarity, which he said involved attacks against the lives or economic existence of individuals in a re-

ligious, racial, or social group. The second was vandalism, which involved the destruction of a group's cultural values.

Professor Lemkin continued his discussion of genocide by explaining that the crime had two phases. Phase 1 involved the destruction of the national pattern of an oppressed group. This was followed by the second phase in which the national pattern of the oppressor was imposed upon the conquered group.

The scholarly work done by Lemkin and other concerned individuals as well as the painful memory of Hitler's atrocities against the Jews prompted the United Nations to act.

In 1946 that international body adopted the following resolution against genocide:

Genocide is a denial of the right of existence of entire human groups as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses of humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations . . . the punishment of genocide is a crime of international concern.

In 1948 this resolution was followed by the drafting of the Genocide Convention. U.S. delegates were instrumental in producing this important human rights document and in securing unanimous approval for it in the General Assembly, where it was adopted by a vote of 55 to 0.

Mr. President, we have delayed far too long in securing ratification of the treaty outlawing this heinous crime. Next week this body will take up the Genocide Convention. It is of the utmost national importance that this treaty be adopted.

LEGAL SERVICES

Mr. McCLURE. Mr. President, I have been reading some materials put forth by legal services lawyers entitled, "How To Be an Effective Legislative Advocate." The source is the National Legal Services Colloquim held at Vail, Colo., in August of 1969. The title is innocuous enough, but the content does not bear scrutiny, not at least, if the reader is interested in any really effective legal services for the poor. Those who favor the corporation proposed by the Labor and Public Works Committee's version of the bill have often defended their legislation by saying that a majority of legal services cases in the past have dealt with individual divorce cases. Apparently we are expected to infer from this happenstance that future efforts will be proportionately the same. But section V of the legal services' advice to its practitioners specifically enjoins them to "act on behalf of a client group rather than an individual client." Unless people are now getting divorced in groups there is an obvious disparity between what is said and what is done.

The lobbying procedures used by legal services lawyers in relation both to the press and to legislators are exposed here in all their cynicism. At a time in the Nation's history when good faith and probity are sorely needed, the poor who have legitimate individual needs will be interested to note that unless they fit into an arbitrary subcultural catchall, their needs will be ignored.

Mr. President, I ask unanimous consent that the attached notes from the National Legal Services Colloquim be printed in the RECORD.

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

NOTES ON LEGISLATIVE ADVOCACY—HOW TO BE AN EFFECTIVE LEGISLATIVE ADVOCATE

I. LEGAL IMPLICATIONS OF LSP LEGISLATIVE WORK

Registration

A great many state laws require that lobbyists register as such, and submit reports. It would seem advisable, in the absence of any OEO policy guidance, to register any LS attorney whose work in legislative advocacy will fall within the scope of your state's law. In doing this sort of work, LS lawyers will be visible in any case, and it would be best to remove this as a possible charge by opponents or unfriendly legislators.

LSP's should also consider whether you wish to have just one man doing your lobbying work, or have several, each expert in his own area. If all else is equal, you ought to opt for the one man, since he will then have an opportunity to build invaluable relationships with legislators.

II. THE LEGISLATURE AS A FORUM

While LS lawyers are well qualified to be effective lobbyists, there are two major adjustments necessary.

First, legislative efforts are much less amenable to control and direction than are normal court-related efforts. An LS lawyer operating in the legislative arena:

1. Is not the principal actor,
2. Is acting through others, and
3. Is subject to the vagaries and whims and scheduling of other bills, other legislators, and other lobbyists.

Second, selling and public relations are vastly more important in legislative advocacy.

Lobbyists, are, in general, selling two points:

1. That there is political good in the proposal or at the least no harm.

The particular legislator will want to understand in this connection whom you speak for, what really is at stake, and most important, what the "sanctions" broadly speaking are the possible gain or loss in votes, the possible gain or loss in campaign contributions, and the possible gain or loss in the esteem of people whose judgment he values or whose judgment shapes public opinion. These "sanctions" are to be inferred from your description of the group you represent, their vigor, and interest in the proposal you are urging. It is good form to state that your group will value the particular legislator in question very highly if he goes along with them on the proposal.

2. That there is social good to be achieved by supporting the proposal.

Your proposal must be a serious one, supported by sufficient facts and data, which will reasonably achieve the good results you claim for it. Most legislators want to do the right thing and are sincerely concerned about problems they know about.

The lobbyist's job is to show them that on balance the combination of political good and social good will be a plus for them. Few legislators will incur what they conceive to be political liabilities in support of hopeless proposals.

These generalizations approach the outer limit of what can be definitely stated about legislators as a class. In each particular case, it is essential to know the man and on what basis he operates as a legislator.

III. LSP EFFORTS IN LEGISLATIVE ADVOCACY

It is clear that the potential for law reform through legislative advocacy is great, both in blocking detrimental legislation and in passing favorable or corrective legislation. It might be worthwhile to consider the institution of a National Center for Legislative Advocacy to help LS attorneys to develop these skills, and provide backup research and support. If inadequate time and manpower were the only factors responsible for minimal legislative efforts by LSP's perhaps such a center would be only marginally effective. But I suspect that many LS attorneys are hampered both by lack of familiarity with the ground rules of legislative work, and by variations of the incorrect notion that money is also the mother's milk of successful lobbying.

Legislative advocacy is no more difficult or demanding than test case law reform. It is merely different. It carries potentially greater rewards, potentially greater frustrations, and sometimes potentially greater risks than courtroom work.

At a minimum, every LSP can seek out a friendly legislator, and urge him to introduce a bill or bills for them, and provide him with back-up work needed.

I think a modest enough resolution for every program director would be that the LSP's in his state would attempt to pass one bill of benefit to the poor through that state legislature next year.

IV. KNOWLEDGE OF THE LEGISLATURE

No other factor is quite as important in legislative technique as knowing everything there is to know about a given legislature, the men in it, and what makes it tick. Some of the successful private lobbyists maintain extensive and exhaustive card files on every legislature in the United States. In some cases, the files will cover only the committee chairmen and the two or three legislators on both sides of the table next in line for that post. Information will include the strong and weak points about each man, including notations about the friends most likely to be able to influence his position, whether in or out of the legislature.

It is obvious that such files are not available to the average LSP. However, a reasonably good cross-section of information is not difficult to obtain, by talks with legislators willing to help you, reporters who have covered the legislature, politicians, personal contact, staff men (where they exist), and people in the districts of particularly important legislators.

It is particularly important that you get to know where the power in the legislature exists, and to what extent it is used. The normal power centers in any legislature are found in:

1. Those who control the procedure and rules, including the debate and the legislative agenda.
2. Those who control assignments of legislators to committees.
3. Those who control the reference of bills to committees.
4. Committee chairmen.
5. Legislators on the appropriations committees.
6. Natural leaders having influence for whatever reason.
7. Staff persons, normally on committees in state legislatures.

You should know, generally speaking, something of the following about each legislator with whom you deal: his political stance generally; his voting record; voting peculiarities based on special interests or unusual quirks; and what supporters and backers are influential with him.

Vote or position peculiarities prove the newly-coined maxim that "legislative gold is where you find it". It does turn up unexpectedly at times. Good legislative advocates

will not make assumptions about the position likely to be taken by a given legislator unless they have some pretty clear indications that he is hopeless.

The conservative, with a "liberal" blind spot, also makes an impressive ally in rounding up support of those who might not otherwise listen to you.

V. FORCES YOU CAN BRING TO BEAR ON LEGISLATORS

Groups of the poor

Whenever possible, a Legal Services attorney should act on behalf of a client group rather than an individual client. This brings involvement of the poor; some education about the processes that control their lives and how to deal with them; provides a vehicle for resort to the news media; more credibility in dealing with legislators; and a mechanism for the involvement of groups made up of non-poor persons.

General community representation can be successful in some cases, especially if you happen to command instant attention from the press as is the case with Ralph Nader. Many of the bills that LS lawyers will push are not, however, earth-shattering news stories. In such the news angle may initially be in the group and in its activities.

Other allies

You can find other allies, preferably already organized in some form or another, wherever you can find some sort of similarity of interest, or parallelism, between the two in the particular legislation. (It would not be unheard of, either, to put in "sweeteners" desirable to other groups you wish to enlist.)

You ought to look to church groups; labor unions; women's clubs and groups, such as the League of Women Voters; partisan political groups; bar associations; university and law faculties; editorial writers; state executive agency officials concerned about the problem; close friends of a key legislator; and "allies of opportunity".

In the last category, for example, there is no earthly reason why modifications of garnishment laws shouldn't be supported by businessmen and industrials whose bookkeeping life is made miserable by the practice.

Bar associations ought to be particularly useful in achieving procedural, or in statutory reforms to keep state laws current with recent Supreme Court decisions.

In any event, if you are serious about legislative law reform, you will get as much going for you as possible on any given issue.

Media

The working press is normally liberal and sympathetic to the poor, and hostile to the "establishment". At the same time, good reporters value the virtue of objectivity. You should never ask a reporter to write a story solely on the basis of personal friendship, or on an issue where there is little hard news value.

But you can provide a new peg around which a favorable story can be written, without any loss of integrity on your part or the reporter's part. For example, the formation of a group, passing a resolution, debates, announcements of intent to do something in the future, are all likely to provide the news peg for a story dealing at least in part with the background material you were interested in getting into print in the first place.

Factual information

It is not sufficient in most cases to present what your proposal does, and who it would help. You must first strongly establish *why* it is needed, and the specific instances of abuse which require some legislative action. While, for example, statistical analyses of caloric intake and protein levels would more soundly base a bill to remedy hunger among the poor, the facts which "sell" such a bill are graphic portrayals of disease, bad eating habits, garbage can rummaging, stunted IQ, squalor, and the like.

VI. COMPROMISE—NEGOTIATION—POLICY

Policy determinations

It is elementary that the broad policy framework of legislative proposals be decided by the poor, or by the group you represent. This is true for several reasons, some of which are mentioned in the preceding Section V. In addition, the most damaging thing that can happen to you as a legislative advocate is to be undercut and repudiated by the group you purport to represent. No legislator in his right mind will incur political liability, or deal with any legislative package, if he suspects that the poor or the group it attempts to help regard it as worthless, or will change their position.

To the extent possible, you ought to hammer out the policy outlines of a bill ahead of time, or at least the order of priority among a list of bills that are being proposed. This may pose difficulties in states with a number of LSP's, but these could certainly be ironed out in joint discussions or meetings.

Compromise

The question here is not whether, but *when* or *to what extent*. Few bills pass exactly as written, if for no other reason than the fact that legislative draftsmen have different styles and ways of achieving the same objective. Therefore, it is necessary that the legislative advocate be allowed some room to compromise within the policy laid down by the poor.

Hopefully the policy will guide him in determining at what point compromise becomes "corrupt", or at what point they're getting less than a half loaf.

A serious question occurs in cases where you anticipate the necessity of substantial compromise, and policy dictates that substantial compromise would be permissible. Do you introduce the strongest bill possible, in the hopes that more of the strength will stick through the compromise and negotiation process? Or do you introduce a bill that is close to the version you anticipate will be passed? There is not a pat answer to this dilemma, but suffice it to say that whatever version of a bill is introduced, it will serve as takeoff point for compromise.

Beware of agreeing to compromise without obtaining specific commitments of supports in return. Compromise is useless unless you pick up additional support in the process.

VII. CONCLUSION

Every legislator is pulled by a host of competing forces and demands: his desire not to offend those he deals with in the legislature now and in the future, especially those having the power to determine his fate in committee assignments and general effectiveness; his apprehension of opposition from business and trade groups; his perceptions of the voter impact any given stand will cause; and his desire to do the right thing. He must feel that he has some room to settle for something less than total victory—he must not feel that he is being presented with absolute demands, and therefore by his lights an impossible task.

SAMPLE LEGISLATIVE CHECKLIST

1. Policy outlined by poor.
2. Information, materials, and case developed.
3. Bill drafted.
4. All possible bases of support and potential allies explored.
5. The legislative sponsor of the measure chosen.

N.B.—This is one of your key choices. The legislator you choose to handle your bill should preferably be on the committee to which the bill will be referred, and in good enough standing in that committee to be effective. If he is personally committed, and a hard worker, your chances are excellent.

6. Legislative sponsor, or his staff if he has one, provided with information on the bill.
7. Other members of the committee visited to gather support.
8. Other members of the legislature visited to gather support.
9. Appropriate civil servants in state executive agencies visited.

N.B.—In some states, bills are routinely sent to the Executive agencies for reports and recommendations. In states where these reports are considered important, you ought to have seen the man likely to be concerned with the subject of your legislation much earlier in the game. It is not unknown that a man who has been asked to help you with a problem may, a few months later, be in a position to help you with a sympathetic report on a bill solving the problem.

10. If the bill should be the subject of hearings, you should be able to suggest witnesses to the committee staff, or your legislative sponsor. Obviously the witnesses should have been checked out earlier, both for willingness to testify and for contents of views.
1. Hearings attended.
2. Participate to the extent possible in redrafting, compromises, report-writing, and other work.
3. Watch the bill pass.

DIVERSE GROUPS OPPOSE NUCLEAR POWER

Mr. GRAVEL. Mr. President, some rather diverse groups have recently endorsed a moratorium on nuclear power plants in this country.

In July, I am told, the Wood County Chapter—Wisconsin—of the National Farmers' Organization passed a moratorium resolution.

In August, Chapter 727 of the American Association of Retired Persons, 84–18 Cala Breeze Way, Tukerton, N.J. 08087, endorsed S. 1217, which would phase out the operation of all civilian nuclear powerplants by 1980.

Also in August, the U.S. Women's International League for Peace and Freedom, 1213 Race St., Philadelphia 19107, unanimously affirmed its demand for "an immediate moratorium on licensing, siting, building, selling, and operating nuclear power plants."

In October, the executive board of Local 5503 of the Communications Workers of America, 3510 W. St. Paul Ave., Milwaukee, Wis. 53208, declared its "support of a national moratorium on the construction of nuclear powerplants, as the only sane avenue open to the United States."

In November, 90 delegates of the UAW Community Action program of 1440 Bellefontaine Ave., Lima, Ohio 45804, unanimously resolved that Congress should enact legislation "to declare a moratorium on the licensing, construction, and operation of civilian nuclear powerplants"; the 90 delegates were representing 14,000 UAW members from 20 locals.

The CWA and UAW groups both endorsed faster introduction of solar and geothermal energy.

While Congress continues deferring to "experts" in the AEC and the Joint Committee on Atomic Energy, the public is consulting its own decency and commonsense, and discovering that nuclear power means a high probability of irreversible radioactive contamination.

WE CANNOT SOLVE THE ENERGY PROBLEM BY CREATING A RADIATION PROBLEM

The core of the whole nuclear controversy has been well summarized in the following leaflet published by the Committee for Nuclear Responsibility:

If we let nuclear fission plants provide 30 percent of our energy by the end of the century, they would necessarily create more long-term radioactivity than the explosion of about a million Hiroshima atom-bombs every year. There is no disagreement about that. Atomic bombs and atomic power plants make exactly the same poisons.

The disagreement begins over the likelihood that people will manage to keep all the poison contained. There is no room in nuclear power for the normal level of human error and corner-cutting. Even 99 percent success is not good enough when you have to contain as much radioactivity as a million Hiroshima bombs every year. It's not honest to pretend that nuclear hazards are like ordinary hazards in everything we do.

Containment of radioactivity depends on near-perfection in the people who design, manufacture, construct and operate nuclear power plants, and who transport, process, and store their radioactive poisons. Successful containment also depends on business constantly rejecting the temptation to cut safety corners in order to increase profits. Because of human nature, the probability is high (not low) that nuclear power will mean radioactive pollution.

If we could "clean up" nuclear poisons when they get out, we could treat them like other pollution problems. But we can't. Radioactive plutonium-239 won't "go away" in 25 years like some other pollutants; it takes 24,000 years for just half of plutonium to decay. Nuclear mistakes could poison earth and water forever, at least in human timescales. It violates minimum morality for our generation to endanger the future for all the generations which hope to follow us, in exchange for a little electric power today—Who gave your permission to use nuclear fission?

LEGAL SERVICES

Mr. McCLURE. Mr. President, as I have stated before on introducing materials related to the legal services bill, I have found that one of the best ways of gaging a group is to read what it says about itself. In descriptions that would be suspect from any mouths but their own, these lawyers tell use how they are trying to break down individualism in the United States and how they are learning and teaching others how to function "in a collective way." In order to allow the lawyers practicing legal services in this country to give a picture of their own aims and ideals, I ask unanimous consent to print in the RECORD chapter 11 of "The People's Lawyers" by Marlise James.

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

LOS ANGELES, CALIF.

Los Angeles may well turn out to be the archetypal American city of the post–World War II period. With its sun, smog, super-super highways, continuous suburbs, with a population on wheels shopping in its multitudinous shopping centers, eating from its seemingly infinite variety of drive-in plastic food places, going home to amazingly alike garden apartments, it seems to embody most of the current silent majority values of this country. There are ghettos, but the good folk only see them from car windows at twenty or sixty miles per hour. The downtown section, where it is not being renewed, is run-down, but, with all the shopping centers, who but the people from the central city see it, The city is a myth, really, that only those stuck in it are forced to believe. For the rest, the city is a series of neat little suburbs.

In such a city, establishing a community of any kind is a difficult task. Everything is so spread out, that it is hard to know where one should begin. Given these conditions it is not surprising that the predominant radical political form in the city is the collective, nor is it surprising that the radical legal community is closely knit. The National Lawyers Guild chapter has around five hundred people on its mailing list, and many of the approximately one hundred and twenty active members attend some or all of the Guild's weekly luncheon meetings. With the Guild's decision at its 1971 Boulder, Colorado, convention to admit legal workers, it is likely that both of these figures are now higher.

In the 1930s and 1940s Los Angeles was a center of union organizing. In the late forties it was the first city out of which came a blacklist (the Hollywood Ten).

Because of this early organizing activity the Guild chapter is composed of both lawyers from that period and the "new breed" radical lawyers who came out of law school in the sixties. Although there are differences of opinion between these two groups, they seem willing to learn from each other.

The firm of Jean Kidwell and Frank Pestana is composed of two lawyers who are husband and wife, are both in their fifties, and, as lawyers, date back to the early organizing period. Pestana is the son of working people who immigrated here from the Portuguese Islands in 1916 and settled in Oakland. He dropped out of high school and traveled the country on freight trains for three years before the labor struggle impressed him enough to send him back to school with the intention of becoming a labor lawyer. He went to Berkeley as an undergraduate, and then to Boalt Law School at Berkeley, graduating in 1940. He immediately joined the firm of Gladstein, Grossman, Margolis & Sawyer in San Francisco, opening an Oakland office for them.

When the war came he went into the army's judge advocate corps. Following that he became an attorney for the Federal Employment Practices Commission, which was trying to work against discrimination against the Black manpower that was coming from the South to help in northern defense industries.

After he left the Commission he went back to the Gladstein firm for a time, then came to Los Angeles to work in the law office that represented the motion picture studio unions.

"There was a terrific labor dispute in those unions from 1945 until 1949 when they were destroyed. In the strikes that accompanied the disputes, real repression came down. As many as fifteen hundred people would end up in jail at the same time for picketing, or allegedly violating court injunctions limiting the number of pickets in front of the studios. Jeannie and I were both arrested for taking the messages of people arrested to their families.

"In 1949 when the unions were destroyed by McCarthyism, we had to build up a whole new practice. We did some labor work, but, in that period, the unions would not take lawyers who had had any sort of leftist political careers. During the early organizing period all the CIO unions had had left-leaning Guild lawyers, while all of the AFL unions had had old hacks. But in the McCarthy period, left lawyers were fired right and left by unions, and the lawyers who went with the unions then were the ones who had been on the outs with the CIO unions before. So I went into straight work—whatever labor I could get, civil rights, police brutality, immigration, and work that stopped deportations."

Kidwell, who did not become Pestana's legal partner until 1950, had come to the legal profession in a roundabout way. She was born in San Francisco in 1917 and was brought up by her father, who was a trade unionist. She went to the University of California at Berkeley majoring in mathematics because she felt, because of the pressure of the times, that that field or teaching were the only occupations open to her. She met Pestana in 1938, when she was still an undergraduate, and they ultimately married. When he went into the army she worked for the army. On their return to Oakland, she worked for the government as a statistician, but found that she was bothered because of her own, her father's, and Pestana's politics.

"I knew it would continue if I was in statistics, so I decided to go to law school. I had thought of going to medical school but I was twenty-nine and there were undergraduate courses I would have had to complete first. So it was law school; I don't even know how."

She began attending Boalt, but, after six months, Pestana moved to Los Angeles and, after six months of a long-distance, commuting marriage, Kidwell went there too, completing her law courses at the University of Southern California.

"Originally, we had thought we'd go to the San Joaquin Valley and establish a legal service for the farm workers, but we ended up working here. My first partnership was with Stanley Fleishman, but eventually he had an accident and, at about the same time, I became pregnant. I had my first child when I was thirty-two and two others after that. I tried to work, but we had no money to have someone watch the kids. After the unions collapsed we were lucky if we made twenty-five dollars a week from legal work for the next few years. We did a lot of free work—all of our immigration cases were free—and we had no people giving us financial backing.

"I was a member of the Communist party from 1938 until 1962, but my relationship to it was strange in that I was never considered one of the lawyers who should be compensated for doing political work. I ultimately left the party because of a disagreement over their saying not to engage in the movements of the sixties because we could hurt those movements if we did. I went to the Mississippi Freedom Rides anyway. A friend from CORE had come to me and told me that they needed publicity because of the number of young people disappearing into the prison system down there. They wanted doctors and lawyers to go there to get them publicity.

"I tried to get other lawyers from Los Angeles to go there but none of them would. So I went with another female attorney. We got arrested and they wanted to bail us out right away, but we decided to stay in and go through the state penitentiary so we could see where people were and what the conditions were. From Mississippi the two of us went, by invitation, to Cuba. We had discussions there about the international Communist movement and a lot fell into place.

"When I returned to L.A. I went back to the group and, in the proper way, started asking questions, but got no response so I left the party."

It was in the late forties and early fifties that Kidwell was involved in a serious struggle within the local chapter of the Guild.

"Frank and I had always been Guild members and I felt that the Guild should not be a mass organization. At that point of time there was a faction who wanted to turn the Guild into that. It was a protective thing that they wanted. But I felt that we had to be a group of radical lawyers that had the right to take a political position without being a political organization, or else the organization would have been pointless. We eventually won, if only by default. The Guild was placed on the attorney gen-

eral's list and that killed any chance of its being massive then. It moved even more to a bar association orientation and a lot of energy was expended getting it off of that list.

"Actually I think the Guild was practically gone by the sixties. If the southern thing hadn't started, if young people hadn't entered, forcing it to change its direction, it probably would have folded. It really wasn't until the Santa Monica convention in 1968 that I felt it definitely would survive.

"By that time the old Guild lawyers were getting old. I believe that lawyers for the most part come from a bourgeois background and, if they don't, law schools do a good job inculcating this into them. The system generally doesn't have to worry much about lawyers when they've done their education and then become part of the arm of government. So, if they manage to fight all of this and get to be fifty or sixty and are still involved in struggle, that's pretty good. As it happens, it also seems to be pretty rare, so the Guild needed some new blood."

Occupying the second floor of the same run-down, but comfortable, pink house in West Los Angeles that holds the Kidwell and Pestana firm is the Bar Sinister (BS), a collective entirely composed of the new breed of lawyer and legal worker.

The Bar Sinister, which can be taken to mean the literal "left bar" or the "evil bar" (since that is how they feel they are viewed by the establishment) or, from its initials, the "bastard of the system," opened in June of 1970. By the end of that summer ten of the people who now compose the Bar Sinister were working there. The political atmosphere form the ideas of these young people also led them to choose the collective firm. Looking at their backgrounds helps one to understand why collectives came about when they did, and the types of lawyers attracted to them.

Joan Anderson was born in Los Angeles in 1942. Since her father was stationed overseas she spent her childhood with her mother and her father's relatives in a suburb of Chicago.

"I always felt separate from the people in the suburb. My parents were working-class and had given me a different attitude than that around me to things like racism. Eventually we moved to California because my parents didn't want me to go to a ruling-class high school. We settled in the San Fernando Valley and I went to a white, working-class high school where I was a cheerleader and interested in my image but never did things like join a social club because I didn't like the elitist attitudes they had.

"I spent my first year of college at the University of Oregon and again felt out of place because it was a party school and I basically just studied. Then I transferred to UCLA and there I realized that I was a radical. I had an Indian professor who was a Socialist or Communist and who was able to voice the opinions I had always had.

I decided to become a lawyer because a lot was happening in the South, and I wanted to be there yet I wanted to continue with school, and law seemed a way to relate to people on a practical basis. I went to Yale Law School, with most of my thoughts on civil rights, although it seemed that I was becoming more radical than the civil rights movement, and left after three weeks. I spent the next year as a social worker here in Los Angeles, but I realized I was no more than a policeman administering money so I went back to law school thinking again that that would let me relate to people in a more meaningful way even though, at that time, I did not have much faith in the court system as a way of changing things. My two years at Yale were the time when I most consciously became a Marxist-Leninist-Maoist.

"I spent most of the first year doing community work in a Black ghetto near Yale. I became involved in a police brutality case which kind of clinched it in my mind about the absurdities of American justice—the Black people I had seen beaten up were convicted of assault. That summer I went to work for CRLA and began to see how the court system treated Chicanos and those organizing among farm workers. The next summer I worked for Truhalf, Walker & Bernstein in Oakland and did some work for the Black Panther Party which was just beginning to emerge, and some free speech cases. I saw then that classical political cases were the only thing that interested me if I decided I wanted to be a lawyer at all. I spent my last year of law school at UCLA doing a lot of political work.

"After I graduated I spent a year working for the Guild as a student and lawyer organizer. Then I came here and worked for some Los Angeles lawyers for a while before spending three months in Cuba with a *Venceremos* Brigade. When I came back, the Bar Sinister was beginning."

David Epstein is also a native of L.A. He was born into a middle-class Jewish family that moved to Venice, California, when he was twelve.

"Moving from a solid middle-class community to a mixed one really had an effect on me. By the end of high school I had real questions about the institutions and values all around me. I went to Berkeley and was there for the free speech movement which began my radicalization. But I think that I am in the generation that tailed right on the beginning of the whole thing.

"I came down to UCLA Law School in 1966 and found it very traditional and quiet. I had decided to become a lawyer because of the momentum of my background and history, and because it was also the time of the civil rights movement when there wasn't a contradiction between being a lawyer and being in the movement. Between my entering and finishing law school my radicalization really occurred. I became involved with people who wanted to do community work in Venice and with people who were working on the formation of a student conduct committee which wound up being almost an advocacy procedure. Then, in my last year of law school, about a half-dozen of us who saw we wouldn't be comfortable going into a straight law office began to have discussions, and these were the seeds of the BS."

Carla Forteney was born in West Virginia and her family then moved around ending up in California in "a typical middle-class situation."

"I went to high school in Sunnyvale, then I went to the Art Institute in Chicago, I started to change there, got into the beatnik thing, then I went to the University of Illinois where I became involved in their free speech movement, antiwar stuff, S.D.S. It was a typical student involvement.

"Then I moved to Los Angeles with a guy who was going to law school at UCLA, and that is how I began to get involved in legal stuff. That's how a lot of the women legal workers get involved. I was involved with the Guild student chapter and some college politics, while I was going into and out of school. Eventually I broke up with that guy but, by that time, I knew David Epstein who was then working in the Guild office and I began working there doing legal defense work, getting lawyers, putting out publicity, going to meetings.

"I went on the Third *Venceremos* Brigade and that was a real turning point. It gave me faith that the things I wanted were necessary, and that there is a worldwide movement trying to get the same things. When I came back the people here, who I'd known from the Guild work, wanted me to join them. I thought, after Cuba, that I wanted to be in a direct organizing role so I felt some contradictions about working here but the needs of the movement are so broad, and I had had a lot of experience doing legal things, plus I had built a relationship with the people here, and so I decided to join them."

Karen Jo Koonan was born in Savannah, Georgia, then raised in New York until she was fifteen when her family moved to Venice. She was a dance major at UCLA and into the bohemian scene until the summer of 1964 when she went to Mississippi.

"Some friends told me about their experiences there the previous summer so I went down and became a Freedom School teacher and worked on voter registration. Needless to say it was a radicalizing experience. The school was burned out after I had been there for seven months so I went to New York, deciding I wanted to be a dancer and ending up working in a bank. Eventually I came back to UCLA and stayed there for two and a half years. Then I realized that being a dance major was politically irrelevant, and I moved to San Francisco where I worked for a movement newspaper for two years and did organizing for draft legal defense work. I got to know the lawyers in the Bay Area and one of them, Dick Hodge, trained me to be a legal secretary and I worked for him parttime for a year. Then I became a secretary at the Guild regional office in 1969, and I stayed there for six months.

"During this time I had been involved in other political things—I went on the first SDS trip that was supposed to go to Hanoi in 1967, but we ended up going around the world in a month and meeting with NLF representatives in Cambodia; I was involved in the Oakland Seven case; I was on the streets for People's Park and then Joan and I organized that defense committee. In December of 1969, when I was still working around the San Francisco Guild office and doing temporary legal secretarial work, I wanted a vacation so I came here and spent some time with Joan and Dan. They talked about the BS and I got turned on by the idea so I moved to L.A. Then I went on the same *Venceremos* Brigade that Joan did and, when we came back, the BS was beginning. I went to Cuba again in December of that year on a special lawyer and legal worker trip."

Barry Litt, a native of Pittsburgh, moved, with his "upper middle-class Jewish family," to Los Angeles when he was fifteen.

"The notion of success in monetary and scholastic terms was stressed heavily in my family. In high school I had a teacher who could get people to think in political terms, and I started doing so. Paula [now his wife] and I met in high school.

"I went to UCLA for a semester, then I finished up college at Berkeley, where the free speech movement was going on. I defined myself as a fringe radical, which meant that my ideology was undefined. My wanting to be a lawyer goes back to all kinds of Jewish things like being articulate, not wanting to be a doctor, and still having a strong sense of wanting to be a professional. So, after Berkeley, Paula and I and our first child moved back here and I went to UCLA Law School.

"My main focus during both undergraduate and law school was reading, especially fiction with an unclear notion of whether I wanted to be a lawyer or writer. After I took the bar exam I wrote for three months but I wasn't pleased with the results. I had known Dan and David in law school, and I knew about the idea of a law commune so I decided to try that. I started going to meetings in January of 1970 and continued going. In those first six months of meetings I found that I had to define myself politically, and I came to the idea of being a Marxist-Leninist, although I am still defining."

Paula Litt was born in Chicago and raised in Los Angeles.

"I came from a wealthy family, but we did not have the trappings of wealth. I went to University High School where I met Barry. By my last year there, I was alienated and my grades started to slump. I was interested then in social action related to my religion but, by the first year of college, I'd lost that interest too. I went to UCLA for a year, then dropped out and went to Berkeley where I went to secretarial school and worked for the University.

"Barry and I got married after his second year there. I worked for a while, went to school for a while, kept bouncing back and forth. I had a child and that gave me some feeling of definition, but it was a disastrous one although I related positively to having children. While Barry was in law school we had two more. Then, when Barry started going to the meetings for the BS, I began going too. I had always had an intuitive sense about politics which crystallized at this time.

"When the BS began I started working with it. We had sitters come in for the children, and we each stayed home with them one day a week until the collective where we now live, which is based upon freeing parents to work while giving children adequate care, came into being."

Beth Livezey is a midwesterner.

"I was born in Oklahoma and grew up there, in Norman where my father was a history professor at the University of Oklahoma. I went to the public schools there and then went to Pembroke College in Providence, Rhode Island. While I was there I became involved in tutoring and in some of the recreational programs in the poorer sections of the city. I was also involved in such issues as open housing, which was before the Rhode Island legislature while I was in school.

"When I was a senior it seemed like lots of people were either getting married or going to graduate school, neither of which was appealing to me. I had gotten increasingly interested in the civil rights movement so, upon graduation, I went South and did civil rights work for two years. During that period I decided that more movement lawyers would be helpful, since there were very few at the time. So I went to Vanderbilt Law School in Nashville because I felt it would be more important to stay in the South than to go to a northern school where there would be people who thought and acted more as I did.

"While I was there I helped to start the Law Students Civil Rights Research Council group and I did some community work. After my first year I worked for C. B. King in Albany, Georgia; and, after my second year, I worked for the Center for Constitutional Rights which was then in Newark. During my last year of law school—from August through January—I worked in New Mexico on some of Reies Tijerina's earlier cases and also took some courses at the University of New Mexico.

"When I graduated I took the New York bar and began working for the Center. I both worked in New York and traveled around doing case work in Ohio, in Chicago for the conspiracy trial, and in other places. After a year of that I felt the need to work in more of a collective form, and in one geographical area. Through the Guild I met the BS people and discussed their hopes of establishing a collective. It seemed like many of our plans and needs meshed. I came out here during the summer of 1970 to see how it was working, and I decided to stay."

Dan Lund is a North Dakotan. At the Guild's 1971 convention he was elected national vice-president of that organization.

"I was raised on a farm near a small town in a parochial atmosphere. I never saw anyone who wasn't a Norwegian or a Swede until I was fourteen years old. But, in spite of that, there were some radicalizing influences. My grandfather was an old world progressive who hated the banks and Wall Street; my great uncle was a lumberjack and a Wobblie; and my mother and grandmother were very active in the Presbyterian Church which was then strongly influenced by a social gospel notion.

"We moved to Culver City, a working-class suburb of L.A., in the early fifties and, while I was in high school, I began to define myself as a socialist because I knew it was sure to terrify and offend everyone around me. I took some kind of perverse satisfaction out of doing typical things well—like sports and getting good grades—and still having a self-defined notion as an iconoclast.

"I went to Pomona College in Southern California where I met some people active in the civil rights movement. I never did go South though. During the summers of my last two years at college I was a grape worker around Fresno and did some work with the California Migrant Ministry and with the pre-Chavez agricultural workers' organizing committee.

"I saw there the conditions under which people worked and the power of the bosses in labor. The strikes were viciously broken and the organizers were helpless, so the workers' solidarity broke and fragmented. It had a great effect on me. I wanted to go out and organize yet, at the same time, I felt cynical about the nature of labor organizing. Finally I decided to be an academic because I thought it was pretentious and paternalistic for me to try to organize farm workers. I went to Yale in graduate work in radical church history for a while but I choked on the cloying atmosphere of the East.

"I quit and came back to California in 1964 and began to do parttime support work for Chavez's union which was then beginning. In the fall of 1965 the grape strike began and I spent a good part of the next year working for the Emergency Committee to Aid Farm Workers, which was trying to mobilize middle-class political and financial support for Chavez. That was a critical time between the beginning of the strike and the time that the UAW gave its support to the organizing work. But, when they got the UAW support, they had to go along with the liberal anticommunism that went with Reuther's money, so I became more cynical about the process of organizing workers in this country.

"So I decided again to retreat from organizing but, this time, I decided to become a labor lawyer so I could work with groups like Chavez's and give them the kind of assistance they needed so that perhaps they wouldn't be forced to make the kind of unholy bargains they had had to with the UAW to get their lawyers and their money. I went to UCLA Law for a year then I began to work with Jim Lorenz on the proposal for CRLA. I was inspired to do this from what I understood the history of the thirties to be when young, radical bureaucrats were able to creatively use many of the government agencies. I thought that OEO might give us an opportunity to do that if we were really serious and if it were done on a big scale.

"I took a year off from law school and served as one of the administrators of CRLA, and I fought for a radical approach to support local organizers and organizations, particularly those that tied themselves to the farm workers' union even though I was somewhat cynical about their tie to the UAW and what that protended. It was a concrete, day-to-day education in bureaucracy and radicalism. While the radical spirit in CRLA was predominant at first, it soon became the minority view. CRLA took a sophisticated turn and became what it is today—the most effective, well-organized legal services program in the country. They are technically probably doing the best legal job in terms of law reform, class action, and sophisticated advocacy for rural poor people, but they have no feeling for supporting local political organizing or mass organizing. In fact, they have a fear of it. Instead of building a base among the people, they've built a base among the liberals and the young creative bureaucrats of Washington who liked the idea of that program and who took a great deal of their own identity as bureaucrats from the fact that programs like that exist.

"After a year I left them to return to law school, sobered and determined that it didn't make much sense to be a labor lawyer and that I didn't know what I was going to do. That was 1967 when there was an intensification of the peace movement. I became active in SDS, and was arrested at the Dow demonstrations at UCLA.

"In the summer of 1968 I was introduced to lawyers and law students who were with the Guild and, while this didn't provide all of the answers, for the first time I felt that I had found a community of people who were good to work with, who could combine being a professional with a revolutionary perspective. My last year in law school I spent a lot of time working with the Guild and, when I graduated, I took over the regional office here and worked at that for a year organizing law students and lawyers and trying on many things for size in terms of what kind of legal work made sense in terms of serving the movement. At the end of that year, the discussions about the Bar Sinister began and I decided I wanted to join in."

Carson Taylor was born in Pennsylvania and raised in Rhode Island.

"My family was upper-middle-class. I went to private schools after the fifth grade. I went to Governor Dummer, a boarding school, for my high school years and then to Amherst College. Ever since I was a kid I had wanted to be a lawyer so I went to Duke Law School.

"While I was there I began to get more radical. Going down to the South, a lot of the contradictions in the society became clearer to me. I thought of staying in Durham after I finished. There were discussions about starting a law commune there, but it didn't look like it would come off.

"It was June of 1970 when I graduated, and my wife, Gwen, and I decided to come out here for a vacation. I knew some of the people from the BS from the Guild so I talked to them when we got here. We never left."

Earle Tockman, a Chicagoan, went to the University of Illinois in Champaign/Urbana.

"I'd always wanted to be a lawyer because of the glorification of lawyers in society and because I had a talent to articulate. However, I took up accounting in college because I thought I wanted to be really rich. Then I decided I could be even richer if I became a tax lawyer so I went to Northwestern Law School. I was a liberal through college and thought I was in the vanguard of the struggle even though I was playing the game. After my second year I worked for a corporate law firm and hated it, but I still couldn't break my bourgeois hangup about money.

"I had this unsophisticated hangup about capitalism and what it did to people, including me, and I really felt the frustration of the contradictions in my life. The last year of law school I decided I wanted to be a poverty lawyer. I got a Reggie and came out here to Los Angeles. I was sent to Compton, a Black area of the city. I began to enter an identity crisis about what it meant to be a lawyer. I joined a group called Lawyers of the People where I met a lot of the people who are now with the BS. Eventually I decided to join them."

Joining the Bar Sinister is one way for Earle, or anyone, to get over their bourgeois hangups about money since the salary scale at this collective is so low it is nonexistent. When the collective has money, people take what they need to pay their bills and to sub-

sist, but there is no minimum or maximum draw as there was at the other collectives discussed thus far. Part of this is by choice and part is because the Bar Sinister began with people who were, for the most part, inexperienced. No one had a client list they could bring with them to the collective as has happened in the others. And, because of their inexperience, the collective is very careful in the cases they undertake. When they take a case they study all of the areas of law involved and consult with more experienced lawyers like those in the Kidwell firm, Michael Tigar, Oliver Wendall Holmes, Jr., and Ben Margolis. So, as of this writing, it takes them a good deal of time to handle their cases.

To cut down on expenses, five of the people from the collective live in a big house in Venice in a working-class, Chicano neighborhood, three others live in the child care collective of which Paula spoke, and the remaining two, at the time of writing, lived alone.

From its beginnings, the Bar Sinister has viewed itself as a political collective first, and a legal collective second. Instead of being the legal arm of the movement, as the Guild tries to be, it wants to be a legal arm *within* the movement.

"Especially in the white left here, we are considered a political collective, just like a collective that does organizing or runs a bookstore."

From their beginnings this attitude has given them a unique set of problems. Following the six months of discussions when it was decided that those interested would give the idea a try, they got an offer of free office space and decided to take it.

"Suddenly, there was the Bar Sinister. Then problems began, like whether people should have individual offices and right on down the line. Then came the question of secretaries. Not all the men could type then, although they all can now. Then we came to the question of collective responsibility for child care which led to the question of efficiency. What is it? What is efficient in terms of a lawyer's time? All of those were important discussions that led us to challenge ourselves with the notion that we were a collective of people all of whom were equal.

"There were monumental struggles about things like whether to have secretaries. One woman was going to come here and be a semi-legal worker and a semi-secretary. But some of the other women pushed that idea aside. Some of the men, however, had expected to set up a commune like any law commune in the country which has secretaries even if they do have equal pay. To get the women to not go along with that, they had to struggle through their own slave mentalities. It's rarer now that outward chauvinistic acts will happen, but they still do and we will stop a meeting to deal with a chauvinistic remark. The struggle against chauvinism is the very foundation of our existence, but we deal with it as it happens.

"In the beginning the women met separately, then we realized it wasn't necessary because that struggle was so incorporated into our existence that those meetings seemed artificial. That isn't to say that the women don't have separate things to talk about, but we do that every day and, if a separate meeting is necessary, we meet. And four of us attend weekly women's meetings with women from other collectives in the city."

The legal workers in the Bar Sinister do a good deal of legal work—interviewing, researching, preparing witnesses for examination—but they don't feel that they are doing it to become lawyers themselves. They are doing it because they feel it is politically important, because they feel that their own understanding of it leads to a better understanding on the part of their clients.

"At one point we had to deal with whether we felt that political work was just like legal work. If it isn't, we would have been saying that lawyering is the only work and the rest is a luxury. So we came to the point where, in defining priorities, it's all work—that goes across the board from child care to legal work."

To emphasize this attitude the collective tries to spend one full day each week on collective studying. On this day called "Dare to Struggle, Dare to Win Day," they discuss books that they have all read on their own time. The reading is done in sections—one month they might study racism; another, the Russian revolution. Because of this practice, they often find themselves criticized by other members of the radical legal community for spending too much time in self-analysis.

"We're always in the position of defending ourselves from criticism. You're damned if you do and damned if you don't. We never said we had all of the answers, but we want to struggle with things and trying to make them different.

"It can be true that collectives spend so much time on self-criticism that they don't get much law work done but I don't think this is necessarily a criticism. I don't think of myself as primarily a lawyer. There are more important things, and one of these is political development. We spend time in things like self-criticism because it is necessary, and one of the results is that we react pretty much the same toward things. It helps to have your heads together to have a good working collective. It's difficult to function collectively instead of individualistically.

"That sort of criticism is an easy one that can best be made by those who don't know what goes on in a law commune. If anything, we spend too much time working on trials and litigating because that is absolutely necessary, and too little time in self-criticism and developing ourselves as political people—although the time we spend is probably more time than most lawyers do, because, with a very few exceptions, most lawyers never develop as political people, although they occasionally develop as legal technicians. It's the lawyers who are defensive about their own lifestyles or economic needs or lack of political development who are quick to say, 'Well, they're just into developing some kind of self-satisfying hippie practice; and not into becoming good lawyers.'

"But, any person I've ever met in a law commune recognizes that, because of the people we represent, and because of who we are and how we are seen, we have to be better than anybody else just to hold our own in court. We recognize that we have to be as good as we possibly can. It's important to note, though, that we don't try to be good or great in every area. We try to discipline ourselves and limit the areas of law that we know and know well. I think, even now, that we've brought a seriousness and a thoroughness to our legal work which has already resulted in some significant courtroom victories as well as a good fight in every case we've undertaken.

"The frustrating thing is that we have received almost no support and very little interest from practicing lawyers. The people mentioned before who help us are the exceptions. Other lawyers either have a curious interest or are kind of waiting for us to fold so that they can say 'I told you so.'

"The most excitement we've encountered comes from brand-new lawyers who are baffled by what they can do, or from law students who are looking for ways to be both radicals and lawyers. So not only are we struggling for ourselves and for the movement to prove we can work, we are also struggling because we feel that we have a real obligation to those people who we hope we can help to stimulate.

"In a capitalist country when you're tending to break down individualism and trying to learn to function in a collective way, a great deal of time is necessary because it's been so drilled into us by the system that one competes with other people, that a lawyer has knowledge he keeps to himself. Breaking all of that down is difficult but it seems, if there is going to be change in this country, that is the kind of thing that people should put time into. It won't do much good to have a power change in this country if the people who take over haven't tried to change themselves beforehand, and haven't learned that it is a constant struggle."

The Venice Legal Collective (VLC), in Venice, California, is different from the Bar Sinister. It is, in fact, different from most of the collectives in the country in that the people who compose this collective see themselves as people first, and political people second. They also seem to have a greater sense of the irony and humor in their own lives and work than do most collectivists. This is reflected in their office, which is disordered, chaotic, and, as likely as not, ringing with laughter or the sounds of five different conversations all taking place at the same time.

The idea for the collective began to germinate in 1970, when some of the people now in the collective were working for a legal health program of OEO that operated out of UCLA. The original plan had been to have a medical/legal collective; but, when the legal people were ready to begin, the medical people were finishing their education and/or in the planning stage, and so the two groups split off. The collective formally began in November 1970, although some of the lawyers did keep working with other projects through the beginning of 1971, largely because the collective needed the money.

"We decided to form the collective because life is short and dull; and we had great expectations and optimism that it would give us a chance for a new way to work and use the law, as well as deep depression about what we were going to do with our lives, and real alienation since the thought of going into the straight world really began to feel as alien as it looked. So, actually, we got together for both personal and political reasons.

"We had four goals when we began, and we continue to have those same goals. First, we wanted to perform legal work for the Venice community and other people in the Los Angeles area who would require the services of a low-income law office, and we wanted to do so at fees that would not rip off the people. We wanted to relate to the community, which is another one of those glorious and nearly indefinable words. Our first problem was in defining the community since it is made up of Browns, Blacks, Indians, working people, freaks, college people, old people, and just plain people. It is a highly disorganized community—of the attempts to organize it, most have resulted in failure—with multitudinous political beliefs, as well as social and cultural differences. Since we have had a hard time finding 'the community' we relate to the various communities with varying degrees of success. We do not feel that we have really become a part of the community, although we feel, with time, we will blend into it. It is only right that we become a part of the community just as everyone else does, by working and living in it.

"We are an office in the community, and we handle many clients from the community. We often handle quick 'freebies' involving phone calls, short paper work, advice, et cetera, for people who live here. Often these are people who just wander in from the street. And, often, they bring us cases which are for small amounts of money or property or small something else. Few lawyers will take these

cases and the people are often stuck. In some instances we help them; in others, we direct them to the proper place for them to get help."

In the time that they have been together, the people in the collective have done just about enough orthodox legal work to support themselves, plus a minimal amount of political cases.

"There haven't been enough resources to do much political case work. We're learning, and it takes us sixty hours a week to get the work done because when we do something usually it is for the first or second time. It takes us a day to do something it would take another lawyer five minutes to do. But that has been a personally enriching kind of experience, and we think it will help us end up as a good law office. Our cases now are political in that people shouldn't be arrested for dope. They should not have to pay money to lawyers for a divorce and they shouldn't have to put up with a quota system on the highway that makes them get picked up for a traffic ticket.

"We feel that the legal profession and the system of law weigh heavily on the poor, the minorities, freaks, women, and other groups of people. While we realize that this is not a shocking revelation we wanted to approach the law with that in mind, and to deal with judges, court personnel, other lawyers, and even the clients in a way that would erode the traditional notions of the legal system. We dress as we feel comfortable, cut our hair as we like, talk to the people as persons to the extent that that is possible. Some clients, we've found, do feel the need to have a heavy-handed, authoritarian lawyer handling their case, but we try to change that when we can. We are trying to alter the mystique which the law contains for most people."

"We try to have a basic respect for people and the directions that they grow in. We don't see talking about being respectful and humane and then putting numbers on people to organize them. We seek to do these things on a daily basis. It is not glamorous, and the effects are generally only as far-reaching as the people we touch, but it is exciting to see the difference in some people when they leave here. Some seem to have a new feeling about casual people, or people with long hair. We believe as more people organize their working lives on this level, more and more people will be touched. Doing it the way we are is often painful and it is possible because, and so long as, the personal benefits are involved."

"Generally, we do not find legal work pleasant, and since we keep fighting the very kinds of ego-tripping it could afford one, we pay a price for our political view of the law. But we are paying that price, in part, because of some of our other goals.

"A second goal we have is that we are seeking to learn about and develop our personal selves. Since work is a large part of life, and since most of us feel we ended up in the law by accident, finding a nonoppressive place and way in which to do our work is very important in allowing each person to find his or her own way. Working, as we are, with friends, where the people are important and profit is secondary, we have the chance to let things out, to reflect, to question. Although it sounds trite, we feel that working in a collective can make it easier to 'know thyself.' We feel that life in our times seems to reinforce the difficulties in dealing with oneself. In our collective we are trying to set the conditions so that people can have a go at it. This is a difficult goal to work on, let alone achieve. Yet, we feel that we have all grown as people to a greater or lesser extent."

The third goal of the eight people in the collective—Mark Edelstein, Susan Edelstein, Dave "the Rave" Grabill, Peter Horstman, Chip Kurtzman, Sandy Nathan, Carl Schwartz, Barbara Young—is closely related to the second. They hope to build honest, productive, creative, understanding relationships among themselves, and then among others.

"We feel to do this it is important to work among friends and to help each other. We have built relationships, but not to the extent that we should have. In many ways this relates to the extent to which people have dealt with themselves. We need to love ourselves in order to love each other. These kinds of love are obviously difficult, but we have profited from our struggles. We feel that our size is important because, in a large group, your ability to have choice is cut down so far that it becomes a threatening thing, and your ability to see yourself is hampered because you're trying to deny yourself.

"While doing all of this, our other goal is to make a contribution to the political development and needs of that vague and difficult animal, 'the movement.' We are bound by a desire for radical change. We hope to have an entity that can do political work aside from the politicalness of being what we are. There are problems, in case you haven't noticed, with politics. We are not bound together as Maoists, Marxists, anarchists, or anything else. This poses problems because we do not unite behind any dogma. Rather, we are forced to unite on the bases that we've already discussed. We are trying to do things because they are right for us, not because they are 'politically right.' Some of us feel more attraction to political activism than others. Some of us are more skeptical. Some of us are very anti-intellectual and cynical of people who are deeply committed to rhetoric, of people who are very working-class-analysis and have to be 'right on' in everything they do and say. Those of us who share that opinion are cynical for two reasons. One, we don't enjoy it and we want to enjoy ourselves; and, two, it's bullshit, and most people aren't able to live up to the shit that comes out of their mouths."

"Yet, we all share the basic disdain for the quality of life nurtured by our society, and by the various forms of domestic and foreign oppression perpetrated by our government.

"In our work we are struggling to break down the oppressive attitudes we sometimes have toward each other. Male chauvinism, sexism, professionalism all represent attitudes with which most of us have been raised, and which we are now seeking to overcome. We feel that we must find new ways to relate, rather than lawyer to secretary or professional to nonprofessional. Obviously, this equally applies to the way in which the office relates to clients. There are many aspects of the law which can be dealt with not only by a lawyer, but by anyone who is knowledgeable in that area. We are attempting to expand those areas by study and practice, thereby helping the lawyers to struggle with their professional attitudes, and helping the legal workers to overcome their feelings of ignorance of the law. The jobs of typing, answering phones, et cetera, are spread out as much as possible so that when shit work is done, at least it is equally divided.

"Obviously, breaking down attitudes and gut feelings that have been built up for many years is difficult, and our office has had its share of difficulties in these areas. At times the tensions are almost overwhelming, and the pressures seem unbearable. Too often we store up our grievances only to explode at a collective meeting instead of discussing our feelings, if possible, at the time of the incident. Recently though, private discussions are becoming more frequent and, if nothing else, this keeps the lines of communication open, which is the only real chance we have to continue to develop as people and as a collective."

"Taken all together, what we have said should indicate that we care about our own lives, that we seek to participate in a radical change of the society, and that we are trying to create our own small community within the larger one. We are part of the movement, although we don't have an interest, necessarily, in leading it. We feel that our lives reflect that we are just part of the small kernel of dissatisfaction festering in the corn fields of America. We hope to join with other kernels to create a better field for us all. Above all else—the politics, the rhetoric, the movement—we are people, with all of the strengths and weaknesses that people have. Some of us are afraid to open ourselves too completely. Others at times need help that the rest of us feel unable to give. But we continue to attempt to relate, and, to love each other."

NO-FAULT AUTOMOBILE INSURANCE

Mr. MOSS. Mr. President, for the past several years, the Senate Commerce Committee has been considering legislation to establish a nationwide system of State no-fault automobile insurance plans. I have been an active supporter of this effort, and have had occasion to involve myself in many of the details of the legislation.

As I have studied the subject of no-fault automobile insurance reform, I have come to the conclusion that very little has been written which is intelligible to the ordinary person. As important as the issue of subrogation is, for example, it can befuddle the smartest housewife, banker, or legislator.

It is with great enthusiasm, then, that I read the Consumer Action Now newsletter entitled, "I'm At Fault, You're At Fault." In a series of short, snappy articles written by lay people for lay people, the whole subject of automobile insurance reform comes into sharp focus.

In the next few months, the issue of no-fault automobile insurance reform will be considered and voted upon in the U.S. Senate. I urge each of my colleagues to read the series of articles in the Consumer Action Now issue entitled "I'm at Fault, You're at Fault," and I ask unanimous consent that the article be reprinted in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. MOSS. Mr. President, I wish to pay special tribute to the members of Consumer Action Now, who have made an important contribution to the literature on no-fault automobile insurance reform. I am particularly proud because a significant contributor to the issue was Mrs. Lola Redford, whom I claim as a constituent of mine.

EXHIBIT 1

I'M AT FAULT, YOU'RE AT FAULT

Insurance. Somehow it just turns me off. It's one of those words that immediately brings to mind some impending disaster, and I have enough little disasters to deal with daily without spending any spare time preparing for them. I would rather embrace the "let well enough alone" philosophy.

Who wants to think about insurance? After all, the reason we insure anything is because it means a lot to us, and who wants to ponder losing something we care about? In fact, I try (if in vain) not to think about "what would happen if?" Added to the trauma the word connotes, it also conjures up images of bureaucratic red tape, pre-

miums, forms to fill out (or worse yet, forms to figure out), and the endless, exasperating vernacular of lawyers and insurance men.

No, I don't want to be in Allstate's hands, or anyone else's hands for that matter. I'd like to believe that I could handle any disaster that could possibly arise . . . but I don't live where I can breathe clean air and I don't live where the best things in life are free, nor do I live in a society that allows me to be totally self-reliant.

Today we have to build in self-protection because our neighbor may step on the rake the kids left in the driveway, because illness or accidents can require prolonged medical care, or because we may commit an error in judgment while driving. It's not exactly a love/hate relationship.

Now, if to the perplexing word "insurance" you add the preface "no-fault," everyone is confused. Or practically everyone. The only people who don't seem to be are the insurance companies and the trial lawyers, who have something to gain by the confusion. While it's easy to rationalize our ignorance or indifference, it's also easy to see that we are the victims of it.

Since CAN is not a group of trial lawyers or insurance representatives, why the interest in the subject? Isn't CAN, after all, an environmental-consumer organization? Where does no-fault insurance fit in? Why a whole issue devoted to the complex, sometimes confusing and rather unglamorous subject?

NO-FAULT OR DOUBLE FAULT

It's really very simple. No-fault is, in the first place, one of the most vital consumer issues of the day. We get less return on our automobile insurance dollar than from practically anything else we buy today—as little as 44 cents on each dollar spent. The present system of insurance also only compensates 15% of all fatally or seriously injured accident victims. Add to that delays in final payments on an average of 16 months to seriously injured victims or their survivors. The present system also adds more than 200,000 cases a year to the nation's already overburdened courts tying up more than 17% of all judicial resources.

AUTO CRITICISM

The automobile is as integral a part of our environment as the solid waste crisis. They both represent very different problems and solutions, but both issues must be addressed now. While we wish to discourage the use of private automobiles and to encourage mass transit, we must admit that the automobile is the dominant mode of transportation today . . . and in some places the only one available. Every driver has a better than even chance of having an accident every *three years*. Just about every driver will have an accident at some point in time. In 1972, motor vehicle accident deaths hit a record high of 56,300. There were an estimated 2,000,000 disabling injuries in the same year as a result of motor vehicle accidents. Clearly, no-fault is an environmental issue, even if we have to redefine the literal definition of environment: all the surrounding conditions and influences that affect the development of living things. The automobile devastatingly affects the development of living things and those living things are we. Its emissions pollute the air. It congests our cities and crowds our highways. It kills, maims and disfigures. How can we not be concerned?

No-fault insurance can't prevent accidents but it can do a lot better by accident victims—which all of us stand a chance of being at some time or another. Federal standards for no-fault auto insurance are a major step in consumer-environmental protection. Most people start thinking about it from a hospital bed. We'd prefer to do it now.

"In other words, the no-fault benefits are subrogable only against the tort feasor's $50,000 no-fault coverage and the liability coverage is preserved for recovery of general damage, i.e., for pain and suffering."

This quotation is about as decipherable as the lyrics to "The Star Spangled Banner." If you were able to breeze through it, you are probably a lawyer or an insurance agent and you don't have to read any further. The following is only for those of us who find this kind of legalese intimidating. What we will try to present here is a "Dick and Jane" primer—an admittedly simplified, digest version of some of the very complex issues that form the background of no-fault insurance. No-fault affects the pocketbooks and peace of mind of people from more unrelated backgrounds than any other issue currently before Congress. So stay with us, because what follows is not just a matter of dollars and cents, but dollars and sense.

A PARABLE

Dick and Jane are out driving in separate cars. Dick runs a red light and creams Jane's new Porsche Who is at fault?

a) Dick;
b) Jane;
c) The Porsche dealer; and
d) Women drivers.

Answer: Dick is obviously at fault. Before we can even begin to understand what no-fault insurance is, we have to make a stab at understanding our present system which we will simply call "fault insurance." Fault insurance is the method we currently use to handle personal injuries and property damage that result from automobile accidents. It is the product of two major ingredients—the first being the long standing principle of fault law, which came into existence long before the automobile and pertains to many other situations. In its simplest terms it goes something like this: If I do something stupid that ends up costing you money (or something worse), I should pay for it. Fault law specifically requires that we adhere to this principle. The legal standard by which fault is determined is "what a reasonable man would have done under the circumstances of the accident." Dick was, in the eyes of the law, no longer a reasonable man when he ran the red light, and he is therefore at fault. Now that sounds simple enough, doesn't it? Wrong. Before Dick can be proven obviously at fault, Jane is going to have the hassle of her life and when she finishes she just might need reminding that she was originally the victim.

ANOTHER PARABLE

Dick and Jane are out driving in their separate cars. Dick makes a left turn on an icy street and runs directly into Jane who, in the excitement of driving her new Porsche, has passed out cold over the natural wood wheel. Who is at fault?

a) Dick;
b) Jane;
c) Puff; and
d) Dick and Jane.

Answer: Only the jury has the answer.

The process of determining fault quickly becomes a subtle and perplexing matter, and it is the point at which lawyers, juries and insurance companies collide. Traditionally, insurance companies serve two functions for automobile policy holders: 1) to pay for any accident the policy holder has, and 2) to defend the policy holder against suits based on the fault law and to initiate suits when they feel they have a case. (If *we* can prove the other guy was at fault then *his* company will have to pay for damages.)

YET ANOTHER PARABLE

Dick and Jane have a head-on collision. Dick sustains a fractured tibia, Jane a broken nose. While Dick's and Jane's respective lawyers and insurance agents talk to each other, who

a) pays the doctor's bills?
b) earns a salary while Dick is out of work?
c) provides the cash for Jane's nose job?

Answer: Nobody—at least not right away.

When two parties are implicated in an accident, the process of proving fault becomes very time-consuming, expensive and difficult. Often so difficult that a victim is not compensated because he cannot prove fault . . . and justice in this country holds that one is innocent until *proven* guilty.

Most of us are pretty limited in our knowledge of fault laws and in the interpretation of our own insurance policies, so in order to protect our right, prove our case and obtain the recompense we deserve, we pay for the services of the technician who understands the meaning and application of the kind of jargon that begins this article—the trial lawyer. The deliberations of lawyers, insurance companies and the courts have a way of taking time—sometimes as much as three or four years. The main reason for the extended time is the number of cases that floods the courts. The insurance companies demand you go to court—so go to court you must.

The wait is tolerable for those of us who can pay the doctor bills, compensate for lost wages or afford the immediate rehabilitation that may be necessary. But, how many of us can afford the luxury of waiting? What happens in many cases (and especially to those whose income is less than $15,000) is a settlement for appreciably less than the true cost of the accident. After a long wait, anything can seem better than nothing at all. It's this kind of process that starts one thinking about the essential fairness of the fault law as it applies to auto insurance.

SO WHERE DOES MY INSURANCE MONEY GO ANYWAY?

There do seem to be some inherent inequities in the current tort liability (you are responsible for your own wrongdoing) system of automobile insurance. A 1971 Department of Transportation study indicated that the total economic loss incurred yearly by badly or fatally injured auto accident victims was $5.1 billion. BUT, as a group, these victims got only $813 million in returned benefits. That's only 15.9% of your dollar, folks. The remaining $4 billion plus goes into lawyers' fees, insurance agents' commissions and overhead. We'd like to see more of that premium money coming our way; the lawyers who handle insurance claims and our friendly insurance agents would like to keep it going theirs. We can make it even more graphic. (To see how things shape up in New York, see illustration, page 4.)

It's not hard to see who's getting the very short end of the dollar. If you are in the average or lower-than-average income bracket, your chances of recovering a return on your premium dollar are even less because the return on premium dollars invested appears to decrease with the amount of wages earned. What's more, if you happen to have an accent, or a limited education or an appearance that doesn't appeal to the run of juries, you might have difficulty in getting an insurance policy in the first place.

On top of all of this, the present fault system encourages dishonesty and overreaching by both accident victims and insurers. Claimants often exaggerate losses, and outrageous courtroom tactics are employed to distort or magnify injuries so that when the settlement is made (even though it may be less than demanded), it's more than rightfully earned. This applies especially to cases where the damages involved are not major—in 1970, accident victims in the $1000 and under loss category whose average losses were $635 received back $1408 (which is unfair). In the case of major and often fatal accidents when average damages were as high as $52,000, the average received back by the accident victim was only $9000 (which is not only unfair but unjust).

There must be a better way. And we must

begin by re-evaluating the whole notion of automobile insurance and classsifying it in the same category with life insurance, fire insurance and homeowner's insurance. All are essentially no-fault. If your house burns down, or your T.V. is stolen, you are paid for the loss under the terms of your policy. A comprehensive study and investigation of the existing compensation system for auto accident losses by the Department of Transportation (DOT) concluded with this statement on our current auto insurance system: "The existing system ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilition and overburdens the courts and the legal system." With fault insurance like this, who needs no-fault? We do.

At present, there are several bills before Congress that concern no-fault. None as good, in our opinion, as the Magnuson-Hart Bill (S354), entitled "The National No-Fault Automobile Insurance Act," recently passed by the Senate Commerce Committee. Enormous pressure was exerted on the Committee by some insurance companies and the Association of Trial Lawyers of America to keep the bill from reaching the floor. This bill creates an auto insurance system which will pay economic loss to *all* people injured in auto accidents *without regard to fault*. For your loss your insurance company pays you (just as your theft, fire and life insurance companies do), and his insurance company pays him.

The Senate bill requires every motor vehicle owner and operator to take out a basic no-fault policy. The key provisions of the bill are the following:

1) Swift compensation for all medical and rehabilitative costs, including vocational rehabilitation, for as long as those costs continue to accrue.

2) All wage losses (after income tax reduction) until injured party can resume available and appropriate employment, to the limit of $1,000 per month up to $25,000. (The state may lower that ceiling to $15,000 but *not* below.)

3) Payments for loss of future anticipated earnings, or for estimated value of earning ability impairment caused by an auto accident.

4) Payments of a reasonable amount for any services that the injured or decreased person would have performed for his own or his family's benefit, had the injury not occurred.

5) Funeral expenses (up to $1,000).

6) Attorney's fees would be paid for instances in which cost exceed total allowable benefits. (This may be rare, as benefits are erous). The right to sue is retained principally for the most serious injury or death.

7) State plans must offer *optional* coverage added to that described above. And for a higher premium price you can obtain additional coverage which would provide benefits for property and collision damage, general damages (i.e. pain and suffering), economic loss in excess of basic amounts, and additional coverage for losses resulting from injury or death.

All payments for economic loss would be made as that loss accrues. If payments are *not* made within 30 days after the insurance company receives reasonable proof of fact and amount of the loss, plus demand for payment, interest on the unpaid amount would accrue at 1½–2% per month. If a suit to recover against the insurance company becomes necessary, the policy-holder's attorney's fees would be paid by the insurance company, unless the court determines the claim to be fraudulent, frivolous or excessive.

Lawsuits to recover economic loss are permitted only when that loss exceeds total allowable benefits. Lawsuits for pain and suffering are not permitted (optional coverage is offered), unless serious permanent disfigurement or injury occurs, or victim suffers total disability for more than six months.

S354 also requires that an assigned claims plan be established by each state, which would enable a person to recover for injuries or death caused by an uninsured vehicle. It would also prohibit policy cancellation for any reason other than failure to pay premiums or revocation of driver's license.

If this bill is passed, the Secretary of Transportation will determine whether or not an individual state plan meets all the basic requirements. If not, then a more stringent alternative plan goes into effect until the state acts to meet the national standards. However, each state is left free to develop its own no-fault plan beyond the national standards set by S354, and is free to administer, operate, tax and regulate auto insurance within its borders without the interference of the Federal Government.

For all of those who do see that the present fault insurance is certainly not all one would wish it to be, there is a variety of expert and not-so-expert opinions as to what changes would be best. Let's just address ourselves to all those who believe that the no-fault system is the best answer to the problems present in the fault system. Among no-fault supporters are those who believe that no-fault should be tried on a state-by-state basis and those who believe there should be Federal standards.

STATEWIDE

The most frequent argument used by those who favor the state-by-state approach is that it permits needed experimentation to discover no-fault's best features. This argument is based on the assumption that the no-fault systems is new, but as we have already seen, it is the most common form of insurance today. Three problems with the experimentation argument are (1) that a patchwork plan of state-by-state insurance would develop, leading to confusion for the number of people who frequently travel interstate; (2) that states experimenting with no-fault may not set up their plans to permit the exchange of information concerning the performance of the no-fault experiment, or that the state may not have good information on its previous system from which to make comparisons, and (3) since some states would develop true no-fault and some develop only so-called no-fault, the public will be incapable of making a true evaluation of the system.

Puerto Rico has had a no-fault law for many years. Only eleven states have true no-fault laws (Massachusetts, Florida, Connecticut, New Jersey, Michigan, New York, Utah, Kansas, Nevada, Colorado and Hawaii). Out of those eleven, only Michigan has a no-fault law which is on a par with the proposed Federal standards. Other states (Minnesota, Delaware, Oregon, South Dakota, Wisconsin, Virginia, Maryland, Texas and Arkansas) have what we can call phony no-fault plans, because what they have done is attach no-fault policies to existing insurance plans without limitation on lawsuits. Since they don't eliminate the fault concept, they can't be considered true no-fault policies.

A good indication of the problems that face the passage of statewide no-fault legislation is the situation in Pennsylvania. In 1972, the Pennsylvania General Assembly closed without passing the Governor's heart's desire, a state no-fault program. The proposal for such a program was said to have died of natural causes. The causes were described as "partisan politics, the power of the legal profession within the legislature, and the sheer weight of its own complexities." These reasons so well sum up the problems with the passage of any no-fault legislation. Multiply this problem by fifty states and we see why hope for passage of statewide no-fault seems so remote. It is also a good indication of why even on a Federal level the battle for no-fault standards will be so difficult.

After the Department of Transportation completed its extensive study, former Secretary of Transportation John Volpe stated that he believed the states should be given two years to enact their own no-fault programs. But here it is two years later and a disgruntled Senator Frank Moss predicts that without Federal initiative it might take 40 years to achieve true no-fault on a state-by-state basis. (Considering the number of trial lawyers who have control of the state legislatures, 40 years may be optimistic). The DOT has shown growing impatience with the slow pace with which the states are adopting no-fault plans, and now appears to be leaning towards Federal standards.

NATIONWIDE

The proponents of the nationwide standards over statewide are quick to list the number of obstacles facing the adoption of no-fault on a state-by-state basis. They fear that state-by-state passage is strictly a fantasy. But more importantly, it is their conviction that the Federal Government has a direct responsibility to see Federal standards are passed. This conviction stems from the fact that most of the people injured or killed in motor vehicle accidents each year were traveling on highways built with 50% to 90% Federal funds. For example, in 1970, 70% of the fatal accidents and 51.3% of those injured were on Federal-aid highways. $60 billion of the $83.7 billion it cost to construct these highways was paid by the Federal Government from funds raised by taxes paid on gasoline, tires, parts and accessories, lubricating oil and trucks. In fact, under the Constitution, Congress is responsible for "the regulation of commerce among the states and the promotion of the general welfare." As a result, no-fault proponents believe that because of the degree of interstate travel today, it is the duty of the Congress to promote a uniform and compatible system which will act to simplify the present automobile insurance system, rather than add to the confusion that differing state-by-state laws and regulations could produce.

The state and Federal governments have formed a powerful partnership which has produced our massive highway system. It is now time for that same partnership to produce a system of automobile insurance in order to provide accident victims on these highways with an efficient, fair and humane compensation system.

A cynic might say that the people who are most opposed to a specific social change are those who have the most to lose, and those who support that same social change are those who have something to gain (which can usually be measured in dollars). Well, let's not be cynical right off the bat about the friends and foes of no-fault. Let's assume that all this arguing for and against no-fault is based on ideological conviction, not dollars.

FOES

The most vociferous group against no-fault has been the Association of Trial Lawyers of America. This national association is composed of 27,000 members and has a good deal of influence in both the state and Federal legislatures. The most frequent arguments the trial lawyers put forth are the following:

Under no-fault the individual will lose the right to sue, which is contrary to the long standing fault law.

As we have already seen, this is only partly true. The right to sue is reserved for those cases which are considered major; when a person dies, sustains serious and permanent disfigurement, or more than six months of permanent injury or disability. The suits which are barred are those which are considered nuisance suits.

Under no-fault the negligent driver goes unpunished.

In the first place, auto accidents today are handled in civil, not criminal courts of justice. Therefore, the prime objective is to make amends or compensation, not to punish. In the second place, the negligent automobile driver today does not, in fact, pay his victim. He doesn't even pay for his own attorney, in most cases. His insurance company does. The negligent driver will be punished (if that is the objective) under the fault or no-fault system in the same manner. He will lose his driver's license or even be jailed if the offense warrants it.

No-fault encourages reckless driving since it allows compensation regardless of fault to all the parties involved.

There are no figures to substantiate this argument. In fact, in Massachusetts the accident rate has gone down since the state adopted no-fault. Furthermore, it is possible that a good driving record or certified car inspection will result in a reduction of premiums under no-fault.

Under no-fault the insurance premiums will go up.

In Massachusetts, which has had a no-fault law in operation for three years, a premium savings for motorists has been effected. In 1971, the premium for coverage was $94. It was $115 under the old system. The savings to the motorist were expected to increase even further in 1972.

No-fault insurance will encourage more claims, burden the court system.

Using Massachusetts as a example, the opposite is indicated under the new system. Automobile accident cases in court were actually reduced by 50 to 60%. And contrary to all expectations, the Massachusetts no-fault law did not encourage more claims. Instead, the number actually fell 38% in the first eleven months of 1971.

Since these then are the arguments which are most often voiced in opposition to no-fault, and they appear to be on very shaky ground, we must look from the ideological arguments to the practical (financial) ramifications of the adoption of no-fault.

Each year more than $1.1 billion goes to plaintiffs' lawyers, and $300 million goes to defendants' lawyers. This sum of money is seriously threatened by the passage of strong Federal no-fault standards. Senator Magnuson has stated that these sums paid to the trial lawyers "will not happen under a nationwide no-fault." And they're not going to let *that* happen without putting up a fight. However, Attorney Robert W. Meserve, president of the American Bar Association, told the Senate Commerce Committee that only a small minority of trial lawyers have based their practices on automobile accident cases. Meserve was convinced by preliminary data that 75% of the lawyers in his state of Massachusetts had been almost unaffected by the state's no-fault law, 25% were moderately affected, and an estimated 7 to 10% would have to make dramatic changes. If those figures can be extended on a national basis, then, the real opposition to no-fault comes only from a fraction of trial lawyers. But if that fraction has to divide a billion dollars, it's not hard to see why they are so vociferous. Some of the trial lawyers don't seem to be against the theory of no-fault but fear that some areas of their practice will be taken away by those lawyers who will now be thrust into competition for clients in other trial situations.

We spoke to a New York trial lawyer who had been active in trying to defeat the New York no-fault legislation to find out what his main objections were. Philosophically, he says he hates to see the legal system lose the auto negligence cases because they are the only cases in the system in which the individual's representation in court does not depend on his wealth. A lawyer is assigned to an injured party and the lawyer's expenses are paid by the losing insurance company when the suit is settled. Since this gentleman's learnings were verbally sympathetic to the poor person, we asked if he knew of people who had had trouble obtaining a lawyer because the court settlement would not be high enough to warrant their time. He did admit that it had to be "a good case, (high stakes) for a good lawyer to accept a negligence case. The only other way one could obtain the best possible representation in small claims cases is if one had a personal lawyer. This would generally include people who were in the financial position to maintain a lawyer.

THE CAMELBACK MEETINGS

Other major opposition to Federal standards for no-fault has come from some of the most powerful insurance companies in the country. And they are not a passive group. When they began to fear that the Magnuson-Hart bill was gaining support on Capitol Hill, they made plans to launch a counter attack with a bill of their own. In December of 1972, the top executives of nine of the largest and most powerful insurance companies met at the Camelback Inn in Phoenix, Arizona to map out an acceptable alternate plan. The companies represented were Allstate, Firemens' Fund, Hartford Insurance Company of North America, Kemper, Liberty Mutual, Nationwide, State Farm and Travelers. After two days of secret meetings (although this secrecy was later denied) the group came up with an "industry" plan of attack. It was called the "Treaty of Camelback" and later more snidely called the "Camelback Paper." These papers were sent to the three major trade associations. They also found their way to Senators Magnuson and Hart who promptly forwarded the documents to the Justice Department to see if the companies were in violation of the anti-trust laws.

The main objective to emerge from the Camelback meetings was to pick ten target states (now the number is 20) and lobby in those state legislatures for a modified no-fault "joint industry" bill. If state legislation was passed, it would undermine the need for a Federal bill and still keep open the possibility of lawsuits. The Camelback bill had a $1,000 limit (or threshold) for payments with the acceptance of suits for medical expenses over this stated amount. Considering the fact that it's the people with expenses over $1,000 who are most unfairly compensated, the Camelback bill appears to help eliminate only overpayment of small suits, not underpayment of large claims. The threshold amount is one of the major differences between the industry and the proposed Federal standards. With a low threshold such as $1,000 more cases could still be open to litigation, thus wasting money on lawyers' fees and the cost of litigation. In addition, a $1,000 threshold might cause over-utilization of medical facilities. The State of Florida is presently investigating the communion of attorney and doctor in keeping patients longer than necessary to use up the $1,000 threshold.

The first attempt to introduce the Camelback bill was in the Virginia General Assembly. The insurance lobby introduced the bill and the trial lawyers lobby ripped it apart and rewrote it to favor their point of view. One insurance man said the lawyers "gutted the no-fault provisions and opened it up to the skies on legal liability." In a sense, the Camelback treaty proved to be a terrific standing target for the trial lawyers. Even some of the insurance industry people who had hoped that statewide passage would bypass the need for Federal standards became pessimistic after watching the Virginia fiasco.

FRIENDS

Support for Federal standards for no-fault insurance is both broad in scope and impressive in the numbers represented. Heading the lobbying effort in Washington has been the NACENT: National Committee for Effective No-Fault, a non-profit corporation charted in Washington, D.C. Cooperating or affiliated with NACENT for the enactment into law of a nationwide no-fault auto insurance system are the following: the AFL-CIO, the American Federation of Government Employees, the Car and Truck Rental and Leasing Association, the Consumer Federation of America, the United Auto Workers, the International Brotherhood of Teamsters, Common Cause, the United Steelworkers Union, the American Trucking Association, Consumers Union and the American Insurance Association.

The question, however, that is more interesting than *who* are the major groups that support Federal no-fault standards is *why* these organizations are endorsing Federal standards. (Remember our cynic: What do these groups have to gain?)

Support from the Consumer Federation of America, Common Cause and other consumer groups clearly reflects their interest in consumer protection. The Consumer Federation stated that the three factors that interest them in the passage of Federal no-fault standards are that no-fault cuts costs to the consumer, no-fault makes it possible for a consumer to collect immedately after an accident and avoids lengthy court cases that prolong collection, and no-fault will greatly benefit low income automobile insurance carriers. The only concern about the dollar here seems to be in saving the consumer's money, or in seeing that he is fairly compensated.

The AFL-CIO endorses Federal standards for no-fault because it feels the arbitrary cancellations, inordinately high premiums, unfair eligibility requirements and insufficient claims compensation that characterize the present system will be rectified under a system that requires compliance with Federal no-fault standards. The COPE MEMO published by the international labor press of the AFL-CIO cited the "undercompensation of seriously injured accident victims, while small, often artificially inflated minor claims are often overcompensated" as the "most inhumane aspect" of the present auto insurance system.

However, a long time no-fault advocate in the insurance industry also stated that organized labor's long-range goal is for automobile insurance to be converted into group insurance policies such as accident and health. These could later be used as a "bargaining chip." (In other words, the gains for union members might have a financial implication but not in terms of income.)

The American Insurance Association, an organization of 126 insurance companies writing approximately 30% of the nation's automobile insurance business, has worked actively for no-fault insurance standards for four and one-half years. After completing an eighteen month study of the fault insurance system in October 1968, the association concluded that the "old method was in complete disrepute and that there was an urgent need for major reform. Since that time they have worked with all 50 state legislatures to press for some degree of uniformity in state no-fault laws. However, because the no-fault laws enacted so far are anything but uniform, the association is now endorsing Federal standards which "may be the only way to achieve a genuine no-fault system for all the people of our country."

Our cynic might say that the insurance companies who are supporting no-fault are behind it because they will make more money. Well, it's not so much a matter of their making more money, but of reducing the costs. This would be done by eliminating the expense of accident investigation, and costly litigation (except for the major accident). These companies could also eliminate the overpayment of grossly inflated, trivial and often fraudulent small claims.

A lawyer in favor of Federal no-fault

voiced the concern that these savings will be taken in as increased profits and not passed on to the consumer. However when questioned about this fear, a spokesman for the AIA stated that on a state-to-state basis the insurance industry is one of the most closely regulated industries. If profits were in excess of the allotted amounts, the state insurance commissioner would order a reduction in premiums for the company concerned. So we spoke to still another lawyer who believed that state legislation is farcical and the possibility of insurance companies pocketing no-fault savings is genuine and should be dealt with in specific language in the proposed no-fault law.

FRIEND OR FOE?

Where does the Nixon Administration stand with regard to Federal standards for no-fault insurance? During the Senate no-fault fight the President preached the merits of the no-fault principle. However, at the same time Administration lobbyists actively worked against the passage of Federal standards, believing that the state-by-state plan was preferable.

The eventual position of the Nixon Administration will probably be tied directly to what the American public demands. Those who have worked closest to the no-fault insurance battle believe that if support for Federal no-fault insurance standards becomes a ground swell, the administration will be reluctant to buck a popular trend.

A recent Gallup poll indicated that people who understood "fault" versus "no-fault" favored "no-fault" four to one. The problem word is "understood." Hopefully we've made the issues of no-fault clear, because consumer participation in this area is absolutely vital. There are few issues of national importance in which the final outcome will very likely be determined by public pressure and opinion.

MEDICAL IMPLICATIONS OF NO-FAULT INSURANCE

"We find repugnant the spector of the medieval custom, in which the beggar inflicts a greater deformity upon himself in order to more effectively stir the sympathy of passers-by. We must not perpetuate a system of restitution of injury based upon the competence of an attorney and the sympathy of a jury. Citizens injured in motor vehicle accidents cannot delay medical care for those injuries; neither can we delay providing a proper mechanism to assure that such care is promptly available, of the highest quality, and at reasonable cost."

James D. Mills, M.D., President of the American College of Emergency Physicians, testifying before the Senate Commerce Committee.

By focusing its attention on the injured party rather than the trial to come, no-fault insurance will have the eventual result of upgrading emergency medical care.

There is now the potential to provide emergency service every bit as good as that in Vietnam, but to do so would be costly. Medical care suffers under the present system because those that provide the service are, at best, delayed payment because of long court battles or, at worst, not paid at all if the victim is unable to prove he was not at fault.

Long court battles often prevent the patient from entering into a rehabilitation program. Moreover, the present legal system encourages him not to improve too rapidly as it might weaken his case. An injured party's ability to regain his health isn't improved much anyway with the added burden of a legal battle to worry about. According to the Insurance Counsel Journal, "there is the known medical fact that patients who become plaintiffs in any type of litigation seeking money damages for their injuries simply do not recover as completely or as quickly as similar patients not embroiled in litigation."

The overuse of X-rays was cited by one doctor we interviewed as an example of the need to "legalize" injuries. This practice (a necessary one under our present system) leads to a waste of medical personnel and equipment.

As it is now, there is no economic incentive for a person to buy a safe automobile. With no-fault those owning safe vehicles would pay less for their insurance than those who do not. This, in turn, will put some much needed pressure from consumers on the automobile industry to manufacture safe cars.

RISING GOVERNMENT COSTS

Mr. NELSON. Mr. President, my distinguished Wisconsin colleague, Senator PROXMIRE, has introduced an excellent proposal in our constant struggle against rising Government costs. He proposes that the Senate adopt a tool used long and quite successfully in the Wisconsin State Legislature. It consists of simply attaching to each bill brought before the legislative body an easily understood estimate of how much it likely will cost, boldly stated on the very first page. The purpose, of course, is to impart a precise awareness of cost. Recently, the New York Daily News underscored the worth of this proposal in an editorial.

Mr. President, I ask unanimous consent that this editorial from the January 4 edition of the Daily News be printed in the RECORD.

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

SCORE ONE FOR PROXY

Sen. William Proxmire (D-Wis.) has proposed that any Senate bills requiring federal outlays carry price tags prominently displayed so that members will become "more conscious of the cost of government."

That, we think, is a dandy idea. And if the taxpaying public had a say, it would carry by acclamation.

The suggestion is particularly attractive because it would mandate disclosure not only of initial, start-up expenses, but projections of costs over a five-year period as well.

Advance funding estimates should have been adopted by Congress years ago. Had the rule been in effect, we have a hunch that a great many loan, aid, grant and giveaway programs that were adopted without Congress having the haziest notion of their eventual expense would never have seen the light of day.

In itself, Proxmire's fiscal early warning notion would do a lot to promote sounder budget management, and we hope he will push it with the utmost vigor.

There are also a couple of other measures Congress ought to consider in the same area.

Congress should establish a system for dealing with appropriation measures as a whole rather than on a piecemeal basis. Furthermore, it should bar the practice of attaching spending "riders" to non-money bills.

It is time, too, that the lawmakers awakened to the realization that many of the laws they enact—in the antipollution area, for example—often obligate industry to make huge and largely non-productive investments.

Since the public, as consumers, eventually foots the bill for the added costs, Congress has a duty to determine beforehand what the tab will be so it and the people can properly weigh estimated expenses against expected benefits.

Another blow for sounder public money management.

BICENTENNIAL

Mr. HOLLINGS. Mr. President, today, I would like to call to the attention of my colleagues a report on the first major Bicentennial observance in the Nation which took place in Charleston, S.C., in December 1973. The Charleston County Bicentennial Committee was in charge of this event—and I am proud of this committee's effort.

I ask unanimous consent that this report be printed in the RECORD.

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

CHARLESTON LEADS PARADE INTO PAST

While communities across the nation begin implementing plans for their first Bicentennial observances, Charleston can proudly boast the first major Bicentennial observance in the nation, successfully staged in December 1973.

But then, Charleston has always been a city of firsts. And Charleston County Bicentennial Committee officials intend for the nation to finally realize the importance of Charleston's role in the colonial history of our country. Long-ignored in history books, Charleston was the site of the first major victory of the Revolutionary War, as well as the first shot of the Civil War.

And now, Charleston has heralded the first true "spark" of the nation's Bicentennial observance.

On Dec. 3, 1973, church bells throughout the port city rang as the members of the S.C. General Assembly gathered in St. Michaels Church for a special patriotic service.

Then a colorful parade from the church to the old Exchange Building (c. 1771) took the members of the General Assembly, the state's constitutional officers and highest judiciary members between ranks of a Citadel Cadet guard. The parade was led by the Citadel Bagpipers and Color Guard, followed by the Washington Light Infantry and Citadel Cadets bearing flags of the 13 original states.

Gov. John C. West and Charleston Mayor J. Palmer Gaillard Jr. followed in a horse-drawn carriage. The sergeant-at-arms of the Senate bearing the Sword of State was followed by Lt. Gov. Earl E. Morris Jr. and members of the Senate. The sergeant-at-arms of the House with the Mace was followed by members of the House of Representatives. Others in the parade were costumed actors who participated in a re-enactment, uniformed British soldiers and Citadel Cadets bearing the flags of the remaining 37 states.

The members of the General Assembly then met in formal session in the Exchange Building. Historians claim there is a direct link between the present-day Legislature and a patriot's protest meeting in that building on Dec. 3, 1773. The event marked the first meeting of the state government in Charleston since the capitol was moved to Columbia in 1790.

The final event of the three-day celebration was the staging of a re-enactment of the 1773 patriot's meeting protesting the British tax imposed on tea. The re-enactment was presented on stage in front of the Exchange Building.

A state-wide television audience watched the historic session and re-enactment.

Prior to the final day of events, about 700 persons attended a Sunday night dinner and reception sponsored by Gov. and Mrs. West at the Municipal Auditorium where special guests appeared in costume as South Carolina's four signers of the Declaration of Independence and six other Revolutionary War figures.

Other events of the three-day celebration included the presentation of the official American Revolution Bicentennial Committee flag to the community of Charleston and

the dedication of Ft. Moultrie on Sullivans Island as a Bicentennial Focal Point. The battle of Sullivan's Island at the fort on June 28, 1776, was the first major victory of the Revolutionary War.

The day also included Revolutionary War exhibits at the Charleston Museum.

According to Dr. Gordan B. Stine, chairman of the Charleston County Bicentennial Committee, committee members are working on many other exciting activities for the next three years. But the first event has been accomplished successfully—and stands, unprotested, as the nation's first major Bicentennial observance.

CHEMISTS EXPRESS DOUBTS ABOUT NUCLEAR POWER

Mr. GRAVEL. Mr. President, in a recent poll, the 850 members and alternates of the Council of the American Chemical Society were asked if they were satisfied with the safety aspects of nuclear powerplants. About 20 percent of them said they were not.

If the survey had been taken 4 years ago, the doubters might have been around 1 percent. However, 4 years ago, no one would even have asked the question, because in 1969, there was only one-sided propaganda about "clean safe nuclear power."

When a handful of courageous scientists, at great personal sacrifice, began to point out the undeniable hazards of nuclear power, the nuclear promoters were correct in claiming that "the overwhelming majority" of the scientific community had confidence in nuclear power. Everybody did, though few had studied it at all.

Dogma is dogma, and of course it is never spontaneously challenged by a majority. Whether a new insight is in science, medicine, philosophy, or government, a few mavericks, a tiny minority, always have to pull the rest of humanity along little by little. Apparently 20 percent of chemists are stirring on the nuclear controversy now, if the ACS Council is representative.

Among some physicians, also, concern is increasing. According to the December 1 Charlotte, N.C., Observer, 20 percent of the members of the Mecklenburg Medical Society support a moratorium on nuclear powerplant construction.

While dissatisfaction with nuclear fission is growing nationwide, the always lavish efforts to promote the peaceful atom are escalating even faster.

The Pennsylvania Power & Light Co. is even distributing a 15-page custom comic book whose back cover declares that nuclear power is not only "safe" and "clean," but also "good looking."

ECONOMIC PLANNING AND DEVELOPMENT

Mr. FULBRIGHT. Mr. President, as a cosponsor of the legislation which established the Economic Development Administration in 1965, I have a strong and long-standing interest in the work of this agency.

The EDA has been and, I hope, will continue to be an effective means of aiding in the orderly development of our communities. It has significantly bolstered economic development and employment opportunities in Arkansas.

The EDA has played an important role in planning development projects in the State through the regional development districts and then helping to obtain funds to assist in carrying out such projects. A major emphasis, for example, has been on developing adequate water systems and industrial parks to serve potential industries. This has resulted in the location of industries in many of our communities, but many more could benefit from such assistance. EDA has also aided in the construction of vocational-technical schools and EDA funds have frequently been used to supplement State or local funding.

The Southwest Times Record of Fort Smith, in its edition of January 6, contained an article by Jane Ann Morrison on the work of the Western Arkansas Planning and Development District.

The article reports on some of the current projects of the WAPDD such as an area-wide study for water supply distribution; a model for central purchasing by municipalities; and a proposed mass transit study.

Areas in which the WAPDD carries out planning and programs include economic development, open space, transportation, housing, manpower training, water and sewer systems, solid waste disposal, health, local government assistance and improvement, drug abuse control, alcoholic treatment, exceptional children education, environmental and outdoor recreation planning.

The WAPDD covers 4,300 square miles in Crawford, Franklin, Logan, Polk, Scott, and Sebastian Counties. Its staff is under the direction of a 39-member board of directors, composed of county judges, mayors, and business, civic, and social community representatives. As the article points out:

WAPDD is no ivory tower group of planners; it is an organization founded on citizen involvement.

The executive branch has in recent years attempted to discontinue the EDA program and I have strongly opposed this effort. I believe that EDA and the development districts such as the WAPDD will continue to make a valuable contribution in Arkansas and elsewhere.

Mr. President, I ask unanimous consent to have printed in the RECORD the article by Jane Ann Morrison from the Southwest Times Record of January 6, as well as an accompanying chart listing federally assisted projects in the Western Arkansas Planning and Development District.

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

WAPDD MORE THAN AN AMUSING TITLE

(By Jane Ann Morrison)

The Western Arkansas Planning and Development District (WAPDD) is a variety of things to a variety of people. To initial lovers it's an organization whose initials form a Bugs Bunny-Batman type word resulting in a smile when said.

For secretaries, it is one of those too-long titles which require taking a breath before saying it all at once.

To some local officials, WAPDD is the place to go to get help in obtaining federal funding for projects. To one of its directors it is an organization trying to take a bite out of an elephant (more about that later).

Statistically, WAPDD is a group of 17 employees (eight clerical-technical, nine professional) working with over 800 citizens on councils, committees and task forces who aim at regional thinking.

Covering the 4,300 square miles of Crawford, Franklin, Logan, Polk, Scott and Sebastian counties, WAPDD is currently conducting programs and activities in the various fields of economic development planning, open space planning, transportation planning, housing planning, manpower planning and training, water and sewer planning, solid waste disposal planning, area-wide comprehensive health planning, local government assistance and improvement planning, drug abuse control planning, alcoholic treatment planning, exceptional children education, environmental planning and outdoor recreation planning.

Before you conclude that nine people are sitting in offices coming out only to tell the rest of the 155,000 people in the six-county district the secret of success, remember the 800 citizens who work with WAPDD. Plus the Board of Directors which directs the policy of WAPDD. The 39-member board consists of county judges, mayors, and business, civic and social community representatives. WAPDD is no ivory tower group of planners; it is an organization founded on citizen involvement.

WAPDD Executive Director Lon Hardin discussed the change in types of planning since WAPDD was organized seven years ago. "At the beginning we were very project oriented. We had to gain credibility and catch the public eye by being able to get the job done—with federal funds. We had to break down the initial resistance to regional thinking and talking together. Now we are more program oriented, less project oriented. We have gained the credibility and can afford to act rather than react."

The chart in the lower right hand of this page shows just how much federal money WAPDD obtained for various activities. Over the years you can see the change from meeting the immediate needs, such as water and sewer plants, to planning for far reaching needs via programs such as the one for alcoholic treatment.

Hardin pointed out the weaknesses of revenue sharing as opposed to the grant system. "With revenue sharing the money tends to go to what is seen as an immediate problem—the sore thumb—and it doesn't really result in planning. When you are applying for a grant there is a tendency to do more thinking. And rural areas can get more using the grant system than from revenue sharing. An example is Mena which, I believe, got around $30,000 a year through revenue sharing, yet obtained $4,756,618 in grants during the last couple of years for their various programs (including parks, gas, sewer, water supply, water improvement, and airport development). Of course, they wouldn't be able to get that much every year, but it does point out the flexibility of a grant system."

"Agency survival," Hardin went on, "is another problem which sometimes hinders community planning. The Corps of Engineers must keep building, so may approach a community with a plan which might not really be necessary as a top priority. Some with an organization like the Soil Conservation Service. Soil management is what they have to sell, but it may not be the community's most important need."

During a brief meeting with Director of Planning Lin Godwin, he quickly went over three of the projects of immediate concern to WAPDD planners. "First we are filing an ap-

plication for funds to make an area-wide study for Arkansas Soil and Water Resources for water supply distribution. We are also forming a municipal fiscal model for central purchasing which pools the purchasing powers for the cities. Right now they don't shop around for things like office supplies, water and sewer pipes and paving contractors—they just select what is at hand. And we are also trying for funding for a mass transit study."

When asked about interstate cooperation and coordination Godwin said, "They are good at coordinating for things like transportation studies, but the answer is 'no' for things like water distribution and land use planning."

Transportation Planner Rex Eads went into further detail about the mass transit study. "Our transportation district includes LeFlore and Sequoyah counties; right now because of the gas shortage we are working on an emergency public transportation plan which will be presented at the Fort Smith Chamber of Commerce on Jan. 11. The energy crunch is the result for the emergency plan, but we'll have to be certain that any immediate plans will serve both the short term and the long term needs."

At last we come to the man whose understanding of the magnitude of the job sometimes makes him feel like he is taking a bite out of the side of an elephant—Director of Comprehensive Health Planning Bill Powell.

To Powell, health is not just the numbers of beds in a hospital, or how many doctors or nurses are available. Personal incomes, environment, health hazards, housing, product abuse, nutrition, attitudes, technology, education and psychiatry all join together to influence the prevention, restoration and maintenance of physical, mental and environmental health.

"An example of the interrelations involved," pointed out Powell "is the hepatitis outbreak in Scott County a while back. It was not fixed through the doctor-nurse syndrome. It was solved with engineers and a modern water system to replace the septic tanks which were infecting the wells."

Powell mentioned that he saw WAPDD as "serving as a representative of the individual; to speak and work for the person who can't do it himself and may be overawed by the professionals."

"Yet, you can't stand up and just take over and get anything done, we must remain in the background," said Richard Shewmaker, Assistant Director of WAPDD. "You might be able to get the physical things done, but you wouldn't accomplish the things that carry it on—like the sense of unity in the town or the personal instances of growth in its citizens."

"The Federal cutbacks of a couple of years ago actually strengthened us as planners," said Shewmaker. "It resulted in more digging, searching for more than one way to solve a problem, It also instigated more state interest in local problems. They re-thought what their role should be."

Shewmaker brought up one of the contradictions in planning that he had run across. "Everyone is presently putting in new sewer systems, using EPA money to meet EPA requirements. The legislation insists that by 1977, communities be set up for the secondary treatment level. There should be no problem for that deadline. But the legislation also has written in that, by 1983, communities be able to treat waste with the technological best method at that time. To me this is idiotic. EPA is not taking into account that the towns are financing a 20-year debt for their new systems and in 1983 will be involved again in a new system, yet will have an 11-year debt hanging over their heads. In my opinion. EPA is encouraging you to make a financial mistake."

"A few years ago the EPA wanted to clean up everything at once; we would like to plan without waiting for everything to fall apart at once", says Shewmaker.

There's a difference.

FEDERAL GRANTS APPROVED THROUGH WAPDD ASSISTANCE

Location	Year	Project description	Total project cost	Total grant	Federal agency
Alma	1966	Water and sewer facilities	$648,000	$518,000	EDA.
				129,000	FHA loan.
Do	1966	Water impoundment dam	1,296,514	564,500	EDA.
Do	1966	Sewage treatment facility	105,000	73,500	EDA.
Altus	1967	Water transmission line	89,000	71,200	EDA.
Mulberry	1967	Water extension industrial park.	140,000	112,000	EDA.
Booneville	1967	Water and sewer facilities to industrial park.	82,000	49,000	EDA.
Van Buren	1967	Water, sewer, access road to industrial park.	598,000	478,400	EDA.
				119,600	EDA loan.
Ozark	1967	Technical assistance study for industrial park site.	3,000	3,000	EDA.
Fort Smith	1967	Regional scientific technically oriented library.	1,253,200	626,600	EDA.
Sebastian County	1967	Purchase of 800-acre recreational area.	240,000	120,000	BOR.
Paris	1967	Overrun on previously approved swimming pool	12,183	6,091	BOR.
Do	1967	Water treatment plant and water line to industrial park.	363,000	217,000	EDA.
Ozark	1968	Surface water supply, treatment plant, transmission line.	1,625,000	1,300,000	EDA.
Do	1968	Overrun on transmission line.	150,000	120,000	EDA.
Fort Smith	1968	New water treatment plant	634,000	380,400	EDA.
Do	1968	Water line and access road to industrial area.	1,750,000	875,000	EDA.
Booneville	1968	Industrial water line	19,000	13,000	EDA.
Fort Smith	1968	Pump stations for industrial area.	795,000	258,570	EDA.
Do	1969	Multi-purpose day care center.	500,000	250,000	EDA.
Sebastian County	1969	Regional park development	863,646	431,823	BOR.
Scott County	1969	Scott Davidson Park Development.	216,878	108,439	BOR.
Booneville	1969	Industrial Development Corp.	253,350	164,677	SBA.
Fort Smith	1969	Bost School staffing grant	96,000	40,800	HEW.
Do	1970	Westark Community College, technical school expansion.	1,530,000	1,224,000	EDA.
Do	1970	Industrial Development Corp.	300,000	195,000	EDA. Business loan
Do	1970	Girls' Shelter staffing grant	13,333	10,000	HEW.
Mena	1971	Emergency propane system	260,000	130,000	EDA.
				78,000	ORC.
Fort Smith	1971	Industrial River Port	785,000	392,500	EDA.
Van Buren	1971	Municipal complex	400,000	320,000	EDA.
Sebastain County	1971	Park development—Phase II.	783,273	391,636	BOR.
Fort Smith	1971	Girls' Club staffing grant	13,288	9,920	HEW.
Do	1972	Regional mental health treatment center.	612,000	459,000	HEW.
Gray Rock	1972	Water distribution system	124,000	86,800	HEW.
Mena	1972	Wastewater treatment works	448,291	246,560	EPA.
Booneville	1972	do	132,000	72,600	EPA.
Fort Smith	1972	Suburban fire stations	480,000	384,000	EDA.
Do	1972	Harbor House alcoholic program staffing grant.	15,000	15,000	HEW.
Do	1972	Community cancer research	15,000	15,000	HEW.
Mena	1973	Park land acquisition	26,500	13,750	BOR.
Ozark	1973	Wastewater treatment works	362,493	271,870	EPA.
Van Buren	1973	Wastewater treatment and sewer interceptor replacement.	625,000	418,750	EPA ORC.
Mena	1973	Park development	221,370	110,685	BOR.
Do	1973	Industrial airport expansion	343,000	274,400	EDA., ORC.
Ozark	1973	Airport expansion	300,000	250,000	FHA, ORC, AAC.
Fort Smith	1973	Waste water treatment	4,029,546	3,022,160	EPA.
Do	1973	Westark Community College Area Health Education Center.	482,224	482,224	HEW.
Do	1973	Voluntary Action Center	23,880	10,000	ACTION.
Do	1973	Regional drug education program.	13,333	10,000	LEAA.
Do	1973	Sebastian County Youth Service Bureau, Lincoln Center.	109,076	92,715	LEAA.
Do	1973	Girls' club creative arts program.	6,195	3,000	AAHC.
Do	1973	Harbor House alcoholic program operations grant.	17,500	17,500	ACAAB.
Do	1973	Counseling and guidance regional alcoholic treatment program.	10,000	10,000	ACAAB.
Do	1973	Counseling and guidance regional alcoholic treatment program.	10,000	10,000	ACAAB.
Do	1973	Gateway house alcoholic women program operations grant.	12,500	12,500	ACAAB.
Do	1973	West. Ark. Counseling and Guidance Center staffing grant.	330,213	300,194	HEW.
Do	1973	Retired senior volunteers program.	26,208	21,763	ACTION.
Do	1973	Opening of beauty shop		2,800	SBA loa
Do	1973	Purchase of clothing store		17,800	Do.
Do	1973	Initiation of sewer service		17,000	Do.
Do	1973	Furniture and automobile upholstering.		17,800	Do.

THE ENERGY CRISIS

Mr. HOLLINGS. Mr. President, today I am calling on the White House to match its energy rhetoric with solid energy proposals.

The White House is calling for project independence to make this country self-sufficient by 1980 yet the Federal Energy Office under William Simon will be set up as a temporary, stop-gap measure with an authorization for only 18 months.

What we need is a National Energy Policy Council capable of long-range planning and collation of energy statistics. We are in the present crisis because no one was minding the store and the supplies ran out. We cannot solve our present problems without all the facts and we certainly cannot become self-sufficient without long-range planning.

On May 10, 1973, the Senate approved S. 70, my Energy Policy Council bill. It was again passed as an amendment to S. 2176, the Energy Conservation Act, and S. 2276, the Federal Energy Administration Act.

A coalition of administration officials and big oil groups has kept the bill from being considered in the House. I first put this proposal forward 2 years ago and the White House has opposed it on the grounds that the job was already being done. But we all know too well that the job was not and is not being done. Since I first proposed the Energy Policy Council, seven energy czars have come and gone. Now we have Mr. Simon who is doing a fine job but he is so tied down by the day-to-day decisions involved in the present crisis he does not have the time to oversee the gathering of needed statistics. Nor does he have the time to do the long-range planning for this Nation's energy needs.

Both economic and environmental problems are handled by White House level councils with the power and resources to make policy. We need to take this same approach to our energy problems and we need it now.

Mr. Simon admits we need to have all the facts to deal with the crisis at hand and he knows we do not have them. The President, the oil companies, and the Members of Congress most knowledgeable on energy all admit they do not have all the facts and they do not have any one place to go to obtain them. Before we rush headlong into a billion dollar program for energy independence, we have to know what we have and what we need. An Energy Policy Council would guarantee a single place for Congress, the administration, and the American people to get the facts and the overall energy picture.

We must remove the suspicion and confusion from everyone's minds by dealing with the crisis realistically and honestly.

NATIONAL SECURITY AND NUCLEAR POWER: ANOTHER ARROGANCE

Mr. GRAVEL. Mr. President, some profoundly important questions about the probable incompatibility of nuclear power plants and national security were placed in the RECORD September 20, 1973, by the Senate assistant majority leader, ROBERT C. BYRD.

He asked the AEC Chairman if the proliferation of surface nuclear reactor plants, each loaded with enough radioactivity to kill at least 100,000 people, makes this country vulnerable to devastation—or blackmail—by saboteurs or by enemies with just conventional weapons.

It turns out that Dr. Dixy Lee Ray, who sent me her response, is counting on such a contingency never occurring:

> The first step in assessing vulnerability is to determine the attractiveness of the target to potential enemies. An attractive target is one which enables the enemy to inflict a great amount of damage with only a small amount of effort or risk.
>
> Viewed in this light, nuclear power plants make very unattractive targets for either a saboteur or a foreign enemy. They are massive physical structures which are not easily damaged by conventional methods. Moreover, even if seriously damaged, a nuclear power plant would constitute far less of a threat to the public's health and safety than would a number of other possibilities which do not need to be mentioned.
>
> A nuclear plant, therefore, is likely to rank quite low on a saboteur's list of priorities.
>
> The situation is much the same when we consider vulnerability to enemy attack. A surprise attack on U.S. nuclear power plants with conventional weapons is simply not a credible threat . . .
>
> Notwithstanding the above, applicants for operating licenses have . . . industrial security measures to protect against industrial sabotage in the proposed plants . . .
>
> Nuclear power plants simply do not offer an especially attractive target for attack. As such, it can hardly be alleged that their existence poses some new and significant threat to our national security.

THE PRICE OF SMUGNESS IN HIGH PLACES

Are we actually being asked by Dr. Ray to gamble our lives and our freedom on her smug assumption that no one will ever want to do it? Can we feel confident that Dr. Ray knows how to think like all existing and potential terrorist groups for the next two generations?

For years, Americans held the assumption that the Arabs would never use their oil weapon because it might hurt them, too. We are paying for our smugness now.

Although I doubt that Dr. Ray would dare predict what will happen to our Middle East relations during the coming months, or even next week, she does not hesitate to predict what will happen about the obvious vulnerability of nuclear powerplants during the next 40 years.

As for her assertion that nuclear powerplants are difficult to sabotage, it seems that some vulnerabilities are so obvious that citizen intervenors in license hearings on the Indian Point No. 2 plant were able to write a set of security "findings" which were deleted from the open record for the sake of public safety. See AEC docket 50-247, "Citizens Committee for the Protection of the Environment, proposed findings of fact, January 1972."

With regard to Dr. Ray's claim that a surprise attack on plants with conventional weapons "is simply not a credible threat," I recall that the AEC evacuated employees from its Oak Ridge installation on November 11, 1972, when a skyjacker, demanding $10 million ransom, threatened to crash the airliner into the Oak Ridge nuclear reactors.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

PRISONER OF WAR AND MISSING IN ACTION TAX ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume the consideration of the unfinished business, H.R. 8214, which the clerk will report.

The assistant legislative clerk read as follows:

> A bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the first committee amendment.

Mr. PROXMIRE. Mr. President, I did not hear the Senator's request.

Mr. TALMADGE. I asked unanimous consent that further proceedings under the quorum call be dispensed with.

Mr. President, I ask unanimous consent that during Senate consideration of H.R. 8214, including votes, the following persons be permitted on the floor: From the Finance Committee staff: Michael Stern, Robert Willan, William Morris, and Joseph Humphreys. From the Joint Committee on Internal Revenue Taxation staff: Laurence Woodworth, Bobby Shapiro, Mike Bird, Howie Silverstone, and Mark McConaghy.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the first committee amendment.

Mr. TALMADGE. Mr. President, H.R. 8214 as it passed the House amends the tax laws in several ways to provide relief for military and civilian personnel returning from the Vietnam conflict, and for the families of those listed as missing in action and who are subsequently determined to have died in earlier years. The committee accepted these provisions as passed by the House, with minor technical changes. In addition, however, the committee has added a number of tax amendments relating to other subjects. Let me briefly describe the House-passed provisions and then summarize the committee amendments.

Under present law, military personnel hospitalized as a result of service in a combat zone may exclude the pay they receive while in the hospital. The first House provision extends this provision to cover, for a period of time, the pay they receive while hospitalized after all combatant activities have terminated.

Second, present law forgives Federal income taxes on income other than combat pay in the case of a member of the Armed Forces who dies while serving in a combat zone, or as a result of an injury incurred while serving in a combat zone. The bill extends this provision to cover income received during the period he is in a missing status, even though it is subsequently determined that he died at an earlier time.

Third, the House bill deals with the question of when the lower tax rates available to a surviving wife are to be available for one whose husband was in military service, is reported in missing status and is subsequently determined to have died in an earlier year. The bill provides in such a case that the widow is to be eligible for surviving spouse tax treat-

ment for the 2 years following the year in which her husband's missing status is terminated, rather than the 2 years following the year of actual death.

The House bill also clarifies existing law in two respects. First, it makes it clear that the spouse of a serviceman in a combat zone is to have the same extension of time for such acts as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, as is available to her husband. Second, the bill also makes it clear that the wife of an individual who is missing in action may file a joint return during the period he is in this missing status even if it is subsequently learned that he was killed in an earlier year.

The bill provides that the special benefits for military personnel during the period there are combatant activities in a combat zone, generally are not to continue to be available for more than 2 years after the termination of combatant activities. In the case of the Vietnam conflict, however, these benefits will be available for 2 years after this bill is enacted.

The House bill also deals with the tax treatment of individuals illegally detained when the *U.S.S. Pueblo* was seized in 1968 by North Korea. In this case, the bill provides an exclusion from income for compensation received by the members of the crew who were not military personnel to conform to the treatment available for nonmilitary prisoners of war taken in a combat zone.

Finally, the House bill removes the requirement that a serviceman serve during an "induction preiod" to receive the special tax benefits I have referred to. This change is necessary since with the expiration of the draft there is no longer an induction period.

As I have said, the committee agrees with the provisions of the House-passed bill with minor technical corrections. The committee, however, also added a number of other amendments to the bill, which the committee believes represent desirable changes in the tax laws.

The first committee amendment provides that cooperative arrangements for the investment of funds formed by educational organizations, and organizations supporting educational organizations, are to be exempt from Federal income taxation.

A second amendment deals with the treatment processes which are treated as mining in computing the percentage depletion allowance for trona. The committee's amendment provides that the decarbonation of trona is to be treated as an ordinary treatment process. The effect of this is to continue, as provided prior to 1971, to allow percentage depletion on trona based on the value of soda ash extracted from it.

The committee also added two other amendments relating to members of the uniformed services. The first extends the moratorium on the application of the moving expense rules provided in the Tax Reform Act of 1969 for members of the armed services until 1975, pending the development of a legislative solution to problems in the application of these new rules for military personnel. Second, a problem has arisen as to the application of the exclusion under present law for scholarship and fellowship grants to payments made by the Government for the tuition and other related educational expenses of a member of the uniformed services under a scholarship program. The amendment continues the application of the exclusion which has been available in the past, until 1975, pending a review by the staff of the effect of the application of this provision.

A fifth committee amendment extends to distilled spirits brought into the United States from Puerto Rico and the Virgin Islands the same abatement or refund provisions in the case of loss or destruction that are presently applicable to imported or domestic spirits.

The committee also added an amendment to the provision relating to the use of appreciated property by corporations to redeem their own stock. This amendment applies the same constructive ownership rules for purposes of determining whether the shareholder has a 10 percent interest in the corporation as apply for purposes of determining whether a redemption of a shareholder's stock is in complete termination of his interest.

A seventh committee amendment repeals the tax and other regulatory provisions on filled cheese in the Internal Revenue Code. These provisions serve no Internal Revenue purposes and regulations as to the wholesomeness and purity of filled cheese products are enforced by the Food and Drug Administration outside of the provisions of the Internal Revenue Code.

Another committee amendment continues for 1 more year, until 1974, the treatment which has been available for taxable years ending before 1973, with respect to the deduction for accrued vacation pay.

A ninth committee amendment deals with certain disaster losses where taxpayers were allowed casualty loss deductions and subsequently were compensated for those losses based on claims of tort. The committee amendment provides that in these circumstances in lieu of taking the compensation into income immediately, the taxpayers may reduce the basis of their damaged property, or replacement property, by the amount of compensation they received up to a maximum of $5,000 of tax benefits. Excess benefits over this level are to be included in the income of a taxpayer over a 5-year period.

A 10th committee amendment provides an exclusion under the unemployment compensation program, similar to the exclusion that exists under the social security program, for the services of students performed in the employ of an auxiliary nonprofit organization which is organized and operated exclusively for the benefit of, and supervised or controlled by, the school, college, or university in which the student is enrolled.

The committee also added an amendment to permit certain private foundations whose assets are largely invested in the stock of a multistate regulated company, described in section 101(1)(4) of the Tax Reform Act of 1969, to exclude the value of this stock in computing the amount of their required charitable distributions under the private foundation provisions. This amendment is designed to effectuate the intent of Congress in the 1969 Act by preventing the charitable distribution provisions from resulting in a forced divestiture of stock that Congress determined certain types of foundations should be permitted to retain.

The 12th, and last, committee amendment makes a change in the tax deferral DISC provisions relating to export sales. The amendment provides that a corporation would not be prevented from qualifying as a DISC if it holds accounts receivable which arose by reason of export-related transactions of a related DISC.

Mr. President, I ask unanimous consent that all committee amendments be agreed to en bloc, and that the bill as thus amended be considered as original text for the purpose of further amendment.

Mr. PROXMIRE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I have an amendment which I have discussed with the distinguished acting manager of the bill (Mr. TALMADGE) and the distinguished Senator from Wisconsin (Mr. PROXMIRE). I ask unanimous consent that I may be permitted to offer the amendment even though the committee amendments have not yet been agreed to en bloc. I realize that the distinguished Senator from Wisconsin is not only opposed to this amendment, but also to an amendment of mine which the committee has already adopted some days ago, and which would be further amended by the amendment I hold in my hand. I wonder if the Senator would allow me to offer my amendment at this time and get Senate action on it, and then, if he wishes to attack my basic amendment, he may retain that privilege.

Mr. PROXMIRE. Mr. President, if the Senator will yield, as I understand, the Senator from West Virginia would amend one of the committee amendments.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. PROXMIRE. I simply want to protect my rights. I want to be sure I will be in a position to get a rollcall on the substantive committee amendment at a later time, or even to amend that amendment further. If this perfecting amendment by the Senator from West Virginia is adopted, would I be able to do that?

The PRESIDING OFFICER. The Senator will be so protected.

Mr. ROBERT C. BYRD. Mr. President, before the Chair puts the request, if I may explain my perfecting amendment while awaiting the arrival of another Senator, the committee recently accepted an amendment which I offered which would give relief to the people who lived in the Buffalo Creek Valley in Logan County, W. Va., and who suffered great losses as a result of the breaking of the slag heap impoundment there a couple of years ago.

Under present law, a taxpayer can elect to claim a disaster loss deduction for a disaster that occurs in 1 year on an amended return for the previous year,

and get an immediate refund on the previous year's taxes. The law further provides that where there is subsequent compensation for the loss, the taxpayer is not entitled to keep the refund, because he would not have suffered the loss which would otherwise justify him in receiving a refund. He is then required to repay the refund to IRS with interest. My amendment which the committee has already agreed to, would allow the West Virginia citizens who suffered losses in the Buffalo Creek disaster to retain their refunds notwithstanding the fact that, subsequently the coal company which was responsible for the impoundment paid compensation to some of the various families; hence, they had received, then, both the refund from IRS and the compensation from the coal company.

These are generally low to middle income taxpayers. The amounts of the refunds from Internal Revenue Service were small and in most instances the taxpayers had already spent their refunds before they were informed they would also receive compensation for their losses, so that it would be considered a hardship to require them now to repay the refunds. Ergo, the committee accepted my amendment, thus relieving these taxpayers of repayment of the refunds.

But, Mr. President, the interest on the refunds would still be required to be paid to the IRS by those who had received the refunds.

The amendment I now offer would relieve these people of having to pay the interest on the refunds which they have already received and which under my substantive amendment they would be allowed to retain. This is the purpose of the perfecting amendment which I now offer.

Mr. PROXMIRE. Mr. President, at a later time, when the amendment comes up in order, I want to explain the reason why I am opposed to it. But I think this perfecting proposal by the Senator from West Virginia would undoubtedly be proper and I would have no objection to that part of it.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Wisconsin. I understand that later he will raise an objection to the basic amendment which I am now seeking to perfect.

Mr. GRIFFIN. Mr. President, will the Senator from West Virginia yield for an observation?

Mr. ROBERT C. BYRD. I yield.

Mr. GRIFFIN. As the Senator knows, I am not on the Finance Committee. I am waiting for the ranking member, the distinguished Senator from Utah (Mr. BENNETT) to arrive on the floor. From what little bit I have learned about the amendment of the Senator from West Virginia, it seems to be in order and equitable, but if he would permit holding up his amendment for just a moment until the Senator is here in the Chamber, I would greatly appreciate it.

Mr. ROBERT C. BYRD. Very well. Of course, I shall do so. I understand and appreciate the request of the distinguished minority whip.

Mr. President, I would ask unanimous consent at this time that the name of my colleague (Mr. RANDOLPH) be added as a cosponsor of the perfecting amendment.

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

Mr. RANDOLPH. Mr. President, it is a privilege to join my able colleague from West Virginia (Mr. ROBERT C. BYRD) in sponsoring this amendment. As he explained, this amendment applies to taxpayers covered by the casualty loss provisions contained in the bill, H.R. 8214, as reported by the Finance Committee. The committee amendment covers certain situations where disaster losses resulting from floods have produced severe hardships on the part of the people affected by them. One of these situations was the Buffalo Creek tragedy in West Virginia.

In these cases of hardships the taxpayers were either not covered by insurance or their losses were in excess of their coverage and they claimed disaster losses with the result that they usually received tax refunds. In these situations, the taxpayers in many cases subsequently were compensated for their losses based on claims of tort. In the cases where the compensation for losses occurred in a different year from the one in which the deduction was taken, the taxpayers often were still in a severe hardship situation and in many cases had already spent not only the tax refund but also the reimbursements before they were aware of the tax consequences. The committee amendment covers the problems resulting from the tax consequences by not requiring these individuals to repay the tax refunds but instead requiring them to reduce the basis of their property by the amount of the refund.

There are certain cases, however, where the taxpayers had revoked their election to deduct casualty losses in the year prior to the casualty and consequently found themselves in the position of not only having to pay refunds to the Treasury Department but also were told by the Treasury Department that they owed the Government substantial interest payments because of these refunds.

Our amendment provides that any taxpayer covered by the committee amendment will not be liable for the repayment of any interest received on a refund of tax resulting from his election of the disaster loss provisions and also will not be liable for the payment of any interest with respect to a deficiency on account of the revocation of the election. It has the effect of placing these taxpayers in the same position with respect to interest charges and payments as if they had not revoked their original election. This is consistent with the purpose of the amendment as reported by the committee.

The Internal Revenue Service has advised me that most of the 1,800 Buffalo Creek taxpayers affected by the tragic flood will benefit by this amendment. It is only fair that these taxpayers not be held liable for these interest payments.

If the provision in the committee bill and this amendment become law, I understand that perhaps the District Internal Revenue Service office will notify those taxpayers involved of the revocation of election and will handle these problems in an efficient and expeditious fashion, possibly using newspaper or radio media. I hope the amendment will be accepted.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and, if I may——

Mr. PROXMIRE. If the Senator would defer that, I have a statement to make on the overall bill, and if I could make it now, it would save some time. When the Senator from Utah comes in, I will probably be through anyway.

Mr. ROBERT C. BYRD. When the Senator from Utah comes in, may the Chair then propound my request?

Mr. PROXMIRE. Fine.

Mr. ROBERT C. BYRD. I thank the Senator very much.

Mr. PROXMIRE. Mr. President, we have before us today, H.R. 8214, what is called the Christmas tree tax bill. This bill, in its first incarnation, was a simple, straightforward bill in the public interest designed to do tax justice to combat veterans, soldiers missing in action and declared dead, certain valiant members of the *Pueblo* ship, and their families.

But in its reincarnation—the reincarnation brought about by the Finance Committee, this bill can scarcely be recognized in its original form.

HISTORY OF CHRISTMAS TREE BILLS

What is a Christmas tree bill? The answer is that it is one of the institutionalized kinds of bills in the House and Senate which is trotted out about once a year and to which is attached almost every kind of tax amendment—good and bad, big dollar amounts and small dollar amounts—that men can think up.

It is difficult and often impossible, to find out who is behind the provisions and who benefits, or to use an inelegant phrase "who gets the gravy." There is a paucity of information, little written explanation, and little detail on costs, ramifications for the tax code, or the views of public interest groups.

If you want to know why some very wealthy people and corporations in the United States—oil companies, foundations, and even Presidents—pay little or no taxes on very big incomes, one must look at the way our tax bills are written including the Members' bills and the bobtail bills and the Christmas tree bills.

If my recollection is correct, it was just such a minor amendment to a tax bill which originally opened up the so-called "unlimited charitable deduction" which along with oil depletion, capital gains, and a few other choice tax provisions, was the major reason why a few years ago several hundred taxpayers with very large incomes—in fact, incomes over $100,000 back in the late 1960's, and there was one year in which it was revealed there were well over 100 taxpayers with incomes of over $1 million—who paid no taxes at all.

And the reason the bills pass is that they combine a coalition of interests, some good and some bad, who are around lobbying to get it through. In the past several weeks my office has been called or visited by a half dozen lobbyists on

this bill telling us not to object to bad provision A or terrible provision B or the bill as a whole on grounds that their provision is worthwhile and a must.

That is how it is done.

THIS BILL IS A MODEL

Now the bill we have before us is a model of a Christmas tree bill. It borders on pure genius. Look what was done.

They took a minor bill entitled "The Prisoner of War and Missing In Action Tax Act" and added a dozen amendments to it.

How can anyone be against tax justice of prisoners of war and the families of the missing in action? If they had called the bill a bill for the relief of widows, orphans, and gold star mothers they could have done no better.

So first of all, in the name of wounded combat veterans and the families of the missing in action we will be pressed to give tax relief to some of the biggest corporations in the United States, a famous rum firm, and several yet unnamed private foundations.

This year the committee outdid itself. The use of the prisoner of war and missing in action tax act as a vehicle for a dozen or so rag tag, nongermane, good, bad, and indifferent tax bills.

To a bill which rightly allows hospitalized combat veterans to exclude their military pay while in a hospital outside a combat zone, and a bill which forgives Federal income taxes on the income of those who die while serving in a combat zone to cover the period while they were in a MIA status, they have added a dozen other amendments, none of them having anything to do with wounded combat veterans, winners of purple hearts, or those who died in the defense of their country.

Just what does it do? The amendments allow an extension of depletion for trona ore based on the value of soda ash extracted from it, allows refunds on rum and spirits lost or destroyed, repeals the tax on certain filled cheese products, affects private foundations whose assets are largely invested in the stock of multistate corporations, and makes changes in the tax deferral of DISC provisions relating to export sales, among other things.

There are no combat veterans there.

MAJOR OBJECTIONS PROCEDURAL

My major objection to many of the amendments in this bill is procedural. We have no record and no testimony about most of them. The language is obscure. We have no "printed" reports from the Treasury. Sometimes the costs are given and sometimes not. I am told that in the House there are another 50 to 100 Members' bills just waiting to see how things go on this Christmas tree bill.

Congress has passed a Freedom of Information Act in order to get needed information from the executive branch. We may need a truth in information act for tax bills proposed in the House and Senate.

In view of the obscurity of the provisions, the lack of a record, and the possible precedents that these bills set, I believe we need to put the onus and the test on the committee to justify these bills and to provide us with a full and complete record.

Therefore starting on page 13, line 14, I will object to each of the proposed committee amendments. I will object to adopting them en bloc and treating them as original text.

Mr. President, I have objected to the request of the distinguished Senator from Georgia (Mr. TALMADGE), who is managing this bill, to have all of the committee amendments treated en bloc.

Now, Mr. President, I am prepared to proceed on the amendments, but before I do so, let me read an article published in the December 12, 1973, Washington Post which tells more about this bill than we can get from the committee report in terms of who actually benefits.

On Nov. 27, the Senate Finance Committee approved an innocent-sounding bill easing federal tax burdens for American prisoners of war.

Nowhere in the bill or the 25-page committee report was there any mention of Allied Chemical and Dye, Texas Gulf Corp., FMC, Stauffer Chemical, McDonnell-Douglas Aircraft, Bacardi Rum, Kerr-McGee Chemical Corp., the Win Schuler restaurant chain of Michigan, or several thousand residents of Logan County, W. Va.

Yet these firms and persons are among the major beneficiaries of a dozen special tax benefit provisions added by the Finance Committee on readying the House-passed bill for expected floor action this week or next.

The additions have turned the POW tax bill into this year's "Christmas Tree," the title traditionally given to the annual "minor" tax measure, usually passed hurriedly just before Christmas recess, that carries a fat sack of gifts for a handful of taxpayers having powerful friends on Capitol Hill.

The committee bill may be only a start. Several special provisions are being readied by various Senators as floor amendments. And in the House, 30 to 40 more such provisions, sponsored chiefly by members of the tax-writing Ways and Means Committee, reportedly are being gathered into one package for quick approval either as a separate bill or a giant amendment to the Senate measure.

Some of these special tax provisions are justified; they merely correct inequities or technical faults in the law. Others are much more questionable, benefiting only one or two taxpayers. However, it is the stealth and concealment that raise the most questions.

As is customary, the Senate bill and report don't identify the congressional sponsors or the immediate beneficiaries.

Mr. President, I ask unanimous consent that the remainder of the article be printed in the RECORD.

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

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

Interviews with tax experts, staff members and Senate aides, however, revealed the beneficiaries and some key sponsors: Sens. Clifford P. Hansen (R-Wyo.), John V. Tunney (D-Calif.), Gale McGee (D-Wyo), Robert P. Griffin (R-Mich.) and Robert C. Byrd (D-W. Va.).

House members pushing provisions that got into the Senate bill were Reps. Charles Chamberlain (R-Mich.), Teno Roncalio (D-Wyo.), James Corman (D-Calif.) and Puerto Rican Resident Commissioner Jaime Benitez.

Hansen, a Finance Committee member, offered a proposal that will mean an annual saving of $2 million for a large number of chemical and mining firms that mine the ore trona, a raw material that yields soda ash for soap and other products.

McGee and Roncalio backed this amendment. About half the nation's trona is produced in Wyoming by Kerr-McGee, Allied Chemical and Dye, Texas Gulf, FMC and Stauffer.

The Hansen amendment would reverse a 1971 Treasury ruling and permit the trona mining firms to continue taking the mineral depletion allowance on the value added to trona by conversion into soda ash. The Treasury strongly opposes the amendment.

The powerful Senate Democratic Whip, Robert Byrd, won committee approval for his amendment saving Logan County taxpayers an estimated $3 million in taxes over fiscal years 1972 to 1974.

On Feb. 26, 1972, a dam owned by Buffalo Mining, a subsidiary of the Pittston Co., burst, killing 116, destroying 700 homes with 4,000 to 5,000 residents. The Byrd amendment specifies that these taxpayers' first $5,000 in reimbursements from the mining company would be exempt from taxes even if they have already taken a tax deduction for the loss. Normally, such reimbursement is taxable when a deduction has already been taken.

The Benitez amendment, backed by the Puerto Rican rum industry as well as the commonwealth government, was pressed by Maurice Fillius, a semi-retired lawyer representing Bacardi, who says he spoke to every member of the Finance Committee on the matter.

It provides that when spirits imported from Puerto Rico and the Virgin Islands to the United States are destroyed by accident, or are lost, while in bonded warehouses or immediately after removal from bonded warehouses, the U.S. whiskey tax shall be refunded.

Whisky produced in the United States already enjoys this tax rebate, and Fillius said its extension to the imported Puerto Rican whisky is merely correction of a tax inequity—a point with which the Treasury agreed. He said Bacardi was interested because it bottles imported rum in a plant in Jacksonville, Fla. There isn't any loss to the U.S. Treasury, since the whisky tax on such rum ordinarily goes to the commonwealth government.

Corman and Tunney sponsored a special benefit enabling McDonnell-Douglas, which has a California plant near Corman's district, to take advantage of the law that says the profits of an overseas trading corporation organized under the DISC (Domestic International Sales Corp.) laws aren't taxable as ordinary business income; they remain untaxed until distributed to shareholders.

The Corman-Tunney amendment would allow McDonnell-Douglas to shift income from its overseas trading corporation to a special financial subsidiary without losing the special tax status. Tunney said he agreed to cosponsor this only after receiving assurance that the Treasury didn't object. There isn't any tax impact, but the amendment bends the existing law slightly for the convenience of McDonnell-Douglas or anyone else who wants to do this.

Schuler, who owns seven restaurants in Michigan and Ohio, had been selling a filled cheese spread called "Win Schuler's Bar-Scheeze." A competitor told the IRS he wasn't complying completely with the labeling requirement. Facing severe loss, the Schuler restaurant chain turned to Congress. The committee said the Food and Drug Administration separately regulates food cleanliness, purity and labeling, and so the 1896 law is really obsolete. The Treasury will lose only a trifle: about $10,000 a year in licensing taxes. The Treasury didn't oppose the amendment.

Tax experts and sponsors of the provisions contend that most of these provisions are

completely legitimate: although they are brought up on behalf of a special interest, they usually aren't approved unless they have broad, fair future applicability.

Mr. PROXMIRE. Mr. President, I yield the floor. It is my understanding that the first amendment will be called up.

Mr. TALMADGE. Mr. President, if it is agreeable to the Senator at this point, we can either proceed to the amendment of the Senator from West Virginia or the first committee amendment.

Mr. PROXMIRE. It is fine with me. Would the Senator from Georgia prefer that we handle the amendment by the Senator from West Virginia in toto or simply the sugestion he is making now?

Mr. TALMADGE. I have no objection. Either way is agreeable to me. I think the better way would be to proceed with the committee amendments one at a time. The Senator requested that his amendment be considered at this time, and I have no objection to that procedure.

Mr. ROBERT C. BYRD. May I suggest that we merely proceed with my perfecting amendment at this time and then let the committee amendment come along in its proper sequence with the other committee amendments?

Mr. TALMADGE. And then consider that as amended. That is agreeable to me. It is agreeable to the Senator from Wisconsin?

Mr. PROXMIRE. Yes.

Mr. TALMADGE. Mr. President, as I understand it, the question is on the first committee amendment.

The PRESIDING OFFICER. That is the pending question.

Mr. TALMADGE. I beg the Chair's pardon. I think we ought to proceed with the Senator from West Virginia's amendment to the committee amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committee amendment which begins on page 13, section 8, be temporarily laid before the Senate, in order that I may offer a perfecting amendment to that amendment, and that after Senate action on my amendment to the amendment is taken, then the amendment, as amended, if amended, take its proper order in the sequence of committee amendments.

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

Mr. ROBERT C. BYRD. Mr. President, I ask that the clerk state my amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 22, line 9, after the period insert the following:

"No taxpayer who enters into an agreement with the Secretary of the Treasury under subsection (a) shall be liable for the repayment of any interest received under section 6611 of such Code on a refund of tax resulting from an election under section 165 (h) of such Code with respect to a loss attributable to a disaster described in this section, nor shall he be liable for the payment of any interest with respect to any deficiency (as defined in section 6211(a) of such Code) arising out of the revocation of such an election.".

Mr. PROXMIRE. Mr. President, as I understand it, the Chair informed the Senate a few minutes ago that in the event this modification is accepted, it would still be in order at a later time to consider the entire amendment beginning on page 19, line 19, relating to the West Virginia problem.

Mr. ROBERT C. BYRD. I was advised at the desk that the amendment begins on line 14, page 13, section 8.

Mr. PROXMIRE. I say to the Senator from West Virginia that I have H.R. 8214, and on page 19, line 19, there are certain losses; and it seems to refer to the substance of the amendment of the Senator.

Mr. ROBERT C. BYRD. There seems to be some indecision at the desk, at the moment.

The PRESIDING OFFICER. The committee amendment begins on page 13, line 14.

Mr. PROXMIRE. That committee amendment is entitled "Cooperative Investment Activities of Educational Institutions" and "Cooperative Service Organizations of Operating Educational Organizations."

Is that the amendment which the Senator from West Virginia wishes to adopt, or do I have the wrong amendment?

Mr. ROBERT C. BYRD. The one I want to amend is the so-called Buffalo Creek Disaster amendment.

The PRESIDING OFFICER. The committee amendment continues from that point to the end of the bill and includes sections 8 through 19.

Mr. PROXMIRE. I see. The Senator from West Virginia is talking about all the committee amendments together. That was the problem.

The PRESIDING OFFICER. It is one single amendment.

Mr. ROBERT C. BYRD. But the only provision I wish to amend deals with Buffalo Creek tax refunds.

Mr. PROXMIRE. I object to taking up the committee amendments en bloc. I ask that they be taken up separately.

Mr. TALMADGE. Is there any objection to the amendment of the Senator from West Virginia? I would have no objection of taking it up.

Mr. GRIFFIN. In view of the earlier recommendations, I have had an opportunity to discuss this proposal with the ranking minority member of the committee, and I understand there is no objection.

Mr. BENNETT. I have no objection.

Mr. TALMADGE. As I understand the procedure now, the Senate will vote on the committee amendments in their order of sequence. I believe the first amendment is in order.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia. Is there objection? The Chair hears none, and the amendment is agreed to.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Georgia, the distinguished Senator from Wisconsin, and the distinguished assistant Republican leader.

Mr. TALMADGE. If the procedure is to take up the amendments separately, I move the adoption of the first committee amendment.

The PRESIDING OFFICER. The question is on agreeing to the first committee amendment.

Mr. PROXMIRE. I want to make sure that I understand this amendment. Is this the amendment which was originally submitted by the Senator from Georgia (Mr. TALMADGE)?

Mr. TALMADGE. No; this is a technical amendment.

Mr. PROXMIRE. I have no objection to amendments prior to line 13, page 13.

Mr. TALMADGE. Mr. President, I ask unanimous consent that amendments prior to line 13, page 13, be agreed to en bloc.

The PRESIDING OFFICER. Without objection, all amendments up to that point are agreed to en bloc.

The question is on agreeing to the next committee amendment.

The amendment is as follows:

SEC. 8. COOPERATIVE INVESTMENT ACTIVITIES OF EDUCATIONAL INSTITUTIONS

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, etc.), is amended by redesignating subsection (f) as (g), and by inserting after subsection (e) the following new subsection:

"(f) COOPERATIVE SERVICE ORGANIZATIONS OF OPERATING EDUCATIONAL ORGANIZATIONS.—For purposes of this title, if an organization is—

"(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expense, to such members.

"(2) organized and controlled by one or more such members, and

"(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

"(A) which are exempt from taxation under subsection (a), or

"(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1973.

SEC. 9. ORDINARY TREATMENT PROCESSES FOR TRONA.

(a) IN GENERAL.—Section 613(c)(4)(E) (relating to treatment processes considered as mining) is amended by inserting after "phosphate rock," the following: "the decarbonation of trona.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1970.

SEC. 10. APPLICATION OF SECTION 82 AND SECTION 217 TO MEMBERS OF UNIFORMED SERVICES.

(a) IN GENERAL.—Notwithstanding the provisions of section 82 (relating to reimbursement for expenses of moving) and section 217 (relating to moving expenses), of the Internal Revenue Code of 1954, the Secretary of the Treasury, in the administration of those sections, is authorized—

(1) to enter into an agreement with the Secretary of Defense under which the Secretary of Defense will not be required to withhold tax on, or to report, moving expense reimbursements made to members of the uniformed services;

(2) to permit any taxpayer who is a member of the uniformed services not to include in adjusted gross income the amount of any reimbursement in kind of moving expenses made by the Secretary of Defense; and

(3) to permit any taxpayer who is a member of the uniformed services to deduct any amount paid by him as moving expenses in connection with any move required by the Secretary of Defense, in excess of any reimbursement received for such expenses, without regard to the provisions of section 217(c) (relating to conditions), to the extent it is otherwise deductible under section 217.

(b) DEFINITIONS.—For purposes of this section, the term "uniformed service" has the meaning given it by section 101(3) of title 37, United States Code, and the terms "adjusted gross income" and "moving expense" have the meanings given them by sections 62 and 217(b), respectively, of the Internal Revenue Code of 1954.

(c) EFFECTIVE DATE.—The provisions of this section shall apply with respect to taxable years ending before January 1, 1975.

SEC. 11. DISTILLED SPIRITS FROM PUERTO RICO OR THE VIRGIN ISLANDS

(a) IN GENERAL.—Section 5008 (relating to abatement, remission, refund, and allowance for loss or destruction of distilled spirits) is amended by—

(1) inserting "or section 7652" in subsection (b)(1) after "the tax imposed by this chapter";

(2) striking out "under section 5001(a)(1) or under subpart B of this part" in subsection (b)(2), and inserting in lieu thereof the following: "under section 5001(a)(1), subpart B, this part, or section 7652";

(3) inserting "or section 7652" in subsection (c)(1) after "section 5001(a)(1)"; and

(4) inserting "or section 7652" in subsection (d)(1) after "section 5001(a)(1)".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the loss or destruction of distilled spirits occurring after the date of enactment of this Act.

SEC. 12. REDEMPTION OF STOCK WITH APPRECIATED PROPERTY.

(a) IN GENERAL.—Section 311(d)(2)(A) (relating to appreciated property used to redeem stock) is amended by inserting after "owns" the following: "(directly or constructively under the rules of section 318(a), which shall apply in determining ownership of stock for purposes of this subparagraph to the same extent and in the same manner as such rules apply for purposes of section 302(b)(3)".

(b) CONFORMING AMENDMENT.—Section 318(b) (relating to cross-references) is amended by redesignating paragraphs (4), (5), (6), (7), and (8) as paragraphs (5), (6), (7), (8), and (9), respectvely, and by inserting after paragraph (3) the following new paragraph:

"(4) section 311(d)(2)(A) (relating to taxability of corporations on distributions of appreciated property in redemptions of stock);".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to distributions made after the date of enactment of this Act.

SEC. 13. REPEAL OF REGULATORY TAXES ON FILLED CHEESE.

(a) IN GENERAL.—

(1) Part II of subchapter C of chapter 39 (relating to regulatory provisions affecting filled cheese) is repealed.

(2) The table of parts of such subchapter is amended by striking out the item relating to part II.

(b) TECHNICAL AND CONFORMING CHANGES—

(1) Section 7236 (relating to false branding, etc.) is repealed.

(2) The table of sections of part II of subchapter A of chapter 75 is amended by striking out the item relating to section 7236.

(3) Section 7266 (relating to offenses relating to filled cheese) is repealed.

(4) The table of sections of subchapter B of chapter 75 is amended by striking out the item relating to section 7266.

(5) Section 7303 (relating to property subject to forfeiture) is amended by striking out paragraphs (4) and (5) and inserting in lieu thereof the following:

"(4) PURCHASE OR RECEIPT OF ADULTERATED BUTTER.—All articles of adulterated butter (or the full value thereof) knowingly purchased or received by any person from any manufacturer or importer who has not paid the special tax provided in section 4821.

"(5) PACKAGES OF OLEOMARGARINE.—All packages of oleomargarine subject to the tax under subchapter F of chapter 38 that shall be found without the stamps or marks provided for in that chapter.".

(6) Section 6808 (relating to cross references) is amended by striking out paragraph (5).

(7) Section 7103(d)(3) (relating to cross references) is amended by striking out subparagraph (C).

(c) EFFECTIVE DATE.—The repeals and amendments made by this section shall apply to filled cheese manufactured, imported, or sold after the date of enactment of this Act.

SEC. 14. ACCRUED VACATION PAY.

Section 97 of the Technical Amendments Act of 1958 is amended by striking out "January 1, 1973" and inserting in lieu thereof "January 1, 1974".

SEC. 15. CERTAIN CASUALTY LOSSES.

(a) IN GENERAL.—Notwithstanding the provisions of section 61 (relating to gross income), section 165 (relating to losses), or any other provision of the Internal Revenue Code of 1954, any taxpayer who was allowed a deduction under section 165 of such Code for a loss attributable to a disaster described in section 165(h) occurring during calendar year 1972, and who received compensation (not taken into account in computing the amount of the deduction) for such loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster, may elect, at such time and in such manner as the Secretary of the Treasury may prescribe, to exclude from gross income the amount of such compensation if the taxpayer enters into an agreement with the Secretary or his delegate under which—

(1) the basis of any property of the taxpayer which was damaged in such disaster, or which is replacement property of like kind for property destroyed in such disaster (acquired within 36 months after such destruction), is reduced (but not below zero) by the amount of any part of such compensation, the exclusion of which does not result in a tax benefit in excess of $5,000, allocable to such damage or destruction, and

(2) the taxpayer will include in his gross income, in equal installments over not more than 5 consecutive taxable years (beginning with the taxable year in which such compensation was received), any amount of such compensation the exclusion of which would result in a tax benefit in excess of $5,000.

(b) DEFINITIONS.—For purposes of this section, the term—

(1) "tax benefit" means an amount equal to the amount of the difference between—

(A) the liability of a taxpayer under chapter 1 of the Internal Revenue Code of 1954 for tax for the taxable year in which the compensation was received, computed without regard to the provisions of this section, and

(B) the liability of that taxpayer for such tax for that taxable year computed after the application of the provisions of this section (without regard to the requirements of paragraphs (1) and (2) of subsection (a));

(2) "gross income" means gross income as defined in section 61 of the Internal Revenue Code of 1954; and

(3) "basis" means the basis of property determined in accordance with the provisions of part II of subchapter O of chapter 1 of such Code (relating to basis rules of general application).

(c) RULES.—In applying the provisions of paragraph (1) of subsection (a) to his property, a taxpayer shall reduce the basis of any depreciable property to which that paragraph applies before he reduces the basis of any of his other property, then he shall reduce the basis of any trade or business property (other than depreciable property) to which that paragraph applies, and finally he shall reduce the basis of any other property to which that paragraph applies. For purposes of this subsection, the term "trade or business property" means property which is not described in section 1221 of the Internal Revenue Code of 1954 (relating to the definition of capital assets), and the term "depreciable property" means property of the taxpayer with respect to which a deduction is allowable under section 167 of such Code (relating to depreciation).

SEC. 16. APPLICATION OF FEDERAL UNEMPLOYMENT TAX ACT TO CERTAIN EMPLOYEES OF SCHOOL-RELATED ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 3306(c)(10) (relating to definition of "employment" for purposes of the Federal Unemployment Tax Act) is amended by striking out so much of such subparagraph (B) as precedes "(i)" and inserting in lieu thereof the following:

"(B) service performed in the employ of a school, college, or university, and service performed in the employ of an organization described in section 509(a)(3) (but only if such organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university), if such service is performed".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 1973.

SEC. 17. APPLICATION OF SECTION 4942 TAX ON FAILURE TO DISTRIBUTE INCOME.

(a) IN GENERAL.—Section 101(l)(3) of the Tax Reform Act of 1969 (relating to savings provisions under section 4942 of the Internal Revenue Code of 1954) is amended by—

(1) striking out "and" in subparagraph (D),

(2) striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; and", and

(3) adding after subparagraph (E) the following new subparagraph:

"(F) apply, in the case of an organization described in paragraph (4)(A) of this subsection,

"(i) by applying section 4942(e) without regard to the stock to which paragraph (4)(A)(ii) of this subsection applies,

"(ii) by applying section 4942(f) without regard to dividend income for such stock, and

"(iii) by defining the distributable amount as the sum of the amount determined under section 4942(d) (after the application of clauses (i) and (ii)), and the amount of the dividend income from such stock.".

(b) The amendment made by this section shall apply to taxable years beginning after December 31, 1971.

SEC. 18. APPLICATION OF SECTION 117 TO CERTAIN EDUCATION PROGRAMS FOR MEMBERS OF THE UNIFORMED SERVICES.

(a) IN GENERAL.—Any amount received from appropriated funds as a scholarship, including the value of contributed services and accommodations, by a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program determined by the Secretary of the Treasury or his delegate to have substantially similar objectives) from an educational institution (as defined in section 151(e)(4) of the Internal Revenue Code of 1954) shall be treated as a scholarship under section 117 of such Code, whether that member is receiving training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required of the member as a condition of receiving those payments.

(b) DEFINITIONS.—For purposes of this section, the term "uniformed service" has the meaning given it by section 101(3) of title 37, United States Code.

(c) EFFECTIVE DATE.—The provisions of this section shall apply with respect to amounts received during calendar years 1973 and 1974.

SEC. 19. DOMESTIC INTERNATIONAL SALES CORPORATION AMENDMENT.

(a) IN GENERAL.—Section 993(b)(3) (relating to qualified export assets) is amended by striking out "such corporation" and inserting in lieu thereof "such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to taxable years beginning after December 31, 1973. Such amendment shall, at the election of the taxpayer made within ninety days after the date of the enactment of this Act, also apply to any taxable year beginning after December 31, 1971, and before January 1, 1974.

Mr. TALMADGE. Mr. President, this is the so-called Common Fund amendment.

Mr. PROXMIRE. Yes. I should like to make sure we understand that. This amendment was proposed by the Senator from Georgia.

Mr. TALMADGE. That is correct. There are a number of private colleges in the United States that have formed a cooperative arrangement for the collective investment of their funds. During the formative years, its management and administrative expenses were met by start-up grants from the Ford Foundation. However, since the start-up grants have now been terminated, the fund must depend solely upon its member colleges for payment of continued operational costs. In 1970, the Internal Revenue Service issued a ruling to the fund that provided that the fund's exempt status would continue only so long as the investment services of the fund are provided to members at a charge substantially below cost. Since the start-up grants have terminated, the fund is apparently in danger of losing its exempt status. This amendment would make it clear that cooperative arrangements for the investment of the type represented by the "Common Fund" will be exempt from taxation.

Mr. PROXMIRE. Is there any loss to the Treasury?

Mr. TALMADGE. None whatever.

Mr. PROXMIRE. Has the Senator received a letter or letters from the Treasury supporting the amendment?

Mr. TALMADGE. The Treasury supports the amendment.

Mr. PROXMIRE. Has the Treasury written to the committee to that effect?

Mr. TALMADGE. Counsel to the committee informs me that they have. When I proposed the amendment it was agreed to unanimously. The committee supports the amendment.

Mr. PROXMIRE. Am I correct in the view that this amendment simply allows these colleges with a common fund to do collectively what they do separately?

Mr. TALMADGE. What they each do individually. The Senator is correct.

Mr. PROXMIRE. I have no objection.

Mr. TALMADGE. Will the Chair put the question?

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The next committee amendment will be stated.

The legislative clerk read as follows:

On page 14, beginning on line 20, insert language down to line 2 on page 15.

Mr. TALMADGE. 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. PROXMIRE. 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. PROXMIRE. Mr. President, it is my understanding that the rest of this bill deals with a group of subjects as different as one could imagine. They are considered as one amendment. There is no indication as to how these weird and strange doings came about.

The PRESIDING OFFICER. The Senator is correct. It is considered as one committee amendment.

Mr. PROXMIRE. There is one part that deals with the depletion allowance on trona, a second with unemployment compensation of students, another with distilled spirits from Puerto Rico or the Virgin Islands, and another with filled cheese.

I understand I can ask for a division by section so that each item will be treated separately and come up for a separate vote.

The PRESIDING OFFICER. Under rule XVIII the Senator has the right to ask for a division.

Mr. PROXMIRE. I do so at this point. I ask for a division on all sections of this bill from this point on.

The PRESIDING OFFICER. The bill will be divided by section, if it is susceptible to division on that basis, and it appears to be.

Mr. PROXMIRE. I thank the Chair.

I see the distinguished Senator from Wyoming, my good friend (Mr. HANSEN) has arrived.

The next amendment deals with trona. I think the orderly way to proceed would be to ask the Senator if he would justify this amendment and answer some questions on it.

Mr. HANSEN. I wish to express my appreciation to my good friend, the Senator from Wisconsin, for his courtesy in seeing to it that I was alerted to the fact that he was going to oppose this amendment. I will be happy, indeed, to respond to his request to justify the amendment.

First, I suspect it might be asked why the amendment was proposed. The reason is that the most significant trona deposits in the United States are, for the most part, located in Wyoming. They were found quite by accident several years ago—more than two or three decades ago, as I recall—when the Mountain Fuel Supply Co., a gas company, was drilling for gas wells. It was then discovered that Wyoming contained these enormous deposits of trona.

In the interest of time and in the interest of trying to save my voice, which is a little weak due to a cold I picked up during a tour of the Middle East, which I just returned from last night, I will not read the committee report.

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

Mr. HANSEN. I yield.

Mr. BENNETT. In the interest of saving the Senator's voice, I will be happy to read the report.

Mr. HANSEN. I will be most grateful to my good friend, the Senator from Utah, who is the ranking minority member of the Committee on Finance.

The PRESIDING OFFICER. The clerk will report the next committee amendment, which is section 9.

The legislative clerk read as follows:

On page 14, beginning at line 20, insert language down to line 2 on page 15.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, the Senator from Wyoming, I am sure, from the sound of his voice, would be without a voice by the time he got to the bottom of the page. My voice is in a little better shape so I am happy to act in his stead.

Wyoming is next door to the State of Utah so we have an interest in their well-being.

The language on page 12 of the committee report reads:

Under existing law, percentage depletion is allowed for certain minerals at specified rates. In computing the percentage depletion deduction, the rate of the depletion allowance is applied to the "gross income from the property." In the case of depletion on property other than oil or gas wells, present law provides (sec. 613(c)(1)) that the term "gross income" means "gross income from mining." Present law further provides that the term "mining" for this purpose (sec. 613(c)(2)), in general, includes not only the extraction of the ores or minerals from the ground, but also certain "ordinary treatment processes" (specified in sec. 613(c)(4)).

In the case of trona, percentage depletion is allowed at the rate of 14 percent. Trona ore, however, is not sold in its crude form as extracted from the ground. The valuable mineral in the ore is sodium carbonate, commonly known as soda ash, and treatment processes must be applied to separate the waste materials from the soda ash. One of the processes applied is a calcining process

which separates the unwanted water and carbon dioxide from the soda ash. A controversy now exists as to whether the process of calcining to achieve the decarbonation is an ordinary treatment process in the case of trona (as it has been treated prior to 1971) so that percentage depletion will be allowed on the value added by that process.

Obviously, if we include in the value of the product the worthless waste part of it coming out with the soda ash when it is mined, then the net value to which depletion is applied is much lower—

The controversy which now has arisen with respect to the tax treatment of trona relates to the application in its case of the term "ordinary treatment processes" of extracted ores or minerals. Prior to 1961, the term "ordinary treatment processes" was described in the code as processes normally applied by mine owners or operators to extracted ores or minerals in order to obtain the commercially marketable product. In the case of trona, the first commercially marketable product is soda ash. Thus, it was held under this description that the calcining of trona to produce soda ash qualified as an ordinary treatment process. In 1960, however, this description of treatment processes was eliminated (in P.L. 86–564) and instead an exclusive specific list of the ordinary treatment processes which are to be considered as mining was substituted. This list did not specifically contain the process used in the case of trona which resulted in its marketable product "soda ash." In addition, the 1960 amendment contained a provision which set forth the treatment processes not considered as mining (unless specifically provided for or necessary or incidental to processes as provided for) and calcining was among the list.

The problem that exists relates to statements made during the hearings in 1959 before the Committee on Ways and Means with respect to the Treasury Department proposal which specified the treatment processes which would be considered mining for purposes of computing percentage depletion. (Essentially, this same proposal was contained in the Senate amendment which was enacted in 1960, as described above.) The Treasury representative in response to the question of whether the Treasury proposal would prohibit the present practice of allowing decarbonation of soda ash said that it was not intended.

In 1971, the Treasury Department announced, while finalizing regulations dealing with the new code provision relating to ordinary treatment process, that for the future it will disallow the so-called "decarbonation" or "calcining" process as an ordinary treatment process with respect to trona; in effect, this would treat it as a nonmining process. This means that percentage depletion would not be based on the market value of soda ash extracted from trona, but rather on the value of trona, as mined including certain other mining processes attributable to trona. Although the Treasury Department concedes there is some justification for the argument that there were assurances given in 1959 that in the case of trona no change was intended, the Treasury states that the 1959 representations were in error and based on mistaken assumptions. However, in view of these representations the Treasury has indicated that it will allow the calcining as an ordinary treatment process for all years through 1970, the year it announced its intention not to treat the "decarbonation" process of trona as a mining process.

The committee has concluded that the trona miners should be allowed to compute percentage depletion in the same manner as was allowed in the past and in the manner in which it was represented by the Treasury in 1959 would be the result under the new provision. The committee's decision is based on its belief that the decarbonation of the trona ore to eliminate water and carbon dioxide is essentially a concentration process which should be treated as an allowable mining process.

And is so treated with respect to other ores—

To assure this result, the amendment provides that the decarbonation of trona is to be treated as an ordinary treatment process.

It is understood that in some cases customers want a higher bulk density soda ash, and to meet that need soda ash which has already been decarbonated is placed in a second calciner to produce a denser product. This densification step was not treated as an ordinary treatment process under the past practice, and is not to be treated as an allowable process under the committee's amendment.

This provision,

If adopted—

is to apply to taxable years beginning after December 31, 1970. This will provide the continued treatment of the decarbonation process of trona as mining since the Treasury Department is allowing this treatment for all taxable years beginning before 1971.

With respect to its effect on revenues, the committee does not believe that this amendment should be viewed as resulting in a revenue loss, since the amendment continues the treatment of trona to the same extent as in the past. However, based on the position the Treasury Department is taking as to the treatment of trona for the future, it can be argued that the amendment will reduce revenues by about $2 million annually.

Mr. President, we have here a situation that has some minor international implications. If this vast trona deposit cannot be developed commercially, then most of the soda ash we buy will be bought outside the United States.

Is that right?

Mr. HANSEN. That is my understanding.

Mr. BENNETT. It is my understanding.

So what we may save in terms of potential additional tax may in fact prevent the development of this trona deposit, or in effect will close it down, because it cannot compete with offshore soda ash without this depletion allowance.

I think it is for that reason, among others, that the committee felt that, looking at the minor amount of potential income which the Treasury has never had, and realizing that this could result in the continued operation of a valuable deposit unique in the United States, which could make it possible for us to supply our needs domestically without having to go abroad for our soda ash, in all these circumstances the committee decided that this was a wise move.

I know the Treasury has taken an official position against it, but I also have the impression, having discussed it just today, that the Treasury will not bleed if the amendment remains in the bill.

Therefore, Mr. President, I hope the Members of the Senate will stand with the committee and reject the amendment proposed by the Senator from Wisconsin, which would undoubtedly result in closing down this property which, as I say, as far as I know is unique in the United States.

Mr. PROXMIRE. There is no amendment pending that has been offered by me. It is a committee amendment. And I propose that the Senate not agree to it. I do this because it magnifies the inequity of the depletion allowance and does it in a discriminatory way.

The purpose behind the committee amendment is to permit this particular mineral, and those who mine it, a higher depletion allowance than would normally be allowed.

The percentage depletion allowance granted by section 613 is a deduction from income for part of the costs of mining an ore. And this is the same process that applies to petroleum. It is vital, if we are to limit the depletion allowance at all, that we specify that it be applied to the cost of mining it from the ground.

The whole issue is how far we should go with that. It could be defined to apply it to the transportation of oil through a pipeline or some other cost which comes after the oil or mineral is extracted.

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

Mr. PROXMIRE. I yield.

Mr. ABOUREZK. I wonder whether it would be appropriate if a depletion allowance of this kind would go for the purchase of a circus, as we see that Gulf Oil has done in the last day or two?

Mr. PROXMIRE. Does, the Senator mean that this might be applied to an individual person?

Mr. ABOUREZK. No; I am talking about the depletion allowance for these oil companies.

Mr. PROXMIRE. The point I was making is that the depletion allowance has always applied to the mining itself, to the extraction of the mineral from the ground, the idea being that it is depletable. And after one takes it out, there is nothing more left.

What the Senator is getting at is that if this is applied to the calcining process that the Senator from Utah and the Senator from Wyoming suggest, we might apply it to any purpose, including service.

Mr. ABOUREZK. What I am suggesting is that the argument which we have heard over the years that a depletion allowance is awarded to encourage the drilling of oil or, as in this case, the depletion allowance is needed for some other purpose in this particular industry.

There was an announcement in the last day or two that Gulf Oil is going to buy a circus out of their profits. That would seem to me to indicate that it could be used for anything.

Mr. PROXMIRE. I am sorry, I misunderstood the Senator. The Senator said circus, and I thought he had said service.

Yes, I suppose that one might deplete a circus, and I suppose that that is what this tax bill is getting to. I thank the Senator.

The companies can deduct a statutory percentage of the income they receive from mining and from that income alone. Since many companies process the ore from the ground through to the finished product, one of the problems in applying these provisions has been to define how much of their work is actually mining and how much is refining and manufacturing.

As the Senator from South Dakota has indicated, if Gulf Oil is going to buy a

circus, they could apply it to that. There does not seem to be any end to it.

Generally, the cutoff point for determining the base is when the ore first reaches a marketable form. Any process which changes the chemical composition of the ore beyond that point is considered part of the refining and not mining.

Once a cutoff point is determined, the depletion allowance is computed on the income from the product as if it had been sold at the point, that is, the market price. Companies try to include under "mining" as much of the processing as possible because as each step is performed, the market price of the product at that point is increased. This increases the base value upon which the allowance is computed and results in a higher deduction.

Trona ore is decarbonated by a heating process called calcining which is used in the refining of several products, of which soda ash is just one, and is not generally considered part of the mining process. Trona miners are now trying to have 613 amended so that calcining will be considered part of the mining process of soda ash—even though it is not so expanded for other minerals—resulting in a higher depletion allowance than they would otherwise be able to claim.

Estimates of the revenue cost of this amendment are about $2 million per year currently which will increase accordingly with the industry's projected expansion to double the present output by 1980.

As I understand it—and I ask the Senator from Wyoming and the Senator from Utah to correct me if I am wrong—the specific beneficiaries of this would be the Allied Chemical Corp., Gulf, FMC, Stauffer, and Texas Gulf Sulphur.

As the Senator from Utah has pointed out, if this would increase the use of this particular resource, the country might benefit. I might also point out that the companies have been expecting termination of this treatment for many years. Gulf Oil invested $75 million in equipment knowing that this special depletion treatment would be terminated.

I might also point out that the Government was not evasive about this matter. They came down loud and clear in this matter. It is further my understanding that the Treasury states that on November 4, 1971, they sent a more detailed letter which I was unable to get on short notice.

Mr. President, I wonder if the chairman of the Finance Committee, the Senator from Louisiana (Mr. LONG), would be able to provide that letter for the RECORD so that we could see in detail the Treasury Department's argument.

Mr. LONG. Mr. President, I do not have it at the moment. However, I can get it for the Senator.

Mr. PROXMIRE. I believe that letter is even more emphatic and specific in indicating why this would be a mistake.

Texas Gulf is investing $75 million in the plant. So there is no loss of jobs involved if this bill fails since the industry is expanding.

Apparently the depletable base will rise to $22.28, the final sales price under the bill, although it costs only $3 to $4 to mine the trona. They already have a higher depletable base than the $3 to $4.

Incidentally, what is the depletable base on trona at the present time? Does the Senator from Wyoming have that figure?

Mr. HANSEN. Mr. President, does the Senator from Wisconsin inquire as to the tax effect?

Mr. PROXMIRE. No; I am talking about the value of the trona. It was my understanding that it cost about $3 to $4 per ton to mine the trona. The effect of the amendment would be to raise the price to $22.28, which would become six times or so more than the cost of mining the trona.

Mr. HANSEN. Mr. President, in response to the Senator from Wisconsin let me say that I will be glad to supply the specifics but I do not have them with me. As I mentioned earlier, I have just returned and I have not had a chance to get everything together as well as I might have done.

Mr. PROXMIRE. I would appreciate receiving that information.

Mr. HANSEN. I would be glad to supply that information. I would also like to say that the base which we seek to have enacted into law by the committee amendment simply continues the tax treatment that has been afforded the industry for some 15 years or more and continued all through taxable year 1971.

So, really it is a little farfetched to say what might happen to the industry or that it makes no difference whether we change the depletion allowance or not. I would point out to my friend, the Senator from Wisconsin, that trona is not something that is easily moved. It is heavy and at the present time it does not go much beyond the product made from the bicarbonate of soda.

Two satellite industries have evolved out there. Church & Dwight has a soda plant there, and I was talking with their representative at Green River, Wyo., asking him how far east they expected to be able to market their product. He said because of the freight differential, it was pretty difficult to go back east of St. Louis.

There are about 12,000 jobs at stake, Mr. President, and certainly these are important to Wyoming. I should think they are important to the United States. As we have found out rather painfully in the past weeks and months, we can tax industries so as to discourage development and, indeed, so as to discourage further expansion of activities, and that is precisely what has happened in the domestic oil industry.

We gave them little incentive because of the different tax treatment that we placed on them to continue the increasingly costly search for oil and gas in this country; and behind that effort to bring about those tax cases were a number of people who were saying, "Let us forget about the domestic industry; let us not worry a bit about the oil in the ground in the stripper wells. Let us go to the Middle East, where there is lots of it, it is in plentiful supply, it is cheap, and we can save the taxpayers and consumers of America literally billions of dollars each year. We can put a tax on that oil when we import it into this country, and make a positive impact on the Federal Treasury through the tariff that people a few years ago were proposing we levy on that foreign oil that we could import so cheaply and so securely from the Middle East."

It seems strange to me that some of those people now, today, are criticizing the oil industry. They are saying we ought to cut the depletion allowance on foreign oil, we ought to outlaw the foreign tax credit, we ought to do everything, practically, to strip the oil industry.

The only reason I make this point is to suggest that it is typical of the very logic being employed right now by the Senator from Wisconsin in saying that we ought to take these four or five major companies—and, as I say, there are some satellite companies also involved—and change the tax treatment.

The Treasury admits that the tax laws that were enacted and the plans and projects made by the companies were based upon the tax treatment they were then being accorded, and I do not think it is fair at all to imply that nothing will happen, that there will be no adverse effect on management and no adverse effect on our economy if we change this around. I think the facts are all on the other side, and despite the fact that the Treasury Department had to issue an adverse report because their net tax take would be increased by some $2 million annually if this amendment were to be stricken, I think we ought to consider the larger tax picture, including the contribution these 12,000 people being employed are making through the payment of individual income taxes, and the taxes that the company has paid. I think it is high time now, in this crucial year of 1974, to recognize at long last the importance of keeping a domestic industry viable.

Mr. PROXMIRE. Mr. President, the argument by the Senator from Wyoming is that this should pass, because otherwise the industry would suffer, and without the depletion allowance, the incentive for employment and production would be equally diminished.

The fact is that this amounts to only $2 million. You cannot have it both ways; either this is a whale of a big giveaway, or a small amount, and I think we can settle on the fact that the Treasury found the loss would be $2 million. Two million dollars in an industry this large cannot be construed as a large incentive.

Let us look at the total picture:

The U.S. industry consumes about 8 million tons of soda ash per year. Wyoming produces about 4 million tons per year, or 50 percent of the total. Soda ash is used in making glass and cement. The demand on the Wyoming miners has increased since those chemical companies in the East who produced synthetic soda ash have been closing down for environmental reasons. So the demand for natural soda ash has increased and the industry projects great expansion.

It is not based on whether or not they can get this particular relatively modest

depletion allowance. The expansion is based on the fact that the demand is there, and of course this is the principal ingredient in any business, as to whether it expands or not.

There are two more processing plants being built now—Allied Chemical and Texas Gulf Sulphur—and the Wyoming production is expected to double by 1980.

And all of that construction, I might point out, was with the firm understanding that the Treasury was opposed to the depletion allowance as presently applied, and that they would do their best to end it, and end it as of now.

Not all the mined trona was processed. Some was stockpiled for processing later when the processing capacity increases—or perhaps when the depletion bill goes through FMC was the first in the field, starting with 300,000 tons in 1951, so their production alone has increased more than 7½ times over. Stauffer is expanding and estimated their production will be 3.75 million tons as soon as possible. TGS is building a $75 million plant. By 1980, the Wyoming producers will be producing approximately 8 million tons per year—1½ tons trona=1 ton soda ash.

The Wyoming industry estimates that there is a $200 million original investment. They need at least another $120 million for new capital as the industry stands now. Another $300 million is required for the expansion that they estimate they will need; and they surely feel, on the basis of their return on investment, on the basis of the price they can expect because of the estimated demand, that this is warranted, or they would not put this amount of money in.

Soda ash now sells for $22.28 per ton. The industry estimates that the price should go to $42 to $56 per ton to finance expansion. Without the increased depletion allowance, they will have to raise the price another $3 or $4 per ton. Current sales—1972—are $100 million per year from Wyoming alone. It costs $3 to $4 a ton to mine trona.

QUESTIONS AND OBJECTIONS

With such great expansion predicted, the incentive of a greater depletion allowance is not justified.

If the bill passes, the depletable base on this will be the $22.28 final sales price. It only costs $3 or $4 to mine it, but they already have a higher depletable base than that. The process they want to add is called calcining and is a chemical process, used in other industries—cement—and not allowed to them as part of the depletable base. Note that bill does not include the process generally, but only for the trona miners.

The trona miners in Wyoming control the market in natural soda ash. They claim that the industry could not bear the increased price if they do not get the depletion allowance, but note the price increase they already predict.

Mr. President, the Treasury opposes this bill. As I say, I am waiting and hoping we can get the later letter, which is even more unsatisfactory, but they answer specifically the points raised by the Senator from Wyoming. They say:

For example, Texasgulf, Inc., announced in its quarterly report for the period ended March 31, 1973, that its board of directors approved on April 5, 1973, the construction of facilities to produce one million tons of soda ash per year from Texasgulf's Wyoming trona deposits. The processing facilities would be constructed at a cost estimated at $75 million. Completion is scheduled for 1976. It seems highly unlikely that a major member of the industry would undertake the construction of such a substantial facility if it did not anticipate that its investment would produce a worthwhile rate of return.

I am sure that that kind of money is not invested unless there is public knowledge, and the clearest and most satisfactory kind of knowledge, in the Treasury Department that this particular tax advantage is going to be lost, and be lost this year. That was the intention of the Treasury, and certainly the expectation of the industry would have influenced, I am sure, their action.

The strongest argument put forth by the industry in support of this amendment is contained in the committee report. It consists of the fact that, historically, calcining was allowed as part of the mining process.

In 1960 Treasury promulgated a set of rules setting out exactly what was an allowable process and calcining was not among those listed. In the 1959 hearings before the Ways and Means Committee, a Treasury Department representative was asked whether they intended to disallow the decarbonation or soda ash and he replied that they did not intend to. Since then, Treasury has allowed it—decarbonation is achieved by the calcining process—but in 1970 they finally said that the whole thing was a mistake and they were not bound by the statements of a Treasury official made in a hearing when those statements are in direct conflict with the law—not just the regulations, but the code itself. So, now the industry wants the law changed.

I would hope, under the circumstances, that the Senate would vote against the pending committee amendment and would not provide this kind of discriminatory application of the depletion allowance which could provide a serious precedent for us. We are doing our best now to try to hold the oil depletion allowance within reason—or maybe to reduce it; but this precedent would open up the depletion allowance to further abuse. So, I would hope that the Senate would vote nay on the committee amendment.

THE 10 BEST AND WORST DRESSED SENATORS

Mr. COTTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). The Senator from New Hampshire will state it.

Mr. COTTON. Is it in order to interrupt this discussion on a point of personal privilege that might take 10 minutes?

The PRESIDING OFFICER. Any Senator has the right to interrupt on a point of personal privilege.

Mr. COTTON. I thank the Chair.

Mr. President, I do not know how many Senators realize how they look to an audience of visitors in the galleries, but I think it is interesting for us to know how we do appear to them and what kind of impression we make, in view of the fact that, for my part, I fear that we have made about one of the worst impressions possible.

Mr. President, I invite the attention of the Senate to a syndicated article published in newspapers in Boston and Washington, written by Vera Glaser, enttiled "The 10 Best and Worst Dressed U.S. Senators."

It reads as follows:

A group of aides who work around the cloakrooms and see the Senators with their hair down, so to speak, drew up a list of 1973's ten best—and worst-dressed.

Number One on the dapper scale is John Tower. The Texas Republican, a former teacher, wears detachable collars and has his suits tailored in London.

By contrast, socially prominent Democrat Claiborne Pell tops the frump list. He once wore the same seersucker suit five days running—

[Laughter.]

and, according to a colleague, "looked like he was born in it."

The wild garb of Wyoming's Gale McGee and Nebraska's Carl Curtis titillates the galleries, but neither made the lists.

McGee's lurid orange shirt, wide-lapelled, brown-striped suit and electric tie stuck out like a sore thumb at the recent swearing-in of Vice President Gerald Ford.

When McGee switched to a "subdued" outfit—navy blue with a psychedelic jungle-patterned shirt—for the White House Christmas prayer service, he disappointed his fans.

"I expected him to look like Santa Claus," a senator complained.

Curtis was known as a dour type until a year ago, when he married for the second time. His new wife, the former Mildred Genier, said she wants "Carl to be noticed on the Senate floor"—and he is.

Wreathed in smiles these days, Curtis has blossomed out in mod finery. He drapes his stocky form in geometric double-knits, pointed yokes, back pleats, flared pants and ascot ties.

Such trends are revolutionary for the Senate, which not too long ago had the sergeant-at-arms evict an aide in a loud plaid suit.

By and large, the ten "best-dressed" are conservative, neat dressers.

The "judges" professed to be offended when Illinois' Adlai Stevenson wore a turtle neck sweater on the floor, and Michigan's Philip Hart and Arkansas' William Fulbright showed up in "Hush Puppies."

[Laughter.]

Tower says he doesn't "make a fetish" of clothes, that "anybody can dress tastefully by putting in a few minutes' thought."

Following him in the peacock parade are Connecticut's Abe Ribicoff, who goes in for pin stripes and expensive shoes, and South Dakota's George McGovern, who went, "Ivy League" in the 1972 campaign, aided by fashion advice from his wealthy finance chairman, Henry Kimelman.

Flashiest and handsomest on the list are Oregon's Mark Hatfield and Massachusetts' Edward Brooke.

Hatfield was one of the first to wear a Nehru jacket and ruffled evening shirts.

Brooke is less innovative, but recently appeared in a large, racy Glen Plaid. He brightens somber suits with loud ties, a favorite being a zigzag red-white-and-blue print. Brooke's staff had tried in vain to steer him away from it for television appearances.

Around the Capitol Brooke looks every inch a senator, but at Martha's Vineyard, where he summers, he loafs in windbreaker, sneakers and floppy hat.

Other "best-dressed" senators are South Carolina's Fritz Hollings (mostly gray suits to match his prematurely gray hair), Hawaii's Daniel Inouye (a daily shoe shine), Virginia's Harry Byrd (coat always buttoned), Delaware's Joseph Biden, and Ohio's William Saxbe, newly confirmed Attorney General.

When Pell was informed he tops the "slob" list, he recalled the advice given him by a senior senator: "There are two kinds of people around here, work horses and show horses."

"I'm not a show horse," Pell said.

Next on the "worst-dressed" list is North Dakota's Quentin Burdick, whom the "judges" tagged "always rumpled, with dandruff and soup stains on his tie."

[Laughter.]

Add to the frumps: Washington's paunchy Warren Magnuson, who wears costly suits but is usually sloppy and flushed; majority leader Mike Mansfield, described as "uncoordinated;" New Jersey's Clifford Case; Iowa's Harold Hughes; New Hampshire's Norris Cotton ("he looks like an oversized gunny sack").

[Laughter.]

California's Alan Cranston, Michigan's Hart and Mississippi's John Stennis.

For those who want to look like a senator in 1974, Tower revealed his London tailors are Anderson and Shepard. For stay-at-homes, Brooke's haberdasher is Mr. Sid in Newton, Mass.

Mr. President, I believe it is excellent for us to know how we look to other people. I want to congratulate the 10 best-dressed men in the Senate. I see some of them thus designated seated here now.

Certainly the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) is always neat and dapper.

I am sorry that the distinguished Senator from Texas (Mr. TOWER), at the top of the list of the best-dressed Senators, is not in the Chamber, but I understand that he will be here in a moment.

I am sorry that the distinguished assistant majority leader, Mr. ROBERT C. BYRD, did not make either list, because there has been some discussion that it would not be too bad to be on the worst-dressed list.

I am sorry that the Senate as a whole cannot enjoy the vision of how it looks to our visitors in the galleries.

I am happy to note that the distinguished Senator from Texas (Mr. TOWER) has just entered the Chamber and has taken his seat. Let me congratulate him on having been designated as the best dressed Senator in the U.S. Senate—[laughter]—who gets his clothes from a London tailor.

Mr. President, I, of course, am talking on a point of personal privilege at this moment because I think it is rather unkind to pick on an old man like myself and say "NORRIS COTTON—'he looks like an oversized gunny sack.'" [Laughter.] My feelings are a bit hurt, but on the whole, I believe an attempt has been made to be fair and just.

I do not mind being listed along with the distinguished majority leader, MIKE MANSFIELD, and with my friend WARREN MAGNUSON and with men like JOHN STENNIS. I do not think we are such horrible looking objects, considering our age, weight, size, and the life we have led.

I ask unanimous consent to have this fine article printed in the RECORD at this point. I hope that Senators will read it carefully and enjoy their position, whatever it is.

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

THE 10 BEST AND WORST DRESSED U.S. SENATORS

(By Vera Glaser)

WASHINGTON.—A group of aides who work around the cloakrooms and see the Senators with their hair down, so to speak, drew up a list of 1973's ten best—and worst-dressed.

No. 1 on the dapper scale is John Tower. The Texas Republican, a former teacher, wears detachable collars and has his suits tailored in London.

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The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). In his capacity as a Senator from Virginia, the Chair thanks the distinguished Senator for enlightening the Senate.

Mr. COTTON. I will not take any more time on such a frivolous matter.

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

Mr. COTTON. I am happy to yield.

Mr. ROBERT C. BYRD. Mr. President, I join my colleagues in recognizing the appropriateness of the Senator's rising at this time on a point of personal privilege. I think we all share his great indignation—affected though it is—at the remarks that were carried in the column.

Let the record show, Mr. President, that it was only after several Senators had retired in high dudgeon to the cloakroom, and after lengthy and heated discussion, that they were persuaded finally by the magnanimous Senator from New Hampshire (Mr. COTTON), and others of us, not to offer a resolution expressing their great and justifiable umbrage at the distinguished senior Senator from New Hampshire's attire's having been characterized in such a way as to make him appear oversized, gunny, or sacky. Fortunately, those of us who are acquainted with the very capable, charming, and lovely author of the column were able to prevail, by wise arguments, on our highly agitated colleagues to restrain their feigned anger and refrain from pressing any such resolution—at least temporarily until tempers could cool and reason be restored. One crisis at a time is enough.

But, in doing so, the able senior Senator from New Hampshire and others of us, quite artfully used the pretext, I must admit, in arguing against the offering of such a resolution, that to include the words "oversized gunny sack" in such a legislative vehicle might provoke a spate of gun legislation. [Laughter.]

Mr. PROXMIRE. "Gunny" legislation.

Mr. ROBERT C. BYRD. Indeed, yes, "gunny" legislation.

Mr. COTTON. The Senator from New Hampshire inserted this in the RECORD in the pure spirit of good-natured fun. He is not offended in the least. I have never met the lady who passed judgment. I am sure that she has good judgment, and I am sure that if I had the

pleasure of her acquaintance, there would be no question of any resolution being offered.

I do not want to say anything that would embarrass my distinguished friend from Texas; but, after serving 20 long years in this body, it is a little humiliating to get up and put on a reasonably clean shirt every morning and come over and try to act dignified and then be told that you look like an oversized gunny sack and that the really dapper fellow in the Senate is the distinguished Senator from Texas. [Laughter.]

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

Mr. COTTON. I yield.

Mr. TOWER. Mr. President, I find myself somewhat in a state of embarrassment about all this. I had absolutely nothing to do with all this, and I was very surprised to read this column. It has probably done me irreparable political damage in my State, because people in Texas do not necessarily cotton to people who patronize London tailors; and the Senator from New Hampshire has already announced that he is not going to run again. [Laughter.]

Mr. COTTON. I apologize to the Senator.

PRISONER OF WAR AND MISSING IN ACTION TAX ACT

The Senate continued with the consideration of the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes.

Mr. PROXMIRE. Mr. President, I hesitate to bring the Senate back to the prosaic problem of trona from the delightful visit to the Senate's haberdashery. [Laughter.]

I have in my mind the latest letter from the Treasury Department on the trona issue, and it is very emphatic and clear. It is so important that I should like to read the letter to the Senate. We know that the Treasury Department is under the same kind of pressure from interested taxpayers who would like relief of one kind or another as are Members of Congress are. This is what the Treasury Department had to say:

> We are aware of the efforts being made to amend section 613 to treat the calcining of trona ore as a "treatment process considered as mining." The importance of this issue to the entire matter of percentage depletion for hard minerals persuades me to put our views in writing for you.

This is exactly what I think is a crucial issue here. The amount involved here can be great, but the precedent can be serious; because if we permit the depletion to be applied to something other than the extraction of the mineral, from the soil, then we get into difficulties, because there can be no end to it.

> The process involved here is "calcining"—the process referred to in section 613(c)(5)—although in this specific industry it is sometimes also called "decarbonization." It involves heating the recrystallized pure trona to drive off water of crystallization and chemically bound carbon dioxide. It involves both a chemical change and thermal action, also as referred to in section 613(c)(5).
>
> We have labored long and hard over the past two years to rewrite the section 613 regulations to carry out the intent of Congress in 1960 and to honor our commitments to both taxwriting committees both when the legislation was under consideration and since then. I believe we have satisfied both objectives. We have attempted to provide a permanent workable framework for resolving future depletion issues without the controversy of the past, the need for repeated legislative changes, and the uncertainty that heretofore existed. As much as possible, we have sought to provide general standards or principles for resolution of specific cases.
>
> Perhaps the most important distinction in our regulations is the differentiation for all minerals, except as noted below, between mining and manufacturing based on whether there are chemical changes as a result of special forces such as heat treatment—precisely what is involved in "calcining." We made no exceptions, except as clearly ordered by Congress in the law for specified minerals. If this distinction is not maintained, it is difficult to resist claims by other taxpayers that similar processes should be allowed for cement, gypsum, certain limestones, lightweight aggregates, and certain other minerals. All are treated with a similar heating process which we have consistently refused to treat as mining.

So if we open up the loophole here, it means that we are establishing a precedent for the Treasury. It will make it even harder for us in Congress to resist extending the depletion allowance further and making it less vulnerable in the future.

> We acknowledge that treatment processes similar to calcining were allowed by statute to producers of magnesite, phosphate rock, and quicksilver ores. Those processes, however, were allowed on an ad hoc basis at a time prior to the final development and acceptance of the present basis for distinguishing mining processes from manufacturing processes. Accordingly, those individual examples do not provide appropriate precedents for this particular change.
>
> When the Treasury's proposals were being considered by the Ways and Means Committee in 1959, the cement industry argued that it should be allowed calcining because the statute specifically allowed the treatment for these minerals. Their argument concluded:
>
> "Is there any logical basis which justified the exclusion from the mining category of a thermal action process—burning in a rotary kiln—in the cement industry, and the inclusion of essentially identical processes—burning, furnacing, and nodulizing in rotary kilns—in the magnesite, quicksilver and phosphate rock industries." Mineral Treatment Processes for Percentage Depletion Purposes, Hearings before the Committee on Ways and Means, 86th Cong. 1st Sess., 1959, at p. 164.
>
> Congress rejected this argument by the cement producers at that time and allowed only those processes up to the kiln. Any broadening of the exception to the general prohibition against calcining can only have the effect of providing other mineral producers with an argument that they also should be allowed to calcine, just as the ment producers argued in 1959.
>
> We are aware of the trona producers' argument that they have an equitable basis for being allowed this benefit because of representations that they feel they received during congressional hearings in 1959. We have examined the record carefully on this point, including the treatment of trona prior to 1959 and discussions between trona representatives and IRS officials in Washington. We have concluded that while they may have hoped they had the matter resolved in their favor, they had no sound basis for relying on that treatment.
>
> Thus, it seems reasonably clear that the Treasury Department's response to Congressman Utt's question was not based upon a complete understanding of the process being described by Mr. Utt. Mr. Utt asked if there was "anything in the bill that would prohibit the present practice of allowing decarbonization on soda ash." Mr. Lindsay inquired if that was an established process, to which Mr. Utt replied that it was. Mr. Lindsay stated that no change in established practices was intended.
>
> It is apparent that Mr. Lindsay was relying on Mr. Utt's characterization of the decarbonization process as one which was currently being allowed. He was not aware, however, that the process was being allowed *only* because it was necessary to obtain the "commercially marketable product," soda ash, under the exact language of this amendment proposed to strike from the statute. In other words, this was not a process that was being allowed as a recognized concentration process.
>
> To illustrate this point more clearly, consider the situation at that time concerning cement. At that particular time the Service had issued a TIR stating that it would no longer litigate the cement cases in view of the denial of certiorari in *Merry Brothers* and *Dragon Cement* cases. Thus, the Service administrative practice at this time was clearly to allow calcining of cement, but the legislative proposal clearly would prohibit that result. Other examples along these same lines are also available.
>
> We have attempted to deal fairly with the trona producers by making our policy of refusing to treat decarbonization as mining prospectively only. Far too much is involved here in principle to base a policy on such a slender support as that 1959 exchange.

That is, all the advocates of this amendment are basing their argument on. I go back to the letter, which states:

> Finally, allowing this process to trona producers will discriminate against other producers of soda ash who manufacture their product through the use of admittedly nonmining processes, and consequently will not receive a similar tax benefit. Thus, incorporation of this provision in the statute will give trona producers a competitive advantage over those companies which, at the present time, produce over half of the soda ash sold in the country. Such a competitive advantage is not appropriate.
>
> You will understand why we in Treasury feel very strongly we must resist any amendment to the Code that will allow calcining, other heat treatment, or other processes resulting in a chemical change as mining except as the statute *specifically* requires it. These distinctions are the basis of our new "general standards" regulations. Our regulations, we believe are sound; they are well accepted by all involved and have elicited no serious protests (except in the present matter) from any side. I repeat that they adhere to all prior Treasury assurances to the tax writing committees; in our view, the trona representatives had no reasonable basis for such an assurance from the exchange in the 1959 hearings.

Then, the letter concludes with this sentence:

> The clear line between mining and manufacturing which we have attempted to elaborate must be preserved. Any exceptions for specific minerals will undermine the integrity of the statutory concept and our regulations.

Mr. President, I do not know how the Treasury Department could be more em-

phatic or clear than they are here. They say this goes to the integrity of the tax code. They are very specific in opposing it. They point out it would result in unfair discrimination.

Mr. President, I yield the floor.

Mr. HATHAWAY. Mr. President, I agree with the excellent statement made by the Senator from Wisconsin. I would like to say that we are currently spending through the "back door" anywhere from $60 to $80 billion a year through our Internal Revenue Code. What I mean by this is that through various deductions that are allowed for economic or social reasons the Federal Government does not collect anywhere from $60 to $80 billion. I am not including in this amount deductions that are allowed to businessmen for the cost of doing business. Many of these deductions are designed to provide incentives to industries, such as the oil industry and the mining industry to help them defray the cost incurred in the risk of exploring for oil or other minerals. I am not against tax incentives per se. I will probably support some of them that will be offered today when we finish the committee amendments. I think that in many instances these incentives are warranted and are very useful for social or economic purposes.

But over the years, many of the so-called tax incentives no longer serve the social or economic purposes for which they were originally designed. Unfortunately, in view of the fact that Congress does not reexamine the Internal Revenue Code on a regular and frequent basis, many of the deductions remain in the code long after their usefulness has expired. It is at that stage that we commonly refer to the erstwhile tax incentives as loopholes. One of the alleged loopholes is the depletion allowance, which has come under a great deal of attack over the past few years.

I think it was back in 1969 that Congress reduced the oil depletion allowance from some 27 percent to some 22 percent, and the debate which was recorded at that time clearly reflects that there was a great deal of sentiment against this allowance and a great deal of questioning as to whether the allowance should be continued at all.

Although I feel hesitant to hurt the industry which the distinguished Senator from Wyoming (Mr. HANSEN) seeks to protect, it seems to me that at this stage, when we are reexamining the depletion allowance as it applies not only to mining but also to oil, to timber, and to other industries as well, we certainly should not be expanding the depletion allowance, but rather be in the position of seeing what we can do to contract it and even, perhaps, to provide an alternative tax incentive to cover the risks of this particular industry.

I know that the Senator from Wisconsin (Mr. PROXMIRE) suggested, back in 1969, that there be a tax credit for the oil industry for new exploration because it was shown in the course of the debate at that time, as I am sure it would be shown in the course of debate today, and probably today to a greater extent because the price of oil, as we all know, has gone up considerably, that the oil depletion allowance had not really resulted in being a great incentive for the exploration for new sources of oil.

So I shall oppose this amendment on the ground that we should reexamine the depletion allowance at this time and certainly should not be voting for an amendment that will expand that allowance, especially when it does not really fit within the rationale of allowing a depletion allowance in the first place, namely, to compensate the miner for the risk he was taking in extracting the ore.

This amendment is going to cover the subsequent treatment of the ore, in which process I do not imagine there is the risk that Congress originally conceived should be compensated for by allowing the depletion allowance for mining in and of itself.

I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. HATHAWAY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HARRY F. BYRD, JR. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the pending amendment be laid aside temporarily and that the Senate proceed to the consideration of other committee amendments.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. Mr. President, I understand the request is to lay this amendment aside, with the understanding that we will go to it a little later?

Mr. HARRY F. BYRD, JR. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the next division of the last committee amendment.

The assistant legislative clerk read the division of the committee amendment as follows:

SEC. 10. APPLICATION OF SECTION 82 AND SECTION 217 TO MEMBERS OF UNIFORMED SERVICES.

(a) IN GENERAL.—Notwithstanding the provisions of section 82 (relating to reimbursement for expenses of moving) and section 217 (relating to moving expenses), of the Internal Revenue Code of 1954, the Secretary of the Treasury, in the administration of those sections, is authorized—

(1) to enter into an agreement with the Secretary of Defense under which the Secretary of Defense will not be required to withhold tax on, or to report, moving expense reimbursements made to members of the uniformed services;

(2) to permit any taxpayer who is a member of the uniformed services not to include in adjusted gross income the amount of any reimbursement in kind of moving expenses made by the Secretary of Defense; and

(3) to permit any taxpayer who is a member of the uniformed services to deduct any amount paid by him as moving expenses in connection with any move required by the Secretary of Defense, in excess of any reimbursement received for such expenses, without regard to the provisions of section 217(c) (relating to conditions), to the extent it is otherwise deductible under section 217.

(b) DEFINITIONS.—For purposes of this section, the term "uniformed service" has the meaning given it by section 101(3) of title 37, United States Code, and the terms "adjusted gross income" and "moving expense" have the meanings given them by sections 62 and 217(b), respectively, of the Internal Revenue Code of 1954.

(c) EFFECTIVE DATE.—The provisions of this section shall apply with respect to taxable years ending before January 1, 1975.

Mr. PROXMIRE. Mr. President, I understand the last amendment has application to moving expense provisions for members of the uniformed services. Is that correct?

Mr. HARRY F. BYRD, JR. The Senator is correct.

Mr. PROXMIRE. May I ask the manager of the bill, if I may, what effect, if any, it would have on the Treasury? It is my understanding the effect is minimal or none.

Mr. HARRY F. BYRD, JR. The amendment will not have any effect on revenues. It continues existing regulations for 1 more year.

Mr. PROXMIRE. And the Treasury does not oppose this amendment?

Mr. HARRY F. BYRD, JR. So far as I know, the Treasury does not oppose the amendment.

Mr. PROXMIRE. Would this be any kind of precedent that might apply in other areas which might cause revenue loss? Is there any evidence on that?

Mr. HARRY F. BYRD, JR. I do not think it would, for the reason that it merely continues a moratorium that has already been put into effect by the Internal Revenue Service. It would continue the moratorium for 1 more year, that is, until the end of calendar year 1974, and during that interim the Finance Committee has instructed the staff of the Joint Committee on Internal Revenue Taxation to make a study of the matters under question and report back to the committee.

Mr. PROXMIRE. It is my understanding that was the purpose, and I certainly have no objection to that. The understanding would be, then, that the committee would be in a position, and the Senate and the Congress would be in a position, to act in the coming year, so that this moratorium would not go on indefinitely, and preferably would be able to act on it before the end of 1974. Is that right?

Mr. HARRY F. BYRD, JR. The Senator is quite right. As a member of the committee, I hope the staff of the Joint Committee on Internal Revenue Taxation will render a report to the committee at an early date, and then that the Finance Committee will act, one way or another, on the matters under discussion.

As the Senator from Wisconsin knows, the Tax Reform Act of 1969 made a series

of revisions in the tax provisions with respect to the moving expenses of those in the armed services. Some of the changes broadened the act as it affected military personnel, and some added restrictions. Those who work in the armed services and the Defense Department say the changes will create hardship, so that the Internal Revenue Service has decreed a moratorium. The purpose of the amendment now pending is to continue the moratorium until the end of the calendar year, so that the staff of the Joint Committee on Internal Revenue Taxation may study the matter.

Mr. PROXMIRE. I thank the Senator. I have no objection.

Mr. HARRY F. BYRD, JR. If there is no further comment, Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the division of the committee amendment.

The division was agreed to.

The PRESIDING OFFICER. The clerk will state the next division of the committee amendment.

The assistant legislative clerk read the next division, as follows:

SEC. 11. DISTILLED SPIRITS FROM PUERTO RICO OR THE VIRGIN ISLANDS.

(a) IN GENERAL.—Section 5008 (relating to abatement, remission, refund, and allowance for loss or destruction of distilled spirits) is amended by—

(1) inserting "or section 7652" in subsection (b)(1) after "the tax imposed by this chapter";

(2) striking out "under section 5001(a)(1) or under subpart B of this part" in subsection (b)(2), and inserting in lieu thereof the following: "under section 5001(a)(1), subpart B, this part, or section 7652";

(3) inserting "or section 7652" in subsection (c)(1) after "section 5001(a)(1)"; and

(4) inserting "or section 7652" in subsection (d)(1) after "section 5001(a)(1)".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the loss or destruction of distilled spirits occurring after the date of enactment of this Act.

The PRESIDING OFFICER. The question is on the division of the committee amendment.

Mr. PROXMIRE. Mr. President, I understand that this amendment is an attempt to correct a situation which adversely affects parts of this country, Puerto Rico, and the Virgin Islands, and simply puts their industry on the same basis as the industry within the 50 States. Is that correct?

Mr. HARRY F. BYRD, JR. The Senator is correct. The Treasury does not oppose the amendment. There will be no loss of revenue.

Mr. PROXMIRE. There is no cost to the Treasury. Whatever cost there is, it is minimal, and it is to Puerto Rico and the Virgin Islands, and they have indicated their support. Is that correct?

Mr. HARRY F. BYRD, JR. That is correct.

Mr. PROXMIRE. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the division of the amendment.

The division was agreed to.

The PRESIDING OFFICER. The clerk will state the next division of the committee amendment.

Mr. HANSEN. Mr. President, I ask unanimous consent that my staff assistant, Mike Shoumaker, may be permitted on the floor during debate on this matter.

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

The assistant legislative clerk read the next division of the committee amendment, as follows:

SEC. 12. REDEMPTION OF STOCK WITH APPRECIATED PROPERTY.

(a) IN GENERAL.—Section 311(d)(2)(A) (relating to appreciated property used to redeem stock) is amended by inserting after "owns" the following: "(directly or constructively under the rules of section 318(a), which shall apply in determining ownership of stock for purposes of this subparagraph to the same extent and in the same manner as such rules apply for purposes of section 320(b)(3))".

(b) CONFORMING AMENDMENT.—Section 318(b) (relating to cross-references) is amended by redesignating paragraphs (4), (5), (6), (7), and (8) as paragraphs (5), (6), (7), (8), and (9), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) section 311(d)(2)(A) (relating to taxability of corporations on distributions of appreciated property in redemptions of stock);".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to distributions made after the date of enactment of this Act.

The PRESIDING OFFICER. The question is on agreeing to the division of the amendment.

Mr. HATHAWAY. Mr. President, I would like to ask a question with regard to this amendment. This is the one with respect to using appreciated property of a corporation to redeem its own stock. Is that correct?

Mr. HARRY F. BYRD, JR. That is the pending amendment.

Mr. HATHAWAY. I understand the purpose of section 311 of the code which allows a corporation to give property in exchange for stock to a stockholder who has a 10-percent interest without the corporation paying any tax on the appreciated value of the property is for effecting reorganization, because it is assumed that with a person with a 10-percent or more interest this would be the situation.

Mr. HARRY F. BYRD, JR. That is generally correct.

Mr. HATHAWAY. Is there any other purpose connected with this allowance for a shareholder who has a 10-percent or more interest?

Mr. HARRY F. BYRD, JR. I do not know of any.

Mr. HATHAWAY. It seems to me that that purpose in and of itself is not the best one for making the allowance. The corporation gets off without paying any tax whatever on the appreciated value of the property it exchanges for the individual stock.

The amendment proposed by the committee would put that purpose on even more shaky ground by, in effect, reducing the percentage share that the individual has to have in order to qualify for the exemption from the tax on the appreciated property. An individual under the committee amendment, if he had only 1 percent share in the corporation but if there was 9 percent additional that was distributed to people over whom he is deemed to have control under the Internal Revenue Code, such as his wife, his issue, et cetera, would be covered. In that situation where he, in effect, has only 1 percent of the stock, we are going to allow the same tax break. It seems to me that is extending the tax break far beyond where it ought to be.

I am really not in favor of extending it to where it is now, at 10 percent.

Mr. HARRY F. BYRD, JR. May I say that under the present law the restrictive ownership rules apply for purposes of determining if the redemption of the shareholder's stock is in complete termination of his interest.

This amendment applies the same restrictive ownership rules for the purpose of determining whether the shareholder has a 10-percent interest in the corporation.

Mr. HATHAWAY. I understand that. However, under the rule as it is now, an individual has to have 10 percent on his own, and then he has to give up all of his holdings plus those others where he has constrictive ownership.

Mr. HARRY F. BYRD, JR. The Senator is correct.

Mr. HATHAWAY. But under the proposal of the committee, the individual could have 1 percent and an additional 9 percent could be under constrictive ownership, and that would qualify him for the exemption.

Mr. HARRY F. BYRD, JR. The additional 9 percent would have to be redeemed as well as the individual's 1 percent.

Mr. HATHAWAY. I understand that. However, it expands the loophole even greater than it is at the present time. I think that even with the 10 percent, it is on shaky ground. To expand it further, I think, is unjustified.

Mr. PROXMIRE. Mr. President, will the Senator yield.

Mr. HATHAWAY. I yield.

Mr. PROXMIRE. The critical question here is, Who is this for? Why are we doing it? Let me see if I understand the amendment. The Senator from Virginia and the Senator from Maine obviously understand the amendment.

This amendment would expand the definition of a major shareholder to include a person who owns of a total of 10 percent directly or indirectly through close relatives, partnerships, and corporations which are related to the shareholder. These attribution rules are defined in section 318 which attributes ownership by individuals and entities related to one another for the purposes of certain transactions. The effect of this is to increase the number of these tax-free redemptions for corporations by making it easier to qualify for the special treatment.

As the law is presently written, the corporation must completely redeem the major shareholder's interest in the corporation, including his indirectly held interests under the 318 attribution rules. This was intended to insure that the shareholder did not retain control of the corporation by indirect means.

The proposed amendment to section 311 would make section 318 attribution apply to both definitions of ownership, ostensibly to make the rules more equitable. However, it is not really a question

of equity since there are no shareholders currently under any obligation to meet the complete termination test of 311 and 318 for any other reason except to allow the corporation to benefit from this loophole. Thus, as it stands, 311 does not work a hardship on any redeeming shareholders. It merely provides a tax break to a corporation when it does certain defined shareholder redemptions.

The amendment, by expanding the definition of a major shareholder, would allow a corporation to take advantage of a loophole that is not now available to it. I presume that the amendment would have a revenue effect, because it would lose money. And it would offer an opportunity for some obviously well-to-do stockholders and taxpayers to gain from it.

It would seem to me that before we act favorably on the amendment, we ought to have some notion of who benefits from it.

I understand the author of the amendment has said that only two or three people would benefit. We ought to know who they are and how much benefit they will receive before we act.

Mr. HARRY F. BYRD, JR. Mr. President, as far as could be determined, this amendment would have a negative effect. As far as knowing who would benefit, I do not know.

Mr. PROXMIRE. Mr. President, I understand that Mr. Dale Wickham testified in 1973 on behalf of several Illinois people who are stockholders of closed corporations.

I wonder if we could get a list of them and how much they would benefit.

Does the Treasury have a position on this matter?

Mr. HANSEN. The Treasury says the application of the constructive ownership rules is inconsistent in this case.

Mr. PROXMIRE. Mr. President, does the Senator have a letter from the Treasury?

Mr. HANSEN. I do have a letter. I would be glad to supply that for the RECORD, but I do not have it with me.

Mr. PROXMIRE. The Senator is the author of the amendment. Would the Senator enlighten the Senate as to who would benefit from it?

Mr. HANSEN. I cannot give specific names. I would be happy to try to get such information as I can. However, I really question this. I do not doubt at all the right of the Senator to ask the question. However, it would seem to me that the principle of taxation is what we should be considering here and not the names of the persons who may be affected one way or the other.

Mr. PROXMIRE. Except that if there are only two or three beneficiaries in the country, the effect on the Treasury would not be enormous. However, the benefit to the individuals could be very great indeed. And I think that might be a proper question to look into.

Mr. HANSEN. Mr. President, if the Senator from Wisconsin would be inclined to be persuaded one way or the other by this information, I could understand the importance of that question.

Mr. PROXMIRE. Perhaps it ought to come in through the private bill route, if it does not have a uniform or useful application.

Mr. HANSEN. I am sorry that I do not have the exact information which the Senator desires.

Mr. PROXMIRE. What would be the effect of this?

Mr. HANSEN. It has a negligible effect on the Treasury.

Mr. PROXMIRE. What does that mean?

Mr. HANSEN. Those are the words of the Treasury. They would have to interpret them. I suppose it is minimal.

Mr. PROXMIRE. One provision of this amendment, I think the next amendment, No. 6, would have a cost of $10,000 in total. Would this amendment have a lesser effect? If it is less than $10,000, I think we might not have so much objection. However, we would still be opposed to it.

Mr. HANSEN. I think it would also be fair to say that with respect to the individuals that could be affected by it, there is no way for me to know. I do not think I can respond to the Senator's inquiry with the names of people who might be affected. I have no possible way of knowing.

Mr. PROXMIRE. I do not think I can understand the equity involved here. Is the equity that he would not be able to take a capital gain when he makes a sale?

Mr. HANSEN. The equity is that if the present provisions are right, this amendment further clarifies that position, and is entirely consistent with it. If you object to the present law, that is another matter; but if the present law remains as it is, it is my contention that this amendment should be enacted in order to treat everyone fairly.

Mr. PROXMIRE. It may be a matter of objecting to widening the present law, and this amendment would seem to widen it and open it up to additional persons, so there would not be any point in it.

As I understand, Mr. Wickham, the witness who appeared before the House, said it would apply in Illinois to several Illinois trusts, and I assume in a country of this size and this variety it would apply in other States, too. I do not know, but it might very well.

Therefore, obviously it would cost some revenue to the Treasury, and we do not know how much that would be.

Mr. HANSEN. I think it would be helpful to point out to the Senator from Wisconsin that in the original drafting of the rule, this precise situation was overlooked in the attribution rule; it was just an error on the part of Treasury, and this is simply an effort to correct that situation.

Mr. PROXMIRE. Is Treasury requesting this, or is it requested by the private witnesses who appeared before us?

Mr. HANSEN. Treasury does not oppose the amendment.

Mr. PROXMIRE. But they are not requesting it?

Mr. HANSEN. I think the Senator is correct. The Treasury has not requested it. If they were requesting it, they would request it as a part of a technical amendment which would encompass many things.

Mr. PROXMIRE. Here is the difficult position we are in: The Treasury did not ask for this. The Senator assures us that the Treasury has no objection to it, but at any rate, counsel appears for unknown persons, it has an unknown effect; it has unknown ramifications, perhaps, in other States. We know it has some effect in Chicago, and we are asked simply to act on the basis of very, very limited information on something that may be costly, but we do not know how costly.

Mr. HANSEN. I could point out how it happened that I proposed this amendment.

The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). The Chair requests the Senator from Wyoming to use his microphone.

Mr. HANSEN. The reason that I did indeed introduce the amendment is that as a member of the Finance Committee, we have a number of people come to members of that committee seeking redress from situations in the tax law which may be unfair or inequitable.

Mr. PROXMIRE. I do not question that at all, and the Senator is absolutely right in doing that. I am sure he does it because he feels it is a bad provision.

Mr. HANSEN. Yes.

Mr. PROXMIRE. I have no question about that.

Mr. HANSEN. Then I was going to add further that if all of the defects in the law that might be pointed out by some of however many millions of taxpayers there are in the United States were to be embodied in this same bill, it would probably amount to 400 or 500 more technical amendments. But we put this amendment in, and it was considered by the Finance Committee, and in the opinion of the Finance Committee was equitable. It addressed a specific problem that was of concern to a number of taxpayers.

It goes beyond those who were represented before the Finance Committee and at one time or another it could be that innumerable people would run into the same situation.

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

Mr. HANSEN. I am happy to yield.

Mr. BENNETT. The way this appeals to the Senator from Utah is that if we are going to include all the ownership held by other members of a man's family in determining whether he has in fact terminated his interest in a company, in equity we ought to use the same measure to find out whether in fact he had 10 percent to start with. It seems to me if we are going to apply this constructive rule on one side of the equation, we ought to be prepared to apply it on the other side of the equation. That is the effect of the amendment.

Mr. HATHAWAY. Mr. President, will the Senator yield for a question?

Mr. BENNETT. Yes.

Mr. HATHAWAY. I suppose the effect is going to be that an individual who now has to have 10 percent-plus may include not only all of his own, but all of his constructive ownership; that is, the effect will be that an individual can have far less than 10 percent, as long as what

he owns plus what he constructively owns amounts to 10 percent.

Mr. BENNETT. Yes.

Mr. HATHAWAY. Whereas before we had a floor of 10 percent on the individual, now it can be 1 percent or less.

Mr. BENNETT. If we are going to use the constructive relationship on one side of the equation we ought to use it on the other side of the equation.

Mr. HATHAWAY. But the effect is to expand a loophole, or whatever you want to call it.

Mr. BENNETT. The effect is that you do equity to the man involved, and in the course of it, in some cases—I do not think it is necessarily a loophole. I do not think it should be in the law at all, if it were a loophole.

Mr. HATHAWAY. That is the next question I wanted to ask the Senator from Utah. What, exactly, is the purpose of having the 10-percent provision in section 311 at all?

Mr. BENNETT. It could be 5 percent, or 20 percent. The 10-percent figure is intended to insure that the stockholder who is going to get the property is a substantial stockholder of the corporation. This generally applies to closely held corporations.

Mr. HATHAWAY. I understand that.

Mr. BENNETT. In order to make sure that a man with one one-thousandth of the stock value cannot come in and say, "Well, give me that parking lot over there, and I will take it in exchange for my stock."

Mr. HATHAWAY. But because he is a substantial stockholder, is there some reason why the corporation should not pay a tax on the increase in value of the property which they give him for his share?

Mr. BENNETT. Apparently that decision was made in an earlier decision, and we are now talking about definitions, as far as I am concerned.

If the definition of what is to prove that he has actually gotten rid of his property is going to make sure that not only he, but his wife, children, uncles, aunts, and cousins got rid of theirs, too, I think they should have a share in determining whether he is a substantial stockholder.

Mr. HATHAWAY. What I am getting at is, in the one one-thousandth deal that the Senator mentioned, if the one one-thousandth shareholder gets property in exchange for his stock, then the corporation has to pay income tax on the appreciated value of the property it gives him. Now, what reason is there, when he holds 10 percent, that the corporation does not have to pay that tax?

Mr. BENNETT. I think the reason is that when he holds 10 percent or more, his identity and that of the corporation is substantially greater than when he holds only 1 percent. So, in effect, there is not so definite an example of possible—I do not want to say conflict of interests—but there is a more obvious identity when a stockholder holds 10 percent or more. If a stockholder holds 100 percent, there is obvious, complete identity between the corporation and the stockholder.

Mr. HATHAWAY. In fact, we tax him twice, so they have gone down to 10 percent.

Mr. BENNETT. They have gone down to 10 percent for the purpose of establishing where that break is.

Mr. HATHAWAY. This would go down even further, to make it clear.

Mr. BENNETT. This would then say, if we are going to judge him as a 10-percent stockholder and require him to get rid of the excess over 10 percent in order for him to qualify, then we have to count in whatever his relatives own to prove he is a stockholder at 10 percent.

Mr. PROXMIRE. Does this not clearly broaden some opportunities to eliminate the necessity for the corporation to pay a capital gains tax? For example, if I have a 2-percent ownership in a corporation and I have an interest in a trust, that is 8 percent—altogether 10 percent—under this new rule, I would qualify. Then if my stock is redeemed by the corporation, and in order to redeem it they pay me in property that has appreciated, and they paid $100,000 for the property, they pay me for the $1 million in stock in their appreciated property. Under this new amendment, they would not have to pay a capital gains tax on that appreciation. They would get stock worth $1 million paid for by appreciated property upon which they would not suffer an obligation to pay a tax on the $900,000 gain. So, this is a new loophole for the corporation; or, to put it another way, another advantage for the corporation—right or wrong?

Mr. BENNETT. The basic rule in the law is that the corporation does not realize income when it distributes its property other than inventory. That is the basic rule in the law. The Senator is saying that when they redeem a 10-percent stockholder, they are not allowed to go under the basic rule.

Mr. PROXMIRE. What I am saying is that any time a new 10-percent stockholder could qualify as a 10-percent stockholder, under this new amendment, the gain the corporation made on the sale of the property would not be considered as a gain and taxed as a gain. But ordinarily, it would be. It would be a redemptive cost and they would not have to pay the capital gains tax; otherwise, it would be considered the sale of that property, and they would have to pay a capital gains tax on the $900,000 in the example I gave; is that right?

Mr. BENNETT. The Senator and I disagree on this basic point. I think this is basically a question of equity. If we are going to judge one-half of the transaction on the basis of attribution, we should judge both halves of the transaction on the basis of attribution. That is what the committee decided.

Mr. PROXMIRE. If the corporation would benefit in the example I gave, under any circumstances, rather than the individual, and as I say, we have no information on how much this would cost. The Treasury indicates they do not think it would cost very much, but we do not know. There is a strong indication that it would cost a great deal—it could cost a great deal—several million dollars.

Mr. BENNETT. We could never amend a tax provision that does not create a benefit for someone and a loss for someone else on the transaction. In this case, it is probably fair to say that if there is a benefit, it is transferred to the individual from the corporation. It is interesting to me to find the Senator from Wisconsin fighting for the corporation against the individual.

Mr. PROXMIRE. No. It is the other way around. I am objecting to the fact that the corporation would be allowed to avoid a capital gains tax under the circumstances, in that they redeem the stock in a far larger group of stockholders. If the stockholder from whom they redeem the stock has an effective 10 percent, as will be more broadly defined here, then they can avoid a capital gains tax.

Mr. BENNETT. Because he is more nearly identified with the ownership of the business. As I understand, this applies largely to closely held businesses.

Mr. PROXMIRE. It would be less closely held if we pass this amendment. It would then apply to larger corporations less closely held, with 1-percent, 2-percent, or 3-percent stockholders rather than 10-percent stockholders. Therefore it would be opening it up to the bigger corporations.

Mr. BENNETT. We come to the question of, what is a stockholder? In half the definition, we say the stockholder is the individual and his wife and children and anyone else covered by the attribution rule. I fully believe that if we are going to say that on one side of the equation, we have to say it on both sides of the equation.

Mr. HATHAWAY. This sort of encourages, if we adopt this amendment, the shareholder's distributing shares to those who would be in constructive ownership and who would have to pay, presumably, less taxes on sales than the owner, because he would be in a higher income tax bracket. So the Federal Government would lose additional revenue as a result of that. Is that not true?

Mr. BENNETT. If we operated to try to change the tax laws on the theory that we reject every amendment that costs the Federal Government money, we could never eliminate an inequity. This is an inequity.

Mr. HATHAWAY. People relieve themselves of some taxes on the sale of stock by putting some shares in their children's name who are paying a much lower bracket than the father, for example.

Mr. BENNETT. We would take it out of both sides. If we want to take it out of both sides, then we can talk about equity. But it is not fair to count in the stock of the children, in making sure that they actually got rid of the 10 percent without counting in the 10 percent to determine that he qualifies.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the pending amendment be laid aside temporarily and that the Senate resume the consideration of the previous amendment.

Mr. BENNETT. Mr. President, if the Senator will withhold that for a mo-

ment, I should like to talk for just 1 minute to this particular subject.

I want to say that the corporation's basis goes over with the property. The taxpayer who gets it from the corporation has it at the corporation basis and he will have to pay the tax for himself. So the opportunity to collect the tax is still there.

Mr. KENNEDY. Mr. President, reserving the right to object, I should like to get some indication as to when this legislation might be further considered.

Mr. HARRY F. BYRD, JR. Is the Senator talking about the pending amendment?

Mr. KENNEDY. Yes.

Mr. HARRY F. BYRD, JR. My unanimous-consent request was this——

The PRESIDING OFFICER. The Senate will please be in order.

Mr. HARRY F. BYRD, JR. My unanimous-consent request was to lay the pending amendment aside temporarily and consider the previous amendment which had been laid aside temporarily and on which the yeas and nays have been ordered and that we vote on that amendment and then return to this amendment.

Mr. KENNEDY. I thank the Senator from Virginia for his explanation. I have no objection.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Virginia? The Chair hears none, and it is so ordered.

The question is on agreeing to the committee amendment, section 9.

On this question the yeas and nays have been ordered and the clerk will call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HARRY F. BYRD, JR. The question is on the adoption of the committee amendment. Is that correct?

The PRESIDING OFFICER. The question is on the adoption of the committee amendment to section 9.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from California (Mr. TUNNEY) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from North Carolina (Mr. HELMS), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 50, nays 38, as follows:

[No. 9 Leg.]

YEAS—50

Aiken	Bennett	Byrd, Harry F., Jr.
Allen	Bentsen	Byrd, Robert C.
Baker	Bible	Cook
Bartlett	Brock	Cotton
Beall	Buckley	Curtis
Bellmon	Burdick	Dole
Domenici	Hollings	Randolph
Dominick	Hruska	Roth
Eastland	Inouye	Scott, Hugh
Ervin	Johnston	Scott, William L.
Fannin	Long	Stafford
Fong	Magnuson	Stevens
Fulbright	McClellan	Talmadge
Gravel	McClure	Thurmond
Griffin	McGee	Tower
Hansen	Montoya	
Hatfield	Moss	
	Pearson	

NAYS—38

Abourezk	Huddleston	Nunn
Biden	Hughes	Packwood
Brooke	Jackson	Pastore
Case	Javits	Pell
Chiles	Kennedy	Proxmire
Church	Mansfield	Ribicoff
Clark	Mathias	Schweiker
Cranston	McGovern	Stevenson
Eagleton	Metcalf	Symington
Gurney	Metzenbaum	Taft
Hart	Mondale	Weicker
Haskell	Muskie	Williams
Hathaway	Nelson	

NOT VOTING—12

Bayh	Helms	Sparkman
Cannon	Humphrey	Stennis
Goldwater	McIntyre	Tunney
Hartke	Percy	Young

So the committee amendment to section 9 was agreed to.

Mr. ABOUREZK. Mr. President, with the recent disclosures about President Nixon's income tax problems, we are going to have our hands full convincing the public that the tax system works fairly.

They are already skeptical of the fairness of the tax system.

Too many taxpayers are convinced that the Federal income tax system is rigged in favor of special interests, huge corporations, and the super-rich.

Some of the provisions in this bill, if enacted, would add weight to that conviction and cost us even further erosion of public confidence.

On the other hand, some of these amendments are good and fair and decent.

The amendment dealing with tax treatment of POW's and MIA's deserves passage. The country owes these people and their families compassionate consideration for all that they have sacrificed and suffered.

Likewise the amendment to extend tax exemption to the Common Fund deserves passage. As I understand it, the Common Fund is an investment organization formed to provide professional investment advice and investment pooling to over 300 educational institutions who are individually tax exempt already.

I have serious questions about the rest of the amendments reported by the Finance Committee.

Foremost among them is the amendment dealing with the treatment process of decarbonation of trona ore. The question, as I understand it, is one of arriving at a determination of the point at which mining ceases to be mining for purposes of the mineral depletion allowance for trona ore, a raw material that is converted into soda ash.

I understand that the Department of the Treasury is strongly opposed to this amendment.

I understand that the amendment would reverse a 1971 Treasury ruling in order to permit trona mining firms to resume taking the mineral depletion allowance on the value added to trona by its conversion into soda ash.

The Washington Post reported last month that this amendment will mean an annual savings of $2 million in taxes for the trona mining firms.

The Tax Reform Research Group, a Nader-sponsored organization, has branded this amendment as blatant special-interest legislation.

I understand that there were no hearings on this. I understand also that although its initial Treasury drain is a modest $2 million annually, the industry plans to double its present output by 1980.

Decarbonization of trona for profit by private corporations may perhaps be a process worthy of public subsidy. Perhaps there are important reasons why the public purse should help pay for it.

I have not seen any such reason. The committee report fails to list an urgent, compelling reason of national priority for this amendment.

Even if it did, I would argue that the subsidy, if justified, ought to be aboveboard. If this process is worthy of public subsidy, then let us fund it through the normal authorization and appropriations process instead of burying it deep in the tax code where the public cannot find it.

If open public hearings show this subsidy to be justified, if they demonstrate that there is a compelling national reason to subsidize these companies, whoever they are, then fine, let us do it. But let us put that subsidy regularly on an annual appropriations basis.

I maintain the same position for all aspects and applications of the depletion allowance, and for most of our other tax subsidies to industry and private business. If they are worthy of public subsidy, they ought to weather the same appropriations process to which we subject funds for the war on poverty, for subsidized low-income housing and a host of other social programs.

We are slowly beginning to learn that depletion allowances do not work as advertised. If it is necessary to subsidize the giant oil companies in order to persuade them to pump oil out of the ground for profit, then let us make it an appropriated subsidy instead of a back-door hidden tax subsidy.

I also have some serious questions about the amendment to permit certain corporations to use appreciated property to redeem their own stock.

I understand that this amendment, because of the very narrow way it is written, would apply to only two or three companies.

We do not know who they are, and we do not know how much this amendment will cost.

Likewise we do not know whether there is a reason these few companies should be afforded a special break by the rest of their fellow taxpayers under the special circumstances which the amendment describes.

Until these facts are put on the public record, we should withhold this subsidy. And then we should begin to consider whether it belongs in the tax code or in the appropriations process.

The amendment to provide flood dis-

aster relief tax considerations to certain victims may be a worthy idea. As you know, we had quite a tragedy in Rapid City, S. Dak., my hometown, in 1972. We were very grateful for the generous assistance which the Congress and the Federal Government afforded.

One lesson we learned in that experience is that it is very hard to administer disaster relief on a fair and equitable basis. It is very difficult to do. Exceptions will always arise, and it is impossible to write legislation which will deal with all of them in a perfectly fair manner.

Having advocated maximum generosity in response to natural disasters, I support the intent of this amendment, but retain strong reservations about whether it will work fairly in its application.

My understanding of the preliminary language of this amendment was that it raised some questions of fairness. I understand that as originally written, the amendment would benefit mainly those with relatively high incomes, and would apply only in the case of the Buffalo Creek flood in West Virginia.

The question raised by this amendment is properly addressed in the tax code, since it deals with the treatment of casualty loss deductions which have already been taken on losses for which there was subsequent compensation as the result of a lawsuit.

My questions are these:

Is the amendment written to include other or future disasters in which the same circumstance might arise?

Is it written in a manner which provides equal consideration for all affected victims, no matter what their income?

This latter point will be the most difficult to resolve. Obviously families with low or moderate incomes did not benefit as much from the initial deduction as did those higher on the income scale, and thus the casualty loss deduction meant less to them in the first place.

My question is what safeguards have been built into this amendment to overcome the initial maldistribution of the casualty loss writeoffs.

Mr. President, my general conviction on the issue of tax reform is that it is hard enough to write legislation which accomplishes the first task of taxation: Raising revenue in a fair and equitable manner so as to engender the trust and cooperation of the taxpayers.

The difficulty of that task is greatly compounded when, in addition, we use tax deductions, credits, allowances and shelters to subsidize various functions, activities and groups of people, for whatever purpose.

Moreover, the use of the tax code to accomplish those subsidies removes them from routine public scrutiny. It diminishes our control of the amounts of those subsidies and their actual application.

If we are ever going to make our tax codes as fair as they could possibly be, we must begin by resisting the temptation of the back door subsidy.

H.R. 8214—TAX REFORM OR CHRISTMAS TREE?

Mr. McGOVERN. Mr. President, the Senate is now considering a House-passed measure that would be difficult for anyone to oppose. It came to the Senate as a relatively simple amendment designed to benefit the families of our POW's and MIA's. As one who introduced a tax measure for their benefit early last year, I am gratified that the Congress is taking action. Certainly the sacrifices these people have made more than justifies special compassion and sympathetic treatment.

Unfortunately, the bill now under consideration—H.R. 8214—is not in the same simple form it was when it passed the House. It has become what many have referred to over the years as a "Christmas tree" bill. Further amendments have been added to the basic provision that bear no relationship with the tax problems of our POW's and MIA's. Their obvious intent is to provide some new tax loopholes for a special few—including a wider depletions allowance for the oil interests.

Having been made aware of some of the inequities in our tax system, many Americans are probably wondering just how all the loopholes came into being. It seems we have a classic example of one of the methods used here before us today.

Given the uncertainty of the times we are living in and particularly the growing distrust among people toward their elected leaders, it seems to me we face a greater issue today than a few simple tax amendments. The credibility of the Congress is again being put to a test. At a time when comprehensive tax reform is badly needed, we find ourselves faced with the possible choice of voting against a needed and worthwhile provision to aid some of the most deserving citizens in the country in order to stave off still another attempt to riddle our tax codes with new loopholes.

Not only is it unfair to the families of our POW's and our MIA's, it is grossly unfair to every taxpayer in the country who does not have the benefit of a Washington based lobbyist or a high-powered tax lawyer. It is out of his or her pocket that must come the tax money to make up the difference between what so many moneyed interests do pay and what they should pay.

Mr. President, I want to associate myself with the effort undertaken by my distinguished colleague from Wisconsin. Senator PROXMIRE, as he has done so often in the past, has chosen to take the time to object to each specific new loophole as it is brought before the Senate. I want it to be known that his objections are mine as well.

TRANS-ALASKA PIPE LINE RIGHT-OF-WAY CONSTRUCTION TO BEGIN IMMEDIATELY

Mr. STEVENS. Mr. President, I should like to inform the Senate that the Secretary of the Interior has signed the permit for the right-of-way for the trans-Alaska pipeline.

Construction will begin immediately.

I am most grateful to Members of this body who worked so hard with me and my colleague from Alaska in order to secure a termination of the litigation which so long prevented the construction of the pipeline, which will ultimately mean that we will be able to bring down to what we call the South Forty-eight, 2 million barrels of oil per day. If we had it now, we would not have a crisis.

I thought the announcement should be made now and again I express my appreciation to all the Members of this body for their consideration during the long debate that took place last July in this body on the subject.

Mr. GRAVEL. Mr. President, I rise to make note of the fact that not 20 minutes ago I and other members of the delegation from Alaska were in the office of the Secretary of the Interior, and he signed before us the Alaska pipeline permit and received from the consortium that will build the pipeline a check in excess of $12 million to pay for the environmental studies that were done by the Government on a reimbursement basis.

This is probably the most concrete step to give heart to the American people that something can and will be done with respect to the energy crisis. This step is the only type action that can be meaningful to increase the supply of oil and to increase the energy to the American people.

I hope this action heralds additional activity by Congress to deal with the scarcities that we have, to provide a policy to bring about an increase in supply. That is the issue that will face Congress this year.

I think if we understand the complexities of the situation we can bring about a solution to this vexing problem which is certainly the most vexing problem we have had since the war.

Again, I think it is a great day for the State of Alaska. More important, it is a day that will go down in history for the American people, because a pipe is going to be laid down. There is a light at the end of the pipe. We hope that by 1977 that light will be closed and oil will be shipped to the people of this country.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

ORDER FOR PRINTING OF WATER RESOURCES BILL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the water resources bill, H.R. 10203, passed yesterday be printed as it passed the Senate.

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

PRISONER OF WAR AND MISSING IN ACTION TAX ACT

The Senate continued with the consideration of the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes.

Mr. HARRY F. BYRD, JR. Mr. President, I move to reconsider the vote by which the last amendment was adopted.

Mr. HANSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HARRY F. BYRD, JR. Mr. President, I yield to the Senator from Colorado.

Mr. HASKELL. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on section 19 of the pending measure.

The PRESIDING OFFICER. Without objection, it will be in order to order the yeas and nays.

Mr. HARRY F. BYRD, JR. Mr. President, does the Senator ask for the yeas and nays?

Mr. HASKELL. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I would like to make a general inquiry of the floor manager or the ranking minority Member with respect to the various provisions that are being considered. Can they give us some idea as to the number of days of hearings that were held on these various provisions and the number of witnesses who were called?

Mr. BENNETT. Mr. President, I have no specific memory.

Mr. KENNEDY. We are considering a bill today which involves a number of provisions. I think the Senate has learned and the American people have learned that there has been special legislation affecting the tax code in which special provisions have provided extraordinary loopholes that have only been paid for by the taxes of others.

I understand the Senator from Wisconsin and the Senator from Maine have gone into some of these provisions in detail. I did not have an opportunity to be on the floor when they did that. I do not want the RECORD to repeat the points they have brought up, but what I am interested in is the number of days of hearings that were held, the witnesses who were called, whether these matters are contained in the reports that were prepared, and whether we in the Senate have an idea of who is going to benefit from these provisions.

Obviously, some of the provisions, such as the flood disaster relief and some of the other programs, are easier to understand as to who will be the beneficiaries, but I am interested in these other matters, so that we can have some idea as to what procedures were followed and what precedents are being established and who is going to be the specific beneficiary of each provision.

Mr. HARRY F. BYRD, JR. If the Senator will yield, the bill itself is a House-passed bill, and, so far as I can recollect—and I will have the staff check it again—there were no hearings on the bill or on the amendments.

Mr. PROXMIRE. Mr. President, will the Senator yield at that point?

Mr. KENNEDY. I yield.

Mr. PROXMIRE. I am delighted that the Senator from Massachusetts has made this point. I think it is the most significant point made with respect to this bill. The fact is that we have had a series of amendments that had absolutely nothing to do with the substance of the bill itself, which is helping prisoners of war and their relatives and giving them some tax consideration. We have a whole series of provisions on which there were no hearings or record. All we have is a committee report which says very little about the substance of these far-reaching amendments before us that establish precedents.

For instance, in the action just taken by the Senate approving special depletion for trona, the Treasury itself says that the proposed tax exemption is precedent-breaking and is going to make it very hard for Congress not to act in the same way with respect to other minerals. And this has all been done on the basis of having no hearings on these amendments. I think the Senator from Massachusetts has made a vital point concerning the reasons for my objection to the bill.

Mr. KENNEDY. I appreciate the comment of the Senator from Wisconsin, who time and again has provided oversight, individually and as a member of the committees, on so many pieces of legislation.

May I ask the members of the committee whether they are willing to accept special provisions in the tax code as a matter of practice? Was it not of concern to members of the committee as to exactly who was going to benefit from many of these amendments? Were such questions asked? If they were, what responses were made? If they were not asked, can the members of the committee give the Senate some reason why they were not?

Were they relying on the record of the House? If they were relying on the record of the House, can the members of the committee tell Senators, on the basis of the House record, who the beneficiaries are going to be with respect to these particular provisions? Can they tell us the number of days of hearings that were held in the House of Representatives and who were called as witnesses in the House hearings?

I am one who likes to feel, in relationship to the committee system, in which I participate, that all members of committees on which I serve require that we have a complete record before the Senate; that we are obviously willing to take, evaluate, and consider the record that is made in the House of Representatives.

How many days of hearings were held in the House of Representatives on these provisions? How many witnesses were called? What does the record say about this? Can the able manager of the bill or the ranking member of the committee inform us as to these provisions?

Mr. HARRY F. BYRD, JR. I cannot give any specific information at this time as to the amount of time the bill itself was under consideration by the House of Representatives or by the committee in the House of Representatives.

Mr. KENNEDY. Is it the response of the Senator from Virginia that there have been no hearings—that the Senate committee has had no hearings; and that the floor manager cannot tell us the number of days of hearings that were held in the House of Representatives and the number of witnesses who were called? Can he tell us whether there were substantial points made by those who offered provisions or those who expressed reservations?

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

Mr. KENNEDY. I should like to give the Senator from Virginia a chance to respond to the comments I have made; then I will yield to the Senator from Wisconsin.

Mr. HARRY F. BYRD, JR. The Senator understands, of course, that the bill as passed by the House of Representatives deals with prisoners of war and those missing in action. The amendments which are being attacked on the floor of the Senate by the Senator from Wisconsin and other Senators were not a part of the House bill.

Mr. KENNEDY. The Senator is quite correct. We are all aware of the procedures that are followed by the Senate in attaching amendments to various pieces of legislation. The Senator from Virginia has pointed this out; and certainly some of us who sought to attach a campaign financing amendment to the debt limit bill remember the clear, soaring rhetoric of the Senator from Utah, who opposed attaching our proposal in that way.

I wonder why, if these particular measures are sufficiently meritorious, we would not have either a private bill introduced and considered and reported for the beneficiaries alone, rather than just tack them on to legislation dealing with prisoners of war, and have them become part of the tax code, capable of having unintended and unforeseen effects in the future.

Mr. HARRY F. BYRD, JR. Mr. President, I think none of these are major amendments insofar as their effect on the Treasury is concerned.

Mr. KENNEDY. Do we know that?

Mr. HARRY F. BYRD, JR. Yes; I think we can state that we know that so far as the information is concerned that has been submitted to us by the Treasury Department.

Mr. KENNEDY. Does the Senator have some response from the Treasury which indicates either what the loss would be from the committee amendments, or which particular corporations and companies would benefit from them?

Mr. HARRY F. BYRD, JR. Mr. President, if the Senator will refer to the report, each section ends with a statement as to the effect that each amendment would be presumed to have on the revenues of the Treasury. The Senator might refer to that, or I would be glad to do it. I have gone over it hurriedly, and I want to check before making a categorical statement. However, I do not know of any amendment that would have substituted effect on the Treasury.

Mr. KENNEDY. Does the Senator not

agree with me that at the time the Philadelphia Nun amendment was passed, Congress opened up an unintended loophole for the unlimited deduction for charitable contributions. I suppose we would have had approximately the same response then, that it was special legislation to look after a particular charity.

I suppose the Treasury response was that it would have a negligible effect on revenues. However, we all know that it had a tremendous effect and meant the loss of millions of dollars, which were eventually made up by the taxpayers in other ways.

I suppose that when the special provision for Louis B. Mayer was considered, we would have been told that this would have a negligible effect. We perhaps would have been told the same thing with regard to the special provision to provide a tax benefit for General Eisenhower on "Crusade in Europe." We know from past experience that Congress cannot write a tax fingerprint, limited to one individual or corporation. If the loophole is there, taxpayers will use it, sometimes totally rearranging their affairs to get the benefit, unintended though it may be.

Does the Senator find any place in the report where it mentions other companies or individuals who can benefit today, or the number of people who can benefit in the future under these provisions? Is that mentioned at any place? If it were, we would have a better idea and would have more complete information as to the real impact of these provisions, other than merely the general descriptions given in the explanation.

Mr. HARRY F. BYRD, JR. Mr. President, first of all, I want to disassociate myself with any of the cases the Senator from Massachusetts has mentioned. I am not familiar with the details of those cases. I am not even sure that I was in the Senate when some of them were enacted into law. I do not know. I do not want to become involved in those cases.

In this particular bill, the legislation as passed by the House was expected to result in a decrease in revenues of approximately $4 million spread over the next several fiscal years. The fact that the induction period requirement for certain prisoner-of-war benefits has been allowed to lapse as of June 30 means that there would have been an increase in receipts of approximately $12.5 million, primarily for 1974. With the changes made in the bill, this would not occur.

The Department of the Treasury agrees with the statement.

So, insofar as the bill passed by the House is concerned, the loss of revenue would be $4 million and the presumed increase of $12.5 million will not occur.

Now we come to the amendments that the Finance Committee included in the bill.

The committee amendments either have no effect, or a small or negligible effect, on existing revenues—as described in each case in the explanation of the provisions above—except in the case of the amendment dealing with the exclusion from the unemployment compensation program—less than $5 million—the amendment dealing with the tax treatment of tuition and educational expenses paid on behalf of members of the uniformed services—less than $10 million—and the amendment dealing with the treatment process of trona. Based upon the Treasury Department regulations this amendment is estimated to reduce revenues by about $2 million. However, the committee believes the treatment provided is a clarification of present law and therefore that this provision should not be viewed as resulting in a revenue loss.

So, that is the best information that I could give to the Senator as to the cost of the amendments.

Mr. PROXMIRE. Mr. President, would the Senator yield at that point?

Mr. KENNEDY. I yield.

Mr. PROXMIRE. The Senator from Massachusetts was correct when he indicated that the difficulty with this kind of tax action is that it may have consequences on the Treasury that we cannot foresee. The Treasury in considering the trona amendment said that it could be a precedent in many other areas. Obviously that could have an effect of $10 million or $20 million or more. The vacation deferral amendment will defer $25 million, lose that much in revenue for 1 year.

Furthermore, we have the unemployment compensation amendment. That is said to cost $5 million.

So, there is a substantial amount involved here. I wonder whether the Senator from Massachusetts would consider the possibility of moving to send the bill back to committee so that we could have hearings and develop a record and could have some basis for dealing with these measures, which could be very costly.

Mr. KENNEDY. Mr. President, I ask the Senator from Virginia and the Senator from Utah why it would not be a satisfactory resolution of the problem we are confronting here to provide at least a Senate hearing on these various provisions, so that we would have our own record in the Senate and have a thorough overall understanding of the short- and long-range implication of each of these provisions.

I wonder why this would not make sense as far as the Finance Committee was concerned and as far as the Senate is concerned.

Mr. HARRY F. BYRD, JR. Mr. President, I would say to the Senator from Massachusetts that certainly I would not want to agree to such a proposal in the absence of the chairman of the committee. The chairman of the committee is necessarily absent from the floor at the present time and will not be able to be on the floor for the remainder of the afternoon.

I would hope that the Senator would not make that motion while the chairman of the committee is absent.

I think that if the Senator will review the committee report, he will find that there are no major matters involved here insofar as large sums of tax funds are concerned.

The Senator may disagree with some of the principles involved.

Of course, that is the Senator's right. I am not sure that I am in agreement with all of the principles involved. I do not think that the revenue loss to the Treasury by virtue of these amendments would be very substantial.

Mr. KENNEDY. It seems to me that if we recommit this bill, the Finance Committee could resolve the issues quickly, in a day or two of hearings. The members of the committee could ask the Treasury Department about each particular provision, what the cost would be, what the long-range implications would be, and who the beneficiaries would be. Perhaps the beneficiaries themselves would have a chance to speak and make their own case. We would also have an opportunity for the representatives of public interest groups in the tax field to comment.

I do not think it would take a great deal of time. I think it could include a Treasury spokesman talking to each one of these points. Others familiar with the particular needs of the beneficiaries could justify the benefit and describe the particular exigencies they may be facing. In this way, the Members would have the kind of information to make a balanced judgment as to whether we think each or all of these matters are worthy of support.

I just wonder if this is a reasonable request. I would think the members of the Finance Committee themselves would like to have this type of information.

Mr. PROXMIRE. Mr. President, the Senator from Massachusetts is absolutely right. There is no evidence of any great urgency. If this measure is delayed for 1 or 2 weeks, I cannot see that it would hurt anybody. Certainly it would serve the public interest better if we had a record on which to make a judgment, so that we would have some sensible guidance. Obviously, we do not know who is going to benefit or is not going to benefit. We do not know what the ramifications of these amendments are. The further we go along the more we find there are just no answers available, and it seems to me that a recommittal would be more satisfactory to all, because the objections I have made and the objections the Senator from Massachusetts and the Senator from Maine have made have all been the same, that we simply do not have adequate information. I think this matter could be handled in a short time on the floor if the hearings as suggested by the Senator from Massachusetts could be held, and we could have some notion in detail of where the Treasury stands, and the other information indicated.

Mr. HARRY F. BYRD, JR. The Treasury has been consulted on all of the revenue effects, and concurs with the statements made in the report as to the potential loss of revenue. That is not to say that the Treasury agrees with every amendment.

Mr. KENNEDY. With which amendments does Treasury agree, and with which do they disagree? Can the Senator tell us why they disagree with some of the amendments?

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

Mr. KENNEDY. I yield.

Mr. BENNETT. The Senator from Utah is very much intrigued by this de-

bate, because when we bring a bill to the floor, the same charges could be made against Senators who offer amendments from the floor, without ever giving the Senate Finance Committee a chance to look at them. If the Senator's logic prevails, then there should be no amendments to a Finance Committee bill on the floor, because he is arguing that we should not even consider them until after the Senate Finance Committee has held hearings on them.

Mr. KENNEDY. Mr. President, I am amazed at the statement of the Senator from Utah. How he can possibly compare the responsibility of a standing committee of the U.S. Senate, set up under the rules of the Senate and charged with the responsibility delegated by the Members of this body to conduct full and open hearings on legislative matters which come before it, with the opportunity which has been established under the rules of the Senate to permit a Member to propose an amendment from the floor? It does not make sense to say that because we do not have hearing on floor amendments—in many instances we do—it is therefore not necessary for us to have hearings in any of the full committees. Surely, that does not follow.

Mr. BENNETT. That is not my argument. The Senator is turning my argument around against me.

Mr. KENNEDY. Then, if the Senator will respond to my particular question, what amendments does Treasury object to, and for what reasons?

Mr. HARRY F. BYRD, JR. If the Senator will yield, I am instructing the committee staff to bring to the floor the Treasury Department's position on each amendment.

Mr. KENNEDY. Does the Senator mean we do not have the information right here before us?

Mr. HARRY F. BYRD, JR. It is not a part of the printed report, and I do not carry it around in my head, but we will get it.

Mr. KENNEDY. The acting floor manager has indicated that in some instances they disapprove and in some they do not disapprove. Of which amendments do they disapprove and of which do they approve, and what are the reasons?

Mr. HARRY F. BYRD, JR. If the Senator will delay just a few minutes, I will get that information for him.

Mr. KENNEDY. Mr. President, I would be interested in the response, but I would like to give an opportunity for any others who may wish to make comments about it. But at an appropriate time, I have the intention of making a motion to recommit to the Finance Committee, with instructions to report back in 30 days.

Mr. BENNETT. Mr. President, the chairman of the Finance Committee is necessarily absent. He has gone to New York to raise finances for the Democratic Party. I wonder if his colleagues on the Democratic side want to force action by the committee in the absence of the chairman. I think the chairman should be here to defend his committee, and, to answer the charges of the Senator from Massachusetts. I think if the Senator has any such program in mind, at least common courtesy would suggest that it might be deferred until the chairman returns.

Mr. KENNEDY. The Senator is absolutely correct. I would be only too happy to have this matter temporarily set aside. There are a number of Senators who intend to continue to discuss it, so I would be more than glad to support any motion to set the matter aside, and then make any appropriate motion at a time when the chairman of the Finance Committee is here, and give other Senators an opportunity to make any expressions they wish. But I am indicating now that it is my intention to so move at the appropriate time. If the leadership wants to set this measure aside and work those particular time factors out, I would be more than glad to accommodate them.

Mr. BENNETT. There is no member of the leadership on the floor at this particular time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARRY F. BYRD, JR. Mr. President, I think it would be best to dispose of the pending amendment before we get to the——

The PRESIDING OFFICER. The question is on agreeing to division No. 12 of the committee amendment.

Mr. HATHAWAY. Mr. President, I have an amendment to the amendment which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The assistant legislative clerk read as follows:

On page 17, line 12, insert the following at the end thereof: "Provided that before the application of the rule of 318(a) one distributer owns 10% of the stock."

Mr. HATHAWAY. Mr. President, I have introduced this amendment to take care of the problem which I mentioned earlier, about what effect the committee amendment would have with respect to the shares that an individual would have to have in order for the corporation to qualify for not paying a tax on the increase in value of the property exchanged for the stock.

As I mentioned, this would allow a 1 percent shareholder to qualify, provided he had attributes that totaled 9 more percent to make the total 10 percent. My amendment would require at least one of the attributes—that is, the stockholder and all of the others who owned shares, the ownership of which under the code is attributed to the stockholder to own 10 percent.

I understand, in consultation with the members of the Finance Committee, that this is an acceptable amendment.

Mr. BENNETT. Mr. President, it is acceptable to the ranking minority member.

Mr. HARRY F. BYRD, JR. Mr. President, I have no objection to the proposal of the Senator from Maine.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

The PRESIDING OFFICER. The question now recurs on agreeing to division 12 of the committee amendment as amended.

The committee amendment as amended was agreed to.

Mr. FANNIN. Mr. President, I ask unanimous consent that a staff member, George Prince, have the privilege of the floor during the discussion of this measure.

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

Mr. CURTIS addressed the Chair.

The VICE PRESIDENT. The Chair recognizes the Senator from Nebraska.

Mr. CURTIS. Mr. President, I rise for the purpose of making a short statement in reference to the procedure followed by the Committee on Finance.

Some people who read the RECORD of today might get the impression that the Committee on Finance moves without adequate information and without ample advice from the Treasury Department and from our own staff. Such is not the case. Senator LONG, as chairman of the committee, like all his predecessors, has presided over one of the best operated committees in Congress.

The question has been raised here as to whether any hearings have been held. Actually, there are items in this bill that are the result of weeks and weeks of hearings. They are isolated items pertaining to matters on which the committee has spent a great deal of time. I can cite one as an illustration. I will not take very much time.

In 1969, the Committee on Finance held public hearings on foundations for weeks and weeks. The proposal was before us that private foundations owning more than a certain percentage of the stock of a business corporation should be compelled to divest itself of some of this stock. It happened that in Atlanta, Ga., there was a foundation named the Herndon Foundation, that owned the majority of the stock in a life insurance company operated primarily by blacks. The Committee on Finance at that time wrote a rule excluding the Herndon Foundation from the divestiture provisions that were placed in the law.

It now develops that another section of the same 1969 act requires an annual payout by the foundation whether income is earned or not. The effect of this provision would result in compelling this foundation to divest its majority interest even though Congress had already written into the law that they could always retain the 51 percent.

The hearings have been held—weeks of hearings. Everyone in the committee was familiar with it, as were the staff members. No purpose would be served by having public hearings and having those people journey here from Georgia and state this proposition, which had been gone over and over in public hearings in the consideration of the original measure. I cite that as just one illustration.

I think I am in a position to speak a

word of defense concerning Chairman LONG and the operation of his committee. I say that because it happens that of all these Senate amendments, none was offered by the junior Senator from Nebraska. I have no personal interest in it whatever. As a matter of fact, at the time this measure was reported by the committee, the junior Senator from Nebraska was out of the country on official business, representing this body in conjunction with the Food and Agricultural Organization. So I can speak without any personal concern about this matter.

I can cite another illustration of a situation in which no public purpose would have been served at all by compelling these citizens to come in and appear at a public hearing.

One section of the bill makes a change in the law in reference to filled cheese. That was a provision in the Internal Revenue Code that was never intended to raise revenue—never for that purpose at all.

One of the original purposes of this provision was to insure food purity. But we have gone a long way in recent years in other aspects of inspection and sanitation, and all cheese as well as other foods are subject to the law of the Food and Drug Administration.

There was no reason to continue that section of the Internal Revenue Code. It hampered an industry, a rather small one. We could have gone through the motions and had a public hearing, inconvenienced these citizens, and imposed upon the taxpayers to print hearings where there was no necessity for it.

I believe that the course followed by the Committee on Finance over the years has been very reasonable and prudent. They have been diligent in protecting the revenue. They have also been sensitive to the need to do justice to everyone. If a taxpayer suffered an injustice, relief should not be denied merely because he was a taxpayer.

I hope that upon reflection, the effort and the attempt to recommit this bill will be abandoned. I believe it would be most unfair to the committee; I think it would be a mistake in procedure. I believe that the chairman of the Committee on Finance, throughout the months and years, has conducted the business of that committee in the public interest and in a forward and open manner, and no good purpose would be served by recommitting the bill.

I am sure that there are many who might insist that we have hearings, and the hearings go unread. I would not be surprised that if more Members had time to read all the reports issued by the various committees, we would find that it would be most helpful and informative, and it would add to the available information we have when we come here to vote on measures from the many committees of the Senate.

I yield the floor.

Mr. HARRY F. BYRD, JR. Mr. President, I concur in the views just expressed by the able Senator from Nebraska.

In that connection. I want to submit for the Record information which was sought by the distinguished senior Senator from Massachusetts (Mr. KENNEDY). The Senator from Massachusetts was anxious to know how the Department of the Treasury viewed each of the 12 committee amendments. I will go through this very quickly.

With respect to the amendment dealing with cooperative investment activities of educational institutions, the Treasury Department supports this proposal.

As to the amendment dealing with the treatment processes for trona and the decarbonation of trona to be considered as mining, the Treasury Department opposes that amendment.

The Treasury Department supports the amendment dealing with application of moving expense provisions to members of U.S. military services.

With respect to the amendment dealing with the treatment of distilled spirits brought into the United States from Puerto Rico and the Virgin Islands, the Treasury supports that amendment.

In connection with the amendment dealing with use of appreciated property by corporations to redeem their own stock, the Treasury Department supports that proposal.

The Treasury supports the amendment dealing with taxation and regulation on the manufacture and sale of filled cheese.

The Treasury Department supports the amendment dealing with accrued vacation pay.

The Treasury Department opposes the amendment dealing with treatment of certain disaster losses.

In connection with the amendment dealing with exclusion from unemployment compensation coverage of students employed by nonprofit organizations auxiliary to schools, colleges, and universities, the Treasury Department defers to the Labor Department and the Labor Department opposes that amendment.

With respect to the exception to charitable distribution requirements for certain private foundations, there is no objection on the part of the Treasury Department.

In connection with tax treatment of tuition and educational expenses paid on behalf of members of the armed services, the Treasury Department opposes that amendment.

With respect to the committee amendment dealing with the transfer of accounts receivable to related DISC's, there is no objection on the part of the Treasury Department.

The Treasury Department was previously consulted and was consulted again today, and I was informed by the Treasury again as to which amendments the Treasury opposes and to which it has no objection or supports.

Mr. President, I yield to the Senator from Georgia.

The VICE PRESIDENT. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, I send to the desk an amendment and I ask unanimous consent that it may be considered out of order.

The VICE PRESIDENT. Is there objection?

Mr. PROXMIRE. Reserving the right to object, would the Senator inform the Senate how long he expects to take? I would prefer to proceed on the amendments as the Senate agreed to do, but if it is only 5 minutes I will be glad to accommodate the Senator.

Mr. NUNN. I think at the most it will be 4 or 5 minutes for the amendment.

Mr. PROXMIRE. I have no objection.

The VICE PRESIDENT. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. NUNN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

At the end of the bill, add the following new section:

COMBINED OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE-INCOME TAX REPORTING AMENDMENTS

SEC.—(a) This section may be cited as the "Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1973".

(b) Title II of the Social Security Act is amended by adding after section 231 the following section:

"PROCESSING OF TAX DATA

"SEC. 232. The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954, to the Secretary for the purposes of this title and title XI. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury.".

(c) Section 232 of the Social Security Act, as added by subsection (b) of this section, shall be effective with respect to statements reporting income received after 1973.

(d)(1) Section 201(g)(1) of such Act is amended to read as follows:

"(g)(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

"(i) the amounts estimated by him and the Secretary of Health, Education, and Welfare which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health, Education, and Welfare and the Treasury Department for the administration of titles II, XVI, and XVIII of this Act and subchapter

E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954, less.

"(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health, Education, and Welfare which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of administration of this title and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

"(B) After the close of each fiscal year the Secretary of Health, Education, and Welfare shall determine the portion of the costs, incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clauses (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds: except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustes under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds, and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, of administration of this title and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.".

(2) Subsection (g) of such section is further amended by adding at the end thereof the following new paragraph:

"(4) The Board of Trustees shall prescribe before January 1, 1977, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.".

(e) Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(f) The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act with respect to the carrying out of the functions of the Department of Health, Education, and Welfare, specified in section 232 of such Act, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

(g) Section 6103 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection:

"(g) DISCLOSURE OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate is authorized to make available to the Secretary of Health, Education, and Welfare information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective information return processing program".

(h)(1) Section 230(b)(2) of the Social Security Act is amended to read as follows:

"(2) the ratio of (A) the average of the wages (as defined in section 209, but without regard to subsection (a) thereof) of all employees as reported to the Secretary for the calendar year preceding the calendar year in which the determination under subsection (a) with respect to such particular calendar year was made to the latest of (B) the average of the wages (as defined in section 209, but without regard to subsection (a) therof) of all employees as reported to the Secretary for the calendar year 1972 or the calendar year preceding the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a),".

(2) Section 230(b) of such Act is further amended by adding at the end thereof the following new sentence: "For purposes of this subsection, the average of the wages (as defined in section 209, but without regard to subsection (a) thereof) for the calendar year 1976 (or any prior calendar year) shall, in the case of determinations made under subsection (a) prior to December 31, 1977, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year."

(i)(1) Section 203(f)(8)(B)(ii) of the Social Security Act is amended—

(A) in clause (I) thereof, by striking out "taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year", and inserting in lieu thereof "wages (as defined in section 209, but without regard to subsection (a) thereof) of all employees as reported to the Secretary for the calendar year preceding the calendar year", and

(B) in clause (II) thereof, by striking out "taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973, or, if later, the first calendar quarter of the most recent calendar year", and inserting in lieu thereof "wages (as defined in section 209, but without regard to subsection (a) thereof) of all employees as reported to the Secretary for the calendar year 1972, or, if later, the calendar year preceding the most recent calendar year".

(2) Section 203(f)(8)(B)(ii) of such Act is further amended by adding at the end thereof the following new sentence: "For purpose of this clause (ii), the average of the wages (as defined in section 209, but without regard to subsection (a) thereof) for the calendar year 1976 (or any prior calendar year) shall, in the case of determinations made under subparagraph (A) prior to December 31, 1977, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar.

Mr. NUNN. Mr. President, I ask unanimous consent that the name of the Senator from Maine (Mr. HATHAWAY) and the name of the Senator from Lousiana (Mr. JOHNSTON) be added as cosponsors of the amendment.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. NUNN. Mr. President, this amendment is the work of the Senator from New Hampshire (Mr. MCINTYRE). I join with him as a prime sponsor of the amendment. In his absence today he asked me to present the amendment.

The amendment which we propose would amend the provisions of the Social Security Act to consolidate the reporting of wages by employers for income tax withholding and old-age, survivors, and disability insurance purposes, and for other purposes.

The amendment would change the present quarterly wage reporting system for social security purposes—IRS form 941—to an annual system utilizing a modified IRS Form W2.

In other words, it would change the number of reports from four during a year to two.

The main objective which we seek in this amendment is to reduce part of the most difficult and costly Federal paperwork burden on small business: the Internal Revenue Service Form 941. This

form, which falls most heavily on small- and medium-sized businesses, costs employers $235 million per year in clerical and accounting costs, according to the President's Advisory Council on Management Improvement. This particular form has been singled out by the National Federation of Independent Business as one of the most onerous of the paperwork forms imposed by the Federal Government. In an NFIB survey it was estimated by 64.9 percent of the businesses contacted that their overhead costs could be significantly reduced if this form were changed from a quarterly to an annual report.

The Federal Small Business Administration surveyed 1,200 other businesses. The SBA survey determined that 8 out of every 10 respondents favored eliminating form 941 and using IRS Form W2 to obtain data for social security purposes. The vast majority of the businessmen surveyed said that the changeover of the reporting system from a quarterly to an annual one would significantly reduce their expenses.

On September 11, 1971, the President's Advisory Council on Management Improvement submitted a report which urged the President to consider establishing a system of annual reporting, and had this to say:

A system of a single annual wage report, technically feasible and administratively adequate, would result in savings to business estimated in excess of $200 million annually; and in substantial net savings within the Internal Revenue Service and the Social Security Administration.

The President's Council in the conclusion of its report, went on to state:

A study of the advantages of a single annual report against objections raised over the past twenty years indicates that:

1. Data processing systems have made tremendous strides since the initial proposal that a single reporting system is not only technically feasible but also administratively adequate.

2. The objections raised in the past are no longer of sufficient weight to continue the now obsolescent system.

3. The annual reduction in the number of reports submitted by business is estimated at approximately 18 million, with a savings in excess of 200 million dollars. Savings to the Federal Government would be reflected in a reduction in operating costs and increased compliance income, but accurate estimates of dollar savings will have to wait on the development of the system.

Mr. President, it is impossible to judge how many employees of the Federal Government could be reduced over a period of time by the amendment being proposed, but it is fair to say it would make a significant difference not only to the small businessmen of the Nation but also to the Federal Government in terms of employees.

According to our information, we do not have any objection from the Treasury Department.

This amendment is primarily the work of the Senator from New Hampshire (Mr. McINTYRE). He and his capable staff worked long and hard on it. The Committee on Finance has taken the original amendment and made substantial changes without obscuring the original purposes of the amendment. As I stated, the Senator from New Hampshire is entitled to credit for the proposal. I have discussed the matter with the Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the Senator from Utah (Mr. BENNETT).

Mr. HARRY F. BYRD, JR. Mr. President, I commend the able Senator from Georgia for the amendment he has just proposed.

As he pointed out, the Senator from New Hampshire late last year offered an amendment with a similar purpose, namely, to require annual rather than quarterly reporting of income to the Internal Revenue Service for social security earnings record purposes. The McIntyre amendment included a provision attributing social security quarters of coverage on the basis of annual income. This provision was quite costly and the amendment in that form could not be accepted by the manager of the bill.

The pending amendment would achieve the same purpose but would not include the costly provision in last year's amendment.

Mr. President, I again commend the Senator from Georgia. I am glad to accept the amendment.

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

Mr. NUNN. I yield.

Mr. PROXMIRE. As I understand the amendment it would mean that firms would report annually on their social security tax payments instead of quarterly.

Mr. NUNN. That is correct. At the request of the staff and members of the Committee on Finance the proposal was changed so that the annual report would be divided into quarterly segments so that the essential part of the social security law would not be affected.

Mr. PROXMIRE. Would this affect the timing of the payments of the corporations to the Treasury?

Mr. NUNN. No, it would not. The only thing it would affect is the paperwork.

Mr. PROXMIRE. Does the Social Security Administration have any objection?

Mr. NUNN. We have no formal opinion from the Social Security Administration.

Mr. PROXMIRE. Does the Senator know whether the Treasury Department supports the amendment? The Senator has consulted with them informally and they do not object. Is that correct?

Mr. NUNN. As I understand it, the Internal Revenue Service is in favor of the amendment, although I cannot give the Senator formal notification on that point. I understand they are in favor of it.

Mr. PROXMIRE. There is no effect on the timing of the payments of the amount to be paid. Is that correct?

Mr. NUNN. It has no revenue effect whatsoever.

Mr. PROXMIRE. I thank the Senator.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

The VICE PRESIDENT. The clerk will report the next section of the committee amendment.

The assistant legislative clerk read as follows:

SEC. 13. REPEAL OF REGULATORY TAXES ON FILLED CHEESE.

(a) IN GENERAL.—

(1) Part II of subchapter C of chapter 39 (relating to regulatory provisions affecting filled cheese) is repealed.

(2) The table of parts of such subchapter is amended by striking out the item relating to part II.

(b) TECHNICAL AND CONFORMING CHANGES.

(1) Section 7236 (relating to false branding, etc.) is repealed.

(2) The table of sections of part II of subchapter A of chapter 75 is amended by striking out the item relating to section 7236.

(3) Section 7266 (relating to offenses relating to filled cheese) is repealed.

(4) The table of sections of subchapter B of chapter 75 is amended by striking out the item relating to section 7266.

(5) Section 7303 (relating to property subject to forfeiture) is amended by striking out paragraphs (4) and (5) and inserting in lieu thereof the following:

"(4) PURCHASE OR RECEIPT OF ADULTERATED BUTTER.—All articles of adulterated butter (or the full value thereof) knowingly purchased or received by any person from any manufacturer or importer who has not paid the special tax provided in section 4821.

"(5) PACKAGES OF OLEOMARGARINE.—All packages of oleomargarine subject to the tax under subchapter F of chapter 38 that shall be found without the stamps or marks provided for in that chapter.".

(6) Section 6808 (relating to cross references) is amended by striking out paragraph (5).

(7) Section 7103(d)(3) (relating to cross references) is amended by striking out subparagraph (C).

(c) EFFECTIVE DATE.—The repeals and amendments made by this section shall apply to filled cheese manufactured, imported, or sold after the date of enactment of this Act.

Mr. BENNETT. Mr. President, I have an amendment at the desk, and ask unanimous consent, out of order, that it may be taken up at this time.

The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). Is there objection? Without objection, it is so ordered, and the clerk will read the amendment.

The assistant legislative clerk read the amendment as follows:

At the end of the bill, insert the following:

"CERTAIN DIVIDEND INCOME RECEIVED FROM A NONINCLUDABLE LIFE INSURANCE COMPANY.—In the case of an affiliated group for corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section 802 that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504."

SEC. 2. The amendment made by the first section of this Act shall apply to taxable years beginning after December 31, 1973.

Mr. BENNETT. Mr. President, the purpose of the amendment is to deal with the treatment of dividends received by a member of an affiliated group from a subsidiary which is not permitted to file a consolidated return with the other members of the group because it is a life insurance company.

Under present law, a personal holding company may be subject to a special tax

of 70 percent of its undistributed personal holding company income. Generally, dividends are included within the term personal holding company income. In the case where an affiliated group of corporations files a consolidated return, it calculates its personal holding company income on a consolidated basis, and any dividends that may pass between members of this group are not treated as personal holding company income. Life insurance companies, however, are not eligible to participate in the filing of a consolidated return even if they meet all the requirements. In this case, dividends that pass from a life insurance subsidiary to a member of an affiliated group filing a consolidated return are treated as personal holding company income.

My amendment simply provides that in this case where an affiliated group of corporations files a consolidated return, a dividend that is received by a member of the group from a life insurance company which is a subsidiary is not to be taken into account in determining whether the group is to be treated as a personal holding company. The amendment applies for tax year beginning after 1972.

I have discussed the amendment with the Treasury this afternoon. They consider it to be a desirable technical improvement of the law and they have no objection to it.

Mr. PROXMIRE. Mr. President, the distinguished Senator from Utah courteously discussed the amendment with me a few minutes ago, and, on the basis of the discussion, it seems to be logical; but the difficulty, as I understand, is that life insurance companies are generally treated differently than other corporations. In this case they would be given the same privilege that other corporations are given. Is that not the case?

Mr. BENNETT. Let us turn it the other way around. At the present time a consolidated group of corporations that does not contain a life insurance company is allowed to consolidate all of its income, and none of that is considered to affect the question of whether or not the holding company becomes a personal holding company.

Mr. PROXMIRE. If the Senator will permit, I want to suggest that he follow this procedure. It would be very useful to this Senator, and I think to the Senate. This is a complicated proposal. I have discussed it with some members of the staff. Although they are very aware of the tax code and they are skilled in interpreting it, they say they are confused with this amendment. They say it is complicated. I think we would be well served if we could have it printed in the RECORD and let it go over until tomorrow to give us a chance to look it over.

Mr. BENNETT. I will be very happy to do that.

Mr. President, I withdraw my request for immediate consideration of the amendment.

The PRESIDING OFFICER. Is there objection to the request to withdraw the amendment and have it printed in the RECORD? Without objection, it is so ordered.

The question now is on the division involving section 13 of the committee amendment.

Mr. PROXMIRE. Mr. President, I would like to ask a question of the Senator from Virginia. As I understand this amendment, it would cost $10,000. This provision in the law was not designed for revenue purposes. It still provides that the Food and Drug Administration would have jurisdiction, because it is the principal responsible agent with respect to the product and the supervision of that product. Is that correct?

Mr. HARRY F. BYRD, JR. The Senator is correct.

Mr. PROXMIRE. And the Treasury has no objection?

Mr. HARRY F. BYRD, JR. The Treasury has no objection.

Mr. PROXMIRE. How about the precedents? Would this have any effect on other similarly situated taxpayers that might be beneficiaries?

Mr. HARRY F. BYRD, JR. At the present time they are not regulated by the IRS, so the Food and Drug Administration now has full authority and would also have full authority under the proposal.

The Senator from Virginia has no idea who would be affected by it, either adversely or beneficially.

Mr. GRIFFIN. Mr. President, I want to acknowledge that the junior Senator from Michigan does have an interest in this amendment, and among those who will be affected would be a constituent in my State.

I ask unanimous consent that there be printed in the RECORD at this point a letter from the Department of the Treasury to the chairman of the Senate Finance Committee, as well as an earlier letter from the Assistant Secretary of the Treasury which was addressed to Representative CHAMBERLAIN, of Michigan, on this subject.

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

THE DEPARTMENT OF THE TREASURY,
Washington, D.C., September 25, 1973.

Hon. WILBUR D. MILLS,
Chairman, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Treasury Department on H.R. 8676 introduced by Mr. Chamberlain. H.R. 8676 would repeal the tax on filled cheese imposed by Part II of Subchapter C of Chapter 39 of the Internal Revenue Code.

Section 4831 of the Code imposes a tax of one cent a pound on filled cheese manufactured in the United States. On imported filled cheese, the rate is eight cents a pound. In addition, there is a system of occupational taxes: $400 a year for each factory; $250 a year for wholesale dealers; $12 a year for retail detalers.

Filled cheese is defined in section 4846 of the Code as meaning

"All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered 'filled cheese' within the meaning of this part."

The tax on filled cheese was imposed by the Act of June 6, 1896. It was one of a number of taxes imposed during the period before World War I designed to prevent the sale of factory prepared food compounds in competition with natural products. Other taxes of a similar nature were those on adulterated and renovated butter, oleomargarine, and mixed flour.[1] In addition to restricting competition, the laws also were advanced as preventing the sale of mislabeled and deleterious products.

Prevention of the sale of these products was not achieved by the tax rates, which generally were quite low, as in the case of the one cent a pound tax on domestically produced filled cheese, but by requirements as to the packaging, labeling, and the posting of signs. In the case of filled cheese the requirements of the law and regulations that are most effective in preventing the distribution of the product are those that must be met by retail dealers. Section 4834 of the Code states that:

"Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Secretary or his delegate."

The regulations expand on this requirement by saying, "Wooden or paper packages similar to those usually employed in selling butter or lard at retail may be used by the retailer in filled cheese." In addition the packages must have the dealer's name and address imprinted thereon plus the legend, "— pound(s) Filled Cheese." The words "pound" and "Filled Cheese" must be in letters not less than one-quarter inch square. A further requirement set forth in section 4834 of the Code provides that:

"Every wholesale dealer and every retail dealer in filled cheese shall display in a conspicuous place in his salesroom a sign bearing the words 'Filled cheese sold here' in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his business is conducted."

The net effect of these restrictions has been to prevent all but a small amount of filled cheese from being sold. Our statistics on this product are consolidated with those for the taxes on adulterated and renovated butter, so that we are not entirely certain as to how much we collect from filled cheese alone. The combined figure for poundage taxes for the fiscal year 1972 was about $4,000. In addition there were 59 occupational tax stamps purchased. In the first nine months of the 1973 fiscal year, poundage tax revenues increased to $10,000. This increase may be due in large part to the interest of consumers in reducing their intake of saturated fats. Incorporation of vegetable oils in natural cheese is considered to be helpful in this respect through reducing the portion of the final product derived from milk.

The Treasury Department favors repeal of the tax on filled cheese. Repeal would have minimal revenue significance. While, up until now, the tax has not been an administrative problem, questions have arisen recently as to whether cheese spreads and cheese toppings qualify for exemption from the tax under the terms of the second sentence quoted from section 4846 of the Code which provides that "Substances and compounds, consisting principally of cheese and added edible oils, which are not sold as cheese or as a substitute for cheese but are primarily useful for imparting a natural

[1] The tax on domestic oleomargarine was repealed in 1950, on mixed flour in 1942.

cheese flavor to other foods shall not be considered 'filled cheese' within the meaning of this part."

For many years, cheese spreads and toppings have been exempt under this provision, which was added to the law in 1938, but we have doubts as to whether they should be. Certainly, there is considerable question as to whether cheese spreads should be considered as not being "'substitute(s) for cheese." The 1938 amendment was really addressed to a mixture of cheese and vegetable oil which was sprayed on products such as popcorn. Repeal of the tax would obviate any difficulties in this area.

This was one of the taxes that would have been repealed by H.R. 25, 92d Congress, the so-called "Deadwood Bill." The explanation of the bill prepared by the Staff of the Joint Committee on Internal Revenue Taxation, dated October 13, 1971, pointed out (page 34) that any requirements as to the wholesomeness and purity of products falling within the filled cheese category are enforced by the Food and Drug Administration outside the provisions of the Internal Revenue Code. In view of this, and the fact that practically no other factory prepared food compounds are taxed, we believe that there is no reason why production and sale of this particular product should be restricted by the tax law. Instead, it should be treated the same as other manufactured foods.

I might add that there is a similar restrictive tax provision in Chapter 39 relating to adulterated and renovated butter. If your Committee should decide to support repeal of the tax on filled cheese, we believe it would be appropriate to repeal the butter tax at the same time.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

FREDERIC W. HICKMAN,
Assistant Secretary.

THE DEPARTMENT OF THE TREASURY,
Washington, D.C.

Hon. CHARLES E. CHAMBERLAIN,
House of Representatives,
Washington, D.C.

DEAR MR. CHAMBERLAIN: This is in reply to your letter of June 20 requesting my comments on H.R. 8676 which you introduced.

The Treasury Department has no objection to repeal of the tax on filled cheese as proposed by H.R. 8676. As you point out, the tax serves no revenue purpose, dating from the time when excises were used to restrict marketing of products considered unwholesome or deceptive. We concur in the analysis of this tax and that on adulterated butter by the Staff of the Joint Committee on Internal Revenue Taxation in its explanation of H.R. 25, 92nd Congress (the so-called "deadwood bill"). This analysis states:

"Sec. 522 (amends ch. 39 of the Code)—regulatory taxes

Subsection (b) repeals provisions relating to taxes on adulterated butter and filled cheese. Requirements as to wholesomeness and purity of these products are enforced by the Food and Drug Administration outside the provisions of the Code. No taxes are collected as to adulterated butter; the filled cheese tax collections have ranged in recent years between $2,000 and $5,000 per year. These taxes date from the 1890's, when they served the dual functions of restricting trade in these items and insuring purity (e.g., restricting the use of rancid butter). At present, they serve no internal revenue purpose. Appropriate regulation of commerce can be accomplished in other provisions of law."

Sincerely yours,

MARTIN J. BAILEY,
FREDERIC W. HICKMAN.

Mr. GRIFFIN. Mr. President, in addition to the other points that have been made in the colloquy between the Senator from Wisconsin and the Senator from Virginia, let me call attention to the fact that the staff of the Joint Committee on Internal Revenue Taxation has been engaged in what I understand is called the "deadwood" bill—cleaning out the deadwood in the Internal Revenue Code.

Last year there was a bill, referred to generally as the "deadwood" bill, which actually passed the House of Representatives, but did not receive attention in the Senate. But among the provisions that the staff of the Joint Committee on Internal Revenue Taxation recommended be included in the so-called "deadwood" bill was a provision repealing this tax, which has been on the books since 1896, and which was put on the books more to discourage imports and to impose labeling requirements than it was to raise revenues.

While in the last year the revenue went as high as $10,000, in the typical year over the last decade the revenues have ranged between $2,000 a year and $4,000 a year. So there is no revenue interest in this, and the original purpose of the act in 1896 is now being fulfilled by the Food and Drug Administration.

I want to point out that this particular amendment is approved not only by the Department of the Treasury but by the Agriculture Department and by the Food and Drug Administration, which is now regulating the matters that were originally intended.

This is an amendment which deserves to be adopted. There is not any purpose other than a worthy purpose involved here, and I hope the Senate will adopt the amendment.

The PRESIDING OFFICER. The question is on agreeing to the division of the committee amendment referring to section 13.

The division was agreed to.

The clerk will state the next section of the committee amendment.

The assistant legislative clerk read as follows:

On page 19, lines 14 through 17, insert a new section as follows:

SEC. 14. ACCRUED VACATION PAY.

Section 97 of the Technical Amendments Act of 1958 is amended by striking out "January 1, 1973" and inserting in lieu thereof "January 1, 1974".

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

The question is on agreeing to section 14 of the committee amendment.

Mr. PROXMIRE. Mr. President, I understand that this amendment refers to accrued vacation pay.

The PRESIDING OFFICER. The Senator is correct.

Mr. PROXMIRE. Mr. President, this amendment involves the timing of deductions for accrued vacation pay—that is, the pay given to employees while on vacation or in lieu of vacation. Prior to 1954, the Internal Revenue Service held that a deduction for vacation pay could be taken in a given year—year 1—even though the specific amount to be paid to particular individuals could not be ascertained until the following year—year 2.

Obviously, when we have that situation, they take the deduction, even though they have not made the payment. So they get the use of the money on a tax-free basis for 1 year. In 1954, for a variety of reasons, the Service revised its position and ruled that vacation pay deductions could not be taken until "year 2" because it was not until that year that the vacation pay liability to specific employees was clearly determined.

Many firms would have been unable to deduct anything on account of vacation pay in the year this ruling became effective, because that year's vacation pay had already been deducted in the prior year under the old rules, while the following year's pay would not be deductible until a later year under the new rules. The prospect of a one-time loss of this deduction reportedly led large auto companies and others to request repeated postponements of the effective date of the proposed revenue ruling. These were granted by the Internal Revenue Service. In 1958, Congress took over the job of postponing the new rules; the last of seven statutory postponements expired on January 1, 1973. This amendment would postpone the new rules yet again, this time to January 1, 1974.

Mr. President, it seems to me that we ought to draw the line somewhere. It seems obvious to me that it is inequitable to permit the taxpayer to take a deduction even though he has not made the payment.

Like prior, similar legislation, this amendment is accompanied by a promise that the problem of accounting for accrued vacation pay will be studied and that "permanent legislation" will then be prepared. Similar promises in the past have not borne fruit. The basic problem for the Treasury is to devise a transitional rule which will permit firms to adopt the Service's new vacation pay accrual rules without passing through a year in which they are not entitled to claim any vacation pay deductions at all. But the real question is why should these companies get a special tax break by continuing to receive a deduction in the year before they actually incur the expense.

It is estimated that if this amendment

is enacted, Federal revenues during the current year will be approximately $25 million lower than they would otherwise be.

There does not seem to be any justification in the committee report or elsewhere as to why a firm should be allowed to take a deduction in a year when they do not actually make the payment; they do not make it until the following year.

I would hope that the Senate will decide to deny this amendment and, at long last, require that this arrangement be put on a pay-as-you-go basis, the way every other taxpayer is required to do.

Mr. HARRY F. BYRD, JR. Mr. President, I am very much inclined to the view expressed by the Senator from Wisconsin. I think the arrangement should be placed on a pay-as-you-go basis. The fact is that Congress, on several different occasions, has postponed doing that. We are now into another year. We are in the latter part of January 1974. I do not see how, as a matter of propriety or fairness, we can fail to enact this amendment and carry it over until January 1 of 1975, as it does. We are already into 1974. So I would hope that the Senate will approve the amendment for this particular year. So far as the Senator from Virginia is concerned, I would vote to put the arrangement on a pay-as-you-go basis when the law next expires, which will be January 1, 1975.

Mr. PROXMIRE. It is already past time this year. The Senator from Virginia makes a very good point. I would like to see if we could not get some commitment from the Committee on Finance to do its very best to give assurance such as we have received from the Senator from Virginia. I would like to see this arrangement on a pay-as-you-go basis from now on. However, as the Senator from Virginia has pointed out, we are already into 1974. But we shall get into the same argument next year.

Mr. HARRY F. BYRD, JR. Mr. President, as the Senator from Wisconsin knows, I can speak only for myself. I can make no commitment for the Committee on Finance, particularly on a matter as to which Congress, on seven different occasions, has postponed the time. So far as my one vote is concerned, I plan to vote, at the appropriate time, to put the arrangement on the appropriate basis; but not now, because to do so would be very unfair.

Mr. PROXMIRE. The acting manager of the bill (Mr. HARRY F. BYRD, JR.) agrees that any system to permit taxpayers to take a deduction in the year prior to the year for the payment of vacation pay is not right. He says that in the future he will do his best to see that the payment is made on a pay-as-you-go basis. The Senator states that it cannot be done this year, and I think he is correct.

I should like to ask the Senator from Utah if he supports the position of the Senator from Virginia.

Mr. BENNETT. I certainly support the objectives. I am not aware of the technical problems that may make the change difficult. I think we would like to clear it out of the way, so far as we can. I agree that we ought to be on a current-year basis, both with income and with deductions. I will certainly, gladly, with the Senator from Virginia, see if that cannot be worked out.

Mr. PROXMIRE. I should like to request that the Senator consider the possibility of discussing with the chairman of the committee (Mr. LONG) writing to the Treasury Department to see if they can work out a system of putting this arrangement on a regular basis from now on.

Mr. BENNETT. I am sure that the two of us will be glad to request that of the Senator from Louisiana.

Mr. HARRY F. BYRD, JR. I think I should make it clear that I cannot guarantee what the Committee on Finance will do. All I can do is to guarantee my one vote.

Mr. PROXMIRE. I appreciate that very much, but the Senator from Virginia has influence on that committee, and all I ask is that he take the position he has already taken here. The Senator from Utah has indicated that he supports that principle, too, and if the chairman of the committee will agree, then I think we have made some progress today.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The clerk will state the next committee amendment section or division.

The assistant legislative clerk read as follows:

On page 19, line 18, over to and including line 9 on page 22, insert a new section 15, as amended, entitled "Certain casualty losses."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. 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. PROXMIRE. Mr. President, this committee amendment is an amendment that I certainly have mixed feelings about. In the first place, it is an amendment offered by the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) who is so courteous, so helpful, and so concerned about the problems of all of us in the Senate. He has been especially helpful to me. I know of his deep personal interest in this matter. But there are problems with this amendment. It provides for special tax treatment for victims of certain flood disasters. Essentially, it is a special interest bill to aid those who suffered property losses in the Buffalo Creek flood. The benefits are limited to a very narrowly defined class of disaster victims. To qualify a taxpayer must have been the victim of a flood in 1972 which was declared to be a national disaster by the President, claimed a casualty loss, and then later was compensated for the loss through a negligence claim. This does not include any compensation received from insurance policies which is the more usual case in disaster losses. Apparently the residents of Buffalo Creek, W. Va., who were flooded when the Pittston Coal Co. dam broke and who subsequently sued and collected for negligence are the only taxpayers who fit into this category.

Normally, if a taxpayer takes a casualty loss deduction and then is later compensated for the loss, that compensation must be considered income and taxed as such. Obviously, if he is compensated under those circumstances, that seems to be logical and proper. Since the taxpayer has been restored to the financial position he was in before the casualty, he repays the tax benefit in this way. Instead, this amendment allows a taxpayer who has been restored financially through the proceeds of a law suit to receive special tax treatment on that compensation. Instead of including it in income in the year it was received, the taxpayer can obtain permission from IRS to reduce the basis of the replacement property with part of the compensation; and then take the remainder as income over a 5-year period.

The basis of the property is reduced by that amount which, by excluding it from income, saves the taxpayer $5,000 in taxes. Obviously, this will vary from taxpayer to taxpayer, depending on other earnings, marginal rates, and other deductions.

Hypothetically, the amount deducted will eventually be taxed at capital gains rates since it will have the effect of increasing the gain realized when the taxpayer sells the property. There are two major benefits to the taxpayer. First, the tax is delayed so that instead of being paid in the year the income is received, it is paid when the taxpayer sells the property. Second, the gain will be taxed at capital gains rates which are half the rates paid on income. Furthermore, the more usual case will occur if the taxpayer dies and leaves the property to an heir, completely avoiding taxation of the gain.

The rest of the compensation is treated as ordinary income spread over 5 years and then taxed accordingly. By spreading out the remainder over 5 years, the taxpayer will be taxed on that money at a lower marginal rate than would apply to the entire amount if reported in 1 year.

Aside from the extraordinary tax advantages, this amendment has two more serious deficiencies. The average taxpayer who is the presumed beneficiary of the amendment, in practice, will not benefit from its provisions. First of all, the benefit will only apply to taxpayers who on their own initiative receive permission for this alternative treatment from the Treasury Secretary. Only taxpayers sophisticated enough and with the means to pursue such an administrative ruling will be able to benefit.

The second problem is that it is very complicated, and requires some sophisticated computations. The taxpayer will have to compute what his income tax would be without counting the compensation and then compute how much compensation he would have to add to taxable income that year in order to increase his taxes by $5,000. The difference between those sums of taxable income is the amount by which the basis of the property can be reduced. Since this amendment is supposed to be designed to help the average taxpayer whose property was destroyed by the flood, it should be written in terms comprehensive to the average taxpayer and not limited to those with the means and ability to pursue such an administrative remedy.

Furthermore, there are no limits on the amount of benefits which can be claimed by any taxpayer. In addition to helping the average taxpayer through a period of financial hardship, this amendment would provide a windfall to the wealthy or corporate taxpayer for whom a postponement of tax liability can mean a large tax savings.

We have not been able to find any actual statistics on who will be affected by this amendment or what the revenue cost is.

Mr. President, I understand that losses by victims of this flood disaster are great. All of us who have ever been associated with floods and who have been aware of the losses of those who suffered from them, know that no compensation can possibly be adequate.

The problem, however, is that where we have a situation which seems to provide a great deal of benefit and a great deal of gain more than the actual loss when we calculate all the taxes involved. It seems to be inequitable. Of course, it is hard to prevent that from becoming a dangerous precedent.

The Treasury opposes the amendment, I think, on the ground primarily of precedent.

There seems to be no estimate of how much this will cost the Treasury but the cost might be fairly substantial.

Frankly, Mr. President, the principal objection I have to the amendment is the fact that it would permit, as I said, a wealthy taxpayer or a corporate taxpayer to obtain a large windfall, to be compensated to the extent that he actually came out ahead because of the flood. I think none of us would accept that as being fair or reasonable.

For that reason, I have suggested a compromise and I am hopeful that the Senator from West Virginia will be able to accept it because it gives complete coverage to the overwhelming majority of modest-income people who would suffer substantial coverage, and virtually everyone else—because wealthy people would be fully taken care of but will not receive any of his compensation——

Mr. ROBERT C. BYRD. Would the Senator briefly state the modification which he is suggesting, please?

Mr. PROXMIRE. The modification I am suggesting is that the taxpayer whose income is $15,000 or less would receive the full and complete benefit of the amendment. To the extent that his income exceeded $15,000, there would be a proportionate reduction in the amount he could benefit. In other words, if he had an income of $20,000 he would receive three-quarters of this additional benefit above full compensation.

Mr. ROBERT C. BYRD. May I interrupt the Senator—in other words, if the victim's income is $20,000 annually, he would not be penalized for the $15,000—anything on the first $15,000?

Mr. PROXMIRE. He would not be penalized at all.

Mr. ROBERT C. BYRD. He would be required, then, to repay only one-quarter of the IRS refund.

Mr. PROXMIRE. That is correct. I want to make it clear that I am referring to income, not loss. In other words, if a taxpayer has an income of $12,000 and suffers a $50,000 loss, which could well occur, he would receive full compensation and he would not have to make any refund whatsoever. He would receive the full refund.

Mr. ROBERT C. BYRD. The Senator's modification does not go to the loss.

Mr. PROXMIRE. That is correct.

Mr. ROBERT C. BYRD. It is based on the income of the party.

Mr. PROXMIRE. That is correct.

Mr. ROBERT C. BYRD. And if the party's income is $15,000 or less, his refund of the Internal Revenue Service repayment is fully waived. Is that correct?

Mr. PROXMIRE. That is correct. The provisions of this amendment would apply.

Mr. ROBERT C. BYRD. And as his income is increased over $15,000, then the amount of the repayment is prorated accordingly.

Mr. PROXMIRE. The Senator is correct. He states it much better than I did.

Mr. ROBERT C. BYRD. It is to be refunded, dollar for dollar on a pro rata basis, once his income is over $15,000.

Mr. PROXMIRE. He would only get a portion as much as he would otherwise get for the amount over that.

Mr. ROBERT C. BYRD. I see. So the person whose income was $20,000 would repay only one-fourth of the Internal Revenue Service refund?

Mr. PROXMIRE. It would depend, of course, on the size of his loss. He would take everything up to $15,000, and after that it would be prorated, depending upon the relationship between the $15,000 and his full income. If it were $20,000, it would be three-quarters that would be forgiven; if it were $45,000, it would be a third. It would relate to the size of his income, so far as the additional compensation is concerned. Under no circumstances would he refund the entire compensation. But it would limit the amount that a wealthy taxpayer would receive in that manner. We would not want to wipe out anybody completely.

What I am saying is that this would apply to the first $15,000 of income, and above that he would get a dollar-for-dollar deduction.

Mr. ROBERT C. BYRD. May I ask this question: If the victim's income is $10,000, it makes no difference what his losses were. He does not have to repay to the Internal Revenue Service any of its refund. Is that correct?

Mr. PROXMIRE. Yes. The full provisions of this amendment—no question about that.

Mr. ROBERT C. BYRD. If his income is $15,000 and he happened to receive a refund from the Internal Revenue Service of $200, he does not have to pay any of that back.

Mr. PROXMIRE. That is correct.

Mr. ROBERT C. BYRD. If his income is $20,000 and he received a refund from the Internal Revenue Service of $200, he would repay $50?

Mr. PROXMIRE. That is my understanding, yes. That is certainly the intent of the amendment, exactly.

Mr. ROBERT C. BYRD. If his income were $25,000—and not many coal miners living in Buffalo Creek have that kind of income. I dare say that the Senator's modification would not affect more than 5 percent, if that much, of those who suffered losses.

Mr. PROXMIRE. That is correct. That is why we designed it that way.

Mr. ROBERT C. BYRD. But if his income were $25,000 and he had received a refund of $500——

Mr. PROXMIRE. He would then repay two-fifths.

Mr. ROBERT C. BYRD. He would repay $200. And the Senator's amendment does not go to the payment of interest.

Mr. PROXMIRE. The payment of interest is taken care of by the perfecting amendment offered by the Senator from West Virginia earlier today.

Mr. ROBERT C. BYRD. Mr. President, I do understand the Senator's amendment.

I believe it was estimated that perhaps 500 persons would be affected by my amendment which the committee accepted some days ago before reporting the bill to the floor. I was also advised that the total cost would be something like a million dollars. We are really talking about chicken feed here. We are talking about poor families who have spent their IRS refunds and who would probably have to borrow the money to restore the refunds to IRS.

But the Senator feels that we may be setting a questionable precedent here, and I understand why he wants to modify the amendment. I do not believe it would affect 90 percent of these people—perhaps only a very small percentage.

I am willing to accept the modification, if the Senator is willing to support my amendment as modified.

Mr. PROXMIRE. I thank the Senator. I am happy to support the committee amendment under those circumstances.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The amendment will be stated.

The legislative clerk read as follows:

On page 20, line 23, insert the following:

After the number "$5,000" delete the period and add ", or"

On page 20, line 24, insert the following:

(3) If the adjusted gross income of the taxpayer does not exceed $15,000 for the taxable years to which this section may be applicable, such taxpayer shall be entitled to the full benefits of this section. Where the adjusted gross income of the taxpayer exceeds $15,000 for the taxable years to which this section may be applicable, the amount of the casualty loss deduction shall be reduced by an amount equal to a percentage, the numerator of which is the taxpayer's adjusted gross income in excess of $15,000, and the denominator of which is the taxpayer's total adjusted gross income for such year.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent at this point to have printed in the RECORD a letter which I wrote to the distinguished chairman of the Committee on Finance (Mr. LONG) on October 17, 1973, and a letter which the distinguished chairman of the Committee on Finance (Mr. LONG) wrote to me in response thereto on November 6, 1973.

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

OCTOBER 17, 1973.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee, Washington, D.C.

DEAR MR. CHAIRMAN: During the recent Senate floor debate on the Pension Reform Bill, I discussed with the staff of the Senate Finance Committee the amendment which I wanted to offer to that bill, to provide favorable tax treatment for the victims of the Buffalo Creek flood disaster in West Virginia.

The staff of the Committee suggested several changes in my amendment which, they thought, would make it more acceptable to the Committee, and incorporated those suggested changes in my amendment. However, in discussing this amendment with the Committee staff and the Floor Manager of the Pension Reform Bill, they strongly urged that I not offer my amendment since they wanted to keep the bill free of all non-germane amendments. Therefore, I withheld offering my amendment, in the hope that the Finance Committee would favorably consider incorporating it into the next appropriate piece of legislation reported from the Committee.

I am enclosing two copies of the revised amendment, and I will greatly appreciate your incorporating it into legislation which is expected to be acted upon this session, in order that these very unfortunate victims of Buffalo Creek disaster may obtain this much needed relief.

Sincerely yours,

ROBERT C. BYRD,
U.S. Senator.

NOVEMBER 6, 1973.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: Thank you for your letter of October 17, 1973 in which you discussed a proposed amendment to provide favorable tax treatment for the victims of the Buffalo Creek flood disaster in West Virginia. An amendment along these lines has been adopted by the Committee on Finance and has been added to H.R. 8214, a House passed bill containing tax changes applicable to military and civilian personnel involved in the Vietnam conflict.

The committee amendment provides that taxpayers receiving income tax refunds on account of flood casualties and who are subsequently compensated for those losses due to claims of negligence, shall be entitled to special tax treatment. Due to the hardships already suffered, the Committee believes it is appropriate, where both a tax refund and other compensation are received, that taxpayers should not be required to pay back the tax refund or include compensation for such losses in gross income. Rather, the basis of the taxpayer's property or replacement property should be reduced in accordance with the receipt of any such funds. The Committee amendment provides, however, that the amount of tax deferred through an adjustment to basis is not to exceed $5,000. Any tax benefit in excess of $5,000 shall be included in the taxpayer's income, pro rated over a five year period.

I trust this Committee amendment adopted at your suggestion, will provide substantial relief to the very unfortunate victims of the Buffalo Creek disaster as well as the many additional taxpayers who have suffered similar hardships.

With every good wish, I am,

Sincerely,

RUSSELL B. LONG,
Chairman.

Mr. ROBERT C. BYRD. Mr. President, I believe that the language of the modification carries out the intent of the author of the modification and also meets with my understanding of the modification. As I stated earlier, I am willing to accept on my part the modification, if the Senator is willing then to support the committee amendment. Any technical changes that are necessary to fully implement the intent as expressed here by way of legislative history, by the Senator from Wisconsin and me can be made by the Secretary or in conference.

Mr. PROXMIRE. Mr. President, with that understanding I withdraw by objection to this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to section 15 of the committee amendment, as amended.

Mr. PROXMIRE. Mr. President, is that the amendment dealing with disaster flood relief?

The PRESIDING OFFICER. That has been agreed to already.

Mr. PROXMIRE. What is section 15? Is that student unemployment compensation?

The PRESIDING OFFICER. The amendment begins on page 19, line 18, entitled "Certain Casualty Losses," as amended.

Mr. PROXMIRE. That is the West Virginia flood disaster provision?

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The next section of the committee amendment will be stated.

The legislative clerk read as follows:

On page 22, line 10, insert new section 16.

Mr. PROXMIRE. Mr. President, this amendment is of great concern to the Senator from New York (Mr. JAVITS). He wants to be here. I suggest the absence of a quorum until he arrives.

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.

THE ENERGY CRISIS—MESSAGE FROM THE PRESIDENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President's message at the desk on energy be jointly referred to the Committees on Armed Services, Banking, Housing and Urban Affairs, Commerce, Finance, Government Operations, Interior and Insular Affairs, Public Works, and the Joint Committee on Atomic Energy.

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

The message is as follows:

To the Congress of the United States:

As the 93rd Congress reconvenes this week, it returns to an agenda that is piled high with vital legislative questions.

America is undergoing a period of rapid change and growth when decisions made in Washington could affect the patterns of our national life for the rest of this century. These decisions demand not only the collective wisdom of our national leadership but also a continuing spirit of cooperation between the executive and legislative branches of our Government. In this first legislative message of 1974, I want to renew my pledge that I stand ready and eager to work with the Members of the Congress in shaping the solutions that are best for America.

In the next few weeks, I will send to the Congress a series of messages requesting swift legislative action in the areas where I feel that progress is most keenly needed. In each of these areas—health, education, transportation, natural resources, and others—these proposals reflect the best efforts of my Administration to solve a wide range of difficult domestic problems.

No single legislative area is more critical or more challenging to us as a people, however, than the subject of this first message to the Congress: The energy crisis. It is because of its importance and because of the urgent need for action that I have chosen to break tradition, outlining to the Congress my legislative requests in energy before delivering my State of the Union Address.

I first warned of approaching energy shortages in a message to the Congress in 1971—the first energy message ever presented by an American President. In 1973, an embargo was suddenly imposed upon many of our foreign supplies of oil, the crisis broke upon us, and the entire country took the first steps toward coping with the emergency. We have made solid progress since then, but it is clear that our efforts in 1973 were just the beginning. As our first order of business in the new year, therefore, let us resolve that 1974 shall be the year that we build a permanent framework for overcoming the energy crisis.

In the initial portion of this message, I want to report to the Congress on our progress over the last three months. The remainder of the message addresses the legislative program on which I am urging Congressional action in 1974:

—*First*, the proposals that I believe

are essential to meet the short-term emergency, including:

—A special energy act that would permit restrictions on the private and public consumption of energy and would temporarily relax certain Clean Air Act requirements for power plants and automotive emissions;

—A windfall profits tax that would prevent private profiteering at the expense of public sacrifice;

—Unemployment insurance to help those who lose their jobs because of the energy crisis;

—And establishment of a Federal Energy Administration.

—*Second*, the legislative proposals that I have previously submitted in order to meet our long-range goal of achieving self-sufficiency in energy, including proposals that would:

—Allow market pricing of new natural gas;

—Allow temporary oil production from the Elk Hills Naval Petroleum Reserve in California;

—Permit surface mining of coal in a manner that is environmentally safe;

—Permit the development of new deepwater port facilities offshore;

—Amend the tax laws regarding drilling investments;

—Modernize the laws regarding mineral leasing on Federal lands;

—And reorganize the executive branch so that it may deal more effectively with energy and natural resource problems.

—*Third*, proposals which are designed to help us achieve self-sufficiency in energy and which I am submitting to the Congress this year for the first time, including proposals that would:

—Eliminate depletion allowances for foreign oil and gas production;

—Accelerate the licensing and construction of nuclear facilities;

—Require labeling of products for energy efficiency;

—And streamline the site selection process for energy facilities.

In addition to these legislative proposals, the Administration is moving forward this year with a series of executive actions and studies relating to our long-term energy needs. The latter are addressed in the last section of the message.

I. REPORT ON THE CURRENT EMERGENCY

Last year the United States consumed roughly 18 million barrels of petroleum, in one form or another, every day. This represented about one-half of our total energy consumption. The level of petroleum consumption was also rising, so that we expected demands to reach about 20 million barrels a day in 1974.

While the country is rich in natural resources, our production of petroleum resources is far less than our demands. Last year we were producing approximately 11 million barrels of petroleum a day, and the level of production was declining.

The difference between our demands and our domestic consumption must be made up, of course, by imports from abroad, reductions in demand, or increased domestic production. Even before the embargo on oil in the Middle East, our foreign supplies were barely adequate. Since the embargo, the shortage has become a good deal more serious. The Federal Energy Office has estimated that during the first three months of 1974, our imports will fall short of our normal demands by 2.7 million barrels a day. If the embargo continues, shortages could exceed three million barrels a day during the rest of the year. That shortfall is the major factor in our current emergency.

ENCOURAGING PROGRESS

With the Nation confronting a severe energy shortage, I appealed to the public eleven weeks ago to undertake a major conservation effort on a personal, voluntary basis. My appeal was repeated by public servants across the land. The Congress acted quickly to pass laws putting the Nation on year-round daylight savings time and reducing the national highway speed limits to no more than 55 miles per hour. The Federal Government began moving swiftly to ensure that fuel supplies were allocated fairly and that conservation measures were undertaken within the Government. Most importantly, the people themselves responded positively, lowering the thermostats in their homes and offices, reducing their consumption of gasoline, cutting back on unnecessary lighting, and taking a number of other steps to save fuel.

Largely because of the favorable public response, I can report to the Congress today that we are making significant progress in conserving energy:

—Total consumption of gasoline in the United States during the month of December was nearly nine percent below expectations.

—Consumption of home heating oil has been reduced. A recent survey of 19,000 homes in New England showed they had reduced heating oil consumption by more than 16 percent under last year, after making adjustments for warmer weather.

—Utilities report that consumption of natural gas across the country has been reduced by approximately 6 percent over last year, while the consumption of electricity is down about 10 percent.

Beyond the progress we have made because of voluntary conservation, we have also been fortunate in two other respects. The weather in the last quarter of 1973 was warmer than usual, so that we did not consume as much fuel for heating as we expected. In addition, the oil embargo in the Middle East has not yet been totally effective, allowing us to import more oil than we first anticipated.

ACTION AT THE FEDERAL LEVEL

The Federal Government clearly has a major responsibility in helping to overcome the energy crisis. To fulfill that responsibility, several steps have been taken in the last three months:

—A major conservation program has been established and has cut consumption of energy by Federal agencies by more than 20 percent below anticipated demands in the third quarter of 1973.

—A sweeping investigation of fuel prices charged at gasoline stations and truck stops has been launched, putting an end to price gouging wherever it is found.

—A Federal Energy Office has been created to serve as a focal point for energy actions taken by the Government.

—Finally, a fuel allocation program has been set up to assure that no area of the Nation is subjected to undue hardships and to assure that in allocating fuel, the protection of jobs comes ahead of the satisfaction of comforts. As part of this allocation effort, refiners are being encouraged to produce less gasoline and more of the products that are needed in homes and industry, such as heating oil, diesel oil, residual fuel oil, and petrochemical feed-stocks. The Cost of Living Council has issued regulations to encourage the shift away from gasoline production. If necessary, additional steps will be taken to encourage shifts in refinery production.

The allocation program now underway will mean some cutbacks in travel, heating and other end uses of fuel, while uses which keep our economy operating at a high level will be permitted to remain at or above last year's levels.

Market forces are also at work allocating fuel. Due primarily to huge increases in prices for foreign oil, the price of gasoline has risen by 12 to 15 cents per gallon over last year. This obviously discourages the consumption of gasoline. Heating oil has also shown a comparable rise with similar effect.

There is a limit, however, to the amount of market allocation through higher prices which we will allow. We will not have consumers paying a dollar a gallon for gasoline. We must therefore seek to maximize the production of domestic oil at a price lower than the price of foreign oil. We will also carefully review requests for energy price increases, to ensure that they are genuinely needed.

All of the measures of conservation and allocation have greatly improved the Nation's chances of avoiding hardships this winter and gas rationing this spring. *Gas rationing, with its attendant bureaucracy and cost to the taxpayer, should be only a last resort.* Nevertheless, we are attempting to be prudent and therefore have developed a system of coupon rationing. The system is now on the record for public comment, and will be ready for use this spring should it prove necessary.

The system would provide for transferable coupons for all licensed drivers over 18 years old. The coupons, unlike the World War II coupons, would be freely transferable. Thus those who can economize and use less than their allotment would be given tangible incentive to do so, while those who seriously need larger amounts would be able to buy coupons legally.

The measures of allocation and conservation are, in the very short-run, the only actions which will have an effect in lessening the crisis. However, in the slightly longer term, we can and we are making efforts to increase domestic supplies of petroleum very rapidly.

Increases in supplies of domestic crude oil are necessary not only to assure supplies, but to keep the prices for consumers at a reasonable level. The prices charged by a foreign cartel for crude oil have risen so dramatically that U.S. oil prices are now greatly below the world market price

To ensure that domestic oil exploration continues and grows, the price of oil from new exploration and development has been removed from Economic Stabilization Act controls. Also, to compensate for increased production costs and to stimulate advanced techniques for recovering oil, we have permitted a $1 per barrel increase in the cost of petroleum under existing oil contracts.

As a result, domestic oil wells that had been abandoned because they were no longer profitable are being put back into production, and new American oil is now beginning to come into the market. We anticipate additional increases in the oil in the future.

As a greater domestic production fills more of our oil needs, we will be demanding less foreign oil, and the price for foreign oil will not be driven upwards by our demands. Our own domestic production will tend to put a cap on the prices foreign suppliers may charge.

To deal further with the world shortage of oil and its increasingly unrealistic price levels, I have invited major consuming nations to a conference in Washington on February 11. The conference will, I hope, eventually lead to greater international cooperation in the areas of energy conservation, research, pricing policy, oil exploration, and monetary policy.

II. LEGISLATION TO MEET THE CURRENT EMERGENCY

Although we have made significant progress over the last three months in reducing consumer demands for energy and in allocating fuel supplies, additional legislative measures must be enacted if we are to maintain our momentum. I am therefore asking that the Congress give its highest priority to five proposals which I have previously recommended for dealing with the short-term emergency:

1. SPECIAL ENERGY ACT

The principal purposes of this legislation are to grant the executive branch authority to restrict the public and private consumption of energy and to modify certain Clean Air Act requirements.

During the closing weeks of December, both Houses of Congress labored long and hard on this emergency bill. As presently drafted in the House-Senate conference, the bill is laden with so many extraneous provisions that I would have difficulty signing it. I urge the Congress to pass a basic bill dealing with mandatory conservation, fuel conversion, rationing, and changes to the Clean Air Act. I would also urge that the extraneous provisions be placed in separate legislation where they belong.

2. WINDFALL PROFITS TAX

The solution to the energy crisis must ultimately depend in large measure upon the response of the public, and their actions will in turn be based upon their recognition that an energy crisis actually exists and that it has not been contrived for the benefit of big business. For weeks, believing that the crisis is genuine, millions of Americans have made sacrifices in their comfort and convenience so that no Americans would have to suffer personal hardships. Those sacrifices are continuing today, and they will be needed in the future. It is up to the leaders of the Nation to ensure that the public trust is not abused.

As President, I am deeply committed to a firm policy: *We must not permit private profiteering at the expense of public sacrifice.* The sacrifices made by the American people must be for the benefit of all the people, not just for the benefit of big business. *In equal measure, we must not permit the big oil companies or any other major domestic energy producers to manipulate the public by withholding information on their energy supplies.* That information must be made available to the public, and it must be accurate and complete.

The windfall profits tax that I outlined last December and am again asking the Congress to pass would serve this policy by preventing major domestic energy producers from making unconscionable profits as a result of the energy crisis. It would exact a tax of up to 85 percent on receipts from sales of crude oil above the ceiling set by the Cost of Living Council in December of 1973.

3. ENERGY-RELATED UNEMPLOYMENT INSURANCE

The energy emergency will undoubtedly result in some dislocation within the economy. Selected labor market areas may experience unusually large rises in unemployment despite our best efforts to minimize economic disruption. Jobs in those areas may become harder than usual to find. Therefore, as an integral part of the same philosophy which had led me to seek a windfall profits tax that prevents a few people from benefiting unduly from the energy emergency, I will also recommend new unemployment insurance measures to cushion American workers against the shocks of economic adjustment. Last April, I submitted legislation to improve the unemployment insurance program by increasing benefit levels and expanding coverage. I call again for the enactment of those measures. In addition, I will submit unemployment insurance amendments that would, on enactment, extend the duration of benefit entitlement and expand coverage in those labor market areas that experience significant increases in the level of unemployment. These provisions, coupled with the recently enacted Comprehensive Employment and Training Act will provide a solid foundation for the more rapid re-absorption of workers into the Nation's economy.

4. MANDATORY REPORTING ON INFORMATION BY PRIVATE INDUSTRY

The information now provided to the public and to the Government by the energy industry is insufficient for public planning purposes. This is a serious deficiency which has understandably become a matter of intense public interest. To correct it, I will shortly submit legislation requiring major energy producers to provide to the Government a full and constant accounting of their inventories, their production and their reserves. Where required for national security or competitive purposes, confidentiality of the information will be protected. Most of this data, however, can and will be made available to the public.

To provide a focus for the collection and analysis of this data, I have directed the Federal Energy Office to establish an Energy Information Center. This center will coordinate energy data within the Government and provide the information to the public, the Congress, and other Federal agencies.

5. FEDERAL ENERGY ADMINISTRATION

FEA would bring together and significantly expand programs to deal with the current energy emergency. It would also carry out major new activities in energy resource development, energy information and energy conservation. Included within this agency would be the functions of the Offices of Petroleum Allocation, Energy Data and Analysis, Oil and Gas, and Energy Conservation from the Department of the Interior and the Energy Division of the Cost of Living Council.

III. OUR PROGRAM FOR THE FUTURE: PROJECT INDEPENDENCE

Energy demand in the United States will certainly continue to rise. Were domestic oil production to continue to decline and demand continue to grow at over 4 percent annually, as it did before the embargo, imports would increase from 35 percent of U.S. consumption in 1973 to roughly half of U.S. consumption by 1980.

We must also face the fact that when and if the oil embargo ends, the United States will be faced with a different but no less difficult problem. Foreign oil prices have risen dramatically in recent months. If we were to continue to increase our purchase of foreign oil, there would be a chronic balance of payments outflow which, over time, would create a severe problem in international monetary relations.

Without alternative and competitive sources of energy here at home, we would thus continue to be vulnerable to interruptions of foreign imports and prices could remain at these cripplingly high levels. Clearly, these conditions are unacceptable.

To overcome this challenge, I announced last November 7 that the United States must embark upon a major effort to achieve self-sufficiency in energy, an effort I called Project Independence. If successful, Project Independence would by 1980 take us to a point where we are no longer dependent to any significant extent upon potentially insecure foreign supplies of enegry.

Project Independence entails three essential concurrent tasks.

The first task is to rapidly increase energy supplies—maximizing the production of our oil, gas, coal and shale reserves by using existing technologies and accelerating the introduction of nuclear power. These important efforts should begin to pay off in the next 2 to 3 years. They will provide the major fraction of the increased supplies needed to achieve energy self-sufficiency.

The second task is to conserve energy. We must reduce demand by eliminating

non-essential energy use and improving the efficiency of energy utilization. This must be a continuing commitment in the years ahead.

The third task is to develop new technologies through a massive new energy research and development program that will enable us to remain self-sufficient for years to come.

We cannot accept part of the overall program and ignore the others. Within the Federal sector, success will depend on a wide range of actions by many agencies. As an important part of that effort, the head of the Federal Energy Office, William Simon, will mount a major effort this year to accelerate the development of new energy supplies for the future.

Our strategy for Project Independence is reflected in urgent measures now pending in the Congress as well as many new legislative proposals and administrative actions I now plan to take.

A. LEGISLATION STILL AWAITING CONGRESSIONAL ACTION

Over the past three years, I have submitted a number of legislative proposals that are essential to our pursuit of energy self-sufficiency but are still awaiting final Congressional action. I ask that the 93rd Congress move ahead with these proposals, and I pledge the cooperation of this Administration in working out any differences. These proposals include the following:

NATURAL GAS SUPPLY ACT

The artificially low prices for natural gas created by Government regulations continue to create a double problem: consumers wish to purchase more of this cheap, clean fuel than is available, while suppliers have little incentive to develop it. I again ask the Congress to provide for competitive pricing of newly developed gas supplies in order to encourage new drilling and to direct available gas into the premium uses.

Although my deregulation proposal should not cause a significant rise in consumer prices for natural gas for some years, I recognize that there is a strong desire to provide added insurance that unreasonable price increases do not occur. This insurance can be provided by adding to the Administration's legislative proposal a provision authorizing the Federal Power Commission to establish limits on absolute price increases. We are prepared to work with the Congress on these changes.

NAVAL PETROLEUM RESERVES

The Nation has vast oil and oil shale reserves which years ago were set aside for national defense purposes by placing them under the control of the Secretary of the Navy. That action was taken at a time when naval petroleum requirements were an especially important share of total national petroleum consumption. Some of these oil reserves, principally those located in Wyoming and California, have been explored and developed to the point where limited production is possible. The largest reserve, located in Alaska, has not been significantly explored or developed and could not be available for production for several years, even in a grave national emergency. I have proposed legislation that would greatly improve the availability of the reserves for future needs and would permit limited production from the Elk Hills Reserve in California to assist in meeting our short-term energy problems.

In accordance with law, the Secretary of the Navy has issued and I have approved a finding that production of oil from Naval Petroleum Reserve No. 1 (Elk Hills) is necessary for national defense purposes. Approval of the Congress is also necessary and I have proposed legislation that would give such congressional approval. It would also provide that funds from the sale or exchange of the oil could be used for further exploration and development of Elk Hills and for exploration of Naval Petroleum Reserve No. 4 in Alaska. I am pleased that the Senate has already passed this legislation, and I am hopeful that immediate action will now be taken by the House of Representatives.

MINED AREA PROTECTION

A Mined Area Protection Act is needed to encourage the development of State programs which permit the mining of coal and other minerals to go forward in a way that is environmentally safe. The absence of clear legislation in this area is inhibiting the development of our coal reserves. The Senate has passed a bill, but it deals only with surface mining of coal rather than all mining and it contains provisions which would actually impede production of coal.

The House Committee on Interior and Insular Affairs is scheduled to take up the matter soon and I am hopeful that it will act favorably on the Administration's proposal.

DEEPWATER PORT FACILITIES

Even though our policy is to achieve self-sufficiency, we will clearly continue to import oil as long as it is available at reasonable prices. To enable us to import fuel more economically, I have proposed Federal Government licensing of the construction and operation of deepwater port facilities three miles or more at sea on the Outer Continental Shelf. The main use of these facilities would be to import crude oil in ships that are economically and environmentally desirable, but are too deep of draft to permit their entry into our port facilities on the East and Gulf Coasts.

This legislation would also eliminate many of the legal uncertainties which now drive private investors away from American waters and to other nations of the Western Hemisphere. The present system only serves to create investments and jobs abroad and raises our costs of imported oil, already high, even further.

DRILLING INVESTMENT CREDIT

Last April I proposed that the investment credit provisions of present tax laws be extended to provide a credit for all exploratory drilling for new oil and gas fields. Approval of this provision would provide an essential incentive for new oil and gas exploration. At the same time, I am asking the Congress to eliminate the tax shelter that now exists for wealthy taxpayers who reduce their taxes by taking deductions for investments in oil drilling.

MINERAL LEASING ACT

The Mineral Leasing Act of 1920 governs the exploration and production of oil, gas, coal, and other minerals on Federal lands while the Mining Act of 1872, governs the exploration and mining for "hard-rock" (gold, silver, copper, etc.) minerals. Both acts have become obsolete. Last February, I proposed a bill that would place all mineral exploration and mining activities on Federal lands under a single Federal leasing system. The bill would assure that the persons who obtain the leases are those who have an interest in early exploration for oil, gas, and other minerals. It would also require that exploration meet the environmental standards of the Administration's proposed Mined Area Protection Act.

ORGANIZING THE FEDERAL ENERGY EFFORT

If the Federal Government is to achieve prompt and productive results in the energy field, its many energy programs and resources must be organized in the best possible manner. Toward this end, I have submitted several organizational proposals to the Congress and urged their prompt adoption. One calls for establishment of the Federal Energy Administration as discussed above. The others call for statutory establishment of the following:

(1) ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

This new organization would provide unified leadership and direction for energy technology programs at the Federal level. ERDA would include the research and development as well as the production functions of the Atomic Energy Commission, along with selected energy research and development functions of the Department of the Interior, the National Science Foundation, and the Environmental Protection Agency. Under this proposal, the five-member Atomic Energy Commission would be renamed the Nuclear Energy Commission and would carry out the vital task of licensing and regulating the rapidly growing use of nuclear power.

(2) DEPARTMENT OF ENERGY AND NATURAL RESOURCES

As the longer-run solution to the many interrelated problems in the energy and natural resources area, I have proposed the establishment of this new department. DENR would incorporate most of the responsibilities of the Department of the Interior; the activities of the Forest Service and certain water resource functions of the Department of Agriculture; the activities of the National Oceanic and Atmospheric Administration of the Department of Commerce; the water resource planning functions of the Corps of Engineers; the gas pipeline safety functions of the Department of Transportation, and the Water Resources Council. Drawn together, these responsibilities would form the basis of a modern department truly capable of

providing a much needed balance between the wise utilization and careful conservation of our Nation's precious natural resources.

Because of the energy crisis, I urge that the Congress give priority attention to the creation of FEA and ERDA. Because of its comprehensive scope, DENR may require additional examination by the Congress, but I reaffirm the need for this modern Cabinet department. Once DENR is established, it should incorporate the functions of ERDA and FEA.

B. NEW LEGISLATIVE INITIATIVES

In addition to the legislation now pending before the Congress still further steps must be taken if we are to progress at a proper pace toward self-sufficiency. Within the next several weeks, I will be sending to the Congress a number of legislative proposals to help us take those steps, including:

CHANGES IN FOREIGN TAX TREATMENT

U.S. companies that produce oil overseas have been granted the same 22 percent depletion allowance abroad that is granted to U.S. companies producing oil in the United States. Both allowances provide an incentive for oil production.

As we move toward U.S. self-sufficiency in energy, however, we want to encourage greater development of U.S. energy resources rather than foreign resources. I am therefore asking the Congress to eliminate these foreign depletion allowances, while retaining the depletion allowance for domestic oil production.

Taxes paid to foreign governments by U.S. oil companies drilling abroad have increased dramatically. There is growing concern about the degree to which such increases should be allowed as credits against U.S. tax on other income. Under these circumstances, it is no longer realistic to treat these payments to foreign governments entirely as income taxes creditable against the U.S. tax. Obviously, however, the oil producing countries, like any other country, have the right to impose taxes and some reasonable portion of those taxes should be creditable. I have asked the Treasury Department to prepare proposals which would cause part of these amounts to be designated as a creditable tax and the balance to be allowed solely as a deduction.

ACCELERATING THE LICENSING AND CONSTRUCTION OF NUCLEAR FACILITIES

Nuclear power, which lessens our dependence on foreign fuel, is an essential part of our program of achieving energy self-sufficiency. At present, however, it takes 9–10 years to complete the planning, licensing, and construction of nuclear power plants. In order to get vitally needed nuclear power on-line more rapidly, I have directed that steps be taken to reduce the licensing and construction cycle to 5–6 years, without compromising safety and environmental standards.

I will soon transmit a legislative proposal to expedite the completion of nuclear power plants by separating the approval process for plant sites from the reactor licensing process and by encouraging the use of standardized plant designs. These designs, once approved, would reduce the required licensing review time and would enhance safety. This legislation would also permit the establishment of an inventory of approved sites for nuclear plants.

EFFICIENCY LABELS

Energy conservation must play a major role in achieving self-sufficiency, but few of the products we now purchase clearly indicate how much energy they require to operate. To assure that such informaton is available, I will shortly submit to the Congress legislation requiring that all major appliances and automobiles produced or imported into the United States be clearly labeled to indicate their energy use and energy efficiency.

ENERGY FACILITIES SITING

The present multitude of Federal, State, and local approvals required for the construction of energy facilities has caused serious delays in their availability. There is also no provision for advanced approval of sites which will be needed in the future. In addition, the public has often been frustrated because public participation in the site approval process seldom occurs early enough to affect the basic siting decision.

In 1971 I requested legislation to overcome these problems for electrical power plants and transmission lines. I resubmitted similar legislation in February 1973, but the Congress has not acted on my proposal. I have now directed that new legislation be prepared, building upon my earlier proposals but covering additional critical energy facilities. This legislation will be directed toward:

—advanced approval of adequate sites for energy facilities on a regional basis;

—better coordination of the various approvals now required by all levels of Government;

—and improved long range planning of energy facility requirements.

CHANGES IN THE CLEAN AIR ACT

The Clean Air Act has provided the basis for major improvements in air quality and we must continue our progress toward even greater improvement. However, during the current energy shortage, it has become clear that some changes in the act are needed to provide greater flexibility in deadlines and other requirements. The special energy legislation now before the Congress would permit temporary relaxation in some requirements applicable to power plants when an adequate supply of clean energy is not available. It would also extend the deadlines for the reduction of emissions from automobiles. I hope the Congress will move quickly to grant authority for temporary relaxation of requirements and freezing the standards for auto emissions—now applicable to 1975 model cars—for two additional years. This latter action will permit auto manufacturers to concentrate greater attention on improving fuel economy while retaining a fixed target for lower emissions. These changes can be made without significantly adverse effect on our progress in improving air quality.

The Congress has also been advised by the Environmental Protection Agency of evidence demonstrating that the reductions of nitrogen oxides from automobiles as required by the Clean Air Act are unnecessarily stringent and that technology to achieve the reductions is not yet practicable. In addition, the Congress has been advised by the Environmental Protection Agency that deadlines cannot be met for meeting air quality standards in some metropolitan areas without drastically curtailing the use of motor vehicles. For instance, these deadlines would require that motor vehicle usage in Los Angeles be reduced by as much as 87 percent.

An extensive review is now underway within the executive branch of the implications of court decisions which require that EPA act to prevent "significant deterioration" of air quality—a requirement that is not defined in either the law or court decisions. This matter has far-reaching implications for public policy regarding land use as well as air quality. Changes in the law may thus be required to deal with this problem, and we will consult with the Congress as appropriate.

We must continue to assess the impact of actions required by the Clean Air Act so that there will be a basis for sound decisions that provide an appropriate balance among our objectives for environmental quality, economic and social growth, energy supply and national security.

IV. NEW ADMINISTRATIVE ACTIONS AND STUDIES

In addition to preparing the legislative proposals above, I have directed that a number of executive actions be taken and additional legislative studies be made which could help us to succeed with Project Independence. Among these actions are the following:

OUTER CONTINENTAL SHELF DEVELOPMENT

The undiscovered oil and gas beneath our Outer Continental Shelf can provide a significant portion of the energy necessary to make us self-sufficient. I have already ordered leasing in that area to be stepped up. Today I am directing the Secretary of the Interior to increase the acreage leased on the Outer Continental Shelf to 10 million acres beginning in 1975, more than tripling what had originally been planned. In later years, the amount of acreage to be leased will be based on market needs and on industry's record of performance in exploring and developing leases. In contracting for leases, the Secretary of the Interior is also to insure that the proper competitive bidding procedures are followed and that environmental safeguards are observed. He will, in addition, set up an interagency program for monitoring the environmental aspects of the new leasing program. There will be no decision on leasing on the Outer Continental Shelf in the Atlantic and in the Gulf of Alaska until the Council on Environmental Quality completes its current environmental study of those areas.

ALASKA PIPELINES

In 1973, the Congress passed the Alaskan pipeline bill, allowing the construction of a vitally needed oil pipeline. The Secretary of the Interior plans to issue

the construction permit for that pipeline this afternoon, and construction should begin this year.

It has long been clear that while an oil pipeline was needed, it alone would not be enough. In addition to the huge oil reserves in the North Slope of Alaska, there are also gas reserves there of at least 26 trillion cubic feet—enough to heat 10 million homes for 20 years. Construction of a gas pipeline should thus accompany the construction of the oil pipeline. What is now needed, and what I am directing, is prompt action by the Administration. Interior Secretary Morton expects to receive two competing applications for the gas pipeline in the near future, one proposing construction across Alaska and the other proposing construction across Canada. I have asked the Secretary to consider these proposals carefully but promptly and to deliver a recommendation to me as soon as possible. I have also asked the Secretary to undertake a further study of the need for future oil and gas pipeline capacity and the best routes for new pipelines should they prove necessary.

STIMULATION OF SYNTHETIC FUEL PRODUCTION

At current rates of consumption, our coal reserves could supply our needs for 300 years while shale oil could satisfy an additional 150 years of demand. However, these resources are not easily recoverable, or usable in a manner that is environmentally acceptable. Therefore, the development of a domestic synthetic fuels industry—the production of oil from shale and the production of gas or oil from coal—can be an important element of our program for reducing our future dependence on energy imports.

The recent bidding for the first commercial oil shale lease indicates strong commercial interest in shale oil development. Five other lease offerings of Federal oil shale lands will be made this year. Several companies have also announced plans to construct plants for the production of commercially usable gas from coal. Nevertheless, a variety of factors including environmental, economic, technical, and regulatory problems impose constraints on any major increase in the commercial production and industrial use of synthetic fuels. I have therefore asked the Administrator of the Federal Energy Office to head up an interagency evaluation of financial or economic incentives or regulatory changes that may be needed to stimulate domestic production.

EVALUATING ENERGY EFFICIENT PRODUCTS

There are now several products on the market which, if given wider use, might help us to use energy more efficiently and could conceivably reduce air pollution. Among them are chemical catalysts and additives, attachments for automobile engines and more efficient heat transfer devices for industrial and home furnaces. Previously, these products have not been commercially profitable because of the low price of fuel. With an increase in fuel prices, however, they have become more attractive. I have therefore directed the Federal Energy Office to collect information on these products and on their energy efficiency. As results are available, we will publicize them and, where appropriate, will purchase the products for use by the Government.

IMPROVING URBAN TRANSPORTATION

It is widely recognized now that the development of better mass transit systems may be one of the key solutions to both our energy and environmental problems. My budget for fiscal year 1975, which will be sent to the Congress in the next two weeks, gives special priority to the improvement of urban transportation, especially transit bus fleets. In addition, I will soon propose legislation to increase the amount and flexibility of Federal transportation aid which is available to local communities.

ENERGY RESEARCH AND DEVELOPMENT

Nowhere will the need for the combined efforts of industry and Government be greater than in energy research and development. If we are to see the successful culmination of Project Independence, the Federal Government must work in partnership with American industry.

For the last five years, I have provided for a continual expansion of our efforts in energy research and development. Federal funding increased almost 75 percent from $382 million in fiscal year 1970 to $672 million in fiscal year 1973 and was then raised to $1 billion for fiscal year 1974. Last June I announced my commitment to an even more rapid acceleration of this effort through a $10 billion Federal program over the next five years, and I asked the Chairman of the Atomic Energy Commission to develop recommendations for the expanded program.

Today I am announcing that in fiscal year 1975—the first year of my proposed five years, energy R&D program—total Federal commitment for direct energy research and development will be increased to $1.8 billion, almost double the level of a year ago. In addition, I will be requesting an increase of $216 million for essential supporting programs in basic and environmental effects research.

Regardless of short-term fluctuations in the energy supplies, our Nation must move swiftly and steadily on a course to self-sufficiency. The private sector clearly must provide most of the money and the work for this effort. We must also guard against Government expenditures which merely replace private sector investments. But the Federal Government does have a role to play in supplementing and accelerating private development and in filling major technological gaps where market incentives are lacking. The Federal expenditures which I am announcing today are designed to serve those purposes.

In pursuing our energy R&D program, we must maintain balance. We cannot afford to direct all our efforts to finding long-term solutions while ignoring our immediate problems, nor can we concentrate too strongly on finding short-range solutions. Our program must be structured to provide us with payoffs in the near, middle, and far term.

For the near term—the period before 1985—we must develop advanced technologies in mining and environmental control that will permit greater direct use of our coal reserves. We must speed the widespread introduction of nuclear power. And we must work to develop more efficient, energy-consuming devices, for use in both home and industry.

Beyond 1985, we can expect considerable payoffs from our programs in nuclear breeder reactors and in advanced technologies for the production of clean synthetic fuels from coal. By this time, we should also have explored the potential of other resources such as solar and geothermal energy.

For the far term, our programs in nuclear fusion, advanced breeder reactors, hydrogen generation and solar electric power appear to be the ultimate keys to our energy future.

V. CONCLUSION

Although shortages were long in appearing, the energy crisis itself came suddenly, borne by a tragic war in the Middle East. It was a blow to American pride and prosperity, but it may well turn out to be a fortunate turning point in our history.

We learned at a stage short of the truly critical, that we had allowed ourselves to become overly dependent upon foreign supplies of a vital good. We saw that the acts of foreign rulers, even far short of military action, could plunge us into an authentic crisis. The Arab oil embargo will temporarly close some gasoline stations, but it has opened our eyes to the shortsighted policy we had been pursuing.

The energy emergency has shown us that we must never again be caught so dependent upon uncertain supplies. It is a lesson the American people must and will take to heart. By 1980, if we move forward with the proposals I have outlined today, I believe we can place ourselves in a position where we can be essentially independent of foreign energy producers.

America has half the world's reserves of coal. It has billions of barrels of oil in the ground, as well as convertible oil shale. It has vast natural gas reserves. We have the world's largest installed nuclear capacity and half the world's hydroelectric plants. This represents a truly enormous store of energy.

The United States also has the largest pool of highly trained scientific talent in the world. Our managerial skills in the private sector are enormous. And our organized facilities for solving technical problems in universities, businesses, and government are unparalleled.

I have no doubt that the bringing together of these natural and human resources can propel us toward an era of energy independence.

It will take time. But along the way we will assure that no groups of Americans are better off because other groups are suffering. We will assure that the genius of the free enterprise system is maintained and not destroyed by its response to this crisis.

Years from now, let us look back upon the energy crisis of the 1970s as a time when the American spirit reasserted itself for the lasting benefit of America and the world.

RICHARD NIXON.

THE WHITE HOUSE, *January 23, 1974.*

PRISONER OF WAR AND MISSING IN ACTION TAX ACT

The Senate continued with the consideration of the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes.

Mr. JAVITS. Mr. President, I oppose this committee amendment. I hope we will have a rollcall vote on it.

My reason for opposition already has been indicated by the manager of the bill. The Treasury Department, I am advised by my assistant who has been in the Chamber, defers to the Labor Department, and the Labor Department opposes the amendment. It opposes the amendment because it creates a class of employees respecting work which is not particularly tailored to students. I feel I must oppose it on that ground.

Insofar as work particularly tailored to students, like work study or work for a college or a university work directly, there is no issue with respect to the amendment, but this relates to students who work in programs, cafeterias, dormitories, book stores, parking lots, radio and television stations, and other types of work which are auxiliary or collateral to the given educational institution and in which many nonstudents are employed. Nonstudents, under this amendment, if they were so employed, would receive the benefit of unemployment compensation.

Therefore, the position needs to be that there is that kind of competitive situation which exists in terms of the type of work which is done; there is no reason why there should be this distinction made respecting unemployment compensation.

Another factor which needs to be mentioned, although I do not put it forward as the basic factor, is that there is a problem of defining students. It will be noted that the particular section relates to students as a generic term. So taking a course or two incidental to employment would perhaps meet that definition, though the person might simply be taking those courses for the purpose of qualifying without really being a student in the sense of the term as we understand it.

But that, I think, is not a major point. I think the major point is the discouragement which would result from hiring members of the local labor force, because on this basis it is somewhat cheaper to hire those who are called students, and it sets up the kind of competition which obviously it is departmental policy to oppose.

In addition, the AFL–CIO has stated its opposition on this ground.

For all of those reasons, Mr. President, I hope that the amendment will be rejected.

Mr. HARRY F. BYRD, JR. Mr. President, the amendment now pending conforms the unemployment compensation coverage to social security. Under the legislation enacted last year, students similarly situated were exempt from social security. This amendment would exempt schools, colleges, and universities from the unemployment compensation tax which would have to be paid on those students employed by nonprofit organizations which are operated to carry out certain functions of these schools.

This provision would decrease annual tax liability by less than $5 million, according to the Treasury. The committee felt that it was fair and appropriate to conform the unemployment compensation to social security.

The Senator from New York is correct when he asserts the Labor Department objects to this amendment.

The Internal Revenue Service did not express an opinion, deferring to the wishes of the Department of Labor.

Mr. BENNETT. Mr. President, I would like to ask a question of the Senator from New York.

Mr. JAVITS. Surely.

Mr. BENNETT. How many of these students to whom unemployment compensation would be paid, if this amendment were defeated, would actually qualify for workmen's compensation benefits? Is this a tax in order to conform to a pattern which the students for whose benefit it was intended could not actually collect the benefits?

Mr. JAVITS. In the first place, it is unemployment compensation which is involved, or workmen's compensation which is involved, and the fundamental requirement depends upon State law, but as I recall it, it is normally a year.

Mr. BENNETT. And a student goes to school for 9 months. The college would be required to pay this unemployment compensation tax, but he could not qualify for benefits, because the next time he came back it would be for 9 months more. He could never qualify.

Mr. JAVITS. Much of this employment does not end in the summer. Last year I had a child involved in it. Most of those operations continue throughout the year. Also, the fact is that local workers were hired. This represents an unemployment compensation which would be paid so that the argument respecting discrimination in terms of discouraging the hiring of local workers is a valid one. There would be no exemption for local workers at all.

Mr. BENNETT. Some institutions can simply organize themselves so that parents who cannot pay the full costs can have their children continue in school. I had a granddaughter who served as a janitor from 9 to 5 in order to stay in school, when her parents found things tough. Obviously, she would never qualify for unemployment compensation.

Mr. JAVITS. May I point out to my colleague that this amendment does not involve those engaged in work-study programs or who work directly for the university. It is, rather, concerned with collateral services, where there is direct competition with local workers.

Mr. BENNETT. But if a university has a university cafeteria, is that a collateral operation?

Mr. JAVITS. If that university actually runs the cafeteria as the university cafeteria, then it would not be a collateral operation. If it is a cafeteria that is run by a corporation or a student co-op, or something like that, then it would be, in my judgment, a collateral operation. This is the way most of it is done, because the institutions themselves do not wish to assume liabilities, for example, suits for accidents, and many things like that, that are inherent in what are normal commercial operations.

As a matter of fact, the amendment itself, in a negative sense, defines it by saying: "to perform the functions of, or to carry out the purposes of a school, college, or university."

That would be the universe, and outside of that universe is the ambit of the amendment to which I am addressing myself.

Mr. BENNETT. Which is saying to me that if the university itself operates the cafeteria or the book store or any of these other operations, it is outside the amendment.

Mr. JAVITS. If it is organized to carry out the purposes of that school, college, or university, it is within this definition. "operated, supervised, or controlled by or in connection with such school, college, or university" itself.

I point out that that is the specification which is made in the law. What they are trying to reach is the auxiliary activities which are operated that way. They include, as I have said, cafeterias, dormitories, book stores, parking lots, and so forth. That is my understanding of the reach of this amendment. It is a rather numerous class of workers who do compete with the local work force.

Mr. President, if I may just complete the argument so that the Senate has a clear understanding of the situation, the fundamental thrust of the opposition to this amendment—and where it is distinguished from social security, which I think is what the Senator from Virginia (Mr. HARRY F. BYRD, Jr.) properly raised—is, first, if we made a mistake in the first place on social security, we should not compound it; but, secondly, because it is very much more pertinent and direct, we are dealing essentially with young people who are much more likely at that stage of their lives to have a need for unemployment compensation than the rather deferred time for which they might be eligible for social security, with the rest of their employable life thereafter, long after they have ceased in any way being on a college campus, the opportunity to earn social security qualifications, whereas the unemployment compensation is a very direct and practical thing and is immediately related to their unemployment in respect of the normal conduct of their life at that stage.

So I can see a distinction, although in my judgment they should not have been exempted from the social security or, now that we have the opportunity to consider it, the unemployment insurance compensation.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? (Putting the question.) There is not a sufficient second.

Mr. JAVITS. Mr. President, I now ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? (Putting the question.) There is a sufficient second.

The yeas and nays were ordered.

Mr. HANSEN. Mr. President, let me say to the distinguished Senator from New York that there is a great deal that is unique insofar as employment is concerned in the matter of on-campus work or campus-related work.

The fact is that in a number of institutions it is the common practice for management purposes to have nonprofit operations set up and managed somewhat independently of the university or college or school administration simply because experience has proven that it works better in that way.

Most of these operations do things that are important for the overall running of the institution. At the same time they provide employment that is important to a lot of young people. I think we ought not to lose sight of the fact that the thrust, in my opinion, must always be to maximize the opportunity for employment.

I do not believe that most people look upon college, university, and school-related work as being the kind of work that would engage one through a very long period of his life. It is an opportunity to earn while one learns.

The reason that I would object to the position taken by the Senator from New York is that any time we add to the cost of providing that kind of employment, inevitably we would reduce the amount of remuneration that otherwise would be available to the work recipient.

As has been pointed out by the distinguished Senator from Virginia, colleges, universities, and schools were exempted from the application of the social security law. And that tax at the present time, I think, is between 5 and 6 percent, 5.6 percent or something like that. I think that says something about the desirability of exempting educational institutions from those requirements normally imposed upon employers generally. And, in my judgment, if we do not agree to this amendment what, in effect, we will be doing is to lessen the amount of funds, lessen the number of jobs, lessen the chances for students who want to help earn their way through school, and lessen their chance to go to school.

I would hope that the Senate would not delete the amendment. I think it is meritorious.

I understand full well that it has the opposition of the AFL–CIO. And I think that I can probably understand why that very important labor organization takes the position it does. It is trying to follow a principle and see that every employer comes under the set of standards that are imposed upon most employers. However, in this instance it occurs to me that were we to delete this amendment, we would simply insure that fewer Americans had a chance to achieve their aspirations and goals in life to which they are so firmly committed and dedicated than would otherwise be the case.

I hope that the Senate will approve the amendment.

Mr. HATHAWAY. Mr. President, if the Senator would yield, I would like to point out to the Senator from Wyoming, one of the proponents of the amendment, that first of all I agree with the remarks of the Senator from New York. Also, I would point out that the low rate of tax is because the experience rate is fairly good. An employer could pay as little as 1 percent, unlike the social security tax, which as the Senator from Wyoming pointed out is almost 6 percent. The money saved for the educational institutions by eliminating students from coverage for unemployment is quite small compared to the benefits the students get if we leave the provision in.

Mr. HANSEN. Mr. President, I appreciate the observations made by the distinguished Senator from Maine. Let me respond to that by saying that really his argument does not refute the principle I stated. It simply says that it has a minimal impact. I grant the Senator that 2 percent or 2-point-plus percent is not as much as 5 or 5-point-plus percent. Nevertheless, the fact remains that if we impose this sort of obligation and this sort of requirement on the operations associated with institutions of learning, we will inevitably lessen the chances for young people to acquire an education.

I recall very well that at the time I went to school back in the thirties, there were a number of people on the campus who earned only $1 a day. That does not sound like very much. However, it meant the difference between being able to stay in school and not being able to stay in school.

I know that on the University of Wyoming campus there were a number of young men who wore either their military shirt or cap. At that time we had compulsory ROTC training. They wore them on days of the week when they were not required to attend classes in ROTC.

So, I say simply, let us not knock out this tax on the basis that it does not take in very much money. Maybe 2 percent is not very much to some people. However, it means a lot to a person when it means that he will not be able to stay in school.

Mr. BENNETT. Mr. President, if the Senator will yield, I come back to the realization that even if that were the case, these people would never qualify for unemployment compensation. Most of them just work through the school year. So, it is putting a tax on a school for which nobody will receive benefits.

Mr. HATHAWAY. Mr. President, I would point out that that situation would enhance the experience rating of the employer, and consequently he would pay a lower percentage into the fund. If the experience rating was good, it could be as little as 1 percent.

Mr. BENNETT. It seems to me that it is a subterfuge. If this is intended to protect students for whom the tax is paid and they cannot be protected, then to me it is dishonest to collect the tax.

Mr. HATHAWAY. If the Senator will yield further, perhaps we should also change the law to permit the students to qualify easier. However, I do not think it will hurt to let the tax stay in effect.

Mr. HANSEN. Let us keep in mind, Mr. President, what institutions of learning are established for. Are they established to provide sources of employment, as seems to be implied by the Senator from Maine, or are they set up to educate people?

I think it is just that simple. If we want to keep our eyes on the prime goal of any educational institution, it seems to me that it ought to be twofold: First, it ought to keep in mind always, as I suspect most if not all of them do, the importance of improving the minds and abilities of those persons attending the institution; and second, it ought to keep in mind the continuing opportunity that each institution has of expanding as greatly as it can the numbers of people who are permitted and privileged to attend the institution.

I thank my distinguished friend.

Mr. HATHAWAY. Mr. President, do I have the floor? If not, I would like to be recognized.

The PRESIDING OFFICER. The Senator from Maine has the floor.

Mr. HATHAWAY. In response to the statement just made by the Senator from Wyoming, I would like to point out that it may be the purpose of schools to educate people, but it is also the purpose of those who are receiving the education, and oftentimes the purpose of their spouses, and often the necessity, for them to work to provide tuition and other costs to the university. It seems to me it is unjust to deprive the spouse of a student or the student himself, when he is unemployed, from receiving unemployment benefits just as every other worker would receive.

I would like to make the point also, when anyone makes the point that we took away the social security benefits from these individuals, why can we not take the unemployment benefits away also, that we should keep in mind that when we took away the social security benefits, we were allowing the students a little more money in their paychecks, because the social security taxes are on a matching basis, with the employer paying 5.85 percent and the employee also paying 5.85 percent, and the student would probably rather have his money at that time, when he is young and needs the money more; whereas the unemployment tax is paid wholly by the employer, and as a matter of law cannot be passed on to the employee.

Mr. HANSEN. I would say to my good friend from Maine, that is all the more reason not to reject this amendment.

Actually, I would say when we are taking away from people i exempt educational institutions the obligation for payment of social securit, taxes, I think it is perfectly clear that what we have done is recognize what the primary mission of an educational institution is, and that is to educate young people. Anything that adds to the cost per capita of doing that lessens the opportunity of that institution to achieve its twin objectives of providing a good education and providing a good education for as many people as possible.

I think that the arguments that have been propounded by the AFL–CIO miss the point. If we want to bring these institutions under the same concept of

law, then we are going to destroy the very quality that has made American labor so outstanding, and that is its ability to perform sophisticated programs or processes, handle complicated machinery, and do all sorts of things that set American labor apart from labor elsewhere with fewer merchantable skills.

Mr. JAVITS. Mr. President, I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, Senators may be ready to vote now, but in any event, I ask unanimous consent that the Senate vote on the pending amendment not later than 6 p.m.

Mr. JAVITS. And that the time be equally divided?

Mr. ROBERT C. BYRD. And that the intervening time be equally divided, in accordance with the usual form.

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

Mr. JAVITS. Mr. President, I yield myself 1 minute, so that we may have one fact clear.

I would like to get, for the record, some definition of the qualification for unemployment compensation. The best I am able to get, in the short time we have, is that the number of States that have approved is 13. I do not wish to vouch for the accuracy of this number in the imperfect state of the information I have, based on the qualifications of earnings, which is between $300 and $800 earned in more than one quarter. A number of States—our number is 12—have approved, as the number of weeks of employment, as a prerequisite, ranging from 14 to 26.

I state these facts only as an order of magnitude rather than in great specificity, and as throwing some light on the point which was raised.

I am prepared to yield back the remainder of my time.

Mr. HARRY F. BYRD, JR. Mr. President, this amendment would exempt colleges, schools, and universities from the unemployment compensation tax on students who are employed by nonprofit organizations which are auxiliary to the schools. It would conform the unemployment compensation to the social security amendments adopted by Congress last year.

I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. BIDEN). All time has been yielded back. The question is on agreeing to the amendment designated "Section 16. Application of Federal Unemployment Tax Act to Certain Employees of School-Related Organizations." The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Mississippi (Mr. STENNIS), the Senator from California (Mr. TUNNEY), the Senator from Texas (Mr. BENTSEN), the Senator from Louisiana (Mr. LONG), the Senator from Rhode Island (Mr. PASTORE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Montana (Mr. METCALF), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), and the Senator from Minnesota (Mr. MONDALE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from North Carolina (Mr. HELMS), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "yea."

The result was announced—yeas 35, nays 45, as follows:

[No. 10 Leg.]

YEAS—35

Aiken	Ervin	McClure
Allen	Fannin	McGee
Bartlett	Fong	Nunn
Beall	Fulbright	Roth
Bellmon	Gravel	Scott, William L.
Bennett	Griffin	Stafford
Brock	Gurney	Stevens
Byrd, Harry F., Jr.	Hansen	Taft
Cotton	Haskell	Tower
Curtis	Hruska	Young
Dole	Huddleston	
Dominick	Johnston	
	McClellan	

NAYS—45

Abourezk	Eagleton	Mondale
Baker	Hart	Montoya
Bible	Hatfield	Moss
Biden	Hathaway	Muskie
Brooke	Hollings	Nelson
Buckley	Hughes	Packwood
Burdick	Inouye	Pell
Byrd, Robert C.	Jackson	Proxmire
Case	Javits	Randolph
Chiles	Kennedy	Ribicoff
Church	Magnuson	Schweiker
Clark	Mansfield	Scott, Hugh
Cook	Mathias	Stevenson
Cranston	McGovern	Weicker
Domenici	Metzenbaum	Williams

NOT VOTING—20

Bayh	Humphrey	Sparkman
Bentsen	Long	Stennis
Cannon	McIntyre	Symington
Eastland	Metcalf	Talmadge
Goldwater	Pastore	Thurmond
Hartke	Pearson	Tunney
Helms	Percy	

So the committee amendment division, section 16, on page 22 of the bill, was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. HART). The clerk will now report the next committee amendment.

Mr. BELLMON addressed the Chair.

The PRESIDING OFFICER. The Chair is advised that the procedure requires that the clerk now state the next committee amendment.

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senate, there will be no more rollcall votes tonight. It is my understanding that there may be a voice vote on an amendment which may be accepted by the committee, but there will be no more rollcall votes tonight. If such are ordered, the leadership will attempt to put them over until tomorrow.

The PRESIDING OFFICER. The clerk will now state the next committee amendment.

The assistant legislative clerk read as follows:

On page 23, after line 5, insert a new section, as follows:

SEC. 17. APPLICATION OF SECTION 4942 TAX ON FAILURE TO DISTRIBUTE INCOME.

(a) IN GENERAL.—Section 101(l)(3) of the Tax Reform Act of 1969 (relating to savings provisions under section 4942 of the Internal Revenue Code of 1954) is amended by—

(1) striking out "and" in subparagraph (D),

(2) striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; and ", and

(3) adding after subparagraph (E) the following new subparagraph:

"(F) apply, in the case of an organization described in paragraph (4)(A) of this subsection,

"(i) by applying section 4942(e) without regard to the stock to which paragraph (4)(A) (ii) of this subsection applies,

"(ii) by applying section 4942(f) without regard to dividend income for such stock, and

"(iii) by defining the distributable amount as the sum of the amount determined under section 4942(d) (after the application of clauses (i) and (ii), and the amount of the dividend income from such stock.".

(d) The amendment made by this section shall apply to taxable years beginning after December 31, 1971.

Mr. BELLMON. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BELLMON. Mr. President, I ask unanimous consent that the pending amendment be laid aside so that I may bring up an amendment.

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

Mr. BELLMON. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

At the end of the bill, insert the following new section:

SEC. —. That (a) part II of subchapter C of chapter 76 of the Internal Revenue Code of 1954 (relating to Tax Court procedure) is amended by adding at the end thereof the following new section:

"SEC. 7465. RECOVERY OF COSTS.

"(a) IN GENERAL.—In any proceeding before the Tax Court for the redetermination of a deficiency, the prevailing party may be awarded a judgment of costs to the same extent as is provided in section 2412 of title 28, United States Code, for civil actions brought against the United States if in the opinion of the Tax Court the actions taken

by the Internal Revenue Service represents an unreasonable exercise of discretion.

"(b) JUDGMENT.—A judgment of costs entered by the Tax Court shall be treated, for purposes of this subtitle, in the same manner—

"(1) as an overpayment of tax, in the case of a judgment of costs in favor of the petitioner, and

"(2) as an underpayment of tax in the case of a judgment of costs against the petitioner.

No interest or penalty shall be allowed or assessed with respect to any judgment of costs."

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) The table of sections for such part II is amended by adding at the end thereof the following new item:

"Sec. 7465. Recovery of costs.".

(2) Section 2412 of title 28, United States Code, is amended—

(A) by inserting "(a)" before "Except", and

(B) by adding at the end thereof the following new subsection:

"(b) In any civil action which is brought by or against the United States for the collection or recovery of any internal revenue tax, or of any penalty or other sum under the internal revenue laws, and in which the United States is not the prevailing party, a judgment for costs may include reasonable attorney's fees if in the opinion of the Tax Court the actions taken by the Internal Revenue Service are an unreasonable exercise of discretion."

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply only with respect to civil actions and proceedings for the redetermination of deficiencies commenced after the date of the enactment of this Act.

Mr. BELLMON. Mr. President, this is an amendment to H.R. 8214, which would permit a taxpayer to recover reasonable court costs including attorney fees when he successfully challenges an adverse Internal Revenue Service ruling in court.

The language of this amendment is identical to S. 1535, which was introduced on April 11, 1973. It has generated wide support in the Senate. At present, S. 1535 is cosponsored by Senators ABOUREZK, BARTLETT, BEALL, BIBLE, CANNON, DOLE, DOMENICI, GURNEY, GOLDWATER, MCGOVERN, STAFFORD, WILLIAMS, and HELMS.

On June 27, 1973, S. 1535 was called up as an amendment to H.R. 8410, the temporary debt ceiling bill. It was withdrawn when the distinguished chairman of the Senate Finance Committee, Mr. LONG, stated his approval of this proposal and indicated his feelings that it should be included as a part of an appropriate tax reform proposal sent from the House. It is my conviction that H.R. 8214 represents such a proposal. Furthermore, it is extremely important that the Congress not delay any longer and act now on this proposal while the country is undergoing the arduous process of filing its income tax returns for this year. Any action which the Congress can take to convince the citizens of this country that they are getting a fair shake in their dealings with the IRS is certainly in the national interest.

This legislation, when passed, will correct one of the main complaints taxpayers have against the income tax laws—namely that the IRS can, at its discretion, use the IRS laws and Federal funds to oppress and to harass taxpayers and that the taxpayer must pay dearly with his own funds to defend himself.

Let me explain. Our tax laws and the regulations governing their implementation have become so complex that they are rarely understood by the average citizen. Thus, expensive professional services become an absolute necessity when differences between taxpayers and the IRS arise. Often taxpayers who are innocent of wrongdoing find it more expedient and less expensive to give in to the demands of the IRS than to contest the alleged shortage in an appropriate court. Obviously, a system which promotes this result is in dire need of reform. Because of the built-in inequities of the present system even if the taxpayer prevails in court, he frequently loses due to the great expense of contesting the claim.

By enacting this proposal, the Senate would accomplish several objectives.

First, it will strengthen the backbone of an innocent taxpayer and reassure him that he can defend his position without paying for costly professional services.

Second, it will discipline the IRS agents against issuing punitive rulings.

The mail received by my office has indicated overwhelming support for the enactment of this proposal from many States. In addition, the National Federation of Independent Business, with more than 300,000 members representing all 50 States, included a question on this proposal in a news survey of its members. The results were 86 percent for the bill, 10 percent opposed, and 4 percent with no opinion.

In evaluating the proposal which I have just introduced, the organization stated:

The present system works to the disadvantage of the taxpayer. This bill would correct a great inequity and make the IRS more cautious in its claims.

Further, the Chief Judge of the U.S. Tax Court, W. M. Drennen, has stated both the need and fairness of this proposal in hearings on May 10, 1973, before the subcommittee of the Committee on Appropriations. In response to a question on whether or not a taxpayer should be permitted to recover the reasonable costs he expends in challenging the IRS, Judge Drennen stated:

Yes, I think it would be more equitable. I think in a lot of courts the costs are assessed that way. We just don't have any authority to do it.

When asked if this would greatly increase the case load of the tax court, the judge stated that,

It would to some extent, but nonetheless it still seems to me to be a fair thing to do.

Also, the judge indicated that this increased expense might make the Internal Revenue Service think twice before forcing a taxpayer to go to court.

It should be noted that this proposal was previously passed by the Senate when offered as a floor amendment to the Senate version of the 1969 Tax Reform Act.

I urge favorable Senate action on this proposal which rectifies an injustice of the present system and forces the IRS to be more cautious in its demands.

The matter has been discussed with the author of the bill. I believe he finds it acceptable, and if so, I will yield to him at this time.

Mr. HARRY F. BYRD, JR. As I understand, the amendment offered by the Senator from Oklahoma has been amended, and the amended language now makes the amendment satisfactory from the point of view of the Senator from Virginia.

Mr. BELLMON. Mr. President, I appreciate the Senator's comments.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment was agreed to.

AMENDMENT NO. 746

Mr. TAFT. Mr. President, I ask unanimous consent that the pending business be laid aside and that it be in order to bring up amendment No. 746.

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

The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. TAFT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

At the proper place in the bill insert the following new section:

SEC. . (a) Section 5517 of title 5 of the United States Code is amended—

(1) by inserting "or city" after "State" each place it appears in subsections (a) and (b), and

(2) by inserting before the period at the end of subsection (c) the following: ", and 'city' means only a city which is incorporated under the law of a State and which had a population (according to the last decennial census before the request under subsection (a)) of sixty thousand or more individuals".

(b) Section 5517 of such title is further amended by adding at the end of subsection (a) the following sentence: "The agreement may not permit withholding of a city tax from the pay of an employee who is not a resident of the State in which that city is located unless he consents to such withholding.".

(c) The heading for such section 5517 is amended to read as follows:

"§ 5517. Withholding State and city income taxes".

(d) The analysis for subchapter II of chapter 55 of title 5 of the United States Code is amended by striking out the item relating to section 5517 and inserting in lieu thereof the following:

"5517. Withholding State and city income taxes".

(e) The amendments made by this section shall apply only in respect of agreements entered into after the date of the enactment of this Act.

Mr. TAFT. Mr. President, I send a modification of this amendment to the desk.

The PRESIDING OFFICER. The clerk will state the modification.

The assistant legislative clerk read as follows:

At the proper place in the bill insert the following new section:

SEC. . (a) Section 5517 of title 5 of the United States Code is amended—

(1) by inserting "or city" after "State" each place it appears in subsections (a) and (b), and

(2) by inserting before the period at the end of subsection (c) the following: ", 'agency of the United States' includes the United States Postal Service and the Postal Rate Commission, and 'city' means only a city which is incorporated under the law of a State and which had a population (according to the last decennial census before the request under subsection (a)) of sixty thousand or more individuals".

(b) Section 5517 of such title is further amended by adding at the end of subsection (a) the following sentence: "The agreement may not permit withholding of a city tax from the pay of an employee who is not a resident of the State in which that city is located unless he consents to such withholding.".

(c) The heading for such section 5517 is amended to read as follows:

"§ 5517. Withholding State and city income taxes".

(d) The analysis for subchapter II of chapter 55 of title 5 of the United States Code is amended by striking out the item relating to section 5517 and inserting in lieu thereof the following:

"5517. Withholding State and city income taxes.".

(e) The amendments made by this section shall apply only in respect of agreements entered into after the date of the enactment of this Act.

Mr. TAFT. Mr. President, this amendment, which was passed by the Senate as part of a bill dealing with miscellaneous tax provisions near the end of the last Congress, would require the Federal Government to withhold city income taxes from its employees. Such a requirement would benefit directly hundreds of thousands of Federal workers.

Because local income taxes are not withheld from the wages of Federal employees, these workers are forced to pay the taxes in lump sums on a quarterly or annual basis. The obligation to pay a substantial amount in local taxes at one time presents a serious hardship to many Federal workers. As of early 1972, one-third of Cleveland's postal workers had not been able to meet this obligation, and owed the city hundreds of dollars per person in back taxes.

This amendment would allow Federal workers to pay their city taxes in the same convenient manner as other workers, by making the payments in even installments throughout the year.

The amendment would also provide some extra money for the cities. Because the cities' tax collection departments will no longer have to devote extra attention to Federal workers, administrative costs will decrease. In my own State of Ohio, the cities of Akron, Columbus, and Toledo expect that they could each save $20,000 to $35,000 in this manner. The major new source of income, however, would occur as a result of a reduction in tax delinquencies and an increase in the cities' ability to collect delinquent taxes. Cleveland's tax department has estimated that because of fewer losses in uncollected taxes, the city's income could be increased by $300,000 to $400,000 annually. The city of Cincinnati has estimated that the enactment of this legislation would save its taxpayers about $100,000.

My amendment would apply to cities with populations of 60,000 or more. When legislation pertaining to this subject was debated on the Senate floor during the last Congress, an amendment was added to exempt residents of States other than that in which the taxing city is located from the withholding requirement unless they consent to withholding. In the interest of making my legislation acceptable to all concerned and thus facilitating its passage, I have included this amendment in today's proposal.

The major organizations representing groups which my amendment would affect strongly support it. These organizations include the National League of Cities—U.S. Conference of Mayors, The National Postal Union and other major Federal employees' associations. The Treasury Department and the Office of Management and Budget have historically supported legislation along these lines, and I have been informed that their positions have not changed.

As I have mentioned, legislation identical to this amendment was passed by the Senate during the 92d Congress, but the House of Representatives did not have time to act on the measure. The House passed similar legislation several years ago.

I hope that this time both houses of Congress will seize the opportunity to provide equal treatment for our Federal workers and additional assistance for our cities.

I should like to emphasize, that, as has been discussed with the senior Senator from New Jersey, who is on the floor at this time, the measure would make it optional for the individual. If the individual did not wish to have a withholding of his city income tax, he could so indicate and take himself out from the application of the amendment.

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

Mr. TAFT. I yield.

Mr. CASE. Mr. President, the Senator from Ohio has correctly stated our understanding about this matter.

I am pleased to see that Senator TAFT has included in his amendment language identical to an amendment I offered on October 16, 1972, on a bill to amend section 3306 of the Internal Revenue Code of 1954. Without my amendment, the bill at that time would have allowed the Federal Government to collect the Philadelphia wage tax from Federal employees who live in New Jersey.

I said at that time:

While residents of New Jersey do not object to paying taxes to out of State municipalities in proportion to the services provided to them, they deeply resent double taxation, both where they work and where they reside, when they have no voice whatever in the utilization of the taxes paid by them, and receive no benefit from the municipality of their workplace.

The amendment that I offered, then, required—as does Senator TAFT's amendment today—that "the agreement may not permit withholding of a city tax from the pay of an employee who is not a resident of the State in which that city is located unless he consents to such withholding." I am pleased to support Senator TAFT's effort today because it contains this important consent clause.

Mr. TAFT. I thank the distinguished Senator.

I might say I understand the amendment is agreeable to the distinguished manager of the bill and the ranking minority member as well, with whom I have discussed the matter.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. HARRY F. BYRD, JR. I wish to ask the Senator from Ohio if it is optional, only on nonresident employees or all employees.

Mr. TAFT. Nonresident employees only. I appreciate the correction.

Mr. HARRY F. BYRD, JR. Mr. President, the amendment offered by the Senator is one which previously has been approved by the Committee on Finance of the Senate and, I see, with a small technical change. I have no objection to it, and on behalf of the committee I am glad to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. CASE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be no further consideration of the pending measure today.

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

RESUMPTION OF TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a resumption of morning business for 5 minutes with statements therein limited to 1 minute.

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

REFERRAL OF A BILL TO COMMITTEE ON AGRICULTURE AND FORESTRY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 316, Calendar Order No. 636, dealing with the Wilderness Act, be referred to the Committee on Agriculture.

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

ORDER OF BUSINESS 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 minority whip, the Senator from Michigan (Mr. GRIFFIN), be recognized for not

to exceed 10 minutes, and that the junior Senator from West Virginia (Mr. ROBERT C. BYRD) be recognized for not to exceed 10 minutes; that there then be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 3 minutes, at the conclusion of which the Senate return to the consideration of the unfinished business, H.R. 8214.

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. 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.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene tomorrow at the hour of 12 o'clock noon. After the two leaders or their designees have been recognized under the standing order, the distinguished Senator from Michigan (Mr. GRIFFIN) will be recognized for not to exceed 10 minutes, after which the junior Senator from West Virginia (Mr. ROBERT C. BYRD) will be recognized for not to exceed 10 minutes, after which there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with the usual 3-minute limitation on statements therein.

At the conclusion of routine morning business the Senate will resume consideration of H.R. 8214, an act to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes. Yea-and-nay votes will be conducted on amendments thereto and on final passage.

The conference report on the National Emergency Energy Act is still pending and action could be taken thereon likewise, that being a highly privileged matter.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate I move, in accordance with the previous order, that the Senate stand in adjournment until the hour of 12 noon tomorrow.

The motion was agreed to; and, at 6:25 p.m., the Senate adjourned until tomorrow, Thursday, January 24, 1974, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate January 23, 1974:

DEPARTMENT OF STATE

Nancy V. Rawls, of Georgia, a Foreign Service Officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Togo.

DEPARTMENT OF JUSTICE

Sidney I. Lezak, or Oregon, to be U.S. attorney for the district of Oregon for the term of 4 years. (Reappointment)

William J. Mulligan, of Wisconsin, to be U.S. attorney for the eastern district of Wisconsin for the term of 4 years, vice David J. Cannon, resigned.

IN THE COAST GUARD

The following named commanders of the Coast Guard Reserve to be permanent commissioned officers in the Coast Guard Reserve in the grade of captain:

Herbert A. Johnson	William B. Korth
Charles W. Koburger, Jr.	Morris O. Parker
	Nils E. Hansen
Joseph N. Shrader	Bill C. Vendl
Frederic C. Sponholz	Winfield H. Adam
Dean A. Ridyard	William T. Sheppard
Dan H. Briganti	James L. Howard
Eugene F. Trainor	

EXTENSIONS OF REMARKS

BLACK MAYORS: MESSAGE FROM THE VOTERS

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 22, 1974

Mr. STOKES. Mr. Speaker, a few days ago it was my honor and great pleasure to attend the inauguration of young Maynard Jackson as the first black mayor of Atlanta, Ga.

With Mr. Jackson's installment in office, Americans may now count 101 cities through the Nation with black mayors.

The Washington Post of January 14, noting this fact, pays tribute in an editorial to the growing political sophistication of blacks in America. Our achievements at the ballot box belie the supposed loss of new power which many have claimed to detect in the evolution of the black struggle. Far from losing power, by building on the successes of the civil rights movements of the 1960's, black Americans have launched campaigns for community empowerment in the 1970's. The success of the new movement in many places is already very clear not only in election results but also in voting patterns. I find it highly significant that Deep South whites cast a huge vote against racism as they elected a mayor and city council pledged to work from a basis of biracial harmony for the health, prosperity, and development of all Atlantans.

I commend the Post's fine editorial to the attention of all my colleagues:

[From the Washington Post, Jan. 14, 1974]

BLACK MAYORS: MESSAGE FROM THE VOTERS

In Atlanta, the other day, the inauguration of a 300-pound 35-year old black lawyer as mayor was closed by a chorus based on Schiller's "Ode to Joy." Just a week earlier a 55-year-old black former state senator declared at his inaugural as mayor of Detroit that it was time for racial harmony to replace the distrust and divisiveness that have touched that city so often in the past.

In a ceremony marked by a delighted outpouring of his enormous family, Atlanta's new mayor, Maynard Jackson, said, "Are we a city too busy to love? . . . Love must be strong economic growth and prosperity for all . . . Love must be a balanced diet for all our children . . . Love must be an open door to opportunity instead of a closed door of despair . . . Love must be a chance for everybody to be somebody." Those are uncommonly powerful words from a black mayor in the capital city of Georgia which gave us some of the ugliest evidence of rampant racism not too many years ago.

The symbols of Detroit and Atlanta are monumental. But, there was similar news from all over the country. Earlier in 1973, Thomas Bradley was elected mayor of Los Angeles. In Raleigh, Clarence Lightner became the North Carolina capital city's first black mayor. Blacks were elected to city halls in Chapel Hill, N.C.; College Park Md.; Grand Rapids, Mich.; Dayton, Ohio; East Orange, N.J. and Greenville, Ga., as well. In all, there are 101 black mayors around the country.

It is fashionable to bemoan the loss of the civil rights momentum generated in the 1960s. Much of the high intensity and the highly visible activity have subsided; some of the legislative initatives generated in those days have been blunted. But the country has clearly come a long way from 1966 when Carl Stokes was elected as the first black mayor of a major American city and 1967 when Richard Hatcher became the second.

One of the major developments shown by the Atlanta and Detroit elections is the growing political sophistication of blacks and the growing political strength generated by black precincts. Interestingly enough, the voting divided more sharply along racial lines in Detroit than it did in Atlanta. There, despite a last minute appeal to white racism by Mr. Jackson's opponent, 20 percent of the white voters cast ballots for the black candidate. The Atlanta voters went farther and elected a city council where Mayor Jackson can count on 10 of the 18 council votes on racial issues and on 6 to 8 on many others. When he was vice mayor, Jackson could only count on one or two.

The fact that voters in Georgia can't be stampeded by predictions of white flight from the city and that blacks are participating ever more significantly in the political process are good omens. America has much more to do in healing its racial wounds. But the sounds from the voters in a lot of America's municipalities in 1973 were the healthy grounds of recovery.

STANLEY CLEMENTS—A CHAMPION FOR BOXERS

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 23, 1974

Mr. ANDERSON of California. Mr. Speaker, when one thinks of boxing one tends to think of the champions—those