

E. PAUL MAGAHA

HON. GOODLOE E. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 24, 1974

Mr. BYRON. Mr. Speaker, on January 10, Mayor E. Paul Magaha, of Fred-

erick, Md., relinquished office after serving two nonconsecutive terms as mayor of Frederick. I want to commend Paul Magaha for a job well done over a period of 8 years. Paul was a true public servant who sought to serve the interests of his constituents and to represent them well.

I would also like to wish Paul Magaha well in his endeavors away from city

hall. I feel sure his energy and devotion to his community will lead to further contributions to Frederick and the surrounding area. His efforts as mayor of Frederick have resulted in a better community, and I know that he will continue to give unstintingly of his time and experience for the benefit of his neighbors.

HOUSE OF REPRESENTATIVES—Monday, January 28, 1974

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Thou wilt keep him in perfect peace, whose mind is stayed on Thee.—Isaiah 26: 3.

Eternal Father, lift us above the din and dust of the past with all its failures and frustrations that we may gird ourselves adequately for the work of this day and the tasks of this week. To us our Nation looks for genuine leadership to guide her safely and sanely through these trying times. May the stature of our souls, heightened by hope, strengthened in spirit and fruitful with fidelity rise to meet the crying needs of these crucial days. Keep our steps steady, our faith strong, our decisions wise and let us not waiver when the test comes to be true-hearted and wholehearted in our devotion to the highest good of these United States of America.

So may we walk steadily in the steps of Him who kept His mind stayed on Thee. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Marks, one of his secretaries.

THE UNAUDITED FEDERAL RESERVE'S NEW GRAB FOR POWER

(Mr. PATMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PATMAN. Mr. Speaker, today the Federal Reserve System announced still another grab for power.

This giant bureaucracy now seeks to extend its power so that it controls directly the reserves of virtually every bank in the Nation—regardless of whether these banks are members of the Federal Reserve System.

This, of course, would be a direct challenge to the dual banking system and would greatly reduce the power of State banking authorities and the independence of the small banks around the Nation. The Federal Reserve has been

losing members rapidly in recent years and it now seeks to have the Federal Government—through action of the Congress—mandate that these banks—virtually every bank in the Nation—remain hitched to the Federal Reserve.

Mr. Speaker, this new power is not needed by the Federal Reserve to control monetary policy and it amounts to little more than that uncontrollable bureaucratic urge to control more and more from the marble palace in Washington. The monetary bureaucrats know no limits to their boardinghouse reaches.

FRS REFUSES TO BE AUDITED BY GOVERNMENT

This grab for power is even more galling when it is realized that this is the same agency which thumbs its nose at Congress and the people and insists on keeping all of its activities secret and unchecked by the General Accounting Office. Here is an agency which lobbies desperately—and improperly—against independent audits by the GAO while at the same time asking the Congress for more and more power.

If the Federal Reserve really thinks it can make a case for more power—as suggested by Dr. Arthur Burns—then I suggest that it open its books and let the Congress and the people find out just how this massive bureaucracy operates. I cannot believe that the Congress will give an agency vast new powers when it refuses to let an auditor through the front door.

SHORTAGE OF GASOLINE IN NEW JERSEY AND NEW YORK

(Mr. HOWARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOWARD. Mr. Speaker, on Saturday I returned from a 2-day personal survey which shows that while the New Jersey-New York area is presently crippled by a shortage of gasoline, you can get all the gasoline you want or need in many other States.

Appalled by what I saw in my driving trip, I telephoned my office and dictated telegrams and letters to the President and the Federal Energy Administrator, William E. Simon, demanding an immediate infusion of gasoline into the New Jersey-New York area under the so-called fair allocation system.

I have also requested an investigation into how and why this situation was allowed to reach such crisis proportions. The letters to the President and to Mr. Simon have been signed by all members of the New Jersey House delegation, with one exception, and by both of our U.S. Senators.

During my drive through South Carolina, Georgia, and Florida, I made a total of 47 stops at gasoline stations. Forty-six of the stations had gasoline, and 36 of them had no limit on how much gasoline could be purchased. Ten of them had some limit, but still had plenty of gas. Two stations remain open 24 hours a day, 7 days a week. Two stations offered a free car wash provided you filled up your tank.

While people in the New Jersey-New York area are unable to get to work, while police stations and municipal officials are calling me and saying that they cannot get gasoline to meet their municipal obligations, people in other parts of the country can get all they want.

The situation is appalling and impossible; it cries out for an explanation. I plan to pursue this matter and to get to the bottom of this obvious contradiction.

BINGHAM PROPOSES CONSTITUTIONAL AMENDMENT TO ALLOW FOREIGN BORN U.S. CITIZENS TO RUN FOR PRESIDENT

(Mr. BINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BINGHAM. Mr. Speaker, I have today introduced a resolution which would provide for a constitutional amendment that would delete the present requirement of article II, section 1 of the Constitution, that the President of the United States must be a natural born American citizen.

Naturalized citizens may serve in every other position in the Government. In fact, there would be great resentment if it were proposed that a naturalized citizen be barred from serving in the Cabinet or on the Supreme Court or in Congress. It makes no sense that the Presidency should be any different.

Mr. Speaker, my proposed constitutional amendment does not amount to an endorsement of Henry Kissinger as President. But I must say in all candor his achievements as Secretary of State have highlighted the problem.

Why should a citizen of Dr. Kissinger's talents be barred from the Presidency? More importantly, why should the American people be denied the right to elect a Kissinger to any office?

The same could equally well be said of Professor John Kenneth Galbraith, who was born a Canadian citizen, and of many other distinguished naturalized Americans.

I recall that in 1928, when my father, Senator Hiram Bingham, had been mentioned for the GOP nomination for Vice

President, a question was raised as to his eligibility because he had been born in the Hawaiian Islands before annexation.

In 1965, I was approached by a father of six whose fourth child had been born in Ireland because the father, not yet a U.S. citizen, had been serving in the American Armed Forces there. The fourth child was therefore not a "natural born citizen," although all five of her siblings were. The father thought this was unjust since she alone was ineligible for the Presidency and Bingham agreed. He introduced a private bill declaring the child "deemed to be a natural-born citizen" and the bill was passed by both Houses of Congress and signed into law by the President in 1967.

Mr. Speaker, I hope that other Members of the House will join in supporting this constitutional amendment, which would do away with a distinction that I think is repugnant to our sense of justice and operates against the best interests of the United States.

OIL AND GASOLINE PRICES

(Ms. HOLTZMAN asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Ms. HOLTZMAN. Mr. Speaker, I am introducing today a bill to freeze and then roll back prices of crude oil and petroleum products. People in my district and, in fact, throughout the country are angry at the recent, substantial increases for gasoline and heating oil. They are especially angry because, at the same time that prices are rising, oil companies are making windfall profits. The people of the country are already suffering under the biggest inflation we have had since World War II. We in Congress cannot desert the consumer by adding increases in oil and gasoline prices to the already enormous burden of inflation.

Prices of heating oil have gone up a whopping 11 percent in the last month alone, and an unbelievable 47 percent in the last year. Gasoline prices increased 4 percent in the last month and 20 percent in the last year.

These prices have been accompanied by unconscionably high profits for the big oil companies. Annual profits of Exxon and Gulf increased by 60 percent in 1973 over 1972. The figures for the rest of the oil giants are slightly lower but still exorbitant. Increases in quarterly profits reported during the height of the crisis late last year were even higher—80 percent for Exxon for example.

My bill proposes to alleviate the inflationary burden on consumers in two steps: First, by immediately freezing prices of crude oil and petroleum products at the level in effect during a 2-week base period ending January 19, 1974; and, second, by rolling back these prices within 30 days to the price levels in effect during the week ended November 10, 1973. Thereafter, the bill would permit only certain narrowly limited price adjustments to prevent any gross inequities or hardships.

A provision is included in the bill which is designed to help independent distributors and their customers by eliminating

price differentials now suffered by purchasers of foreign rather than domestic oil products. This provision will aid the customers of independent oil distributors who recently have been paying exorbitant prices for products such as home heating oils. Independent oil distributors are now being forced to buy high-priced foreign oil products because of discriminatory allocations of domestic oil products by the big oil companies.

Finally, the bill authorizes the President to issue orders designed to preserve the competitive viability of independent marketers, small retailers, and independent refiners within the oil industry.

Enactment of this bill would bring price relief to the consumer and would constitute a very significant step in controlling the runaway inflation suffered during 1973.

REPEAL OF DAYLIGHT SAVING TIME

(Mr. ROGERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROGERS. Mr. Speaker, I am today introducing legislation which would repeal the Daylight Saving Time Conservation Act of 1973.

Although passed with good intention, I am afraid that this law has not significantly contributed to the conservation of energy and has in fact proved to be detrimental to many.

In my State of Florida, there have been eight children killed on the way to school since the law went into effect on January 6, 1974. In each case there was darkness when the accident took place. This compares with only two deaths during the same period last year.

In addition, a recent survey of power companies tells us that the hoped for savings of energy has not materialized. Nearly 30 States were polled and the results came back that less than 1 percent savings could be attributed to daylight saving time. In Florida, the Florida Power & Light Co. estimated that no appreciable savings could be traced to daylight saving time.

I hope that this legislation will be given speedy consideration and that other of my colleagues who are also troubled by incidents such as those in Florida, will join in supporting this legislation.

GREAT LAKES HEARINGS RELEASED

(Mr. FASCELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FASCELL. Mr. Speaker, earlier this year the Inter-American Affairs Subcommittee of the Committee on Foreign Affairs held hearings both on the serious floods which this spring caused substantial damage in several States and on the overall activities of the International Joint Commission, United States, and Canada. I want to take this opportunity to advise Members that these hearings have now been printed and are available in the Foreign Affairs Committee office.

THE SHORTSIGHTED APPROACH OF BUSINESS

(Mr. KUYKENDALL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUYKENDALL. Mr. Speaker, I have just seen the most conclusive evidence to support my contention that much of the American corporate community lacks the most elementary knowledge of how to deal with people through their Government—and why they have done a generally miserable job of promoting the free enterprise system for so many years.

The Dun Review report that a majority of 300 top business executives have asked for the resignation of President Nixon should come as no surprise to me. In my 7 years on the Commerce Committee I have been constantly amazed and disgusted at the shortsighted approach taken by many business executives, who do not give a tinker's dam about the Constitution, unless it is wrapped around their profit-and-loss statements.

This group has decided that the disruption of their business that would be caused by impeachment is undesirable, but the disruption that would be caused by resignation is tolerable. In other words, an accused President should sacrifice his right to defend himself on the almighty altar of a rising stock market.

Coming to the Congress from big business myself, I am speaking of an environment that I grew up in, and I feel this gives me certain privileges of criticism. And I have often said, if most business executives ran their businesses the way they run their politics, they would be broke in 6 months.

COUNTDOWN ON CONTROLS—FIRST SEGMENT

(Mr. STEELMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEELMAN. Mr. Speaker, there is wide agreement now that wage and price controls are ineffective and should be scrapped. Groups including the U.S. Chamber of Commerce, the AFL-CIO, and the National Association of Manufacturers have joined the ranks calling for an end to the controls program. I invite my colleagues to join me starting today in a daily series of 1-minute speeches, a "Congressional Countdown on Controls," citing constituent communications that illustrate the need to end wage and price controls. This series will continue indefinitely and includes a call for the Banking and Currency Committee to hold hearings on the repeal of the Economic Stabilization Act and encourage the executive branch to act to terminate the program.

It has become increasingly obvious that these controls have not only failed miserably in slowing inflation but have also led to shortages, disruptions, and distortions in the economy. From paper to plastics, rubber to steel, consumers and businessmen alike are complaining of shortages. We have all received numerous letters indicating that industrial

production has been disrupted, corporate capital expenditures have diminished, favorable foreign trade has been hindered, administrative expenses for business compliance with regulations are mushrooming and jobs are endangered.

Mr. Speaker, the inability to slow inflation is the most obvious failure of wage and price controls. In the first 11 months of 1973 the Consumer Price Index showed prices increasing at almost twice the rate—6.4 percent—of 1972. Wholesale prices were 11.5 percent higher. Final figures for 1973, just in, show consumer prices increasing 160 percent faster than in the previous 2 years—at 8.8 percent—and wholesale prices rising at almost twice the rate of 1972 and over four times the rate of 1971—at 26.7 percent. In addition, the National Association of Manufacturers' survey shows that one-third of firms contacted have canceled or postponed capital expansion and two-thirds report that such expenditures would be increased upon removal of these controls.

Congressional review of the Economic Stabilization Act and its accompanying program is necessary now.

LET US REPEAL DAYLIGHT SAVING TIME LAW

(Mr. PEPPER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PEPPER. Mr. Speaker, during the time that the daylight saving time law which we recently enacted has been in effect eight schoolchildren in my State of Florida have lost their lives going to school in the darkness. It seems to me, therefore, that we should pay attention to those who say, speaking now of the report of the utilities company, that daylight saving time as we passed it has saved very little fuel and there has been no real advantage to the people of this country.

Is whatever advantage we may have derived worth the life of even one child lost in the darkness of the morning hours trudging his or her way to the schools of our country?

For myself, therefore, I join my colleagues to have already done so in introducing a bill now to repeal this daylight saving time law. I hope my colleagues all over the country, many if not all of whom I am sure have had the same experiences as I, will join in this effort and I hope we can get early action on what I believe to be this imperative measure.

Mr. ROUSSELOT. Will the gentleman yield?

Mr. PEPPER. I yield to the gentleman. Mr. ROUSSELOT. Did the gentleman vote for the bill?

Mr. PEPPER. Did I vote for the bill? Mr. ROUSSELOT. Yes.

Mr. PEPPER. Yes, I did. But as the old saying is: a wise man changes his mind; a fool never does.

VIETNAM-ERA VETERANS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 93-205)

The SPEAKER laid before the House the following message from the President

of the United States, which was read and referred to the Committee on Veterans' Affairs and ordered to be printed:

To the Congress of the United States:

Yesterday, January 27, 1974, marked the first anniversary of the date on which the United States troops ended hostile action against the enemy in Vietnam and began the long-sought disengagement from the longest war in our Nation's history.

It is particularly fitting that today, a year later, we should focus our attention on what has been done—and what remains to be done—to repay the debt America owes to those who served.

There are twenty-nine million living American veterans today—men and women who have given military service to their country. Nearly 7 million of them are Vietnam-era veterans. We owe these men and women our best effort in providing them with the benefits that their service has earned them. Accordingly I will request \$13.6 billion in spending for veterans' benefits and services in my new budget, an increase of \$5.9 billion over the comparable 1969 request.

THE AMERICAN VETERAN TODAY

On the whole, the situation of the American veteran today is a good one. The average veteran has a higher income, more education, and better health than non-veterans of the same age. He or she is a vital, productive member of the civilian community—a national asset in peace as well as in war.

The years since 1969 have marked important progress for the American veteran. Between 1969 and 1975, outlays for veteran pension programs will have increased from \$2.2 billion to \$2.9 billion, covering 2.4 million beneficiaries, while compensation for service-connected disabilities or death will have increased from \$2.7 billion to \$3.9 billion. The benefits we pay to our veterans should continue to reflect the generous appreciation of the American people.

Since 1969, 4.1 million veterans have finished their educations under the GI bill. Of those, 2.7 million are Vietnam-era veterans. The rate at which Vietnam-era veterans have participated in the GI bill training exceeds that of any previous GI bill. At the same time, the number of veterans assisted through guaranteed mortgage loans has increased by 46 percent.

In the last year alone, it was my pleasure to sign into law two major measures benefiting veterans and their dependents. The final form of both pieces of legislation was the result of close cooperation between the legislative and executive branches, and I wish to take this opportunity to repeat my thanks to the Congressional leaders and committee members who helped us arrive at the desired results.

The Veterans Health Care Expansion Act of 1973 was a landmark measure. It provides major improvements in and expansion of medical and nursing care for veterans and extends treatment benefits to certain dependents of veterans.

The National Cemeteries Act of 1973 consolidated the bulk of veterans cemeteries and set up a National Cemetery System within the Veterans Administra-

tion and improved related benefits and services. Based on a study authorized by the act, I intend to submit further proposals for improving the cemetery system.

Improved veteran health care has also taken the form of greater flexibility in treatment and more numerous treatment facilities as evidenced by:

- 16 new outpatient clinics and 663 new specialized medical services;
- Strengthened affiliation of 106 VA hospitals with 89 medical schools; and
- Consolidation of medical regions and the strengthening of regional management to provide faster responses to problems at individual hospitals.

A vigorous program of modernization and construction has also played an important part in improving veterans health care. Ten new or replacement hospitals have already been established and five more replacement hospitals are being designed or are under construction. In the period 1970-75 the ratio of staff to patients in VA hospitals will have been increased by over 30 percent. We have added over 25,000 full time personnel to the medical departments of the veterans hospitals since 1969, and my budget proposals for fiscal year 1975 will provide for an additional 7,600 medical personnel.

Veterans Administration hospital construction funding in fiscal 1975 will reach an all-time high of \$276 million and, when these funds are brought to bear, the VA will be in the midst of its greatest program of hospital construction in history.

As I look forward to proposing my National Health Insurance plan—to make more and better health care available to all Americans—it will be more than ever important to take the VA's health care system into consideration. It is my strong view that it should continue as a system, under VA, to insure the proper care of eligible veterans. The Veterans Administration now operates the largest civilian medical care system in the world. It is only fitting that it remain one of the best.

NEW INITIATIVES TO PROVIDE FOR OUR VETERANS

Two important Administration initiatives in veterans affairs should receive the attention of the Congress in its coming session.

(1) PENSION REFINEMENTS TO HELP THE NEEDIEST

In the field of pensions, Administration proposals will benefit one million veterans and 1.3 million survivors of veterans in economic need due to age, disability or loss of a breadwinner. Although VA pensions have been increased by 27 percent since 1969, some of the most needy are least provided for under the current structure. Many needy veterans and their wives receive less money from the pension system than they would from welfare and no automatic adjustment is provided for increases in the cost of living. There are other inequities as well.

As I mentioned in my message to the Congress on national legislative goals on September 10, 1973, refinement of the

Veterans Administration pension program is necessary. The program has so many problems that it cannot be corrected unless the entire framework of the program is restructured.

I regard the following principles as vital to a realistic and equitable VA pension program, and I will propose legislation to achieve these goals:

—VA pensioners should have some regularized way of receiving cost-of-living adjustments in VA pension payments tied to the automatic increases now available to social security recipients.

—The VA pension program should be structured to assure that additional income flows to the neediest pensioners. This objective would involve raising VA payments to those pensioners who receive less total income than adult welfare recipients under recent amendments to the Social Security Act. In addition, a family's total income should be considered in determining the amount of pension needed.

—Veterans and widows should be treated equally with regard to income and pension payments.

(2) INCREASE IN EDUCATION BENEFITS

The cost of living is also a problem for those veterans now taking advantage of the GI bill to further their training or education. They need additional help if their allowances are to keep pace with inflation. There are 2.1 million current beneficiaries of the GI bill, most of them Vietnam-era veterans. Payments to each trainee have increased sharply—by 1975 they will be more than double the level of 1969. To help meet the rising cost of living, my budget will request an additional \$200 million to provide an 8 percent increase in education benefits in 1975.

INCREASING PRIVATE EMPLOYMENT OF VETERANS

No group of veterans is more in the minds and hearts of Americans today than those who have recently returned from Vietnam and our Nation's longest war. Beyond the readjustment problems faced by veterans of past wars, this Administration has recognized that the Vietnam-era veteran faces special challenges in re-entering a highly complex and competitive civilian society. We have done our best to help him meet those challenges.

Of particular importance have been our efforts in the field of employment. In 1970, for example, more than a million veterans left the Armed Services and entered the civilian economy. By October of that year, the unemployment rate for Vietnam-era veterans had grown very serious. This led to the launching of the Administration's job placement efforts which have so far helped 2.2 million returning veterans to find jobs. The unemployment rate for Vietnam-era veterans, which once far exceeded that of the general public, was reduced from a high of 11 percent in early 1971 to 4.4 percent by the end of 1973. Both Government and the private sector—through Jobs for Veterans and the National Alliance of Businessmen—

played a part in this remarkable success story. We intend to continue these efforts. In fiscal year 1974 our goal is to place 1.2 million additional veterans in jobs or training programs.

PAYING TRIBUTE TO ALL AMERICAN VETERANS

The tangible benefits extended to our veterans such as medical assistance, education grants and pensions are only one of the ways that America should repay her debts to the men and women who have served her well. We should also accord them a high degree of respect and appreciation in our everyday contacts with them. And we should set aside certain days each year to commemorate their heroic deeds.

In 1974, there should be at least two occasions on which we pay special honor to those who have served in the Vietnam conflict.

One such commemoration was held yesterday, January 27, the first anniversary of the Vietnam ceasefire. I officially proclaimed that day as National MIA Awareness Day. There are still 1,300 Americans missing and unaccounted for in Southeast Asia, and there are more than 1,100 American casualties whose bodies have never been recovered. Their experiences, as well as those of their relatives and loved ones, have been a wrenching sacrifice that deserves special recognition. That is why we set aside a special day dedicated to these Americans and to their families.

In honoring the missing and fallen in the Vietnam conflict, we should also remember the countless others who served and survived that war. Last month I was pleased to sign into law a joint resolution of the Congress authorizing me to proclaim March 29th of this year as "Vietnam Veterans Day". It is appropriate that we choose that date—the first anniversary of the return of all of our POWs—as an occasion to honor all of the veterans of the Vietnam era.

We will honor those Vietnam veterans once again later in the year on Veterans Day itself, an observance which gives us the opportunity to pay tribute not only to the seven million who served during the Vietnam era but also to the 22 million other men and women who have proudly worn the American uniform in years before.

For most Americans, Veterans Day is traditionally associated with November 11th of each year. That was the day more than half a century ago when an historic and dramatic ceasefire was achieved in the First World War.

Legislation approved in 1968, however, changed the traditional observance of Veterans Day from November 11 to the fourth Monday of each October. That change, while well intended, has stirred up considerable confusion and not a small amount of resentment. In many places—including the Tomb of the Unknowns in Arlington National Cemetery—there are now dual observances of Veterans Day, while in others, observances are held not in October but on November 11.

Thirty-one State legislatures have now enacted resolutions declaring that within their jurisdictions November 11th will

be officially observed as "Veterans Day". In addition, all of the major veterans organizations have indicated their strong support for returning to the November 11th observance.

In view of the confusion which has arisen and in view especially of the position taken by the veterans themselves, I believe it would be wise to repeal the 1968 change in the Veterans Day observance. I therefore urge the 93rd Congress, as part of its effort to honor our veterans, to enact legislation restoring November 11th as the official date for the entire Nation to commemorate Veterans Day.

As we celebrate Veterans Day this year, let us do so with the hope that the 29 million Americans who have served in our armed forces represent our last generation of veterans and the last of America's wars. May we never forget that we will only be worthy of the blessings of peace and freedom they have won for us for as long as we continue to honor them, and may we do everything we can to repay our boundless debt to them.

RICHARD NIXON.
THE WHITE HOUSE, January 28, 1974.

AMENDING GENERAL EDUCATION PROVISIONS ACT

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor be discharged from further consideration of the bill (H.R. 12253) to amend the General Education Provisions Act to provide that funds appropriated for applicable programs for fiscal year 1974 shall remain available during the succeeding fiscal year and that such funds for fiscal year 1973 shall remain available during fiscal years 1974 and 1975, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the bill, as follows:

H.R. 12253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 414(b) of the General Education Provisions Act is amended by inserting "(1)" before "Notwithstanding", by striking out "subsection" and inserting in lieu thereof "paragraph", by striking out "1973" and inserting in lieu thereof "1974", and by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this paragraph, any funds from appropriations for the fiscal year ending June 30, 1973, to carry out programs to which this title is applicable which are made available during the fiscal year ending June 30, 1974, shall remain available for obligation and expenditure during the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975."

Mr. PERKINS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the purpose of this bill is to allow local school districts to carry over into the next school year unused

funds appropriated for this school year. Ordinarily, school districts could do this under section 414 of the General Education Provisions Act. However, that section has expired and must be renewed in order to allow a carryover of funds.

This bill would also allow school districts to carry over into the next school year funds which had been impounded by the administration from the fiscal 1973 appropriation. The administration has released some of these funds voluntarily and has released the bulk of these funds pursuant to court orders. But since the funds were not released until shortly before Christmas, school districts cannot conceivably have enough time to make the wisest expenditure of them during the remainder of this school year. Therefore, it is necessary to allow districts to carry over these funds into the next school year.

Mr. Speaker, I have checked with Chairman MAHON and Chairman FLOOD of the Appropriations Committee, and neither had any objection to this bill or to our bringing it up today. I am also not aware of any objection by any other Member to the bill. The administration is also in full support of the bill.

I will insert at this point in the RECORD Commissioner Ottina's letter addressed to me supporting the bill:

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
OFFICE OF EDUCATION,
Washington, D.C., January 28, 1974.

HON. CARL D. PERKINS,
Chairman, Committee on Education and
Labor, House of Representatives, Wash-
ington, D.C.

DEAR MR. CHAIRMAN: I am pleased that you have taken such prompt action in response to my letter requesting action to extend and amend Section 414(b) of the General Education Provisions Act.

My understanding of H.R. 12253 is that it would allow state and local authorities to expend the FY 73 funds recently released through June 30, 1975 and would extend the period for obligating the FY 74 funds to the same date. It is also my understanding that H.R. 12253 would only extend the provisions of Section 414(b) until June 30, 1975; however, I understand that you will address the question of making this provision permanent (as I have requested) in your consideration of H.R. 69.

Assuming my understandings are correct, I can assure you that the Administration views H.R. 12253 as a good interim solution to the funding problems I addressed to you in my letter of January 21, 1974.

It is my understanding that the Office of Management and Budget has no objections to transmittal of this letter.

Sincerely,
JOHN OTTINA,
U.S. Commissioner of Education.

We have resorted to this unusual procedure to pass H.R. 12253 for two reasons. The first reason is that school administrators across the country are confused about the length of time they will have to spend these funds. Many of them fear that these funds will only be available through the end of this school year. And they may, therefore, be tempted to make rash use of the funds in order to use them all up by June 30.

The second reason is that the major anti-impoundment law suit is still pending against the administration, and the attorney for the successful plaintiffs is

to be in court this week requesting a court order that the administration immediately make known the length of time the impounded funds will be available. If Congress acts today, we will assume our rightful leadership in specifying how long these funds ought to be available; and we will therefore assist the court in resolving this difficult lawsuit.

The one point in the language of H.R. 12253 which I would like to make clear concerns the phrase "funds . . . made available." We mean by this to include all funds which were or are going to be made available for obligation and expenditure during fiscal year 1974 from funds appropriated by Congress during fiscal year 1974 from funds appropriated by Congress during fiscal year 1973—whether those funds were impounded and voluntarily released by the administration, whether they were impounded and only released by the administration pursuant to court order, or whether they were ordinarily made available at the State or local level for obligation and expenditure during fiscal year 1974. All of these funds can be carried over for obligation and expenditure into fiscal year 1975.

Mr. QUIE. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I am happy to yield to the ranking minority member of the committee, the gentleman from Minnesota (Mr. QUIE).

Mr. QUIE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I, too, am rising in support of H.R. 12253. This legislation is urgently needed if we are to insure the wise expenditure of Federal education funds at the local and State levels.

The principle behind this legislation is well established, as the gentleman from Kentucky (Mr. PERKINS) has indicated. It was first enacted into law in 1970. Reports which I have received from educators in Minnesota indicate that it has done a great deal to eliminate end-of-the-fiscal-year obligation of funds, and to provide better services to the children benefiting from Federal aid.

As the chairman has noted, this extends the already existing Tydings amendment to cover moneys expended by the Federal Government in fiscal 1974, and adds a new section permitting the carryover of funds which the administration had impounded, and then released from fiscal 1973.

This legislation has the full and complete support of the administration.

Mr. Speaker, I ask unanimous consent to insert in the RECORD at this time a letter of support from the U.S. Commissioner of Education, John Ottina, and a table listing those impounded fiscal 1973 funds to which the second section of this bill applies.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

There was no objection.
(The material referred to is as follows:)

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., January 28, 1974.

HON. ALBERT H. QUIE,
House of Representatives,
Washington, D.C.

DEAR MR. QUIE: I am pleased that you have taken such prompt action in response to my letter requesting action to extend and amend Section 414(b) of the General Education Provisions Act.

My understanding of H.R. 12253 is that it would allow state and local authorities to expend the FY 1973 funds recently released through June 30, 1975 and would extend the period for obligating the FY 74 funds to the date. It is also my understanding that H.R. 12253 would only extend the provisions of Sections 414(b) until June 30, 1975; however, I understand that you will address the question of making this provision permanent (as I have requested) in your consideration of H.R. 69.

Assuming my understandings are correct, I can assure you that the Administration views H.R. 12253 as a good interim solution to the funding problems I addressed to you in my letter of January 21, 1974.

It is my understanding that the Office of Management and Budget has no objections to transmittal of this letter.

Sincerely,
JOHN OTTINA,
U.S. Commissioner of Education.

Impounded fiscal year 1973 education funds
ESEA

Title I (School library resources)	\$224, 815, 000
Title II	10, 000, 000
Title III	25, 000, 000
Title V	15, 036, 000
Title VII (Bilingual)	9, 870, 000
Title VIII (Dropout prevention)	1, 500, 000
Sec. 308 (Nutrition and health)	500, 000
Total	286, 721, 000

Vocational Education	
Part A (State Advisory Councils)	514, 000
Part B (Basic programs)	50, 000, 000
Part F (Consumer and home economics)	12, 697, 000
Part H (Work/study)	4, 524, 000
Part I (Innovation: curriculum development)	2, 000, 000
Sec. 102B (Students with special needs)	9, 898, 000
Total	79, 633, 000

Cooperative Research Act	
Education Broadcasting (Same Street)	1, 000, 000
Education Statistics Surveys and Special Studies	2, 650, 000
National Achievement Study	1, 000, 000
Total	4, 650, 000

Library Services and Construction Act	
Title I (public library services) ..	32, 000, 000
Title II (construction)	15, 000, 000
Title III (interlibrary cooperation) ..	4, 770, 000
Total	51, 770, 000

National Defense Education Act	
Title III-A (equipment and minor remodeling)	48, 000, 000
Total	48, 000, 000

Environmental education.....	820,000
Total.....	820,000
Public Law 815 (construction) ..	10,000,000
Total.....	10,000,000
Education for the Handicapped Act	
Part B (State grant program) ..	12,500,000
Total.....	12,500,000
Adult Education Act (State grant program) ..	23,700,000
Total.....	23,700,000
Higher Education Act	
Title VI-A (undergraduate institutions equipment) ..	12,500,000
Total.....	12,500,000
Grand total.....	530,294,000

Mr. QUIE. Mr. Speaker, when I was in my district during the recent recess, I heard more about the need for this legislation than anything else in the education field. I suspect many of the Members had the same experience.

Mr. Speaker, I, too, urge my colleagues to accept this bill.

Mr. PERKINS. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

RAIL PASSENGER TRANSPORTATION

The SPEAKER pro tempore (Mr. McFALL). Under previous order of the House, the gentleman from Idaho (Mr. HANSEN) is recognized for 10 minutes.

Mr. HANSEN of Idaho. Mr. Speaker, today I and 15 of my colleagues have joined in sponsoring H.R. 12305, to amend the Rail Passenger Service Act of 1970 to extend the basic rail passenger transportation to States that are not now served.

When the Amtrak system came into being millions of our people and hundreds of communities across the land were left without any rail passenger service. For several States all rail passenger services to major population centers was terminated. My own State of Idaho was among those that were left high and dry when Amtrak was unveiled. The result was extreme hardship for millions of Americans, including thousands of Idahoans, that had come to depend on rail service as a main source of transportation.

Among those hardest hit by the loss of rail passenger service were older persons who are not able to drive cars and must depend on public transportation, which is virtually nonexistent in Idaho and many other parts of our Nation.

That hardship has now deepened because of the fuel shortages that are incident to the energy crisis. Because of greater distances between population centers and the lack of public transportation the people in Idaho and other Moun-

tain States are more dependent on the automobile. Idaho's per capita fuel needs, for example, are about 23 percent higher than the national average.

The fuel shortage we are facing is real and it is critical. There is no prospect for relief for many years, at least a decade but probably much longer. The need to develop alternate means of transportation is becoming increasingly apparent and urgent. Public transportation services must be expanded to permit a more efficient use of our Nation's energy resources while meeting our peoples' need for economical, convenient, and adequate transportation services.

Passage of H.R. 12305 will be a major step in the direction of meeting this critical national need. The expansion of rail passenger services is one of the best means of conserving and wisely using our energy resources and providing an acceptable alternative to more costly means of transportation, particularly the private automobile.

Mr. Speaker, I am hopeful that this urgently needed legislation will receive the high priority for early consideration that it deserves.

I include as a part of my remarks the text of H.R. 12305 and the names of its cosponsors:

H.R. 12305

A bill to amend the Rail Passenger Service Act of 1970 in order to expand the basic rail passenger transportation system to provide service to certain States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title II of the Rail Passenger Service Act of 1970 is amended by inserting at the end thereof a new section as follows:

"Sec. 203. Extensions of basic system after initial designation.

"The Secretary shall, within sixty days after the effective date of this section, designate an extension of the basic system to provide adequate intercity rail passenger service to a major population area of each of the contiguous forty-eight States which did not have any large population area provided with intercity rail passenger service by the basic system designated pursuant to section 201. Extensions pursuant to this section shall be part of the basic system for all purposes of this Act and the designation of such extensions shall not be reviewable in any court."

LIST OF COSPONSORS

Mr. Hansen of Idaho, for himself, Mr. Anderson of Illinois, Mr. Cleveland of New Hampshire, Mr. Cronin of Massachusetts, Mr. Harrington of Massachusetts, Mr. Hunt of New Jersey, Mr. Kyros of Maine, Mr. Mazzoli of Kentucky, Mr. Melcher of Montana, Mr. Mitchell of Maryland, Mr. Moakley of Massachusetts, Mr. Nix of Pennsylvania, Mr. Roe of New Jersey, Mr. Talcott of California, Mr. Vander Jagt of Michigan and Mr. Waldie of California.

JUSTICE FOR ALL

The SPEAKER pro tempore. Under previous order of the House, the gentleman from California (Mr. McCloskey) is recognized for 60 minutes.

Mr. McCLOSKEY. Mr. Speaker, a fine man, Egil Krogh, has just been sentenced to jail for his admitted guilt in the commission of a felony. If Mr. Krogh's crime cannot be justified by invoking national security, then certainly the cover-up of

that crime cannot be justified in the name of national security. Egil Krogh spoke persuasively to this point when he entered his guilty plea. He said:

... I cannot in conscience assert national security as a defense. I am therefore pleading guilty because I have no defense to this charge.

The President of the United States has publicly admitted that when he learned of Mr. Krogh's offense he acted deliberately both to conceal that crime and to hinder the prosecution of those who committed it. His actions consisted of his instructions to H. R. Haldeman and John Ehrlichman to conceal Krogh's actions, and to Assistant Attorney General Henry Peterson to refrain from investigation or exposure of Krogh's criminal conduct.

These actions by the President constitute high crimes in their own right. They are defined as felonies by sections 3 and 4 of title 18 of the United States Criminal Code.

Section 3 reads in part as follows:

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Section 4 reads:

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both.

The President has admittedly obstructed justice. Of equal importance, several White House employees have pled guilty to obstruction of justice, and like Mr. Krogh, face imprisonment.

If we are a nation under law, then we cannot treat one man differently from another, particularly for violating the same law under the same circumstances.

Undoubtedly, the constitutional separation of powers doctrine prevents criminal indictment of a sitting President.

The sole remedy is impeachment, with any criminal prosecution to come only after his removal from office.

In the case of Vice President Agnew, however, the Government followed a special procedure.

When the evidence became clear that the Vice President had committed high crimes, he was allowed to resign in consideration for the promise that his guilty plea would not result in a jail sentence. The rationale for this special treatment was that it was in the national interest to avoid the trauma and uncertainty of a long trial and its accompanying impact on our prestige in the eyes of foreign nations.

The same rationale can be urged in the President's situation.

As one of the Members of the House charged with the constitutional responsibility of impeachment, I would like to propose that we grant amnesty for the President and a full pardon for all crimes he may have committed during his tenure in office if he chooses to resign.

As I see it, the President is in precisely the same situation as Vice President Agnew was a few months ago.

Evidence has been presented of his guilt of ordinary crimes under the law. The House has, by an overwhelming vote, directed inquiry as to whether he should be impeached. We expect a report from the Judiciary Committee within 90 days.

The constitutional trial before the Senate could last through the summer.

I would make clear that I am not urging that the President resign. Only the President can make that decision. I hope he will resign, but feel we have no right to ask it. Our sole constitutional power is that of impeachment. We can legislate amnesty, however, and I go no further than to propose that we do so if the President resigns.

The basis for such offer of amnesty lies in the benefit to the Nation recognized by Attorney General Richardson when he recommended against a jail sentence for Mr. Agnew, that it is damaging to the very functioning of our Government to have our highest executive officer undergo many months of trial.

There are two distinctions some of our colleagues have suggested as between the cases of Mr. Agnew and President Nixon.

The first, that the President is entitled to the defense of "national security," has been refuted by Mr. Krogh's statement that he could not, in conscience, assert the national security as a defense.

The second alleged defense is that Mr. Nixon has been a "good" President.

The issue, however, is not whether the President has been a good President, but whether even good Presidents are not required to obey the law.

Egil Krogh is a good man. I am personally familiar with the excellent work he performed in a number of areas for the White House, from the land reform program in Vietnam to treatment of heroin addiction here in the District of Columbia.

Nevertheless, Egil Krogh is going to jail, at peace with himself because, in his own words:

My coming to this point today stems from my asking myself what ideas I wanted to stand for, what I want to represent to myself and to my family and to be identified with for the rest of my experience. I simply feel that what was done in the Ellsberg operation was in violation of what I perceive to be a fundamental idea in this country—the paramount importance of the rights of the individual. I don't want to be associated with that violation any longer by attempting to defend it.

With those words, Mr. Speaker, I think Egil Krogh did as much for this Nation as did, with equally simple words, men like Nathan Hale and Elliot Richardson.

I would place Egil Krogh, along with Richardson and Bill Ruckelshaus, among the quiet national heroes of our day. That they are all Republicans gives me some small pride and hope for the survival of our present two-party system.

The issue before us is a simple one, going to the most fundamental of our national strengths.

Is any man above the law?

In particular, can we ever permit our highest officials to violate the law without remedial action?

That we are a Government of laws, not of men, is the key principle of our whole

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system of government. It is perhaps more important that we firmly re-establish that principle than that we succeed in any other of the dimly perceived goals we now pursue with such difficulty.

We treasure, and constantly repeat to one another, our pledge of allegiance to the flag—ending in those basic words: "justice for all."

What is justice for all? When several individuals commit the same offense, fairness and justice require at the very least that they be treated equally under the law. High Federal officials, in particular, must be held to the same standards of law as ordinary citizens.

When the President commits a crime, the common law should be invoked against him as it would be against the common man. Only because of the problems in exercising the functions of Government during a lengthy impeachment trial, and for that reason alone, should we consider amnesty to the President if he chooses to resign. In the last 10 months, we have seen the executive branch almost paralyzed by the White House efforts to conceal the truth and by an accompanying malaise throughout the executive departments which look to the White House for decision and leadership.

It may be said that it is inconsistent to urge the principle that the President is subject to the same law as others in one breath, and then to suggest that he receive special treatment in the next breath.

But there is a third principle: That a functioning U.S. Government is more important than punishment of any given individual. We may necessarily have to sacrifice some measure of efficiency in Government to preserve the rule of law, but we need sacrifice neither efficiency nor the law in granting a pardon to a President for his unlawful acts.

I do not urge his resignation, but only that in the Congress we be prepared to honor by an act of patriotism with the forgiveness appropriate to a spirit of national reconciliation we perhaps need as badly today as we did in the dark days following the Civil War. The President has borne great burdens, and in many areas he has done a superb job. Should he resign in the Nation's interest, I for one am prepared to vote for full and unconditional amnesty. Otherwise we have no choice but to proceed carefully, fairly, and thoroughly with the constitutional process of impeachment. As Ben Franklin said, with the Constitutional Convention:

It would be the best way, therefore, to provide in the Constitution for the regular punishment of the Executive, where his misconduct should deserve it, and for his honorable acquittal where he should be unjustly accused.

There should be no reason to fear any constitutional process undertaken in a judicial and nonpartisan manner, but I would hope that the President's resignation would spare us that problem.

NOTRE DAME NO. 2 AND UCLA NOW NO. 1

(Mr. DEL CLAWSON asked and was given permission to address the House

for 1 minute and to revise and extend his remarks.)

Mr. DEL CLAWSON. Mr. Speaker, a week ago today the gentleman from Indiana (Mr. BRADEMANS) had occasion to take the floor to comment upon the success of the Fighting Irish over UCLA. For 1 week they had the glory of basking in the No. 1 spot in the Nation, but this was only by 1 point.

On Saturday last, the UCLA basketball team with Mr. Walton taking charge took away from the Smiling Irish their fight and they are now in tears because they are not just 1 point ahead, but 19 points behind.

I had hopes that the gentleman from Indiana would be here so that he could shed those smiling tears of the Fighting Irish. UCLA is back on top and the Fighting Irish will have to take second place.

Mr. Speaker. May I say to the gentleman from Indiana that the Lord giveth and UCLA taketh away.

REPRESENTATIVE JACK KEMP CALLS FOR A RETURN TO ECONOMIC PROSPERITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 15 minutes.

Mr. KEMP. Mr. Speaker, the authority for Government regulation of wages and prices is scheduled to expire on April 30. I hope the Congress does not extend this authority, but instead helps to restore the strength of this Nation by moving forward to the democratic principles and unparalleled economic productivity which arise naturally from a free market economy. In fact, I have introduced legislation to repeal the misnamed Economic Stabilization Act, the act which authorizes the present controls.

WESTERN NEW YORKERS WANT A REPEAL OF WAGE-PRICE CONTROL

I had an experience this past weekend which convinces me—more than ever before—of the preponderant support out among the grassroots for an immediate repeal of wage-price controls, or, minimally, their expiration on April 30.

Western New York, a part of which I have the honor of representing in this Chamber, is expecting a full 20-percent cutback in construction during 1974. This means a loss of jobs and income, not only in the construction trades but in the general economy of the whole area. Why? Principally, because of shortages of critical materials—occasioned by price controls, escalating prices—occasioned by distortions resulting from both wage and price controls, and fuel problems—occasioned in great part by a variety of Government regulations.

I met—together with Members and staff members of the western New York congressional delegation—with representatives of construction unions, construction employers, architects, and financial institutions. This meeting was to discuss the severity of the economic crisis and the remedial action this Congress can take to alleviate its potential recessionary impacts.

Almost everyone there—labor, business, government—supported some form of deregulation of wages and prices, a return to a market system of allocating scarce resources, a return to the principles of supply and demand—in summary, getting big and intrusive Government off the backs of the American people.

I feel confident that these kinds of meetings are happening all over our great Nation. Their significance should never be overlooked by any Member of this body.

WAGE-PRICE CONTROLS IN PERSPECTIVE

With the passage of 2½ years since these controls were "temporarily" placed upon the productivity of our people, it is important to examine objectively, the effects of wage and price controls and the policies upon which they were premised.

I hear questions daily: "Why shouldn't we extend wage and price controls? After all, don't we need controls now more than ever since prices are still rising? Don't we need more controls to allocate scarce resources and goods in short supply? And, even if we are going to end price controls, shouldn't we wait until a more appropriate time?" When then do I advocate a refusal to extend these controls?

As a nation—and as a Congress entrusted with the exercise of the people's welfare—we are at an historic focal point for major decisions on the role of government in the economy. If we opt for more controls, we invite the potential destruction of the most productive economy in the world—ours. If we opt for restoring freedom to the marketplace, we will not only help to resolve many of our ills, but we will also set the stage for a period of renewed economic expansion and solidity. This period now before us—between now and April 30—is when we must make this decision, and I, for one, will be on the side of freedom as I believe I was when I voted against the last extension of the act.

This economic stabilization program has been a dismal failure by all objective standards. It has produced disruptions, distortions, and strains upon the economy and the livelihood of the people, seen most frequently in terms of both shortages and higher prices.

If we do not learn from the experiences of history—and there are many, including our own experiences over the past 2½ years—and return to a market economy, we are inviting even worse shortages and even higher prices. These may, in the end, produce a severe recession or even a depression. This would stagnate the economy of the entire world, would weaken our position in relation to controlled economies, would result in millions unemployed, and would place additional—and what would have otherwise been unnecessary—burdens upon government to insure the general welfare.

The choices are clear: Regulation or deregulation; authoritarian government or freedom. Writing in the Harvard Business Review, C. Jackson Grayson, former head of the phase 2 Price Commission, observed:

Price and wage controls such as we have

experienced in Phases I through IV have helped to extend the degree of public control and to accelerate the rate of change. At some point—and I predict that, at the present rate, this point may be reached in about 15 to 20 years—the essential characteristics of a competitive, private enterprise system (non-regulated prices, profit motives, risk taking, collective bargaining) will no longer make up the economic engine that drives our system.

I am not saying that there is and will continue to be public regulation of the private enterprise system. Since 1930, we have had that—a mixed public-private system. But, in the 1970s, the pendulum of the mix has been swinging further, and faster, toward central control.

Call it what you will—managed capitalism, socialism, a planned economy, a post-industrial state—the end result will be the virtual elimination of the free-market system as we now know it. There will be no signposts or traffic lights. We will simply shift over to another kind of system.

Mr. Speaker, I do not believe the Congress of the United States wants to pursue such a reckless course of action as to endanger the economy and the general well-being of our Nation and its people. This Congress will be held accountable on how we stand on the question of preserving a free economy, and there can be no freedom—personal, political, intellectual—unless there is economic freedom. For the first time in American peacetime history, we are living under an authoritarian economy, and too many seem to be willing to acquiesce in its continuation. This must not be allowed to happen.

It is astonishing to me, in light of our Nation's prosperity under a market economy and of our virtually pending collapse under Government regulation, that some argue for even greater controls. I am dismayed that some want more regulation, more control, more bureaucracy, more redtape, all of which combine to produce less freedom, less production. I question no motives, but I cannot agree with the premises for their conclusions. The administration, elected in 1968 on a platform to enact no controls and re-elected in 1972 on a platform to remove temporary controls almost immediately, now infers more controls, and the Chairman of the Council of Economic Advisers Mr. Stein, even sees a need for a Federal Government, master planning agency.

No matter what actions the Government takes, we cannot—and should not—repeal the law of supply and demand. What Government action does do is to distort that law so severely as to cripple the capacity of the people to use its mechanics to avert imbalances in the economy. The Federal Government is simply not wise nor sensitive enough to substitute its judgment for those who actually make the economy work: 210 million Americans.

What are the impacts of wage-price controls?

IMPACT ON THE COST OF LIVING: UP!

There are few areas where the failure of price controls can be more graphically demonstrated than the meteoric rise in the cost of living since 1971. The Department of Labor release of January 22 shows the biggest spurt in the cost of living during 1973 since 1947—a full 8.8 percent. In 1973—

Supermarket prices rose 22.1 percent;

Gasoline prices went up 18.6 percent and fuel oil and coal prices went up 44.7 percent;

Meat, poultry, and fish prices rose 26.4 percent; and

Nonfood commodities, on the whole, rose 5 percent in price and services rose 6.2 percent.

And to make matters worse, this rise in prices was accompanied by a decline in the purchasing power—the real value of the dollar—of an average wage earner's salary by 1.9 percent.

Since this administration took office in 1969, we have had an opportunity to test the efficacy of controls. Between December 1970 and August 1971 when controls took effect, the Consumer Price Index grew at a rate of only 3.3 percent. Since controls were imposed, the Index has accelerated at a much higher rate, with an astonishing 8.8 percent increase for 1973. Thus, we have suffered the trauma of dislocations resulting from the imposition of controls only to now see clearly that the problems they were supposed to solve are not only still with us but are growing at even faster rates.

One cannot avoid the implications of such drastic raises in prices. But one public figure, at least, did miss the point: The President of the United States. It was incredible to read, on the day the statistics on 1973 were released that the President felt his program of wage-price controls had "helped to reduce the dangers of inflation," despite the contrast between the 8.8-percent reality and the 2.5-percent projection for 1973 by the White House made a year ago. How far off could they have been? Rhetoric, including the President's further remarks the same day that, "We are proving that a dynamic and resilient people can meet the challenge of inflation without sacrificing the ideal of a free market system," is no substitute for reality. And, reality mandates this program to be allowed to expire or even be terminated before its natural expiration.

The answer to inflation is not controls.

In other words, a freeze simply masks the consequences of inflation. Price controls, wage controls, rent controls, and interest controls distort and unbalance production. They inhibit business confidence, scare off investors, and produce shortages. Moreover, controls distract attention from the true cause of inflation—the failure of successive administrations to exercise fiscal responsibility. The root of all inflationary evil in the United States is excessive Government spending, and consequent excessive money supply issued to cover the Federal deficits. These are the things that must be attacked through adequate congressional budgeting techniques and through an aroused public will to curb spending by both the legislative and executive branches of Government.

The controllers persist in refusing to learn from experience. Controls failed during World War II, at a time when the U.S. Government was fighting a global war that had tremendous popular support. They are failing today. Indeed, controls have failed whenever and wherever they have been tried, for they are cosmetic measures that provide no real or lasting remedy to economic ills.

If the legal price for any commodity, whether it is bread or shoes, is held by edict substantially below what the free market price would be, the low fixed price must overencourage the demand for it, discourage its production, and bring about a shortage. The profit margin in making or selling it will be too small as compared with the profit margin in producing or selling something else.

IMPACT ON UNEMPLOYMENT: UP!

Wage-price controls are resulting in rising unemployment. This is happening in two ways: First, industry is laying off current work forces, and, secondly, industry is holding back on hiring additional persons because of economic uncertainties. This is no new insight; we have seen this for months.

An article in *The New York Times* of November 27 predicted a rise in unemployment during 1974 from 4.5 percent to 6.0 percent. This move of but 1.5 percent would mean layoffs of a whopping 1,300,000 persons. Why? In the opinion of the analyst that prepared this particular article, because of growing shortages.

Projected rises in unemployment were a focal point of the recently released study done by the National Association of Manufacturers, "Industry Survey on Wage and Price Controls," January 7, 1974. This authoritative report reveals that 23.7 percent of companies with annual revenues of less than \$50 million and 41.2 percent of companies with annual revenues in excess of \$50 million indicated that "controls had had an effect upon the number of persons employed by the companies."

Many companies reported that they would have employed more persons had it not been for controls.

The relationship here is one of increased production and planned capital spending, both of which have been cut back because of these controls.

Another important complaint by firms, closely related to employment, was their inability to keep high quality personnel. Why? Because under wage regulations, these firms cannot legally increase employee compensation.

The NAM survey also indicated that 40 percent of the firms stated that pay regulations discourage increased productivity. Thus, one can see how wages, prices, and productivity are all so interrelated.

IMPACT ON PRODUCTION: DOWN!

Before controls were imposed in 1971, the only thing most Americans were short of was credit and time. But now, if you want gasoline, it is short. If you want anything made of steel, it is short. If you want lumber, it is short. If you want textiles, they are short. If you want paper, it is short.

Wage-price controls are crippling the productive capacity of the American people, and it is too shortsighted a view to simply say that such an observation is intended only to help businessmen. Nothing could be more wrong. The restoration of productivity means much more for everyone.

Productivity generates jobs, many of which have been lost as a result of these controls, and jobs mean take-home pay and less unemployment.

Productivity generates profits which are distributed to millions of families across the country who have saved their hard-earned dollars to buy shares of stock as a hedge on the future and for retirement.

Productivity produces revenues, in the form of taxes, through which government can meet other priority needs.

Productivity means the use of goods, raw materials, and byproducts of other industries, thereby producing profits and jobs in those supply industries.

But, productivity is not happening. Wage-price controls continue to stagnate our economy, producing unemployment, reduced profits, reduced revenues, inadequate capital for expansion. The cold facts and hard statistics bear out this claim fully.

The NAM report, to which I have referred, concentrates heavily on the impact of these controls on prices and production. This NAM survey was not strictly limited to manufacturing or industrial firms; it also included utilities, airlines, insurance companies, wholesaling and retailing operations, banks and other financial institutions, and agricultural processors: In short, it covered the overwhelmingly preponderant source of jobs in America.

Are there shortages? Unbelievably so. The listing of specific items—one by one—which are in critical supply is a full 2½ typewritten, single-spaced pages, with insignificant supply shortage a full additional 2 pages. And, we are not talking about insignificant items. We are talking about zinc, aluminum, lumber, asphalt, cotton, copper, paper, steel, plastics, coke, iron, silver, nylon, and nearly 600 other goods.

What other important findings are contained in the report?

Nearly 31 percent of small firms—annual revenue of less than \$50 million—and nearly 46 percent of large firms—over \$50 million—have reduced or eliminated output of products or services as a result of controls.

Over 91 percent of small firms and 97 percent of large firms are experiencing unusual difficulties in obtaining their requirements of important materials or supplies.

Nearly 62 percent of small firms and 80.5 percent of large firms ascertained that the principal influencing factor to which shortages are attributable were wage and price controls.

As to the future, 32.8 percent of the total firms felt that unless wage and price controls were lifted that the shortage situation would become critical, and an additional 52.3 percent felt it would become worse.

Over 40 percent of small firms and over 55 percent of large firms have been forced to modify production and marketing plans at the expense of serving customers because of wage and price controls.

Some 76 percent of small firms and nearly 87 percent of large firms assert that customers will pay more for products they purchase because of controls.

Over 58 percent of small companies and nearly 81 percent of large firms are having adverse effects on earnings due

to controls, and this is of great significance because return on investments are the key to additional capital formation from which to expand production.

A full one-third of all firms have postponed or canceled planned increases in capital outlays due to controls.

Over 60 percent of small firms and nearly 80 percent of large firms indicated they were "suffering harmful distortions or financial damage because of controls."

It is, therefore, not surprising that nearly 92 percent of small firms and 97 percent of large firms were "favoring a prompt termination of controls."

The NAM is to be commended by Members of this body for having fulfilled a very real need for this kind of hard evidence.

Is there little wonder that there is a rising crescendo for abandoning these controls?

CALLS FOR REPEAL REACHING A CRESCENDO

I am heartened at the rising number of significant calls for abandonment of the wage and price control program, particularly by the cohesion on this issue by labor, business, and the public.

The AFL-CIO has called for abandonment of this program, perhaps summed up best by a statement of the Communication Workers of America that these controls are "a joke, a nasty joke on workers whose wages are shrunk by freezes and then shredded by bloated prices and inflated interest rates."

The U.S. Chamber of Commerce and the National Association of Manufacturers have called for repeal.

Most significantly, the public—the buying public—the consumer—is calling for an end to these controls. In a recent Harris survey, published in the *Washington Post* during the week the price ceilings on beef were lifted, a decisive mood amongst the people was reflected:

The prevailing view on the beef problem, supported by a thumping 64-22 percent, is that "all price controls on beef should be dropped so that farmers will produce more beef and that will bring the price of beef down." Thus, the American people are opting to try the free market approach.

One can fully appreciate the importance of removing wage-price controls when one examines the forced changes in human conduct which arise from their imposition.

Prof. Milton Friedman, former president of the prestigious American Economic Association, has observed:

There has been essentially no discussion of a much more fundamental issue. The controls are deeply and inherently immoral. By substituting the rule of men for the rule of law and for voluntary cooperation in the marketplace, the controls threaten the very foundations of a free society. By encouraging men to spy and report on one another, by making it in the private interest of large numbers of citizens to evade the controls, and by making actions illegal that are in the public interest, the controls undermine individual morality.

In this sense, Mr. Speaker, the continuation of these controls pressures the moral fiber of the Nation.

What about those who say that the time is not now right for removal of these controls?

The fact is that the time is never right

to abolish controls, if one is trying to avoid totally the short term rises in price which will inevitably result immediately after their removal. This happened in 1947 after the wartime controls were lifted. But that is shortsighted. After the immediate rise—and this is not speculation, it is fact—the laws of supply and demand begin to take effect, reflecting accurately their interrelationship. Prices then start to decline, as they did after 1947; production starts upward, et cetera. All that we do by keeping these oppressive controls is postpone the day in which we must lift them or risk the total destruction of our economic system. I know the President wants to be remembered in history, but I do not think he wants that remembrance to be next to Herbert Hoover. In some ways both were the victim of policies set into motion long before they took office, but that does not relieve them from the responsibility which they must bear in history's eyes for having failed to take all necessary steps to avoid a pending crisis.

WHAT OUGHT TO BE DONE?

In his classic work on the fall of Greco-Roman civilization, Edward Gibbon, observed:

In the end, more than they wanted freedom, they wanted security. They wanted a comfortable life and they lost it all—security, comfort and freedom. When the Athenians finally wanted not to give to society, but for society to give to them, when the freedom they wished for most was freedom from responsibility, then Athens ceased to be free.

I can think of no more bone-chilling observation for the backdrop against which we ought to view the dangers of wage and price controls.

The question, "What ought to be done?" must first be addressed by answering the question, "What ought not to be done?"

The Congress ought not—and neither should the administration—sit back and simply wait for the expiration date of April 30 to pass. The economy is so badly distorted by these controls—and business, labor, and the public are looking so intently for specific evidence on what Government intends to do—that we ought to act now to remove them.

What, then, ought to be done?

First, we must recognize that ideological, philosophical, political, or partisan motives must be set aside. This is no time for rhetoric. We must act on the basis of the facts which are now easily ascertainable. This is a time for answers. These facts support an immediate abandonment of wage-price controls.

Second, the administration should order an immediate rescission of phase IV controls.

In the alternative, if the administration fails to take this action, the Congress should repeal the Economic Stabilization Act now, not waiting until it simply expires on April 30. I have introduced H.R. 10006 to repeal this act, and I urge its speedy passage.

Third, the Government ought to pursue monetary and fiscal reform thereby lessening inflation. An appropriate place to start would be the enactment of my bill, H.R. 10432, the Emergency Anti-Inflation Act.

Fourth, Government should hereafter, pursue a consistent policy as to the national economy. The Cost of Living Council has been decontrolling specific commodities—for example, cement and fertilizers—when it was determined by the Cost of Living Council, after virtually interminable consideration, that such decontrol was necessary to bolster sagging production. Although appropriate measures to undertake this is a haphazard approach which helps few and fails miserably to address the basic policy issues. The pursuit of consistent policy would be a great boon to our economy and an important guide to the wage earners.

Fifth, Government should move decisively toward a less interventionist role in the economy, since Government action typically creates more problems than it resolves. Such a noninterventionist perspective should form the basis for new policies. The American consumer would be their ultimate beneficiaries.

Sixth, our institutions—the universities, government, business, labor, et cetera—must so well document the stark realities of having relied upon and used these controls as to totally discourage our Nation from ever again, at least during peacetime, relying upon such measures.

We owe this, Mr. Speaker, to ourselves and to our posterity.

BANNED FOR ADVOCATING EQUALITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. Diggs) is recognized for 5 minutes.

Mr. DIGGS. Mr. Speaker, the situation in the Republic of South Africa is rapidly deteriorating with the banning of more people than ever before for advancing equality, human dignity, and basic political participation for the disenfranchised black majority. The increasing repression by that minority government is indicated by the fact that in 1973 there were at least 70 bannings as compared with 14 in the previous year. The bannings deprive the victim of his or her means of livelihood, prohibit writing or publication, attending meetings, moving outside a small area, or any of the basic rights that in a democracy would be taken for granted. Some of the bannings have been used against eminent theologians who preach justice and freedom, and the most eminent of these is Dr. Manas Buthelezi, S.T.M., Ph. D., the Natal regional director of the Christian Institute of Southern Africa.

Dr. Buthelezi is the cousin of Chief Gatsha Buthelezi, who is well known here in the United States. The banning of his cousin is a sign that the South African regime is using an old tactic which it has brought out in the past to deal with political opposition—to refrain from attacking the leading figures in any organization, but to destroy the movement by banning those closely involved in its day-to-day work. By using this tactic against Dr. Buthelezi, the South Africans have demonstrated the hypocrisy of their claim that the "Bantustans" offer a means of political expression for Africans, and that conditions in South Africa

are supposedly improving for the black majority.

Dr. Buthelezi recently gave an address at the University of Cape Town, which indicates the sincere convictions which he and others have of the necessity of change in South Africa. By banning him, the South African minority regime has restated its contempt for law and for decency; it has affirmed its determination to obliterate all questioning voices in South Africa. I include the address and two articles from the December 9 edition of the South African paper, the Cape Times to be printed in the Record, at this point:

CHANGE IN THE CHURCH

(By Dr. Manas Buthelezi)

To some people's 'change' and 'church' seem to be two irreconcilable concepts. The church as an institution stands in sharp contrast to the transitoriness of the things of this world. While permanence and continuity describe the character of the church to them, it is to worldly things that 'change' relates.

In the Middle Ages 'seculum', of which secularization and secularism are modern English variations, pointed to a category of time: it meant 'age' or 'century' as opposed to 'eternity'. It also came to designate those members of the clergy who ministered to people in their daily life in contrast to the members of the monastic orders. In 'seculum' there was a notion of that which is passing away or temporal in contrast to that which is eternal.

Thus the secular was a realm of temporal political power, of labour and trade and natural law. This was in contrast to the church which was a dispensary of grace which related man to the eternal. Timelessness and permanence was to the church what change and transitoriness was to the world.

Since the earliest times of church history the category of antiquity was used to demonstrate the permanence and continuity of the church vis-a-vis sects and heretical groups. The novelty of the sects and heretical groups stood in sharp contrast to the antiquity of the church which dates back to the times of the apostles. Thus in his *Prescription Against Heretics*, Irenaeus challenges the heretics thus:

HERESIES

"If there are many heresies which are bold enough to plant themselves in the midst of the apostolic age, that they may thereby seem to have been handed down by the apostles, because they existed in the time of the apostles, we can say: Let them produce the original records of their churches; let them unfold the roll of their bishops, running down in due succession from the beginning in such a manner that that first bishop of theirs shall be able to show for his ordainer and predecessor someone of the apostles or of apostolic men—a man, moreover, who continued steadfast with the apostles."

It is the wrong notion of what the church stands for that causes many people in South Africa to find it difficult to see the church as an instrument of social change and social process. To them that is Social Gospel. This poses the problem of the solidarity of the church with the mass of people among whom it ministers. The issue at stake is whether the bridge between the church and the secular world is just the mission of the church to the world or that this mission presupposes an already existing solidarity between the two.

Gustaf Wingren has made the observation that the salvation event which is the content of the message of the church took place outside the religious centre of Jerusalem. It took place in the world; in the sphere of the

"secular." Not an apostle but a stranger. Simon of Cyrene, under compulsion, carried the Cross of Christ; a criminal at Jesus' side and not a disciple received the promise of the kingdom. Both the death and resurrection were enacted before the pagans, Roman soldiers, and not before a crowd of disciples who, as a matter of fact, had run away and were in hiding. Thus, this event in Jerusalem, which is to be proclaimed to all people 'beginning from Jerusalem' is, as much as any could be, an event in the world.

From the beginning the church is part of God's transforming social process in the world. Is there any thing more transforming than the power of the Gospel to the lives and destinies of the peoples of the world? When Christ sent his disciples to make disciples of all nations he was in effect prescribing that the church should be an instrument of change in the historical destinies of those nations.

STRUCTURAL CHANGE

Therefore when we speak of change in the church; it is not just a question of change in church structures—even though that is also included—but also change in the role of the church in the South African society. The church does not exist for itself but for ministering to South Africa. Therefore what is of primary importance is not just structural change within the church but how the church projects itself as a catalyst in changing the thinking and behaviour of South Africa's politicians, economists as well as all citizens.

Let us take the question of social justice. There are Christians who believe that the active promotion of social justice is outside the purview and competence of the church. They believe that this is something that should safely be left in the hands of politicians. They forget that justice belongs to God and not to the discretion of politicians. There are people who believe that the social and political structures in South Africa radiate justice and fair play to all and that it is only political agitators and communist inspired church men who see the situation as problematic at all.

Talking about change, one of the things that should change is this type of thinking. Therefore there should be change within and through the church.

WHY THERE IS NEED FOR CHANGE

Rightly or wrongly the white man has been regarded as the standard bearer of the mission of Christ in South Africa. He was the protector and watch-dog of all the values which the Christian Gospel is designed to uphold.

We have, however, witnessed one of the greatest spectacles in the history of the church in South Africa, namely, the systematic apostasy of the white man. Let me give a theological setting to this change.

Justice and love are two concepts which are theological in the strict sense of the word. As far as the imperfect human language can go, "holy" and "love" are words which almost define the nature of God. We say "God is holy" and "God is love".

The idea that God cares for his creation in general and for his peoples in particular is central in both the old and new Testaments. In contrast to the gods of the Greek and Roman religious world, who were sometimes represented as jealous of and competing with man, the biblical God is characterized by his active interest in the welfare of his people: he loves and is just to them.

In one of the stories of Greek mythology it is told how sex came about among men. Man was originally a very beautiful being with four legs, four arms and two heads. The gods became so jealous of his beauty that they clove him in half. Since then the two halves have been trying to come together in the form of man and woman.

SHEPHERD

When we encounter the 'shepherd' of the Psalms or that of St. John's Gospel, we do not only get a glimpse of how a rural culture conceptualized its God, but more important we find an instance of what I shall call biblical oeconomia, that is, God not only produces the means of sustenance but he also distributes it equitably like a shepherd who tends his flock. The communism of the New Testament Church was a social extension of this biblical concept of "God economics". The author of the Book of Acts portrays this social extension as a communal life of sharing, that is, a pooling together of God's gifts for common consumption.

The social extension of "God's economics" contains a moral element of stewardship. The story of Ananias and Sapphira dramatizes the moral accountability of the stewards of God's stewards. The point of reference is always how man's stewardship reflects God's justice and love.

What has happened in this country is that the white man in his stewardship has violated the integrity of God's love and justice.

It is common knowledge that in this country the active promotion of love between black and white is looked at with suspicion. Any fraternization between races, which should naturally develop from faith in Christ, instead of being a cause for praise brings with it serious consequences, like being visited by the security police or simple exposure to one form of censure or the other.

As a black Christian I have come in anguish to the conclusion that the white man, through his political and social governmental institutions, no longer services the promotion of God's love between black and white but is really doing his best to kill and frustrate it. This spiritual vandalism on the part of the white man has brought with it consequences so serious that it is no longer a theoretical possibility that Christians suffer just for the sake of promoting love and good will between black and white.

After the end of it all South Africa will have a unique distinction of producing martyrs who suffered simply because they were trying to promote good will between the races.

INTRIGUING QUESTION

The current and intriguing question is whether Christian love is safe at all in the hands of the white man. The same applies to social justice. As far as the question of the violation of social justice is concerned, there is a sense in which one can say that the black man has become a 'Christ' to the white man: he has been 'crucified' so as to bring security and social salvation to the white man. What counts for his insecurity means security to the white man: his poverty is the yardstick of the white man's affluence. In other words the white man would not be as affluent if the black man were less poor than he is.

The irony of all this is that Christianity in South Africa has a white image. This is in spite of the fact that almost all the major multi-racial churches are overwhelmingly black. 'What the churches in South Africa are thinking' is very often identical to 'what white people in South Africa are thinking'. The voice of the black man has yet not been heard in the church in any significant manner. Added to this is the fact that the white man has discredited himself as the protector of Christian values; the situation becomes very desperate indeed.

There must, therefore, be change in the church in order to reflect a changed situation, namely, the white man's turning against that which promotes Christian love and justice. The church must release its potential by promoting the reflection of its black constituency in both its structure and proclamation. The church must cease to be sec-

ularian in order to reflect the whole of the people of God. It must cease to be a satellite of white power politics in order to become a forum of communion for the whole people of God.

THE BLACK MAN HAS CHANGED

The last three years have been characterized by the evolution of Black Consciousness in South Africa. This in turn called for the need to relate the Christian faith in the experience of the black man.

'But God, why did you create us?' This was the title of an article which was published in a church periodical some years ago. The article as a whole reflects the mood of a black man who cries from the abyss of the shackles occasioned by the fact that he is black. He is seeking for meaning for and destiny in a life in which blackness is not a favourable intellectual point of orientation.

The theological meaning of this question cannot be appreciated in isolation from the whole gamut of social, political and economic problems. This is not the place to discuss the content of the question as such since here we are discussing change in the church in broad terms. I only wish to point to the reality of its existence as a primary pretheological question. In other words there are certain questions which are suggested by the reality and mode of human existence. Any healthy theological reflection uses these questions as points of orientation.

In this critique against 'kergmatic theology' Paul Tillich cautions us against the danger of 'throwing' the Christian message at those 'in the situation'. One need not follow all the turns and twists of his method of correlation in order to appreciate the validity of his caution. He defines the 'situation' as follows: 'Situation; as one pole of all theological work does not refer to the psychological or sociological state in which individuals live. It refers to the scientific and artistic, the economic, political and ethical forms in which they express their interpretation of existence.' 'The situation to which theology must respond in a special period.'

CHRISTIAN MESSAGE

Paul Tillich asserts that the Christian message supplies answers correlated to the existential questions which arise from the human situation. The task of Systematic Theology, according to him, is to analyze the human situation from which the existential questions arise, and in demonstrating that the symbols used in the Christian message are the answers to these questions.

When man—even an unbeliever—raises moral and existential questions about his life and environment, he is impelled by his condition of creatureliness. Gustaf Wingren argues that 'men ask themselves questions like these because of the very fact that they are alive. They can ask them, even though they have no belief in God at all, but what they are really questioning is their relationship to God. For this relationship is given with life itself, and even when men have ceased to be related to Him'.

We can even go further and say that the preaching of the Word of God by missionaries in Africa did not serve to pull down God to the African situation, because he was already there protecting and sustaining life as Creator. All the preaching did was to bring the message of a God who was already there. The important soteriological motif out of which arises the question as to how man can be reconciled to God, should not make us oblivious of the creation motif out of which arises the question how God commands the situation in the fallen world. Neither should epistemological considerations, namely, as to when man 'graduates' from a lack of certain knowledge to ascertained knowledge of things divine, determine our conception of the temporal order of the events of God's active presence among sinful men.

From the above it follows that the existential questions which arise from the soul of the black man are the legitimate frame of reference for the Gospel which sums up God's design for the situation of man. If the Gospel is to save the black man, it must relate to such basic questions as "Why did God create me black? What is the ultimate destiny of the black man in a world governed by the values of the white man?" It is the task of theology in Africa to use these questions as the frame of reference while it defines the content of the Gospel which is designed also to save the black man. The classical themes of theology and their formulation should only serve as starting points and not mark the final and ultimate points of the task of theologizing.

The so-called Black Theology is the intellectual arm of the spiritual awakening of the black man towards the message of the Gospel. The black man, for the first time, is beginning to hear the message direct from God's mouth. For the first time he hears God from the depths of his existence as a black man.

The Church can no longer pretend as if nothing has happened. It cannot close its ears forever towards the witness of faith—liberation by the majority of the South African believers. The Church must change so that the black man's witness to the Christian faith may also be heard. In a eucharistic tone the black man is singing "Out of the depths and cry unto thee, O, Lord!" Who has the authority to silence the black man?

GOD DEMANDS CHANGE NOW

This is the time of crises: the crises of Christian discipleship. South Africa urgently needs the Gospel of liberation; a Gospel that will liberate the whites from the bondage inherent in the South African way of life—a way of life that chokes brotherhood and fellowship between black and white. This is the Gospel which will liberate the white man into the realization of the fact that he is nothing but a fellow human being in relation to the black man, and a Gospel which will liberate the black man into the realization of the fact that he is nothing less than a human being.

South Africa urgently needs security—a security that results from fellowship between black and white; not a security created by distance between black and white, since the consciousness of distance does not lead to a feeling of security, but leads to fear and suspicion.

God demands that the white man must repent from his political, economic and social sins he has committed over the last three centuries. If the white man will be saved at all, the English and the Afrikaners of this country must say in unison *mea culpa, mea culpa, mea maxima culpa*.

God is greater than the power which the white man wields today. The white man is nothing but the creature of God for whom Christ also died on the cross. The white man is guilty before God because he has manipulated his political and social institutions against the promotion of love between brothers and against justice towards brothers.

The church must change because God demands it now. Both the white man and the black man must be liberated from the present bondage. That will be meaningful change because the whole church, black and white, will have been instrumental in it.

[From the Cape Times, Dec. 9, 1973]

BAN ON THEOLOGIAN "HORRIFYING"

(By the Most Rev. Denis Hurley)

"It is abundantly clear that we are now in a situation in which anyone with Christian concern about South Africa must stifle his conscience or risk Government reprisal."

He said "a Christmas, full of disquiet, not a happy and peaceful one, would be a sign that we are taking the situation seriously."

The Most Rev. Robert Selby Taylor, Anglican Archbishop of Cape Town, said he was disgusted that yet another person has been banned without trial and without being told of the reason for the action which has been taken against him.

"Dr. Buthelezi's banning will confirm many people in many countries in their opinion that South Africa is a totalitarian state," he said.

"The Rev. Dr. Manas Buthelezi is a well-known and highly respected theologian with a worldwide reputation.

"The Black people of South Africa must be particularly angry that so distinguished a member of their community should have to be subjected to the restrictions imposed upon him by this banning order."

Mrs. G. Ventress, chairman of the Natal Coastal region of the Black Sash, said it was the view of her organization that "any society which can tolerate this banning without an outraged conscience is both morally sick and blatantly permissive."

She said the country has been subjected over recent months to a wave of bannings culminating in the order against a man "whose sole crime seems to have been his dedication to the teachings of Christ."

Dr. Buthelezi, cousin of Chief Gatsha Buthelezi (head of the Kwazulu Government) is the 70th person to have been banned this year.

A statement signed by the Cape regional director of the Christian Institute, the Rev. Theo Kotze, and five members of the Cape board of management of the Institute, said that they were ashamed "that in a country which claims that its policies are based on Christian values such unjust and arbitrary actions not only continue but are increasing to an alarming extent."

They called on the Government to bring Dr. Buthelezi to trial.

In Johannesburg, the South African Council of Churches has warned the Government that by banning people like Dr. Buthelezi it was creating hostility. The Council described the banning as "a flagrant incitement of the Black people of South Africa."

The director of the Christian Institute, the Rev. Beyers Naude, said that if the Government had found reason to ban Dr. Buthelezi "we at the Institute will just have to accept that similar action may be taken against us."

A Sapa-Reuter report from Geneva last night said that the Lutheran World Federation yesterday issued a statement expressing shock at the banning.

[From the Cape Times, Dec. 9, 1973]

BAN ON C.I. MAN AN EPIC BLUNDER

(By Gerald Shaw)

At lunch in Mowbray a few months ago, I met a visiting theologian from Natal, a quietly-spoken Lutheran pastor.

The visitor impressed his fellow guests as a man of formidable intellect, a churchman of unusual quality. It emerged that he was a cousin of Chief Gatsha Buthelezi, Chief Minister of Kwazulu.

And now Dr. Manas Buthelezi, regional director of the Christian Institute in Natal, is banned, excised from the Christian community. The loss is grievous.

I would like to be able to tell you what Dr. Buthelezi had to say on that day in Mowbray. But the provisions of the Suppression of Communism Act make it an offence for his words to be quoted.

Hundreds of people heard Dr. Buthelezi speak at the University of Cape Town and elsewhere during his visit to Cape Town. Those who heard him were convinced that this was a man destined to play an important part in his country's history.

HIS QUALIFICATIONS

His *curriculum vitae* is impressive. His theological qualifications include a master's

degree in Sacred Theology at Yale, New Haven. Dr. Buthelezi has an international reputation in the Christian church as an exponent of a school of theology which holds that Black Christians have a duty to reevangelize their White brothers who have strayed far from the path of the Gospel.

This school of theology is no doubt unconventional to many. But the action now taken against him by the Nationalist Government is a blunder of epic proportions.

Anyone who was out of circulation on leave in November, as I was, returned in December to find a whole new set of assumptions operating in local and international politics as a result of the oil boycott.

The consequence for South Africa are serious. Even assuming that our own problems of oil supply can be solved, as seems likely, we are by no means out of the woods.

Our real problem concerns our relations with the friendly nations of the West, who are now subject to the kind of pressures which make it imperative for them to put their own vital interests first.

If the price of oil is to include a tougher line against South Africa, it is going to become even more difficult than it has been in the past for the nations of the West to consider the interests of the Whites of Southern Africa.

For this reason it is folly for the Nationalist Government to do or say anything to make things more difficult for the West in its relations with the Republic.

To do and say things which are an affront to Western standards, threatening free expression and persecuting Christian churchmen, in these circumstances, is madness.

The Rev. Theo Kotze is quite right when he says that the banning of Dr. Buthelezi aligns South Africa with the brand of persecution of Christians that is common practice in the communist countries.

CURIOUS COMPANY

The presence in the Republic of Cardinal Mindszenty, perhaps the most renowned victim of communist persecution in Europe, is a reminder that current Nationalist actions are placing the Republic in curious company.

The views of the Lutheran World Federation, as expressed by Dr. Andre Appel from Switzerland, are already known.

There is no doubt that the Christian community throughout the world sees this action in the same terms as does Dr. Buthelezi's colleague in the Christian Institute, the Rev. Theo Kotze, who said yesterday:

"Dr. Buthelezi's only crime is to be a faithful follower of Jesus Christ—but of course that is a most dangerous road to travel in this country at the moment."

In any event, if the State believes Dr. Buthelezi to be guilty of subversion, why does it not charge him in an open court?

There is no shortage of wide-ranging statutes which could be invoked. There can hardly be a country in the world which is so well equipped with security legislation.

The banning of Dr. Buthelezi strikes me as a grave error of judgment on the part of the authorities. The repercussions will be felt for some time.

Any further interference with the functioning of a free Press would be a blunder of similar proportions.

If there is anything that distinguishes the free nations of the West from the totalitarian societies, it is freedom of expression and freedom of religion.

The timing of this latest banning order was an inspired stroke of official genius in our relations with Black Africa.

At Addis Ababa, Chief Gatsha Buthelezi is battling to make his voice of moderation heard in the councils of the OAU. And it seems that he was making considerable headway.

No longer. The news of the banning of his cousin, a churchman, must surely have cut the ground from under Chief Buthelezi's feet.

The spate of banning orders this year is a sure indication that the political temperature is rising in the Republic. With the prospect of a clamorous general election early next year, the temperature is hardly likely to drop.

SOLUTION OBVIOUS

The solution open to the Republic is obvious, but there seems little hope that it will be invoked. As a matter of urgency, the lot of Black South Africans must be eased. The crucial areas are the pass laws—the whole maze of oppressive legislation bearing down on Africans—migrant labour, urban and rural wages and working conditions. This is where we will have to start.

If there are people who are not familiar with the crushing burdens which legislation places on Africans, they might call at the Athlone Advice Office to get some idea of the effect of our system in the day-to-day lives of the African people.

Nothing will be gained by more bannings, more suppression, more oppression.

None of our problems, international or otherwise, will be solved until we remove the root causes of Black disaffection.

There are many who realize this, members of organizations such as Verligte Actie, the Institute of Race Relations, the Christian Institute, Dr. Gerdener's new Democratic party and the United and Progressive parties.

There are even some Nationalists who can sense what is really needed. As things now stand, the power and the responsibility is in their hands.

The rest of us can only hope that they can do something before it is too late.

VORSTER'S PROSECUTION FOR THE WITNESS

(By James Macmanus)

The South African Government is now moving with speed to crush moderate critics of its apartheid policy. The trials of nine such men, five of them churchmen, began in Pretoria yesterday, bringing into the open the long threatened confrontation between Church and State in South Africa.

The first two cases were postponed yesterday and the remaining seven scheduled for this week are likely to be put back pending an appeal in a related case on Friday. But the adjournments will be brief and the message behind the prosecutions is clear. The South African Government is now bent on the destruction of moderate organisations in the country working peacefully for change of the apartheid system.

The nine defendants are all charged with contempt, that is a refusal to testify before the Schibusch Commission which was set up by the Government in January 1972 to investigate the activities of four anti-apartheid organisations.

Five of the accused are leading members of the Christian Institute, a nondenominational body which is pledged to racial equality in South Africa. Four are from the Institute of Race Relations (IRR). The Commission was charged to investigate the "objects, organisations and financing" of both organisations. The National Union of South African Students (NUSAS) and the University Christian Movement, which has now voluntarily disbanded, were also on the list.

The Commission began its work with an investigation of NUSAS. The hearings were held in secret and allowed witnesses no effective legal representation nor the right to refute charges. The nature and source of the Commission's own evidence was not given. The student leaders felt however that to appear before the eight-man Commission would be the best way to show they had nothing to hide.

It proved a tragic misconception of the Commission's powers and intentions. Sixteen student leaders were "banned" on the orders of the Attorney-General earlier this

year after the Commission sent an interim report on its finding to the Government. The banning orders, which last five years, summarily ended the academic careers, social lives and professional aspirations of the students concerned.

When taxed with the reason for such draconian measures South Africa's Prime Minister, Mr. Balthazar Vorster, said: "It is unfair to burden the courts with responsibility for security. The bannings are preventive, not punitive." Liberal opinion in South Africa interpreted these words to mean that the Commission had been set up to bypass the courts and neutralise potential dissidents through a secret machinery answerable only to the Government.

The reason for such action was simple. The Government had become irritated, if not alarmed, at the relative independence of the judiciary. The answer was the Schibusch Commission and the lesson of its first investigation was not lost on those next in line for the treatment—the Christian Institute and the Institute of Race Relations.

In the wake of the student bannings the leaders of both organisations decided to have nothing to do with the Schibusch hearings. The penalty for refusal to testify is six months' imprisonment or a £50 fine.

But the greater danger is that the Commission can recommend wholesale bannings for those who refuse to appear before it. One of the leaders of the Christian Institute, the Reverend Theo Kotze, made it clear in a letter to all members why they had decided to risk such penalties. The Institute had nothing to hide, he said, but it could not "co-operate with a Commission of Inquiry which by its constitution and mandate is a denial of the democratic process and judicial procedure . . . we re-affirm our conviction that the investigation of any organisation should be undertaken through a judicial commission which can ensure impartiality, the right of defence to accusations made, the right to face one's accusers and the upholding of the due process of law."

The stand against Schibusch was backed by the South African Council of Churches which has 20 affiliated churches representing more than three million South African Christians. The SACC had initially supported a policy of cooperation with the Commission but in July it publicly reversed this attitude and said that it would stand by any of its members if they refused to testify before Schibusch.

If Mr. Vorster's Government was worried by the prospect of a complete break in relations with the church it did not show it. The Commission not only pressed on but widened its scope. The Wilgespruit Fellowship Centre in Johannesburg, an advanced training centre for Christians, was rapidly investigated and condemned as a "den of iniquity." The Council of Churches was told to "clear up" the centre, whose group therapy sessions had apparently shocked the Commissioners. The SACC held a separate inquiry and cleared the centre of the charges that had been made.

Meanwhile, approximately 15 subpoenas were issued to compel testimony from staff of the Christian Institute and the IRR. Nine people refused to comply with the order. Those who did were mainly junior black staff who felt it better to wait for a greater issue before risking fines, imprisonment or banning.

On the whole, however, the leadership of both groups held firm in their refusal to deal with the Commission which is incidentally named after its chairman Mr. Alwyn Schibusch, the Nationalist Party MP. And this it is which has brought them into the lists for trial in Pretoria this week.

Most of the defendants, including Theo Kotze, have already had their passports removed. But as Theo Kotze stressed in an interview with the Guardian in April neither he nor his colleagues have any intention of

running away from the fight. For them the Schibusch Commission is the crunch issue in South Africa today. Their feeling is that to allow the Commission to become an established and recognised body is to acquiesce in the destruction of the legal system in South Africa.

The trials will almost certainly result in light fines. But the Commission is waiting in the wings to renew its demands for testimony and that can only lead to further charges of contempt and further, harsher, sentences. For the moderate churchmen and social workers in South Africa the collision course seems to have been set.

The Archbishop of Canterbury yesterday launched a fund for the Christian Institute. Contributions should be sent to the Christian Institute Fund, c/o The Midland Bank, Central Hall, Westminster, London, SW 1.

PROFESSIONAL STANDARDS REVIEW ORGANIZATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 5 minutes.

Mr. GONZALEZ. Mr. Speaker, the Professional Standards Review Organization, included in title XI of Public Law 92-603, the Social Security Act, has generated much discussion and concern in my State of Texas, as well as other States across the Nation.

The idea for this organization was hastily added to the social security bill in the Senate based on the premise that the taxpayers' money would be saved by having a Federal agency check on doctors to make sure that they do not overcharge for the medical services they give to patients whose medical bills are paid by social security funds.

Unfortunately, while the concept appeared to be harmless, the specific provisions of the law turned out to be such that they would impose on the professional and his patient a system of care standardized at a level that could be below what patients are now being offered under medicare and medicaid.

In addition, it would violate the customary confidentiality between doctor and patient since all the physicians records must be made available to the PSRO inspectors. This procedure particularly removes those guarantees of privacy which have been so important a part of the close relationship between doctor and patient, and has enabled him to provide his patients with highly personal and highly efficient care.

It should also be noted that the PSRO program has many unanswered questions such as what the review mechanism will be, how the records will be kept, and the cost of the program. It appears that there are no plans to have these questions answered until the program is underway which, in my opinion, is putting the cart before the horse. This type of planning is very disturbing indeed when we are dealing with the health care of many elderly and poor patients.

It is my understanding that some physicians have notified their patients they no longer will treat patients whose fees will be paid directly or indirectly by social security. Not because they dislike the fee schedule, but because they feel they could no longer give the patients the type of care they deserve when they

would be told how to treat a patient or how long a hospital stay they can recommend.

No other profession has been subjected to such harsh and demanding scrutiny, and the approach of the PSRO's appears to be an overzealous one to correct the threat of fraud in medical charges, when the records show a total of only 16 doctors being convicted in all 50 States in the 6 years since medicare-medicaid began under social security.

Today I am introducing a bill to repeal title XI of the Social Security Act which established the PSRO's. However, I am offering a substitute by authorizing the General Accounting Office to audit hospitals, skilled nursing facilities, or any other institutions to determine if hospital services, hospitalization, or fees for services under medicare or medicaid are unnecessary or excessive.

I believe that my method would remove the burdensome and unnecessary regulations imposed upon the medical profession by the Professional Standards Review Organization, but still provide a means whereby the Federal Government has control over the medicare and medicaid funds.

Every Member agrees that it is the intent of Congress to insure the taxpayers that their money is being utilized efficiently and for the purpose intended under law, but I do not believe that the PSRO approach is the best method of doing this. We should not subject one group of people to harsh rules and regulations that, in the end, turn out to be to the detriment of the poor and elderly that we are trying to help.

NATIONAL COMMISSION ON THE FINANCING OF POSTSECONDARY EDUCATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. O'HARA) is recognized for 15 minutes.

Mr. O'HARA. Mr. Speaker, it is with considerable satisfaction that I note the submission last week of the final report of the National Commission on the Financing of Postsecondary Education.

The past several months have seen the presentation of a number of reports by private and public groups on the questions facing postsecondary education—and particularly the financial questions. The Carnegie Commission, the Committee on Economic Development, the Newman Task Force, to name only three, have all submitted recommendations on postsecondary education matters. And in all these cases, there is much for the Congress to consider very carefully as it prepares for the expiration in 1975 of the existing Higher Education Act programs.

But the National Commission which just reported to us is a special case. The Commission was created by the Congress in the Education Amendments of 1972. It was mandated by that legislation to carry out "a study of the impact of past, present, and anticipated private, local, State, and Federal support of postsecondary education; the appropriate role for the States in support of higher education, including the application of State law upon post-postsecondary educational opportunities; alternative stu-

dent assistance programs; and the potential Federal, State, and private participation in such programs."

The final report has now been printed and released. I do not pretend to be in a position to make a definitive judgment on the substance of the Commission's findings and suggestions for action. Nor do I think that judgment need be made, or should be made, in a precipitate fashion.

The Commission has done, I can say, a superb job of gathering data, and organizing that data so that decisionmaking bodies, including the higher education community itself, and the Congress and the State legislatures, can get about the business of making policy decisions on the basis of that data, and in response to those suggestions. As an indication of the intention of the House Special Subcommittee on Education to take this report very seriously indeed, I have contacted the chairman of the National Commission and asked him to be prepared for an open hearing on the Commission's final report at the earliest date which will be mutually convenient for the committee and the Commissioners.

Those hearings will not mark the beginning of my subcommittee's study of these same problems, but they will mark a new phase—and I hope a climatic phase in our efforts to prepare existing Federal legislation for improvement and extension.

The National Commission's study will, I am confident, prove to be particularly useful as a first step legislative action because the Commission included among its members, five Members of the Congress—all of whom have been actively involved in the effort to develop and improve Federal higher education programs and policies. These colleagues of ours who served on the Commission included the gentleman from Indiana (Mr. BRADEMAS), who has for several years chaired the House Select Subcommittee on Education, the gentleman from Oregon (Mr. DELLENBACK) who is the ranking minority member on my own Special Subcommittee on Education, the junior Senator from Rhode Island (Mr. PELL), who chairs the Education Subcommittee of that body, the junior Senator from Maryland (Mr. BEALL) a member of the Senate Committee on Labor and Public Welfare, and the junior Senator from Maine (Mr. HATHAWAY) a member of the Senate committee, and before his election to the Senate, a member of the House Education and Labor Committee and a leading figure in the struggle for full funding of education programs.

With this distinguished congressional participation, it is my confident expectation that the Commission's report will be of great value to the Congress as a point of departure. To what extent we will or should follow the Commission's thinking, only time and study and extended debate will show. Indeed, some conclusions have been drawn already from statements in that report with which I would not want to fully associate myself. But the report does give us a place from which to start.

I do not want, of course, to emphasize the congressional Members of that Commission to the exclusion of the other members, public and governmental, whose expenditures of time and energy

on the report were enormous and whose contributions to its final outcome were commensurate. Let me list here the names of the other members, and express to each and every one of them, on behalf of the Congress which gave them their mandate and to whom they have now submitted the results of their labors, a heartfelt thanks and good wishes.

The Commission's chairman was Donald E. Leonard, attorney of Lincoln, Nebr.

The vice chairman was Marian W. La Follette, member, board of trustees, Los Angeles community colleges.

Other members included: Ernest L. Boyer, chancellor of the State University of New York; Hon. Winfield Dunn, Governor of the State of Tennessee; Tim R. Engen, student body president, Bradley University, Peoria, Ill.; Dan R. Martin, of Chicago, president, Associated Colleges of the Midwest; George Kaludis, vice chancellor of Vanderbilt University, in Tennessee; Walter C. Mercer, president, the Ohio National Bank of Columbus, Ohio; Joseph Cosand, Deputy Commissioner for Higher Education, USOE, who was later replaced by Peter P. Muirhead, both as Deputy Commissioner of Education and on this Commission.

John W. Porter, Michigan State Superintendent of Public Instruction; Louis P. Rodriguez, assistant superintendent of educational service for the Phoenix, Ariz., elementary schools; Sister Jane Scully, president of Carlow College, in Pittsburgh, Pa.; and Ruth C. Silva, professor of political science at Pennsylvania State University.

I would be doing a disservice to the Commission if I neglected to extend thanks, too, to the executive director, Dr. Ben Lawrence of Boulder, Colo., and to the other members of the staff who assisted the Commission in its work.

I make no predictions now as to what will remain of the substance of the work of these dedicated citizens when we finish our own legislative deliberations. We will not and cannot legislate in a vacuum, and education legislation must take shape not only in terms of what is best for education, but in terms of what is best for the Nation as a whole. But I can safely predict that the National Commission's report, will play a major role in determining the form that debate will take, and will expedite its completion.

PROJECTED DISMEMBERMENT OF U.S. PANAMA CANAL ZONE CREATES CREDIBILITY GAP AS TO SECRETARY KISSINGER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. FLOOD) is recognized for 10 minutes.

Mr. FLOOD. Mr. Speaker, in many previous addresses in the Congress, I have discussed at considerable length the more significant features of Isthmian Canal policy questions and offered plans of action for our Government derived from reasoned lines of thought. The current threats to the Panama Canal, which since 1946 when Alger Hiss, a high State Department official, over the objection of a superior, succeeded in officially describing the Canal Zone as an "occupied territory," were dramatically emphasized in the overthrow on September 11, 1973,

by the Armed Forces of Chile of that country's Marxist government. The lessons to be derived from that overthrow were covered in a colloquy by six Members of the House in the CONGRESSIONAL RECORD of September 26, 1973, which is commended for reading by all concerned with canal questions.

In the course of the current treaty negotiations over the status of the Canal Zone, I long ago noted that those charged with that task did not include anyone who had ever borne the burden of responsibility in an important position in the Canal Zone Government for the maintenance, operation, sanitation, or protection of the Canal. Thus, they have been persons without the lessons of experience and their work has reflected this lack to such a degree as to raise serious questions as to their qualifications for so vitally important work.

Both prior to and after the ill-advised meeting of the U.N. Security Council in Panama, March 15-21, 1973, I wrote the President requesting an appointment so that the facts rather than misrepresentations could be given him, but so far without success. Following the March 15-21 meeting in Panama I wrote the President inviting his attention to these facts: That the Canal Zone was acquired by treaty negotiated under congressional authorization, that the Congress has not authorized its disposal, and that the U.S. veto at the March 15-21 U.N. Security Council meeting was only a veto of immediate surrender and not eventual surrender of the Canal Zone to Panama. Attached to that letter was the 1973 memorial to the Congress of the Committee for Continued U.S. Control of the Panama Canal, which is one of the best yet brief summaries of the crucial canal problems ever written.

On June 11, I received a letter from Dr. Henry Kissinger, then assistant to the President for National Security, in which he promised to see that the views presented would be given full consideration. Dr. Kissinger is now the Secretary of State and with his active support, the move to dismember the U.S. Canal Zone seems to be underway. This development is in direct opposition to the views of many Members of the Congress of both major parties who feel that they have been ignored and has raised serious doubts as to the credibility of Dr. Kissinger and those associated with him on this matter.

In this connection, Mr. Speaker, I would invite attention to the fact that the present Government of Panama is not a constitutional one but a pro-Red revolutionary dictatorship set up as the result of a military coup on October 11, 1968.

In order that all Members of the Congress may read the indicated exchange of letters, I quote them along with the 1973 memorial of the Committee for Continued U.S. Control of the Panama Canal:

APRIL 30, 1973.

The PRESIDENT,
The White House,
Washington.

DEAR MR. PRESIDENT: In response to the White House letter of April 7, 1973, signed by Mr. Richard K. Cook, expressing your desire for an opportunity to discuss future Panama

Canal policy with me, I shall welcome such an invitation.

As to other parts of that letter attention is respectfully invited to the following facts:

1. The Canal Zone was acquired under treaty as authorized by Act of Congress (Spooner Act of 1902).

2. The Congress has not authorized the disposal of this territory or any property thereon, all of which is owned by the United States.

3. Ambassador Scall at the March 15-21, 1973, United Nations Security Council meeting at Panama condoned the proposal for the eventual surrender of the Canal Zone to Panama; what he vetoed was only its immediate surrender, which was a matter of strategic timing rather than principle.

4. There is no more authority for negotiating such a surrender in a treaty with Panama than there is for negotiating a treaty with Mexico for rescission of the 1853 treaty for the Gadsden Purchase and return of that territory to Mexico.

Because much inaccurate and misleading information in what our Isthmian canal policy should be has been persistently published despite repeated exposure of fallacies, I enclose a 1973 Memorial to the Congress by a distinguished, independent and experienced group. Because it diametrically opposes official recommendations and probably has not been made available to you, I trust that you will take time to read it.

In addition, you should know that since appearing on *The Advocates* program of March 15, 1973, with Representative Philip M. Crane and Dr. Donald M. Dozer, I have been deluged with letters from 45 states and territories supporting our position by 25 to 1.

Again, I assure you that I shall welcome an opportunity to discuss the entire canal situation with you.

Sincerely yours,

DANIEL J. FLOOD,
Member of Congress.

PANAMA CANAL—SOVEREIGNTY AND MODERNIZATION, MEMORIAL TO THE CONGRESS, 1973
COMMITTEE FOR CONTINUED U.S. CONTROL OF THE PANAMA CANAL

Sovereignty and modernization

Honorable Members of the Congress of the United States:

The undersigned, who have studied various aspects of interoceanic canal history and problems, wish to express their views:

1) The report of the interoceanic canal inquiry, authorized under Public Law 88-609, headed by Robert B. Anderson, recommending construction of a new canal of so-called sea level design in the Republic of Panama, was submitted to the President on December 1, 1970. The proposed canal, initially estimated to cost \$2,880,000,000 exclusive of the costs of right of way and inevitable indemnity to Panama, would be 10 miles West of the existing Canal. This recommendation, which hinges upon the surrender to Panama by the United States of all sovereign control over the U.S.-owned Canal Zone, has rendered the entire canal situation so acute and confused as to require rigorous clarification.

2) An important new angle developed in the course of the sea level inquiry is that of the Panama biota (fauna and flora), on which subject, a symposium of recognized scientists was held on March 4, 1971 at the Smithsonian Institution. That gathering was overwhelmingly opposed to any sea level project because of the biological dangers to marine life incident to the removal of the fresh water barrier between the Oceans, now provided by Gatun Lake, including in such dangers the infestation of the Caribbean Sea and Atlantic Ocean with the poisonous yellow-bellied Pacific sea snake and the crown of thorns starfish.

3) The construction by the United States of the Panama Canal (1904-1914) was the greatest industrial enterprise in history.

Undertaken as a long-range commitment by the United States, in fulfillment of solemn treaty obligations (Hay-Pauncefote Treaty of 1901) as a "mandate for civilization" in an area notorious as the pest hole of the world and as a land of endemic revolution, endless intrigue and governmental instability (Flood, "Panama: Land of Endemic Revolution. . ." C.R., August 7, 1969), the task was accomplished in spite of physical and health conditions that seemed insuperable. Its subsequent efficient management and operation on terms of "entire equality" with tolls that are "just and equitable" have won the praise of the world, particularly countries that use the Canal.

4) Full sovereign rights, power and authority of the United States over the Canal Zone territory and Canal were acquired by treaty grant in perpetuity from Panama (Hay-Bunau-Varilla Treaty of 1903). In addition to the indemnity paid by the United States to Panama for the grant in perpetuity of the indispensably necessary sovereignty and jurisdiction, all privately owned land and property in the Zone were purchased by the United States from individual owners; and Colombia, the sovereign of the Isthmus before Panama's independence, has recognized the title to the Panama Canal and Railroad as vested "entirely and absolutely" in the United States (Thomson-Urrutia Treaty of 1914-22). The cost of acquiring the Canal Zone, as of March 31, 1964, totalled \$144,568,571, making it the most expensive territorial extension in the history of the United States. Because of the vast protective obligations of the United States, the perpetuity provisions in the 1903 Treaty assure that Panama will remain a free and independent country in perpetuity, for these provisions bind the United States as well as Panama.

5) The net total investment by the taxpayers of our country in the Panama Canal enterprise, including its defense, from 1904 through June 30, 1971, was \$5,695,745,000; which, if converted into 1971 dollars, would be far greater. Except for the grant by Panama of full sovereign powers over the Zone territory, our Government would never have assumed the grave responsibilities involved in the construction of the Canal and its later operation, maintenance, sanitation, protection and defense.

6) In 1939, prior to the start of World War II, the Congress authorized, at a cost not to exceed \$277,000,000, the construction of a third set of locks known as the Third Locks Project, then hailed as "the largest single current engineering work in the world." This Project was suspended in May 1942 because of more urgent war needs, and the total expenditures thereon were \$76,357,405, mostly on lock site excavations at Gatun and Miraflores, which are still usable. Fortunately, no excavation was started at Pedro Miguel. The program for the enlargement of Gaillard Cut and correlated channel improvements, started in 1959, was completed in 1970 at a cost of \$95,000,000. These two works together represent an expenditure of more than \$171,000,000 toward the major modernization of the existing Panama Canal. Under current treaty provisions Panama has proclaimed that the word "maintenance" in the treaty permits "expansion and new construction" for the existing Canal (C.R., July 24, 1939).

7) As the result of canal operations in the crucial period of World War II, there was developed in the Panama Canal organization the first comprehensive proposal for the major operational improvement and increase of capacity of the Canal as derived from actual marine experience, known as the Terminal Lake—Third Locks Plan. This conception included provisions for the following:

(1) Elimination of the bottleneck Pedro Miguel Locks.

(2) Consolidation of all Pacific Locks South of Miraflores.

(3) Raising the Gatun Lake water level to its optimum height (about 92')

(4) Construction of one set of larger locks.

(5) Creation at the Pacific end of the Canal of a summit-level terminal lake anchorage for use as a traffic reservoir to correspond with the layout at the Atlantic end, which would improve marine operations by eliminating lockage surges in Gaillard Cut, mitigate the effect of fog on Canal capacity, reduce transit time, diminish the number of accidents, and simplify the management of the Canal.

(8) Competent, experienced engineers have officially reported that all "engineering considerations which are associated with the plan are favorable to it." Moreover, such a solution:

(1) Enables the maximum utilization of all work so far accomplished on the Panama Canal, including that on the suspended Third Locks Project.

(2) Avoids the danger of disastrous slides.

(3) Provides the best operational canal practicable of achievement with the certainty of success.

(4) Preserves and increases the existing economy of Panama.

(5) Avoids inevitable Panamanian demands for damages that would be involved in the proposed sea level project.

(6) Averts the danger of a potential biological catastrophe with international repercussions that recognized scientists fear might be caused by constructing a salt water channel between the Oceans.

(7) Can be constructed at "comparatively low cost" and being "an enlargement of existing facilities" without requiring additional "lands and waters" avoids the necessity for a new canal treaty with Panama.

(9) All of these facts are elemental considerations from both U.S. national and international viewpoints and cannot be ignored, especially the diplomatic and treaty aspects. In connection with the latter, it should be noted that the original Third Locks Project, being only a modification of the existing Canal, and wholly within the Canal Zone, did not require a new treaty with Panama. Nor, as previously stated, would the Terminal Lake—Third Locks Plan require a new treaty. These are paramount factors in the overall equation.

(10) In contrast, the persistently advocated and strenuously propagandized Sea-Level Project at Panama, initially estimated in 1970 to cost \$2,880,000,000, exclusive of the costs of right of way and indemnity to Panama, has long been a "hardy perennial," according to former Governor Jay J. Morrow. It seems that no matter how often the impossibility of realizing any such proposal within practicable limits of cost and time is demonstrated, there will always be someone to argue for it; and this, despite the economic, engineering, operational, marine biological and navigational superiority of the Terminal Lake solution. Moreover, any sea-level project, whether in the U.S. Canal Zone territory or elsewhere, will require a new treaty or treaties with the countries involved in order to fix the specific conditions for its construction; and this would involve a huge indemnity and a greatly increased annuity that would have to be added to the cost of construction and reflected in tolls, or be wholly borne by the taxpayers of the United States.

(11) Starting with the 1936-39 Treaty with Panama, there has been a sustained erosion of United States rights, power and authority on the Isthmus, culminating in the reopening in 1967 of negotiations for a proposed new canal treaty or treaties that would:

(1) Surrender United States sovereignty over the Canal Zone to Panama;

(2) Make that weak, technologically primitive and unstable country a senior partner in the management and defense of the Canal;

(3) Ultimately give to Panama not only the existing Canal, but also any new one

constructed in Panama to replace it, all without any compensation whatever and all in derogation of Article IV, Section 3, Clause 2 of the U.S. Constitution. This Clause vests the power to dispose of territory and other property of the United States in the entire Congress (House and Senate) and not in the treaty-making power of our Government (President and Senate)—a Constitutional provision observed in the 1955 Treaty with Panama.

(12) It is clear from the conduct of our Panama Canal policy over many years that policy-making elements within the Department of State, in direct violation of the indicated Constitutional provision, have been, and are yet, engaged in efforts which will have the effect of diluting or even repudiating entirely the sovereign rights, power and authority of the United States with respect to the Canal and of dissipating the vast investment of the United States in the Panama Canal project. Such actions would eventually and inevitably permit the domination of this strategic waterway by a potentially hostile power that now indirectly controls the Suez Canal. That Canal, under such domination, ceased to operate in 1967 with vast consequences of evil to world trade.

(13) Extensive debates in the Congress over the past decade have clarified and narrowed the key canal issues to the following:

(1) Retention by the United States of its undiluted and indispensable sovereign rights, power and authority over the Canal Zone territory and Canal as provided by existing treaties;

(2) The major modernization of the existing Panama Canal as provided for in the Terminal Lake—Third Locks Plan.

Unfortunately, these efforts have been complicated by the agitation of Panamanian extremists, aided and abetted by irresponsible elements in the United States, aiming at ceding to Panama complete sovereignty over the Canal Zone and eventually, the ownership of the existing Canal and any future canal in the Zone or in Panama that might be built by the United States to replace it.

(14) In the 1st Session of the 93rd Congress identical bills were introduced in both House and Senate to provide for the major increase of capacity and operational improvement of the existing Panama Canal by modifying the authorized Third Locks Project to embody the principles of the previously mentioned Terminal Lake solution, which competent authorities consider would supply the best operational canal practicable of achievement, and at least cost without treaty involvement.

(15) Starting in January 1973, many Members of Congress sponsored resolutions expressing the sense of the House of Representatives that the United States should maintain and protect its sovereign rights and jurisdiction over the Panama Canal enterprise, including the Canal Zone, and not surrender any of its powers to any other nation or to any international organization in derogation of present treaty provisions.

(16) The Panama Canal is a priceless asset of the United States, essential for inter-oceanic commerce and Hemispheric security. The recent efforts to wrest its control from the United States trace back to the 1917 Communist Revolution and conform to long range Soviet policy of gaining domination over key water routes as in Cuba, which flanks the Atlantic approach to the Panama Canal, and as was accomplished in the case of the Suez Canal, which the Soviet Union now wishes opened in connection with its naval buildup in the Eastern Mediterranean and Indian Ocean. Thus, the real issue at Panama, dramatized by the Communist take over of strategically located Cuba and Chile, is not United States control versus Panamanian but continued United States sovereignty versus

Soviet control. This is the issue that should be debated in Congress, especially in the Senate. Panama is a small, weak country occupying a strategic geographical position that is the objective of predatory power, requiring the presence of the United States on the Isthmus in the interest of Hemispheric security and international order.

(17) In view of all the foregoing, the undersigned urge prompt action as follows:

(1) Adoption by the House of Representatives of pending Canal Zone sovereignty resolutions and,

(2) Enactment by the Congress of pending measures for the major modernization of the existing Panama Canal.

To these ends, we respectfully urge that hearings be promptly held on the indicated measures and that Congressional policy thereon be determined for early prosecution of the vital work of modernizing the Panama Canal, now approaching saturation of capacity.

Dr. Karl Brandt, Palo Alto, Calif., Economist, Hoover Institute, Stanford, Former Chairman, President's Council of Economic Advisors.

Comdr. Homer Brett, Jr., Chevy Chase, Md., Former Intelligence Officer, Caribbean area. Hon. Ellis O. Briggs, Hanover, N.H., U.S. Ambassador (retired) and Author.

Dr. John C. Briggs, Tampa, Fla., Professor of Biology, University of South Florida.

William B. Collier, Santa Barbara, Calif., Business Executive with Engineering and Naval Experience.

Lt. Gen. Pedro A. del Valle, Annapolis, Md., Intelligence Analyst, Former Commanding General, 1st Marine Div.

Herman H. Dinsmore, New York, N.Y., Former Associate Foreign Editor, New York Times, Editorialist.

Dr. Lev E. Dobriensky, Alexandria, Va., Professor of Economics, Georgetown Univ.

Dr. Donald Dozer, Santa Barbara, Calif., Historian, University of California, Santa Barbara, Authority on Latin America.

Lt. Gen. Ira C. Baker, Washington, D.C., Former Commander-in-Chief, Allied Air Forces, Mediterranean; Analyst and Commentator on National Security Questions.

K. V. Hoffman, Richmond, Va., Editor and Author.

Dr. Walter D. Jacobs, College Park, Md., Professor of Government and Politics, University of Maryland.

William R. Joyce, Jr., J.D., Washington, D.C., Lawyer.

Maj. Gen. Thomas A. Lane, McLean, Va., Engineer and Author.

Edwin J. B. Lewis, Washington, D.C., Professor of Accounting, George Washington University; Past President, Panama Canal Society of Washington, D.C.

Dr. Leonard B. Loeb, Berkeley, Calif., Professor of Physics (Emeritus), University of California.

William Loeb, Manchester, N.H., Publisher and Author.

Lt. Col. Matthew P. McKeon, Springfield, Va., Intelligence Analyst, Editor and Author.

Dr. Howard A. Meyerhoff, Tulsa, Okla., Consulting Geologist; Formerly Head of Department of Geology University of Pennsylvania.

Richard B. O'Keefe, Fairfax, Va., Asst. Dir. of Library, George Mason University, Research Consultant on Panama Canal. The American Legion.

Capt. C. H. Schildhauer, Owings Mills, Md., Aviation Executive.

V. Adm. T. G. W. Settle, Washington, D.C., Former Commander, Amphibious Forces, Pacific.

Jon P. Speller, New York, N.Y., Author and Editor.

Harold Lord Varney, New York, N.Y., President, Committee on Pan American Policy, New York, Authority on Latin American Policy Editor.

Capt. Franz O. Willenbacher, Bethesda, Md., Lawyer and Executive.

Dr. Francis G. Wilson, Washington, D.C., Professor of Political Science (Emeritus) University of Illinois, Author and Editor.
Institutions are listed for identification purposes only.

THE WHITE HOUSE,
Washington, D.C., June 11, 1973.

DEAR MR. FLOOD: Mr. Friedersdorf has passed on to me a copy of your letter of April 30, 1973, to the President and the attached 1973 Memorial to the Congress of the Committee for Continued U.S. Control of the Panama Canal. It is useful to have your views on this important subject and I will see that they are given full consideration.

Best regards,

HENRY A. KISSINGER.

ARKANSANS MAKE KNOWN THEIR VIEWS ON IMPEACHMENT, WATERGATE INVESTIGATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 5 minutes.

Mr. ALEXANDER. Mr. Speaker, during my 5 years of service in the U.S. Congress, I have yet to witness an incident which has stirred the emotions of the people of Arkansas as much as the firing of Special Prosecutor Archibald Cox and Deputy Attorney General Ruckelshaus and the resignation of Attorney General Richardson. Never have I seen such an outpouring of public opinion as I observed after that Saturday night. All wanted me, as their elected Representative, to know of their support for, or opposition to, the President's actions.

On October 23, 1973, resolutions of impeachment began to be introduced in the House of Representatives which under the Constitution has the sole responsibility for impeachment.

On a matter of this magnitude and historical importance to the Nation, I wanted to know the feelings of the people in Arkansas. For this reason, the first week in November, I mailed a questionnaire to persons in my district who have previously exhibited interest in National affairs in order to determine just what these people were thinking; 11,112 questionnaires were sent to 5,556 homes in the 21 counties of the First Congressional District of Arkansas.

Additionally, I mailed a copy of the questionnaires to the 45 newspapers in the district requesting publication so that the opportunity for expression could be expanded. Approximately 10 newspapers voluntarily published the questionnaire, the results of which are also included below. I am deeply grateful to those editors for this cooperation.

I wish to share with my colleagues the result of this survey and a tally of my mail on this subject through December 31, 1973.

The results follow:

IMPEACHMENT SURVEY RESULTS

I. QUESTIONNAIRE (3,570 RESPONSES)

One of the most important subjects facing our Nation today is the attempt to impeach the President of the United States because of allegations of possible abuses of the powers of the office of the Presidency brought out by the Watergate investigations.

As you know, this question must be decided in the U.S. House of Representatives.

In order that I may be better informed about your thoughts on this subject, I would appreciate your taking the time to answer the questions below. Your additional comments are welcomed.

1. Do you want to see the Watergate investigations continued?

Yes, 1,596 (44.71 percent); No, 1,820 (50.98 percent); No opinion 154 (4.31 percent).

2. Do you believe, as a result of Watergate, that in the best interest of the country President Nixon should:

a. Remain in Office, 1607 (45.01 percent).
b. Be censured by the Congress if evidence shows that he was involved in the Watergate cover-up, 582 (16.31 percent).
c. Resign, 469 (13.13 percent).
d. Be impeached if evidence shows that he was involved in the Watergate cover-up, 557 (15.61 percent).

cd. (A significant number of respondents checked both c (Resign) and d (Be impeached). Many of these indicated that they would first favor resignation, then impeachment if the President does not resign. For this reason, I have included a separate category (cd) compiling the results). 331 (9.27 percent).

e. No opinion, (.67 percent).

II. NEWSPAPER QUESTIONNAIRE RESULTS (401 RESPONSES)

1. Yes 159 (39.65 percent); No 226 (56.36 percent); No opinion 16 (3.99 percent).

2. a. 249 (62.09 percent).

b. 23 (5.73 percent).

c. 21 (5.23 percent).

d. 78 (19.45 percent).

cd. 27 (6.73 percent).

e. 4 (.77 percent).

III. CORRESPONDENCE (IN THE FORM OF LETTERS AND TELEGRAMS AFTER OCTOBER 20 THROUGH DECEMBER 31, 1973)

Total: 559.

In-District: Pro-Impeach 143 (69.08 percent).

Anti-Impeach 64 (30.92 percent).

State (Including First District):

Pro-Impeach 391 (69.94 percent).

Anti-Impeach 168 (30.06 percent).

DR. MARTIN LUTHER KING, JR.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mrs. COLLINS) is recognized for 10 minutes.

Mrs. COLLINS of Illinois. Mr. Speaker, my presentation today is simply to remind this 93d Congress that America and the rest of the world has lost one of its greatest warriors. Yes, my friends and colleagues, Dr. Martin Luther King, Jr., was indeed a warrior who fought for freedom as he walked and as he spoke. His battle was for peace, justice and for the equal treatment of all mankind. He waged war on ignorance, hatred, bigotry and all other forms of social injustice that has been so much a part of America's past. It pleases me to know that Dr. Martin Luther King's beliefs and convictions are felt in the hearts and minds of millions of people today, and that the impact of his wisdom and ability to lead the nonviolent fight for the rights of mankind will last for generations to come.

Dr. Martin Luther King's life was short, but he used it to bring about a major turning point in the struggles for peace and righteousness that has plagued America in her short, but troubled history. Dr. King believed in America, possibly more than America believed in it-

self. He stood as a symbol for the undying yearnings and imperishable rights for all Americans. He stood for equal laws and equal opportunity which is necessary if this country is to survive in the spirit that gave it its birth. Like our forefathers he too had a dream: that all men freely enjoy life, liberty, and the pursuit of happiness.

CONGRESS REPLIES TO THE PRESIDENT'S ENERGY MESSAGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. O'NEILL) is recognized.

Mr. O'NEILL. Mr. Speaker on Saturday, January 26, the majority whip responded on nationwide radio to the most recent energy message of the President. JOHN MCFALL was chosen by the Speaker and by the Senate majority leader to make the response to the energy message on behalf of the entire Congress.

In his address, JOHN pointed out that not until now has the administration been willing to join with the Congress in an affirmative attack on this energy problem. Last year, the initiatives were all on the part of the Congress while the administration supplied virtually no leadership on this matter.

But I agree with JOHN that it is too late to fix blame. What we need is cooperation and action on the part of the President and the Congress here in Washington and the people all over the United States.

I insert the full text of Mr. MCFALL's remarks into the RECORD:

JANUARY 26, 1974.

STATEMENT OF CONGRESSMAN JOHN J. MCFALL OF CALIFORNIA

As Majority Whip of the House, I am speaking to you, on behalf of the Congress, about the energy crisis and what your Congress is doing about it.

Last week, President Nixon spoke again on what his Administration hopes to do about the energy pinch. Today I want to round out that picture and tell you what Congress has already done and what its next steps will be and why.

Few problems have presented a greater challenge to the people of this nation and their Congress, because few matters affect so many of us so profoundly and so extensively. We are all affected by the energy crisis. We must all work together to deal with it, even if our part is nothing more dramatic than turning down a thermostat or driving at fifty-five miles an hour.

Throughout most of last year, the Administration appeared to prefer talk to action. We are gratified to note that the Administration is ready to join with the Congress in a creative and cooperative approach to this problem.

The objectives of our national energy policies must be these: 1) we must assure that our current supplies of energy are made available to all sectors of our economy; 2) we must encourage the development of new energy sources; 3) we must assure that there is no profiteering by one group at the expense of all the people caught up in this crisis; 4) we must assure that Americans' job security is not jeopardized by an energy shortage; 5) we must assure that there is equal sacrifice for all Americans; and 6) we must reduce our dependence upon foreign countries for our energy.

One important step toward these goals is

an omnibus energy bill expected to come before the House and Senate for final passage next week. This Energy Emergency Act, as it is known, would give the President extraordinary powers to deal with this energy crisis. He would have the legal authority he needs to impose energy-saving measures. The bill would also provide for the conversion from oil to coal in power generators. It would make anti-pollution standards for cars less rigid. It would prohibit any company from making windfall profits out of this energy crisis. And finally the bill would require oil, gas and coal producers to supply detailed reports on the amounts of their reserves, their production and distribution.

In fact, many of the measures in the President's energy message last Wednesday are merely variations on the provisions already contained in the Energy Emergency Act drafted by the Congress, and we hope that he will support it.

The Administration and the oil companies delayed final consideration of this bill until now because they opposed some provisions—those dealing with lawsuits on windfall profits, disclosure of energy resources and congressional review of the President's actions.

The Energy Emergency Act would give us a solid statutory base from which to launch a comprehensive attack on the energy problem. The bill was drafted after extensive hearings in which energy experts gave the Congress the best available information on the nature of the crisis and the alternatives for dealing with it. The final version combines the best elements of the Senate bill developed under the leadership of Senator Henry Jackson and the House counterpart shaped by the Commerce Committee under Chairman Harley Staggers.

Energy matters dominated the work of the Congress last year. Twenty-eight committees in both Houses held more than 500 days of hearings on energy-related issues.

Among the most important new energy laws passed by Congress last year were the Alaska pipeline bill and the mandatory fuel allocation law. In April, the Congress gave the President stand-by authority to see that available fuels were allocated fairly among all service stations and distributors. As gas stations began to fall last summer and the Administration gave no sign of acting, the Congress passed over Administration opposition another law requiring mandatory allocation of fuel supplies.

Now that mandatory allocation is in effect, the Federal Energy Office is having difficulties administering it. In the western region, farmers and other priority users report that parent oil companies and local distributors are not observing fuel distribution rules. Hopefully, the performance of the Federal Energy Office will improve as the agency gains experience.

A number of other energy-related measures are now being considered in the current session of Congress.

On Monday Chairman Wilbur Mills and the House Ways and Means Committee will open hearings on a windfall profits tax and other tax proposals. Meanwhile, the Senate Finance Committee under the chairmanship of Senator Russell Long will be holding concurrent hearings on the same subject. We need to stop oil price gouging, to spur exploration and drilling at home and to keep prices down. We also need to be assured that all sectors of our economy are paying their fair share of taxes.

Even in the press of this energy emergency, we must never permit ourselves to lose sight of environmental and consumer considerations. Any easing of anti-pollution or other standards must be reasonable and necessary to deal with this emergency. We cannot permit those who oppose environmental regulations, consumer protection laws and our anti-trust statutes to capitalize on this crisis.

Next week the House is scheduled to take up legislation to establish a Federal Energy

Administration. This bill would give permanent statutory existence to the Federal Energy Office, now a temporary agency, and would concentrate in one federal organization the responsibility for dealing with our current energy problems.

A companion measure which would set up an Energy Research and Development Administration has already been passed by the House and now awaits Senate consideration. The ERDA bill would convert the Atomic Energy Commission, with all its resources and expertise, into an organization for research on all forms of energy.

Both bills, in their final form, are the product of the House Government Operations Committee under Chairman Chet Holifield. The Senate committee under Senator Jackson is considering its own version of ERDA which would provide for a multi-year program of research to be funded at \$20 billion.

There are several other areas in which we can take effective energy action. Congress has already enacted a law providing \$3 billion for mass transit construction. Very soon both Houses expect to give final approval to a bill providing operating subsidies for those systems. We hope that the President will now support this legislation.

Beyond mass transit, we need to formulate a national transportation policy, covering all forms of transportation, so that we know how to allocate fuels more effectively to this vital industry.

We will also want to consider more funds for the improvement of coal liquefaction techniques which the Interior Department has been working on for the past twenty-five years. The Navy has tested coal liquid and could run half its entire fleet on such fuel if the process is further developed within the next decade. Coal liquefaction and gasification are areas where successful development would mean jobs and an abundant source of energy for factories where millions of Americans work.

Solar energy is a promising source of power to heat and cool our homes and offices, and legislation authorizing a demonstration project has been drafted. In preparation is another bill providing for research on geothermal energy—the natural heat lying deep within the earth.

A deepwater ports bill is taking final form and is expected to come up for House action next month.

Congress is encouraging the environmentally acceptable development of oil shale. Our reserves in shale are more than all known shale reserves anywhere else in the world.

We need accurate and complete disclosure of all the energy resources available to us: we need to know where the oil and gas and coal are located and who controls these deposits. Legislation has been introduced by House Majority Leader Thomas O'Neill and others to create a federally owned corporation to engage in the development, sale and discovery of oil and natural gas.

There has been no lack of Administration messages to the Congress on energy. Counting the most recent submittal, the President has sent Congress five messages on energy in the past nine months.

On April 18, 1973, the President announced that he would increase funding for energy research and development by twenty percent. However, the proposed increase was already contained in the fiscal 1974 budget which the President had announced three months earlier. At that time, Congress, industry and the utilities protested that it was far too little.

On June 29, the President announced that he would recommend an increase of \$100 million in this year's energy research budget.

He also announced a \$10-billion, five-year research and development program—the same one which was already under consideration by the Congress. Treasury Secretary

Shultz and Interior Secretary Morton had earlier testified in opposition to it.

On October 11, the President spelled out details of the \$100-million research program he had announced three and a half months before. Most of it consisted of existing federal programs which had been redefined to bring them under the heading of energy.

On November 7, the President told the nation that an energy crisis existed, and he asked the people to make voluntary sacrifices and savings of energy. His request to Congress for unspecified emergency powers led to the Energy Emergency Act which comes up for final consideration next week.

On January 23, the President submitted his fifth message with recommendations for so-called initiatives—many of which are already under consideration by the Congress. For example, the President proposes mandatory labeling of gasoline mileage on new cars and electricity-use on household appliances. Senator Tunney introduced such legislation several months ago and the Administration opposed it. The bill was passed anyway by the Senate and it now awaits House action.

Other actions taken by the Congress during this period include measures dealing with job loss and other economic consequences of the energy crisis. The cost of living rose eight-point-eight percent in 1973—the highest increase since 1947.

The danger now is that the energy crisis threatens to force increasing numbers of workers out of jobs while prices remain at record levels.

To provide assistance to displaced workers and the families they support, the Congress has included unemployment benefits in the Energy Emergency Act. In addition, Congress has authorized a continuation of the public services employment program.

The time has long passed where it does any good to assign blame for the current crisis. What is needed are responsible and realistic proposals that meet the problems. The American people have a right to know what we, their elected representatives, are doing for them, and how we are seeking to accomplish their desired goals. A person without a job is not interested in the political ramifications of the energy crisis. The American citizen is looking to keep his job. He wants to know how he is going to keep up his health insurance, how he can maintain his pension rights, whether or not he will have enough heat, oil and gas, and what kind of actions his government is going to take.

The Democratic Congress, with the support of many of its Republican colleagues, is providing many of the answers. But questions remain, and other programs have yet to be developed. The President is asking the have. And in return we in Congress expect cooperation of the Congress. This he shall that same cooperation from his Administration.

For it is only through such partnership that we can design the programs and pass the legislation and set the example for the American people. It will take all of us, working together, to resolve the energy problems of our nation.

SOCIAL SECURITY RECORD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. CULVER) is recognized for 5 minutes.

Mr. CULVER. Mr. Speaker, the Nixon administration's hijacking of the credit for the recent 11-percent increase in social security benefits needs to be exposed for the duplicit half-truth it is. In signing the bill in his California White House, Mr. Nixon boasted that social security benefits have risen by 68.5 percent

since this administration took office 5 years ago.

What this self-serving statement does not reveal is that the administration fought and hampered Congress on each of the four occasions that social security benefits were raised during these years.

Here is the record: In 1969, when Mr. Nixon proposed 7 percent, then reluctantly 10 percent, Congress voted 15 percent. In 1971, the administration proposed and lobbied for 6 percent, Congress voted 10 percent.

In 1972, the President proposed 5 percent, then 10 percent. Congress voted 20 percent. Then, recently, Mr. Nixon signed the latest two-step 11-percent increase, the first step of 7 percent to become effective in March, the second step in June. The President had pressured for no increase at all until July.

Nonetheless, the Nixon administration unblushingly takes credit for the full 68.5-percent rise in benefits accruing from these four increases voted by Congress.

It should be noted that Congress was on the job, taking care of an important segment of the "people's business"—the needs of the elderly and others dependent on social security in these times of soaring inflation. The administration was dragged along in the act, kicking and screaming, but now taking the credit. Little wonder "Operation Candor" died aborning.

An article by John Herling on the editorial page of the Washington Post of Saturday, January 26, 1974, spells out the facts in this matter. I include it to be printed in the RECORD at this point:

SOCIAL SECURITY RECORD

(By John Herling)

President Nixon's technique in grabbing credit where credit is not his due was incredibly illustrated when he signed the latest legislation calling for an 11 per cent increase in Social Security benefits.

As he signed the bill in San Clemente, he spoke with pride of the fact that Social Security benefits "have risen by 68.5 per cent since this administration took office five years ago."

What he did not say was that he and his top associates dragged their feet and tried to slow down Congress from enacting an increase in Social Security on the four separate occasions that Social Security benefits were raised.

Seventy-two year old Nelson Cruikshank, the vigorous president of the 4,000,000-member National Council of Senior Citizens, scorched the "dismal record" of the Nixon administration in its first five years. Not only has Mr. Nixon resisted adequate improvements in the Social Security system but, says Mr. Cruikshank, "he lacks a realistic income strategy for old Americans." But the President's effort to block improvements in Social Security benefits was thwarted by the Democratic Congress which attached Social Security increases to veto-proof legislation.

Here is the record, starting with his first year in office:

In April 1969, Mr. Nixon proposed a 7 per cent increase in benefits. Organized labor and the National Council of Senior Citizens lobbied hard against the administration's proposal. Whereupon, in September of that year, the President relented and said he would go with 10 per cent. But Congress insisted on a more adequate figure and in December, Congress tacked on a 15 per cent increase to the tax reform bill. Thereupon,

the President reluctantly bowed and signed the bill on Dec. 30.

In 1971, Nixon proposed a 6 per cent increase in Social Security benefits, but Congress—again by oblique action—stiff-armed the President. In March of that year, it passed a 10 per cent increase which was tied to the debt ceiling bill.

In June 1972, Congress again circumvented the President. At first, he favored a 5 per cent increase but later agreed to a 10 per cent boost. Labor and senior citizen organizations insisted on a higher figure—20 per cent. This became law when Congress again attached the increase to the debt ceiling law.

In that presidential year, the re-election of the President was the main order of business. Without a flicker of embarrassment, President Nixon took the credit for the increase he had opposed. Every Social Security payment contained the following notice:

"Your Social Security payment has been increased by 20 per cent with this month's check by a new statute passed by Congress and signed into law by President Nixon on July 1, 1972."

Finally, the other day, the President signed the latest Social Security bill for a two-step 11 per cent increase, the first increase of 7 per cent to be effective in March and the second in June. But Mr. Nixon wanted no increase at all until July.

Actually, if the President had his way in the last five years, the Nixon increases in Social Security benefits would have amounted, at best, to no more than 28 per cent instead of the 68.5 per cent to which he now points with pride.

ELIMINATE OIL COMPANY TAX BREAKS

(Mr. LONG of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LONG of Maryland. Mr. Speaker, I am today introducing a bill to end the tax giveaway which has made it more profitable for American oil companies to put their money into the Middle East and to neglect the development of U.S. oil production—thus contributing in a major way to the American dependence on foreign oil and our apparent shortages here at home.

Mr. Speaker, the tax credit for the so-called tax—really a royalty—that the oil companies pay to Arab States is invisible foreign aid that siphons tax money from the U.S. Treasury to the Arab nations. Over \$1 billion—possibly \$6 billion—cuts the U.S. tax rate of U.S. oil companies from 48 percent to 2 percent a year.

This drain to foreign countries has the effect of holding down domestic oil production from our huge oil reserves, of reducing the revenue that flows into the U.S. Treasury, thus putting a greater burden on the ordinary taxpayer, and of giving vast sums of invisible foreign aid to the Arabs, which they are already using to greatly step-up purchases of arms from Russia and Europe, making it necessary for the United States to give greater amounts of military and economic aid to Israel. The result could well light a fire in the Middle East that could ignite the world.

Mr. Speaker, let us move now to get American capital back to America—so that our gasoline and heating oil will not suddenly run dry and suddenly de-

prive us of fuel to run our factories or gas and oil to run our ships and planes in any sudden outbreak of war.

THE INDEPENDENCE OF TEXAS BANKERS AS TOLD BY PRESIDENT OF AN INDEPENDENT BANKERS ASSOCIATION OF AMERICA

(Mr. PATMAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PATMAN. Mr. Speaker, throughout my career, I have fought hard for the maintenance of a strong system of independent and locally owned banks.

In my own home State of Texas, the smaller independent banks have been very important to the progress of the State and I want to see this type of banking remain.

The banking situation in Texas has been outlined in detail by Fred T. Brooks, president of the Merchants State Bank of Dallas, in an article which appears in the next issue of the Texas Bankers Record. Mr. Brooks, in addition to his important accomplishments in the State of Texas is president of the Independent Bankers Association of America—the organization which represents the independent banks across the Nation.

Mr. Brooks' comments are important reading for anyone concerned about the future of independent banks. I place in the RECORD a copy of Mr. Brooks' article entitled "Independence—The Texas Way."

The article follows:

INDEPENDENCE—THE TEXAS WAY

(By Fred T. Brooks)

Since when is "independent" a bad word in Texas?

Certainly, not since a tiny band of heroic Texans died for their freedom at the Alamo during the Texas War for Independence.

Certainly, not since Texas became an independent Republic prior to joining the United States.

Certainly, not since individual initiative generated by a system of independent, private enterprise made Texas a national leader in economic growth.

Yet today, a few expansion-minded bankers are attempting to undermine the spirit of independence that made Texas and America great. Their ravenous gobbling up of banks is systematically destroying one of the most vigorous banking systems in the nation.

From El Paso to the Gulf, and from the Panhandle to the Rio Grande, the people of Texas have more than 1,240 independent, competitive, community banks from which to choose—more than any other state. Competition—the great regulator and the best protection the consumer has—flourishes in Texas banking as it does no where else.

Contrary to the arguments of the expansionist bankers, the people of Texas have found unit banking to be one of their greatest assets. Texas grew up under the unit banking system and became the top state in industrial growth without the existence of multi-office banking. Texas ranks among the top five states in total bank deposits, with \$36.3 billion. We are topped only by New York, Pennsylvania, California and another unit banking state—Illinois.

HEALTHY MIX OF BIG AND SMALL

It should likewise be recognized that Texas has a healthy mix of big, little and medium-sized banks, a desirable kind of balance that few states can duplicate. One measure of a

state's comparative standing in the number of large-sized banks is the American Banker index of the 300 largest U.S. commercial banks. Sixteen Texas banks are on this list. This number is exceeded only by New York, Pennsylvania and New Jersey. But Texas has an advantage over these Eastern states—branch banking has seriously eroded their systems of independent, community banks, but ours is still largely intact.

We have the best of both worlds, a situation which was recognized by such great Texas banking leaders as Nathan Adams, Fred Florence, R. L. Thornton and Judge Elkins, to name a few. These men were independent bankers, the kind of men who built Texas by marshalling ideas and visions, the men who were able to carry out such ideas and visions. They believed that the Texas economy was best served by a diffused banking system, with each of 1,240 independent banks in the state using its resources to service its local area.

TWO-PRONGED ATTACK

Today's expansion-minded bankers offer a poor substitute for the fine banking system of Texas. They appear more interested in building their own multi-office empires than in giving the public the kind of banking system that serves people best. In only two years 20 multibank holding companies have captured 41 per cent of the deposits of Texas. Now, a move is underway to remove from the Texas constitution a prohibition on branch banking. This would take away from the people of Texas and give to the legislature the power to decide the type of banking system our state will have.

Combine the two devices of multibank holding companies and branch banking and you have the formula for destroying independent, community banking in Texas. Experience in state after state has shown that unit banking cannot long survive the economic and political power of giant multi-office banking systems.

HOW OUR NEIGHBORS HAVE FARED

In Arizona, for example, statewide branch banking has caused an erosion in the number of banks until there are now only 16. While Texas has one bank for every 9,000 Texans, Arizona has only one bank for every 110,780 residents. Arizona, of course, has 382 branches, but these are not banks. They are without the power to make banking decisions independently of the absentee headquarters office. The people of Arizona really have only 16 banking decision-making centers from which to choose, while Texans have more than 1,240.

In a number of other states—North Carolina, Oregon and California, for example—statewide branch banking has diminished the number of banking decision centers and concentrated control of banking resources in a handful of giant banks operating many branches.

In Arizona, the five largest banks or bank groups control more than 95 per cent of the deposits in the state.

Such concentration is typical in every state that permits statewide branching. It is true to a somewhat lesser extent in states that permit branching on a limited scale.

Our neighbor to the immediate west, New Mexico, permits a bank to have branches within the county in which its head office is located and in adjoining counties. The concentration pattern can already be seen developing under this limited branching system—New Mexico, with 72 banks that operate 140 branches, has a bank-to-population ratio of 1 to 14,000, and its five largest banking organizations control 60 per cent of deposits.

But concentration is least in the states which do not permit branch banking. In Texas the five largest banking organizations control only 22 per cent of the total deposits. This is a healthy situation. No single bank

or combination of banks has an inordinate amount of power in Texas. The same is true of our unit banking neighbors of Oklahoma and Arkansas.

Neither state permits branching. As a result Oklahomans have 440 banks from which to choose, and Arkansas consumers have 254. Deposit concentration in the five largest banks or bank groups in Oklahoma is about 31 per cent, and in Arkansas it is 22 per cent. The bank-to-population ratio in Oklahoma is 1 to 5,800, and in Arkansas, 1 to 7,570.

OUTSTANDING GROWTH UNDER UNIT BANKING

Yet expansion-minded bankers in our state argue that Texas should permit branch banking to spur economic growth.

This is a spurious argument, at best. We know that Texas has enjoyed outstanding economic growth under the existing unit banking system.

Furthermore, it must be recognized that banks do not create wealth. Branch banking would not magically manufacture new deposits. It would merely redistribute existing deposits into fewer and larger banks, headquartered in the larger cities. This could cause a flow of capital out of the smaller communities of the state into the financial centers, or even out of state.

Proponents of bank expansion respond to this by saying that branch bank systems have higher loan limits than those of unit banks. This is really not a problem, because a country bank can turn for help to a correspondent bank.

Giant borrowers are almost always national corporations that do business with giant banks. Such borrowers would not as a matter of policy confine all their business to one bank or one city or even one state. No one has shown that a company has failed to locate in Texas, or that growth of business in this state has ever been stifled, because of our unit banking system. Our industrial progress proves that independent banking is a partner in economic progress.

When deposits become concentrated in a handful of giant banks, money becomes less available for people-type loans—for houses, small businesses, recreation vehicles.

Economist Jerome C. Darnell summed up the minimal effect of branching on economic growth when he wrote the following in a study published by the Federal Reserve Bank of Philadelphia: "If and when growth comes, it results mainly from other forces at work."

UNIT BANKS ARE CONSUMER BANKS

It is the competitive nature of unit banking that makes this system the most advantageous from the consumer's point of view.

The independent, community bank is able to offer better service because the management of the bank frequently has his life's savings tied up in the organization. The manager of a bank branch or a subsidiary of a holding company usually has no investment in the bank. His job just represents another rung on the corporate ladder. If a man who owns his bank doesn't offer better banking services than the manager of a banking office controlled by a group of investors in a distant city, it is his own fault.

The president of an owner-operated, independent bank is personally involved with his customers. They are his friends and neighbors. Chances are, his money as well as theirs is invested in the bank. He is concerned with local needs, with building up the community because it's his community, too. And he doesn't have to consult a company policy manual or wait for final approval from some remote executive before granting a loan. It's his personal, on-the-spot decision, based on his knowledge of the customer and the problems involved.

Giant banks favor giant customers, particularly during periods of tight money. They compete with the giant banks in other cities and other regions for the loans and deposits

of national business organizations. Community-owned banks primarily serve small depositors and small-to-medium-sized business firms.

In any branching state, shop the mortgage departments of a branch bank and an independent in the same area for a home loan. Then shop the same banks for a business loan for a small company starting out or expanding its operation. You will find that the average family, the average small business gets better service and better rates from the unit bank.

BRANCHING MEANS HIGHER COSTS

Even supporters of branch banking have admitted such a system means higher costs. Branch offices with absentee ownership take more money to run than independent local units. Increased costs of maintaining more offices with more personnel and equipment lead to increased credit costs. Service charges in the branch banks of New York, for example, are commonly higher than unit banks in Chicago.

A large number of studies which have been done by the research departments of the various Federal Reserve Banks and others indicate that claims of greater efficiency in branch or holding company banks cannot be supported.

THE PEOPLE HAVE NOT ASKED FOR BRANCHING

If there are no clear economic advantages to banking concentration, why is there pressure to allow such concentration? The people of Texas have certainly not asked for this change in our banking structure.

One answer is that the larger banks in Dallas and Houston would love branching. They would love to follow their customers to the suburbs, would love to get a piece of the action in the many flourishing cities and towns of Texas. If they are allowed to expand via branching, it will not bring an advantage to the consumer. The consumer will lose—lose because the larger bank must always put the interests of its larger customers first, lose because local control and ownership will be lost, lose because the personal touch will be lost.

UNIT BANKS—THE INNOVATORS

Banking concentration also tends to be unfriendly to new ideas. In many places it is the small banks that have pioneered such things as charge-card banking, which were later adopted by the big banks. Small banks can afford to innovate. When a big system makes a change, it has to be made in all 42 or 200 offices, and management is understandably wary of making a king-sized mistake.

ECONOMIC POWERS BECOMES POLITICAL POWER

Power tends to snowball. Studies have shown that in the process of banking concentration, a parallel concentration occurs in commerce and industry. Smaller businesses in Europe, for instance, have virtually disappeared, and the opportunity for new small enterprises has all but vanished.

Then, too, banking concentration is more than economic power. It goes hand in hand with political power—that is the nature of things. Do the people of Texas want to hand over that kind of power, with all its potential for abuse, to a handful of bankers? Would that be in the public interest?

TEXAS: NO. 1 IN NUMBER OF BANKS

Texas is not underbanked. It has more banking institutions than any other state. Not one citizen of this state is without legitimate banking service. Branch banking would mean that the financial needs of the people of Texas would be made subservient to the credit demands of corporations headquartered around the country and overseas.

What would branching accomplish other than the swallowing up of existing banks?

Change in all things is inevitable. And there's nothing wrong with change when improvements result. But the unit banking

system has been and is working effectively for the people of Texas. In the absence of any evidence of public benefit from branching, why change it? Indeed, in view of the real disadvantages and dangers of concentration, to invite branching is to invite disaster. The first step in this invitation to disaster would be the removal of the branch banking prohibition from the Texas Constitution.

CAUSE FOR OPTIMISM

Despite the opposition we face from the very large, expansionist banks, Texas independent bankers are optimistic.

First, the people are becoming fed up with the economic dislocations that are occurring in many economic sectors because of concentration, most recently in the oil and food processing industries. One of our big jobs is to reach the public consciousness with the message that the Texas banking system is one of the few remaining bastions of diffusion and competition. The people of Texas are not asking for a more concentrated form of banking.

Second, independent banks are a growing force both in Texas and in the nation. Growth in membership in the Independent Bankers Association of America is a reflection of this increasing determination by independent banks to roll back the forces of banking concentration. The number of IBAA member banks in Texas has nearly doubled in the last 10 years—from 325 in 1964 to more than 600 today. Five years ago 421 Texas banks were IBAA members and just one year ago the number was 521.

A similar growth pattern has developed nationally. The IBAA today has 1,000 more banks than it did 10 years ago, growing from 6,243 member banks in 1964 to 7,240 banks today.

Just five years ago the IBAA had 6,607 members, and one year ago the total was 7,130 banks.

Texas and Illinois lead the nation in IBAA membership.

IBAA HEADS FOR TEXAS IN MARCH

Third, an event will occur in Texas, March 21-23, which should have a further unifying effect on our independent banks. I refer to the 44th annual IBAA convention at the Fairmont Hotel in Dallas, which will bring together independent bankers from throughout the nation.

In addition to the opportunity which independent bankers will have to exchange ideas, the convention program will feature an outstanding array of nationally-known speakers. These will include Dr. Walter Heller, chairman of the Council of Economic Advisers under Presidents Kennedy and Johnson; consumer advocate Ralph Nader; Chairman Wright Patman of the House Banking and Currency Committee and Federal Reserve Governor Robert Holland. Also invited to speak was Texas Governor Dolph Briscoe.

We invite every Texas independent banker to participate in what promises to be one of the most exciting conventions in IBAA history.

SOMETHING BASIC IN COMMON

It is most fitting for a national association of independent banks to gather in Texas. Texas was born out of a desire for independence, and in no state does the flame of independent banking burn more brightly today. The IBAA began because 28 independent bankers fiercely desired to retain their independence. Their determination has united 7,240 independent banks into a strong national organization. Texas and the IBAA thus have something very basic and very important in common.

Now we are in another fight for what we believe is best for Texas and our nation. That fight is for independence—still a sacred word in Texas and one that brings tears to the eyes of its citizens.

I know that leaders of multibank holding companies do not believe they are destroying one of the last strongholds of free enterprise, but in truth they are.

But they speak only for a few large organizations—the IBAA speaks for those 7,240 banks throughout the nation and the more than 600 banks in Texas that believe in that kind of banking system that serves people best—*independent, community banking.*

NATIONAL CANCER ACT EXTENSION

(Mr. ROGERS asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. ROGERS. Mr. Speaker, I am, along with Chairman STAGGERS, Mr. KYROS, Mr. PREYER, Mr. SYMINGTON, Mr. ROY, Mr. NELSEN, Mr. CARTER, Mr. HASTINGS, Mr. HEINZ, and Mr. HUDNUT, all members of the Subcommittee on Public Health and Environment, introducing legislation to extend the National Cancer Act of 1971. On the Senate side, Mr. KENNEDY is introducing a companion bill.

Three years ago, we passed into law provisions which were intended to place a clear priority on finding answers to the most dreaded disease mankind has ever known.

Much has been done in this area since we provided tools for an accelerated effort. The Director's report on the overall efforts should be forthcoming within a month. But I would like to touch briefly on just a few of the accomplishments that the Cancer Act has given the people of this Nation.

First, cancer research and supporting activities have more than doubled under provisions of the National Cancer Act of 1971.

The law provided for the establishment of 15 comprehensive centers. At this time we have 12 in place and operating including 3 which were in existence before the law. By July 1974, at least six additional comprehensive centers will be underway. At that time, well over one-half the population should be close enough for a patient to visit a comprehensive cancer center for a consultation and return home the same day by surface transportation.

These centers, in addition to doing research which is vital to the overall effort, also provide treatment for victims, rehabilitation counseling, and outreach programs which are designed to bring to the area physicians the latest knowledge and techniques developed for the detection and treatment of patients.

The latter point is extremely important. For estimates now show us that nearly 110,000 Americans die each year from a form of cancer which is either curable or treatable. This means that if the knowledge we presently have were only disseminated to the general public and to physicians, we could radically reduce the death rate of cancer in the Nation. And the National Cancer Act is making good progress in accomplishing this.

In addition to the centers, seven major hospitals are involved in demonstration programs with practicing physicians and health workers.

Second, we have established, as called for in the law, a cancer control program.

With the existing state of the art, we find that many cancers are curable or treatable if we can detect them at early stages. The control programs are designed to make sure that, for instance, women have Pap tests and breast examinations. The simple breast examination is one of the most effective devices we use against the cancer that kills more women than any other. This year, in conjunction with the American Cancer Society, more than 100,000 women will have examinations which could literally save their lives.

The National Cancer Institute, directly, and through grants and contracts, have initiated or expedited research projects in chemotherapy and immunology. The use of chemotherapy has already reaped benefits, and the concept that our own bodies can, with help, develop immunity, is a most promising area.

One of the less identifiable, but important area developments which has resulted from the Cancer Act is that institutions and individuals are communicating with each other. This leads to a reduction in efforts and an increase in the state of the art.

The extension legislation which we are today introducing basically makes minor changes to a law which most feel is a sound and effective one. Possibly the most obvious change is the elimination of the number of comprehensive centers. The law calls for 15. We now feel that this limitation on the number of centers should be released if the establishment of additional centers should come out of the basic appropriation to NCI.

It would now appear that we may need about 35 centers to form a geographic network which will insure that 75 percent of all Americans could be within reach of a comprehensive center by ground transportation for a visit and be able to return home the same day.

I would add that the amendments which we are recommending have also been recommended by the National Cancer Advisory Board. At this time, I would like to include in the Record a section-by-section analysis of the changes which we propose to make.

We have scheduled hearings on this legislation for February 5-6, and I would appreciate hearing from my colleagues on any phase of this legislation.

I would like to take this opportunity to commend the work that the Director of the National Cancer Institute, Dr. Frank Rauscher, has done and also congratulate Benno Schmidt for his leadership as Chairman of the President's panel.

The analysis follows:

THE NATIONAL CANCER ACT AMENDMENTS OF 1974

SECTION-BY-SECTION ANALYSIS

Section 2.—Amends section 402(b) of the Act to provide that only direct costs, and not indirect costs such as overhead, of research and training grant applications shall be considered in determining whether or not an application shall be exempt from review by the National Cancer Advisory Board.

Section 3.—Amends section 407(b) (7) of the Act to allow the Director of the National Cancer Institute more autonomy and flexibility in the use of training stipends, fellowships, and career awards.

Section 4.—Amends section 408(a) to delete any reference to a specific number of cancer research and demonstration centers. By July 1974, when the current law expires, all fifteen centers called for in the Act will have been established. This would allow the authority to continue and not be limited to the establishment of fifteen centers.

Section 5.—Amends section 409(b) to authorize appropriations of \$50,000,000 for fiscal 1975, \$65,000,000 for fiscal 1976, and \$85,000,000 for cancer control programs in cooperation with State and other health agencies in the diagnosis, prevention, and treatment of cancer.

Section 6.—Amends section 401(1) of the Act to increase the number of experts and consultants assisting the members of the National Cancer Advisory Board from fifty to one hundred. Further amends section 410 of the Act to add a new paragraph authorizing the Director of the National Cancer Institute to award grants for construction, alteration, and renovation of basic research laboratory facilities, including those related to biohazard control. This provision is necessary in view of the need to create safe environments for researchers working with dangerous viruses.

Section 7.—Amends section 410(C) of the Act to authorize appropriations of \$750,000,000 for fiscal year 1975, \$830,000,000 for fiscal 1976, and \$985,000,000 for fiscal 1977.

PEACE—A HOPE

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SIKES. Mr. Speaker, peace in the Middle East is a hope, not an actuality. Nevertheless, it is a strong hope. It also is the first time ever that both Arabs and Israelis have been willing to negotiate directly in the search for peace.

Actual accomplishments thus far have been minor and limited to Israel and Egypt. They include a cease-fire, the beginning of withdrawal of forces to agreed lines, and a willingness to reopen the Suez. But the pattern for conciliation has been established and other Arab nations are beginning to fall in line.

There remain the more knotty problems of an actual treaty of peace with new lines of separation which will provide buffer zones for Israel and which the Arabs can accept. There is the very difficult problem of Jerusalem, the control of which both sides demand. And there is the barely mentioned problem of Palestinian refugees, which may be the most difficult problem of all. These are the Palestinians who were dispossessed of their lands by the Israelis and whom the Arabs would not accept. They live in concentration camps where hate and bitterness are rampant and they provide most of the Arab terrorists.

But for the impressive start toward real peace in the area, America and the world—and especially the warring nations—can thank Henry Kissinger. The American Secretary of State has carried the load of peacemaker almost single-handedly. He has shuttled from country to country carrying messages and needling concessions which both sides were too stubborn to do for themselves. He has made progress. The Russians have not helped. There is little to indicate that they really want peace. World peace is not part of their plan.

From these efforts there will be fallout for America. The Arabs have long wanted to be our friends. They now are appreciative for the obvious effort of this country to be fair to all sides. Oil shipments will follow. So will trade, and there are many items the Arabs want to buy from us.

It will require months to complete the work for a lasting peace and there are still difficult days ahead. The important thing is that a meaningful effort is underway and this operation can be a very important step toward peace in our time for most of the world.

AMERICANISM

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SIKES. Mr. Speaker, I am very proud, indeed, to submit for reprinting in the RECORD the winning essay on Americanism in the competition for Air Force personnel attending the Aerospace Defense Command Leadership School at Tyndall Air Force Base, Fla. It was written by Sgt. Michael D. Fleury. My warmest congratulations are extended to Sergeant Fleury for a masterful work and to the Air Force for its sponsorship of such worthwhile programs.

The essay follows:

AMERICANISM

(By Sgt. Michael D. Fleury)

Reflecting upon the word "Americanism," my mind is flooded with bits and pieces of my proud heritage.

America, the melting pot of all nations. The land where the weak are very strong, and all are free, all are proud.

America is the epitome of civilized man's efforts toward the perfect self-government. America, a land in which every man regardless of race, creed, sex, or national origin can breathe deeply and swell his chest with pride in the knowledge that he is a part of the greatest of nations. A land where all cast one vote, all decide where all are one and one is all. The land where all are brothers, united in the effort to maintain their freedoms.

Now and then, my wandering thoughts are caught up by my conscious and I stop to ponder, to marvel at my extreme good fortune, and I ask myself, "Why should I be the lucky one, why was I born an American?"

"I cannot find the answer. Certainly, I am no better than any other man on this earth. Yet I have so much more than millions upon millions of less fortunate, merely by being born in this time and in this great nation.

Since the day that I became aware of other nations and other peoples, that question has remained unanswered, as it will be long after my last breath.

Realizing this, and thanking God almighty, I walk tall, I salute gratefully and most proudly all who have passed these great gifts of freedom on to me.

And I bow my head in silent gratitude to all my forefathers who struggled so valiantly, suffered so bravely, and died so freely so that I, who have no right other than birth, could treasure and exercise the freedoms and liberties that I do.

I pledge my every waking moment to the defense and continuation of these precious pearls of wisdom. I will proudly pass them on to the next generation.

My prayer is one of utmost thankfulness. I also pray that I may be deserving of the oceans of tears, sweat, and blood that have

been shed so that I could walk these meadows a free man.

I am but a grain of sand in a great desert, one among many. But I am strong and proud, healthy and educated.

I have more than many. I am an American.

INVALID INCREASE IN AIR FARES: REQUEST FOR RESTITUTION

(Mr. McFALL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. McFALL. Mr. Speaker, on December 26, 1973, 23 of my colleagues and I joined Congressman JOHN E. MOSS in asking a Federal Court of Appeals to set aside a Civil Aeronautics Board order and grant relief to the traveling public for overcharges from airline fares previously held to be "unlawful" by the court. On July 9, 1970, the court held CAB Order 69-9-68 was invalid; the fares based on the order were held "unlawful"; and the case was remanded to the Board for further proceedings consistent with the court's opinion.

In a brief filed with the U.S. Court of Appeals for the District of Columbia, we said that the traveling public was equitably entitled to relief from these illegal fares and that the Civil Aeronautics Board had erroneously found these fares to be just and reasonable and not otherwise unlawful because it had not taken into consideration ratemaking standards similar to those it had established in the "Domestic Passenger Fare Investigation," docket 21866. We pointed out to the court that C.A.B. 73-7-39 reflects acceptance of capacity standards some 33 percent less stringent than what the Board has declared to be reasonable in the "Domestic Passenger Fare Investigation"; a 55 percent load factor and zero dilution rate, or an effective 55 percent normal fare load factor standard in the "Domestic Passenger Fare Investigation," on the one hand, versus a 48.9 percent actual load factor and approximately a 16 percent dilution rate, or an effective 41.1 percent normal fare load factor in Order 73-7-39. This means that the Board has found airline fares some 33 percent greater than its own definition of adequate and efficient service would have required, to be "not unjust or unreasonable."

Our brief of December 26, 1973, asks the court for relief from these overcharges in the form of either restitution to members of the public who were called upon to pay the illegal October 1969 fares, or by the establishment of a fund or reserve against which future fare increases can be charged. Specifically, we ask the court to grant relief of at least \$213,519,000, the full amount we have demonstrated carrier revenues were in excess of what just and reasonable fares would have produced during the period in question or, in the alternative, \$5,553,765, which represents a ratio of the carriers' revenue attributable to October 1969 fare increase to total carrier revenues of the year ending September 30, 1970, applied to the carriers' net operating profit for the year ended September 30, 1970.

The brief and supporting material which we filed follows. The names of the Members of Congress who filed this brief are listed in the document.

[In The UNITED STATES COURT OF APPEALS For The District of Columbia Circuit, No. 73-1772]

JOHN E. MOSS, ET AL., PETITIONERS,

v.

CIVIL AERONAUTICS BOARD, RESPONDENT.

PETITION FOR REVIEW OF ORDER 73-7-39 OF THE CIVIL AERONAUTICS BOARD

BRIEF FOR PETITIONERS—ISSUE PRESENTED*

This case presents the issue whether the traveling public is entitled to restitution or other appropriate relief by reason of the unlawful domestic passenger airlines fares which went into effect on October 1, 1969 and remained in effect for more than a year thereafter.

REFERENCES TO PARTIES AND RULINGS

The parties to this case are Petitioners John E. Moss, Glenn M. Anderson, Thomas L. Ashley, George E. Brown, Jr., Phillip Burton, James C. Corman, John D. Dingell, Don Edwards, Richard T. Hanna, Augustus F. Hawkins, Chet Holifield, Harold T. Johnson, Robert L. Leggett, John McFall, Spark M. Matsunaga, Joseph G. Minish, Patsy T. Mink, Jerry L. Pettis, Thomas L. Rees, Peter W. Rodino, Jr., Edward R. Roybal, Bernie Sisk, Charles M. Teague, Lionel Van Deerlin, and Jerome R. Waldie; and the respondent Civil Aeronautics Board. Sixteen airline carriers and Keith Roberts have been granted leave to intervene.

The ruling under review is Order 73-7-39 of the Civil Aeronautics Board, issued on July 11, 1973.

STATEMENT OF THE CASE

Introduction

This is the sequel to *Moss v. C.A.B.*, 139 U.S. App. D.C. 150, 430 F.2d 891 (hereinafter "*Moss I*"), decided by this Court on July 9, 1970. The case originated in a challenge upon Civil Aeronautics Board Order 69-9-68, issued on September 12, 1969, by which the Board, in cooperation with the regulated industry, promulgated a new formula for calculating domestic passenger airline fares and announced that it would permit tariffs based on that formula to go into effect as of October 1, 1969. The carriers all filed such tariffs, resulting in a 6.35 percent nationwide, industrywide fare increase. *Moss I* concluded that Order 69-9-68 had "determined" airline rates within the meaning of the Federal Aviation Act, 49 U.S.C. §§ 1301 et seq., and that the Board had failed to abide by the statutory requirements for ratemaking. Order 69-9-68 was held invalid; the fares based on the order were held "unlawful"; and the case was remanded to the Board for further proceedings consistent with the Court's opinion.

STATEMENT OF FACTS

Three kinds of "further proceedings" have ensued: (a) the *Domestic Passenger-Fare Investigation* (hereinafter the "*DPFI*"), an extensive examination of various aspects of airline ratemaking; (b) the effort to re-establish lawful fares to replace those declared unlawful by *Moss I*; and (c) a proceeding instituted by the Board upon a supplemental complaint filed by petitioners, for the purpose of determining what relief should be granted the traveling public by reason of the unlawful fares that prevailed after October 1, 1969. This last proceeding lies at the heart of the present controversy, but all three types of "further proceedings" bear on the case. The record is, therefore, both voluminous and complex, and this Statement will de-

scribe only those portions which are of prime significance. Further details are discussed in the Argument, and a chronological summary of developments is set out in Addendum B attached to this brief.

I. The DPFI

On April 21, 1969, petitioners requested that the Board institute "a general rate proceeding to investigate the structure and construction of air passenger fares" in order to develop the background necessary for setting fares and evaluating carrier fare proposals. The Board had never in its history adopted guidelines interpreting the "rule of ratemaking" set forth in section 1002(e) of the Act. While standards for carrier rate of return had been established, the agency had shown no comparable interest in measuring carrier costs. Fares had always been considered in light of the carriers' experienced and projected costs—with no inquiry into the reasonableness of these cost figures or whether they complied with the statutory requirements of adequate, efficient, and low-cost service. Rates had been made on a "cost-plus" basis by simply adding a return element to the carriers' cost projections.

Because the carriers compete for passengers and because price competition is virtually unknown to the industry, the carriers have historically engaged in intense "cost competition," vying with each other through increases in capacity, amenities, advertising, and other costs. The combination of cost competition and cost-plus ratemaking makes it virtually impossible for the carriers to earn the return that the Board regards as reasonable or for fares to decrease. Higher fares lead to intensified competition through higher and higher costs which, in turn, generate pressure for still higher fares. Petitioners requested a general rate investigation and the establishment of cost-oriented ratemaking guidelines which would break into this cycle by providing incentives for more efficient, lower-cost service.²

Petitioners' request for a general rate investigation was left pending when the Board issued Order 69-9-68 in September 1969. On January 9, 1970, this Court deferred action on petitioners' motion for interlocutory relief against the October 1969 fare increase "to permit respondent to consider and to act upon petitioners' complaint now pending before it." And on January 29, 1970, the Board issued Order 70-1-47, instituting the *DPFI*. The investigation was divided into ten separate "phases," covering aircraft depreciation, treatment of deferred federal income taxes, treatment of leased aircraft, joint fares, discount fares, seating configurations, load factors, fare level, rate of return, and fare structure.³ Final decisions have been rendered in all of these phases except that dealing with fare structure. As described more specifically hereinafter, the *DPFI* has amply confirmed the view that cost guidelines are necessary for proper airline ratemaking under the statute and that rates made in the absence of such guidelines are irrational and excessive.

II. Resetting of fares for the future

The decision in *Moss I* on July 9, 1970 placed the status of the then prevailing fares in doubt.⁴ A remand to the Board was necessary to permit the agency to achieve "a resetting of fares . . . for the future." *Democratic Central Committee of the District of Columbia v. W.M.A.T.C.*, No. 21,865, June 28, 1973 (slip opin., pp. 75-76).

In a filing dated July 24, 1970, petitioners urged the Board to hold public hearings and reset lawful fares consistent with the statute and subject to judicial review. Petitioners argued that the Board bore a large measure of responsibility for the errors noted in *Moss I* and that it should undertake to correct those errors itself. Petitioners suggested that, pending the resetting of lawful fares, the

Board should summarily reestablish the lower fares that were in effect prior to October 1, 1969; those fares had never been challenged and could thus be presumed lawful.

Instead the Board elected to continue the prevailing unlawful fares. On July 28, 1970, it issued Order 70-7-128, calling for new tariff proposals from the carriers. It announced that these proposals should be constructed without reference to the formula set forth in Order 69-9-68, and should become effective on October 15, 1970. In the meantime, the fares declared unlawful in *Moss I* would remain in effect. On July 29, 1970, the Board moved this Court to stay its mandate in *Moss I* for a period of 90 days in order to provide time for the establishment of new fares in this manner. Petitioners opposed the requested stay of mandate, contending that the prevailing fares were even more objectionable than those originally brought to the Court's attention,⁵ and that the carrier filings contemplated by Order 70-7-128 could not achieve a resetting of lawful fares.

On July 30, 1970, this Court granted the stay requested by the Board. The carriers proceeded to submit new tariff filings, most of which were based directly on the formula set forth in Order 69-9-68. And on September 24, 1970, by Order 70-9-123, the Board permitted fares identical to those prevailing on July 9, 1970 to remain in effect indefinitely. The agency accomplished this by suspending all other proposed tariffs on the ground that they "may be . . . unlawful" and permitting all carriers to file new tariffs embodying the prevailing fares.

On October 7, 1970, petitioners asked the Court to grant a further stay of its *Moss I* mandate as an expression of disapproval of the Board's method of "resetting" lawful fares. This request was denied on October 27, 1970.

Except for increases in first-class and discount fares, domestic passenger fares remained essentially unchanged until Board Orders 71-4-59/60, on April 9, 1971. The first of these orders held on a tentative basis that the carriers were entitled to fares at a maximum level 9 percent above the existing fares.⁶ Board Order 71-4-60 held that, in the interim before Order 71-4-59 became final, the carriers were entitled to fares at a maximum level 6 percent above existing fares.

Petitioners sought reconsideration of Orders 71-4-59/60, contending that the Board had again accepted important elements of the carriers' cost projections at face value, without scrutiny for reasonableness. However, new fares based on Order 71-4-59/60 went into effect on May 7, 1971. In Order 71-6-138, dated June 28, 1971, the Board denied petitioners' request for reconsideration.⁷

Petitioners are dismayed that the Board has continued to regard fare increases as the panacea for all problems encountered by the airline industry. The agency's pliant acceptance of the carriers' preference for high-cost, high-fare service does not appear consistent with either the letter or the spirit of the Federal Aviation Act. The situation is analogous to that described in *Democratic Central Committee of the District of Columbia v. W.M.A.T.C.*, No. 24,938, June 28, 1973, where the Court referred to the agency's "erroneous postulate" that "it was compelled—no matter to what level it must raise the fares, how substantial the fall in ridership, and how financially sick [the carrier] might be—to set the fares so that [the carrier] could always earn a profit." (slip opin., p. 51) Indeed, because of the wasteful cost competition in which the carriers are engaged, the Board's ratemaking approach appears even more misguided than the one involved in the *Democratic Central Committee* case. The combination of such competition and cost-plus ratemaking works at direct counterpurposes with both the goal of producing adequate profits for

*Footnotes at end of article.

the carriers and that of achieving low fares for the public.

However, petitioners have lacked the resources to pursue each of the Board's decisions through the available channels of judicial review. It is clear that Order 71-4-59, on April 9, 1971, constituted agency rate-making subject to such review. Since that order was not challenged, and since it is now beyond review, the fares fixed therein must be presumed lawful. Petitioners therefore concede that a "resetting" of lawful fares was achieved when these fares went into effect on May 7, 1971 and that the charging of unlawful fares based on Order 69-9-68 finally came to an end at that time. This case therefore involves fares that were in effect from October 1, 1969 through May 6, 1971.

III. Proceeding to determine relief for the public from the October 1969 fares

For present purposes the most important "further proceedings" following *Moss I* are those concerning relief from the unlawful fares charged by the carriers for more than a year. The issue here, in the words of *Democratic Central Committee of the District of Columbia v. W.M.A.T.C.*, No. 21,865, June 28, 1973, is "remediation of the consequences wrought by the order while it was actually operative." (slip opin., p. 76)

On July 24, 1970, petitioners asked the Board to institute a proceeding to determine relief for the period from October 1, 1969 through the date on which lawful fares would be re-established. Petitioners suggested that the proceeding deal with: (a) calculation of the sum exacted from the public by reason of the unlawful fares; and (b) determination of the proper disposition of this sum. This Court's orders of July 30, 1970, and Ober 30, 27, 1970, relating to the mandate in *Moss I*, both took notice of petitioners' request for a relief proceeding.⁸ On September 15, 1970, by Order 70-9-73, the Board called for briefs from the parties on various questions pertinent to the proceeding. And on February 25, 1971, by Order 71-2-109, a relief proceeding was instituted.

Order 71-2-109⁹ defined the scope of the proceeding as follows:

A. The proceeding would serve "to clear the air concerning the fares in effect from October 1, 1969 through October 14, 1970" (p. 5) and to assist in resolution of several class actions brought against the carriers following *Moss I*.¹⁰

B. The issue to be resolved would be whether the fares in question "were unjust and unreasonable, and if so, the amount of any overcharges that resulted for the period in question" (p. 3);

C. The questions whether the Board has power to grant relief, and the form that appropriate relief might take, would be deferred "until such time as the factual issue of reasonableness is ready for decision" (p. 3);

D. The proceeding would concern only "the reasonableness of the general level of fares which took effect on October 1, 1969," "the returns to the carriers which they produced," and "their conformance as a whole to the standards of Sections 1002(e) and 102 of the Act." (p. 3, n.5)

In a request for reconsideration dated March 8, 1971, petitioners urged the Board to take specific steps to ensure the fairness of the adversary proceeding it was instituting. The proceeding, involving fares unlawfully set by the agency in cooperation with the carriers, was unique in the Board's history. Petitioners had argued against those fares and for relief for the public since mid-1969. Elemental fairness dictated that the public's position be fully and fairly represented in the forthcoming proceeding, and this was not the normal case in which such

representation should be entrusted to the Board.

For these reasons petitioners requested a relief proceeding "which puts as little burden on them as possible and places the burden to the maximum extent elsewhere." Specifically, they urged the Board to provide, or to order the carriers to provide, for reimbursement of the costs which they might reasonably incur in the proceeding, such as travel expenses, fees for experts and other witnesses, and legal fees. In addition, petitioners asked the Board to make available such further assistance, including assistance from its Bureau of Economics, as petitioners might reasonably find necessary.

By Order 71-5-65, dated May 13, 1971, the Board rejected these requests for assistance. One week later, trial examiner Ross I. Newmann ordered preliminary submissions from the parties dealing with the issues presented, the information and evidence needed, and proposed procedural dates. A Prehearing Conference was set for July 29, 1971.

Petitioners' pretrial submission, on July 20, 1971, contained a detailed statement of the issues presented, including specific requests that the proceeding cover the "basis [on which] the Board . . . [made] its determination as to the reasonableness of fares in Order 69-9-68" and the question whether the fare structure embodied in those fares was consistent with the Federal Aviation Act. Petitioners also sought detailed data on carrier costs, revenues, and traffic, both on a systemwide basis and with respect to representative city pairs; and information regarding *ex parte* contacts between carrier employees or agents and the Board or its employees relating to either the fares under investigation or the relief proceeding itself.¹¹

On August 7, 1971 Examiner Newmann issued a Prehearing Conference Report rejecting most of petitioners' requests. Information about *ex parte* contacts, representative city pairs, and cost and revenue data computed on an hourly basis was all denied. Petitioners excepted to the Prehearing Conference Report, arguing that the information they had requested was needed for a thorough investigation of the October 1969 fares.¹² On September 3, 1971, Examiner Newman issued a Supplemental Prehearing Conference Report, rejecting all of petitioners' contentions.

On December 3, 1971, petitioners submitted the testimony of Richard W. Klabzuba as their direct Exhibit MOC-T-1 (App. —). Mr. Klabzuba had previously testified before the Board on two occasions and had authored a number of published papers dealing with airline earnings, costs, and other matters pertinent to the industry. He had attempted to determine what overcharges, if any, had been produced by the October 1969 fares, but had been hindered by the inadequacy of the data made available by the carriers. Mr. Klabzuba suggested, however, that the issue of overcharges should be determined by using specific guidelines to determine a reasonable level and structure of service during the period under investigation; the amount of revenue needed to produce that level and structure of service; and the amount of actual carrier revenues, if any, in excess of this need.

On January 21, 1972, petitioners submitted Exhibit MOC-T-2 (App. —), rebuttal testimony of Mr. Klabzuba, developing the points made in his direct testimony. Mr. Klabzuba noted that all the carriers had simply asserted that the costs they had incurred were reasonable, argued that they had not earned an adequate return on investment, and concluded that the fares in question did not produce overcharges. Mr. Klabzuba expressed the view that the public had been called upon to pay fares in excess of those needed to finance adequate and efficient service, and the carriers' presentation did not refute this point. He thought a proper hearing in September of 1969 would have revealed that a fare increase was unwarranted.

Hearings were held before Examiner Newmann from February 22, 1972 through March 1, 1972. Extensive testimony was taken both from carrier witnesses and from Mr. Klabzuba, the only witness to testify for petitioners. In the course of the hearings, petitioners submitted Exhibit MOC-1 (App. —), a chart reflecting various estimates of the overcharges produced by the October 1969 fares, depending upon the level and structure of service deemed reasonable. Pursuant to a request from the Board's Bureau of Economics, petitioners subsequently submitted Exhibit MOC-2, a computation supporting the estimates shown on Exhibit MOC-1.

The Bureau of Economics was not helpful to petitioners. It declined even to take a position during the hearings before Examiner Newmann,¹³ and claimed to represent every one of the adverse parties involved.¹⁴ Eventually, on brief, it revealed itself as yet another voice supporting the carriers.

On May 1, 1972, petitioners filed a brief with Examiner Newmann contending that the October 1969 fares had produced overcharges equal to their revenue effect, approximately \$265,000,000. In addition, petitioners argued that the carriers had failed to show that the fares in question were just and reasonable within the meaning of the Federal Aviation Act, that the relief proceeding had actually revealed the fares to be unjust and unreasonable, and that the fares had produced at least \$250,000,000 in revenues in excess of a just and reasonable amount.

Examiner Newmann's Initial Decision, rendered on July 3, 1972 (App. —),¹⁵ focused upon "the financial situation of the airlines," with particular emphasis on "low profitability," (I.D. pp. 17-18, App. —). The Examiner held that "the issue of whether the fares charged . . . were reasonable can be resolved by examining the actual operating results experienced by the industry" and that "the best overall index of the reasonableness of the general level of passenger fares here under investigation is return on investment." (I.D., p. 20 App. —) Examiner Newmann concluded that the carriers had not earned a reasonable return during the period under investigation. The specific guidelines proposed by petitioners to determine a reasonable level and structure of service were summarily rejected, as were their objections to the discriminatory features of the fare structure and to the unfairness of the relief proceeding.¹⁶ The fares in question were adjudged not unjust and unreasonable.

Board review of Examiner Newmann's decision was granted by Order 72-9-23, dated September 7, 1972. In their brief to the agency, filed on October 6, 1972, petitioners argued that *Moss I* justified relief for the public of its own force, regardless of whether the October 1969 fares could be rationalized, long after their making, as not unjust and reasonable. *Moss I* had laid bare a serious and intentional violation of the Federal Aviation Act, and the Examiner's denial of all relief on the basis of the carriers' earnings was highly inappropriate. In addition, petitioners contended that the justness and reasonableness of the fares in question had not been shown. It was clearly improper to hinge decision on "actual operating results experienced by the industry" (I.D., p. 20, App. —), since this approach might produce a finding of no overcharges even if carrier costs were blatantly unreasonable. If "justness and reasonableness" of the October 1969 fares was to be tested, it was necessary to apply all the standards of sections 1002(e) and 102 of the Act, including standards requiring efficiency and low-cost service, without discrimination. When reasonable standards were applied, it became clear that substantial overcharges had been exacted from the public.¹⁷

Footnotes at end of article.

Oral argument was held before the Board on November 15, 1972. On July 11, 1973, the Board issued Order 73-7-39 (App. —),²⁹ upholding Examiner Newmann, finding the fares in question not unjust and unreasonable, and dismissing petitioners' complaint for relief. The Examiner's findings and conclusions were generally adopted. The Board held that *Moss I* rested on mere "procedural error" (73-7-39, p. 4, n.8, App. —), and found that it would be "inequitable to require that any amounts collected under the tariffs should be refunded unless it is found that the fares were unjust and unreasonable." (73-7-39, p. 9, App. —). It concluded that "the best overall index of the reasonableness of the general level of fares is return on investment." (73-7-39, p. 27, App. —). Issues regarding the discriminatory features of the October 1969 fares, the Board's power to award relief, and the appropriate form of relief were not reached.³⁰

On July 16, 1973, petitioners filed a petition in this Court for review of Order 73-7-39. Various motions to intervene have been granted, and the case has been consolidated with *Roberts v. C.A.B.*, No. 73-1790, by order dated October 17, 1973.

ARGUMENT

I. Introduction

Moss I struck down a ratemaking system which the Board and carriers had followed for years. That system involved private discussions between Board personnel and industry representatives; fare proposals by the carriers based on these private discussions; a response from the agency commenting upon the carrier filings and, if necessary, suggesting alternatives; withdrawal by the carriers of their initial proposals and the substitution of new tariffs conforming to the Board's specifications; and Board permission for the new tariffs to go into effect. Because all tariff proposals involved in this system were nominally initiated by carriers, only very limited judicial review was available under section 1006 of the Federal Aviation Act. The notice and hearing requirements of section 1002(d) and the various ratemaking factors specified in section 1002(e) could effectively be ignored.

Focusing on Board Order 69-6-68 and the substantial fare increase which it contemplated, petitioners challenged this entire system. They argued that the increase had been granted in violation of sections 1002(d) and 1002(e), that it was not justified under the statute, and that the fare structure determined in Order 69-6-68 was discriminatory and unjust. Petitioners sought suspension of the tariffs filed pursuant to Order 69-6-68 and refunds or other appropriate relief for the traveling public.

The Board admitted that it had approved the October 1969 fare increase "without complying with the statutory procedural requirements and criteria for rate-making by the Board." 139 U.S. App. D.C. at 152, 430 F.2d at 893. Its contention was that "it was not required to adhere to the standards of subsections (d) and (e) because . . . it was not determining rates. . . ." 139 U.S. App. D.C. at 154, F.2d at 895.

In *Moss I*, the Court rejected this contention. It held that "the procedure used by the Board is contrary to the statutory rate-making plan in that it fences the public out of the rate-making process and tends to frustrate judicial review." 139 U.S. App. D.C. at 152, 430 F.2d at 893. It found that the rates in question had been "determined by the Board, with the cooperation of the carriers, to be a maximum reasonable rate for the future." 139 U.S. App. D.C. at 155, 430 F.2d at 896. It stated: "we cannot help but conclude that the Board is only seeking to avoid the strict requirements of the rate-making portion of the statute and the resulting more

stringent judicial review." 139 U.S. App. D.C. at 159, 430 F.2d at 900.

Noting that "there is more to rate-making than providing carriers with sufficient revenue to meet their obligations to their creditors and to their stockholders," the Court rejected "any intimation by the Board that its responsibilities to the carriers are more important than its responsibilities to the public." 139 U.S. App. D.C. at 160, 161, 430 F.2d at 901, 902. *Moss I* concluded: "Since the record shows, as the Board admits, that the public notice and hearing requirements of section 1002(d) were not observed in issuing the order of September 12, that order is invalid and the tariffs filed by the carriers based thereon are unlawful." 139 U.S. App. D.C. at 161, 430 F.2d at 902. The case was remanded to the Board for further proceedings.

The Board, through its "further proceedings," has attempted to negate the practical effect of *Moss I*. The agency has decided that (a) the illegality found by the Court could be rectified for the future by new carrier tariffs identical to those declared unlawful, as long as the Board order calling for such tariffs did not set forth explicit instructions for their preparation; and (b) the illegality could be rectified for the past by simply finding that the October 1969 fares did not produce unreasonable carrier earnings. Under the Board's approach, *Moss I* will have had no practical consequences on airline fares either for the future or for the past, and its only effect will have been minor and cosmetic modifications of Board procedures.³⁰

Petitioners contend that meaningful relief should be awarded the public by reason of the illegal October 1969 fare increase. As discussed more fully below, that increase produced additional revenue for the carriers in the amount of \$265,913,000. It produced revenues that exceeded a just and reasonable level by approximately the same amount. Restitution or similar relief is required by the controlling precedents, and such relief is essential to discourage re-adoption of the ratemaking system struck down in *Moss I* or similar circumventions of the statute. This Court has the power to grant appropriate relief, and petitioners urge it to do so.

II. Legal and equitable considerations support relief regardless of justness and reasonableness

Board Order 73-7-39 declares that it would be "inequitable" to require the carriers to make restitution, "absent a finding that the fares were unjust and unreasonable." (p. 7) But the normal rule when a tariff is found unlawful is that "the last lawful pre-existing rates are the effective rates to be applied by a court in considering restitution . . ." *Middlewest Motor Freight Bureau v. United States*, 433 F.2d 212, 224 (C.A. 8, 1970); *Chicago M., St. P. & P.R. Co. v. Alouette Peat Products, Ltd.*, 253 F.2d 449 (C.A. 9, 1957). This rule has nothing to do with justness and reasonableness. The *Alouette* court noted that "a rate, to have final lawfulness and validity, must be lawfully established . . . must be just and reasonable . . . and nondiscriminatory and nonprejudicial . . . Lacking any of these essentials, it cannot be the valid, lawful rate even though it becomes the applicable rate by virtue of being on file with the Commission." 253 F.2d at 455 (footnotes omitted). The rates that went into effect on October 1, 1969 were not "lawfully established," whatever else may be said of them. These rates had a revenue impact of \$265,913,000, and it is therefore this amount that represents the difference between "the last lawful pre-existing rates" and the amount which the carriers collected.³¹ The public is entitled to restitution or other relief with respect to this sum.

As Examiner Newmann and the Board have noted (I.D., pp. 9-12, App. —; 73-7-39, p. 5, n. 9, App. —), there are differences between this case and *Alouette*.³² While *Alouette* in-

involved rates made in violation of a valid order of the Interstate Commerce Commission, this case involves rates made through cooperation of the Board and carriers in violation of the Federal Aviation Act.³³ These differences provide no justification for a departure from the general rule: "A rate once fixed remains established until changed in some manner allowed by law." 253 F.2d at 456. The rates in effect prior to October 1, 1969 were not changed in a manner allowed by law for well over a full year after that date.

It is true that the Supreme Court's decision in *Atlantic Coast Line R.R. v. Florida*, 295 U.S. 301 (1935), indicates that a restitutionary remedy is not automatic when agency-determined rates are declared unlawful. While the Court recognized the general rule "that what has been lost to a litigant under the compulsion of a judgment shall be restored thereafter, in the event of a reversal, by the litigants opposed to him, the beneficiaries of the error," 295 U.S. at 309, it went to state that the general rule is "not without exceptions." Since a cause of action for restitution is "equitable in origin and function," "the claimant, to prevail, must show that the money was received in such circumstances that the possessor will give offense to equity and good conscience if permitted to retain it." 295 U.S. at 309. The Supreme Court concluded that the claimant in *Atlantic Coast Line* had failed to make such a showing.

The "equities" favoring the carrier in that case were, however, clear and convincing. At issue was a 1929 order of the Interstate Commerce Commission invalidating certain railroad rates for being both discriminatory and so low as to be noncompensatory. The Supreme Court had struck down the I.C.C. order in *Florida v. United States*, 292 U.S. 194 (1931), on the sole ground that "the facts supporting the conclusion were not embodied in the [agency's] findings." 295 U.S. at 311. The Commission's error was a "mere slip," a defect in the "form" of its decision, 295 U.S. at 310, 311. After *Florida v. United States*, the Commission had held further, legally valid, hearings and had again invalidated the rates in question as discriminatory and noncompensatory. Nevertheless, certain shippers had brought suit to recover sums paid the carrier while the 1929 order remained in force.

The carrier was wholly without blame for the defects in the 1929 order, and the complaining shipper had benefited for years from the discriminatory, unjustly low, and indeed confiscatory rates that the Commission intended to revise. The shippers were in the unattractive position of contending that the carrier should retain no more of the monies it had collected than those confiscatory rates would have produced.

The Supreme Court found "the claim for restitution yields to the impact of these converging equities with all their cumulative power." 295 U.S. at 313. The claimants had not shown that "a fixed and certain duty has been laid upon a court of equity to make the carrier pay the price of the blunders of the commerce board in drawing up its findings." 295 U.S. at 314. Having surveyed the entire record and concluded that "what was charged would have been lawful as well as fair if there had been no blunders of procedure, no administrative delays," the federal court would "stand aloof" and "leave the parties where it finds them." 295 U.S. at 314-315. In the circumstances, the claimants not having shown the Commission's ratemaking order to be unreasonable, "the carrier does not offend against equity and conscience in standing on its possession and keeping what it got." 295 U.S. at 318.

This case is very different from *Atlantic Coast Line*, because the "equities" here clearly favor petitioners and the public. The October 1969 fare increase was invalid not for a "mere slip" or a matter of "form" but be-

Footnotes at end of article.

cause of a serious violation of the governing statutory scheme. That increase was granted without the public notice and hearing specifically required by section 1002(d). Whether this error is labeled "procedural" or "substantive," it is plainly of a different magnitude from a failure to embody supporting facts in findings. Moreover, the error in this case was deliberate. The Board and carriers cooperated in devising an illegal ratemaking system for the purpose of "[avoiding] the strict requirements of the statute and the resulting more stringent judicial review." 139 U.S. App. D.C. at 159, 430 F. 2d at 900. If meaningful relief is not granted here, there will be no effective safeguards to ensure that a similar system will not reappear in the future. Compare *Wyandotte Transportation Co. v. United States*, 389 U.S. 191, 202-03 (1967).

Furthermore, the Board has conceded that the October 1969 fare increase was granted without observance of the criteria for rate-making embodied in section 1002(e). 139 U.S. App. D.C. at 152, 154, 430 F. 2d at 893, 895. This concession has never been retracted because the Board and carriers consider the facts surrounding the October 1969 fare increase to be irrelevant.²⁴ For this same reason, the Board and carriers have consistently rejected petitioners' inquiries as to the circumstances behind Order 69-9-68 and the *ex parte* meetings which preceded that order.

Nor can it be maintained that the Board alone was at fault. The carriers willingly participated in the closed-door meetings in which—there is every reason to believe—the terms of the October 1969 fare increase were negotiated. They cooperated in the establishment and maintenance of the ratemaking system which *Moss I* found illegal. And throughout the relief proceeding they successfully urged the Board to deny requests for information about their *ex parte* contacts with the agency.

In short, the Board and carriers are in a poor position to advance *Atlantic Coast Line* for the proposition that relief would be "inequitable" if the fares in question are not found unjust and unreasonable. *Atlantic Coast Line* speaks of "equity and good conscience"—which presumably includes a good deal more than a *nunc pro tunc* judgment on reasonableness. The various considerations described above, and recognized in *Moss I*, bear strongly on the equities in this case and, in petitioners' view, indicate that "the money was received in such circumstances that the possessor will give offense to equity and good conscience if permitted to retain it." 295 U.S. at 309.

This Court's decision in *Williams v. W.M.A.T.C.*, 134 U.S. App. D.C. 321, 415 F. 2d 922 (1968), also supports the claim of the public to relief. In *Williams* the Court concluded that an administrative agency had failed to apply appropriate ratemaking criteria and to make the inquiries prerequisite to valid exercise of its rate-setting authority.

Given these conclusions, the Court "could not permit [the carrier] to retain the increased fares, since to do so would be to give legal effect to the [agency's] invalid order." This was so "notwithstanding that we have held neither that the [agency] lacked power to order a fare increase, nor even that the fares authorized are, as a matter of law, unjust or unreasonable." 134 U.S. App. D.C. at 322, 415 F.2d at 943 (footnotes omitted).

It is true that in the exercise of the "equitable discretion" recognized in *Atlantic Coast Line*, the Court in *Williams* stated that it was "unable to see how any proper resolution of the matter of restitution in the circumstances presented could ignore the reality of [the carrier's poor] financial experience during the years in question." 134 U.S. App. D.C. at 345, 415 F.2d at 946 (footnotes omitted). But contrary to the conclusion which the Board draws from this

statement (73-7-39, pp. 6-7, App. —), *Williams* did not indicate that justness and reasonableness was determinative of the issue of restitution—much less that "fair return on . . . investment" was determinative of justness and reasonableness. The Court indicated, rather, that carrier return was one matter bearing on the equities and thus on the ultimate disposition, of that case. Moreover, the Court was clear that it "could not . . . give legal effect to [the invalid rates set by the agency] . . . by withholding restitution altogether." 134 U.S. App. D.C. at 323, 415 F.2d at 944—precisely what the Board has done here.

Like *Atlantic Coast Line*, *Williams* did not involve the kinds of equitable considerations independent of justness and reasonableness, and favoring the complaining parties, which petitioners have described above. *Williams* therefore does not undermine the strong support which these considerations provide for relief to the public to the full extent of the revenue impact of the October 1969 fares: \$265,913,000. And since the *Williams* analysis derives directly from *Atlantic Coast Line*, that decision adds further support for such relief in this case.²⁵

III. The board erred in concluding that the fares in question were "not unjust and unreasonable"

Order 71-2-109, instituting the relief proceeding, indicated that the issue to be determined was whether the fares charged by the carriers after October 1, 1969 "were unjust and unreasonable." (pp. 2-3) The order declared that "justness and reasonableness . . . will be best determined by application of the standards traditionally governing Board practice in rate cases as set forth in Sections 102 and 1002(e) of the Act." (p. 3) For the reasons stated above, petitioners believe relief should be granted in this case regardless of whether the fares in question are now considered "not unjust and unreasonable." However, petitioners also contend that the Board's conclusion that these fares were "not unjust and unreasonable" is clearly wrong. The fares must be considered unjust and unreasonable both because the carriers have not borne the burden of proving the contrary, see 5 U.S.C. § 556(d); *Puerto Rico v. F.M.C.*, 152 U.S. App. D.C. 28, 36-37, 468 F.2d 872, 880-81 (1972); and because analysis of the governing statutory provisions demonstrates that the fares produced revenues considerably in excess of the carriers' legitimate need.

In petitioners' view, the Federal Aviation Act, particularly sections 1002(e)(2) and 1002(e)(5), requires a determination of the type and quantity of service that would have been "adequate and efficient" during the period in question; and a computation of the "lowest cost" for furnishing such service. This entails an assessment not only of carrier earnings needs but also of efficiency and the reasonableness of carrier costs. There may be several ways of making this assessment, but the best way is to translate the statutory criteria into precise guideline standards of reasonableness. The Board has adopted several such standards in the *DPFT*, and petitioners have proposed that similar standards be employed to test reasonableness here. Even if the specific standards proposed by petitioners are deemed inappropriate, the carriers' revenue need should still be determined in light of some assessment of "adequate and efficient" service. If the fares produced significant revenue in excess of the amount needed to provide such service, the fares should not be considered just and reasonable.

The Board, in contrast, believes it would be improper "to impose Board-made standards retroactively on carriers" (73-7-39, p. 15, App. —) and that no alternative tests for reasonableness of service are required. Implicit in Order 73-7-39 is the conclusion

that petitioners must bear the burden of demonstrating that the October 1969 fare increase did not comply with the statute; that the agency's responsibility extends only to examining the specific points which petitioners have placed in issue; and that findings demonstrating the compliance of the fares with the factors specified in section 1002(e) are not required. Furthermore, Order 73-7-39 changes the ultimate test for relief from "sums in excess of just and reasonable fares" to "unjust enrichment." (73-7-39, pp. 23, 29, App. —)²⁷ The latter standard implies concentration upon "return on investment"—i.e., whether the carriers earned a return which the Board regards as unreasonable. (73-7-39, p. 27 App. —)²⁸ This analysis leads the Board to conclude that the fares in question were "not unjust and unreasonable" because carrier earnings did not reach an unreasonable level. The issue before this Court, insofar as "justness and reasonableness" is concerned, is whether this conclusion is legally correct.

In the sections that follow, petitioners will discuss the various aspects of carrier costs which, in their view, must be subjected to scrutiny for reasonableness; the specific tests for reasonableness which they have proposed; and the discriminatory aspects of the fares in question. The treatment accorded all these matters in Order 73-7-39 is much less than the statute requires. See *Democratic Central Committee of the District of Columbia v. W.M.A.T.C.*, No. 24,398, June 28, 1973 (slip opin., pp. 32-42).

A. The Cost of Excess and Unreasonable Capacity Should Not Be Recognized

The October 1969 fares cannot be tested for "justness and reasonableness" without, at the very least, a determination of what constituted reasonable capacity during the period in question. Capacity—available seat miles or seat hours flown—is of critical importance in assessing reasonableness because the vast majority of carrier costs are directly affected by capacity. The greater the capacity provided in relation to demand, the higher costs will be. Petitioners have proposed the use of two standards for the purpose of determining reasonable capacity after October 1, 1969. These standards, governing "load factors" and "dilution," are discussed in the sections that follow.

1. Passenger load factors

Passenger load factor is "the measure of the percentage relationship between capacity operated and revenue traffic carried. . . ." (Order 71-4-54, p. 1)²⁹ In other words, load factor is the quotient obtained by dividing available capacity sold by total available capacity.

It is indisputable that fares and load factors are inextricably interrelated. On the one hand, high fares tend to produce low load factors, both because "fare increases . . . depress traffic" (71-4-54, p. 42)³⁰ and because "the higher the fare level in relation to cost, the more capacity carriers will offer and the lower load factors will be. . ." (71-4-54, p. 23; Tr. 744-45) On the other hand, "increasing the fare level for the purpose of achieving profitable operations at the lower load factor lowers the breakeven load factor and thus encourages the addition of more capacity, leading again to lower profits and demands for further fare increases." (71-4-54, p. 21)

During the first year of carrier operations after October 1, 1969, the trunk carriers experienced an average load factor of 48.9 percent; the local service carriers experienced load factors of 43.2 percent.³¹ These figures represent significant decreases from the load factors experienced in the mid-1960's. (71-4-54, p. 15; Exhibit BE-52, App. —) The reason is obvious: Over the period from 1967 to 1969, supply in the airline industry (in the sense of available seat miles) increased approximately three times faster than demand. (71-4-54, p. 17)

Footnotes at end of article.

The Board has said that "there is no reason why passengers rather than shareholders should pay for excess capacity" (71-4-54, p. 40), and this is precisely what petitioners contend. The pertinent figures indicate that the 6.35 percent fare increase in October 1969, following close upon a 4 percent increase in February of that same year, was both the product of existing overcapacity and the cause of still greater overcapacity. The Board has effectively conceded in Order 71-4-54 that the October 1969 fares underwrote service that was not "adequate and efficient" within the meaning of section 1002(e) of the Federal Aviation Act.

An argument could be fashioned that the October 1969 fares were *per se* unjust and unreasonable because they exacerbated an already serious overcapacity problem. Petitioners have not made this argument. They have merely proposed that carrier revenue need for the period in question be redetermined on the basis of reasonable capacity, with the costs of unreasonable capacity deleted. As a first step in that redetermination, they have suggested the use of a "load factor standard," a concept which the Board recently adopted, comparing it as follows with a policy of accepting actual and projected load factors at face value:

Under such a policy, passenger fares would rise if load factors fall, and fares would decrease if load factors rose. The . . . alternative is to base fares on standard or optimum load factors, which would be capable of achievement over the long-range. Under this latter concept, the fares would be fixed at a level which would produce a reasonable return on investment assuming that the industry operated at the standard load factor. As opposed to the first alternative, which contemplates that fares will fluctuate with load factors, the second alternative contemplates that earnings will fluctuate with load factors. (71-4-54, pp. 4-5; emphasis in original)

The Board has reasoned:

[A] policy of basing fares on actual load factors can only lead to increasing overcapacity, with the traveling public being asked to pay higher fares to compensate the carriers for the cost of operating an increasing number of empty seats. This result is virtually inevitable because schedules constitute the major competitive device of carriers in their efforts to preserve and enhance their participation in the traffic markets which they serve. In any given market, the carrier with the greatest number of schedules will normally carry the largest number of passengers. Thus, the desire to maximize market participation creates powerful incentives to add capacity. The countervailing incentive is supplied only by the imperative of economics: Schedules cannot be added indefinitely if the load factors achieved are insufficient, at the prevailing fare levels, to permit the carriers to cover costs and return a profit. But this economic incentive loses its force if the carriers are able to raise their fares to cover declining load factors. In that event, the pressure of competition to add schedules will become virtually irresistible and will inevitably lead to a long-term decline in load factor, rising fares to support higher levels of unused capacity, and, because of regulatory lag, a chronically depressed profit level for the industry as a whole. (71-4-54, p. 5)

It is "obvious" that actual capacity is not a proper basis for determining reasonable fares. (71-4-54, p. 21). In fact, the Board finds in section 1002(e) a "duty" to establish "load-factor standards properly adapting capacity to traffic needs for ratemaking purposes." (71-4-54, pp. 8-9). It has observed that "the absence of the constraint of load-factor standards . . . has undoubtedly contributed to the tendency of the carriers to overschedule capacity" and that "a system of regulation which encourages excessive ca-

capacity would be patently adverse to the public interest. . . ." (71-4-54, pp. 21, 6)

The Board's treatment of load factors in the present case, is however, perplexing. Petitioners suggested that the standards adopted in the *DPFI* to determine reasonable capacity to be employed here—"an overall trunkline standard of 55 percent, an overall local-service standard of 44.4 percent, and an industrywide standard of 54.1 percent." (71-4-54, p. 33). The Board agrees that "reported operating results of the carriers under the fares in question should not be accepted" (73-7-39, p. 13, app. —); but it has rejected its own *DPFI* standards and refused to consider alternatives.

The agency contends that "to impose Board-made standards retroactively on carriers in a situation where they had no reason to believe that their operations would be subject to *ex post facto* review raises a substantial question of equity." (73-7-39, p. 15, App. —) And it perceives "anomaly" in imposing any load factor standard higher than 52.5 percent, in light of its *DPFI* determination to apply such a standard on an interim basis in order "to allow for a transitional period to enable the carriers to bring their operations into closer compliance with the [55 percent] long-term standard." (73-7-39, p. 16, App. —; 72-8-50, p. 29) ²²

There is, however, no "inequity" in finding that capacity producing average load factors of 48.9 percent is unreasonable. The Board has specifically stated that fares geared to permit such overcapacity are unacceptable. Nor is there "inequity" in the claim that carriers "had no reason to believe that their operations would be subject to *ex post facto* review." There is nothing *ex post facto* about this case except in the sense that judicial review is always *ex post facto*. The carriers are aware that "judicial review at times results in the return of benefits received under [an] upset administrative order." *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965). And they were on notice as early as mid-1969 that petitioners were challenging further fare increases, largely on the basis of the unreasonable capacity being provided.

Furthermore, the Board does not "accept the proposition that excess capacity has been brought about by forces beyond the carriers' control" (71-4-54, p. 30); it does not believe that "the carriers' decisions to introduce larger aircraft should relieve them of responsibility for realistic scheduling and require an increase in passenger fares." (71-4-54, p. 39) As early as May 1969, in Order 69-5-28, the Board noted that the 53.0 percent passenger load factor reported for 1968 "is the lowest reported for any of the past 20 years" and that "estimates indicate that the domestic trunk load factor will drop to even lower levels during 1969" (p. 3); it observed that "the carriers have bought equipment despite (not by reason of) traffic forecasts" and that "the basic solution to the industry's present financial situation would appear to lie in exercising restraint in ordering new flight equipment and in the use of its available capacity, rather than in increasing its price to the public." (p. 4; emphasis supplied)

In short, the Board itself has declared that capacity during the period here in question was unreasonable; that the October 1969 fare increase contributed to the capacity problem; and that the overcapacity problem is, at least in part, the responsibility of the carriers. In these circumstances, the only serious issue relating to load factors in this proceeding is which guideline standard to apply for the purpose of adjusting the carriers' experienced results. The Board has suggested that "the appropriate standard to use would be the interim standard of 52.5 percent, rather than the long-term

standard of 55 percent, since it would be anomalous to hold the carriers to a higher standard for the earlier period." (73-7-39, p. 17, App. —) ²³ But this is a bootstrap argument. The Board adopted an interim standard of 52.5 percent in 1971 and 1972 because the carriers were experiencing load factors on the order of 50.6 percent for 1971 and 51.6 percent for 1972, and it was thought that the long-term standard could not be attained prior to 1973. This may have been an acceptable ratemaking judgment in mid-1971, in light of the predicament then confronting the industry and the agency. But the Board is not making rates in this case; it is passing upon the "justness and reasonableness" of one of the principal fare increases which caused the mid-1971 predicament. It has not been established that load factors on the order of 55 percent would have been unattainable in October of 1969, if fares had been properly established; on the contrary, load factors had been that high or higher for most of the 1960's, and it was only in 1969 itself, when fares were increased more than 10 percent, that load factors fell to clearly unreasonable levels. (71-4-54, p. 15)

Thus, the reasons which led the Board to temper the load factor standards found reasonable in Order 71-4-54 are not applicable here. Those standards—55 percent for the trunklines and 44.4 percent for the local service carriers—should be employed in this case, in the absence of a showing that other, lesser standards would be more reasonable.

2. Dilution

"Dilution" measures the degree to which promotional and discount fares cause actual revenue yield to fall to reach the yield that would have been attained if all passengers had paid the full fare. (Tr. 641) ²⁴ Discount and promotional fares naturally yield less than full fares. Their purpose is to generate additional traffic "to fill otherwise empty seats." (71-4-54, p. 38; emphasis supplied). To the extent that this occurs, load factors are raised, total costs remain relatively unchanged, and costs per passenger are lowered. If the increase in load factors more than offsets the dilution, a reduction in fares will be possible. Thus, as long as discount and promotional fares are used for their true purpose, dilution is a tolerable and even a desirable feature of airline fares.

However, when capacity is added in order to carry diluted-yield traffic, and load factors are kept at or below the reasonable full-fare level, discount and promotional fares cease to serve their purpose, and become inefficient and uneconomical. The added capacity used to carry the diluted-yield traffic means increased total costs; unit costs do not decline and may rise; and the lower yield produced by the discount fares results in a decline in carrier rate of return. "Cost plus" ratemaking passes on the higher costs and lower returns to the passenger in the form of higher fares.

A "dilution" standard is therefore a necessary complement to a load factor standard as long as discount or promotional fares exist. A load factor standard cannot control excess capacity by itself because the load factor standard does not take account of the difference in yield between a discount fare and a full fare. Thus, load factors which might appear perfectly reasonable if only full-fare traffic were being carried may in fact be extremely unreasonable because substantial capacity is being employed to carry diluted-yield traffic.

The Board has recognized the relationship between dilution and load factors:

A principal purpose of discount fares is to generate traffic to fill otherwise empty seats and thus reduce passenger-mile costs for normal-fare passengers. In order that this purpose not be frustrated, load-factor standards for ratemaking purposes should logically be adjusted upward to take into account the

²² Footnotes at end of article.

dilution in yield occasioned by discount-fare traffic . . . (71-4-54, p. 38)

There are two ways of "adjusting" the load factor standard to take account of dilution: one is to adjust that standard itself; the other is to employ a separate standard limiting dilution to a reasonable level. Petitioners have proposed the latter approach in this case, urging that a guideline dilution standard of 12 percent be used and that dilution in excess of that amount not be recognized. (Tr. 661, 739)

In Order 72-12-18, dated December 5, 1972,³⁵ the Board went further than this. It determined that henceforth it would compute fares "on a hypothetical full normal-fare basis *i.e.*, as if the discount fares were not a part of the fare structure." (p. 4) In other words, normal fares would not be increased at all to make up the difference between revenue produced at a reasonable full-fare load factor and revenue actually earned. Since the carriers experienced dilution after October 1, 1969 was substantially higher than 12 percent, application of the Board's approach in this case would produce a substantially greater disallowance of revenue need, and thus a substantially greater discrepancy with reported revenues, than petitioners have urged.

The agency has been concerned with the problem of dilution for essentially the same reasons as those advanced by petitioners:

[I]n the long run the carriers add equipment and schedules in order to accommodate discount traffic. When this occurs, the discount fares cease to cover costs and the shortfall must either be subsidized by the normal-fare passenger, or the carriers will not realize sufficient revenues to provide adequate service. (72-12-18, p. 12)

The Board explained that over the period from 1966 through 1971, the carriers were purchasing equipment and scheduling with reference to all traffic, including discount-fare traffic, and "were increasing their capacity at a faster rate than the growth of traffic warranted, notwithstanding the high level of discount traffic." (72-12-18, p. 43) Of course, a raising of normal fares in order to cover the declining yield produced by such discount traffic burdens the normal-fare passenger by asking him "to bear a fare increase in order to cover the short-fall created by the discount fares." (72-12-18, p. 46)

The Board noted that "under previous policies, the carriers have not had adequate incentives to consider the long-term impact of promotional fares since ratemaking practice has permitted them to seek fare-level increases to offset declines in yield stemming from the discount fares." (72-12-18, p. 56) A policy of adjusting cost projections and revenue need "to eliminate the dilution caused by the discount fares" (72-12-18, p. 55) is, therefore, "a necessary adjunct to the load-factor standards established in [Order 71-4-54]":

The purpose of the load-factor standard was to assure that the fare level would not be burdened by the cost of providing service in excess of the needs of the traveling public. It was and remains the Board's intention that the 55-percent standard be achieved through adjustment of aircraft fleet size and schedules in relation to traffic demands. This intention would obviously be frustrated if the carriers sought to realize the standard load factor by an artificial stimulation of traffic through the use of discount fares and were free to pass the losses from such traffic on to the remainder of the traveling public. Such a result would clearly be at war with our statutory goal of assuring that air transportation be furnished at the lowest cost consistent with the performance of adequate and efficient service. Indeed, failure to adopt an undiluted normal-fare concept in fixing

passenger-fare levels could well create a powerful incentive for the carriers, leading to undesirable extensions and proliferations of discounts as a means of achieving the standard load factors. (72-12-18, pp. 57-58; citation omitted)

The Board accordingly determined that it would not accept any dilution in determining the full fare; discount and promotional fares would be accepted only on a short-term basis and only for the legitimate purpose of filling otherwise empty seats.

In these circumstances, the Board's attitude toward dilution in order 73-7-39 is, again, puzzling. The agency has observed that discount passengers accounted for more than 40 percent of traffic during the period here under investigation (72-12-18, p. 10); that the percentage of discount traffic has tended to rise as load factors have dropped (72-12-18, p. 43); that the carriers have provided substantial excess capacity for the purpose of carrying discount traffic. (72-12-18, pp. 40-42) It is therefore odd that the Board finds no "evidentiary basis" for a dilution adjustment in this case and finds the application of petitioners' proposed 12 percent standard "faulty in concept." (73-7-39, p. 21, App. —)

The reasons for employing a dilution adjustment here are precisely the same as those enunciated by the Board in Order 72-12-18: to take account, after the load factor adjustment, of that amount of excess capacity which was provided for discount-fare passengers. (Tr. 739; see also Tr. 641, 654, 661, 720, 722-25, 730, 733-34) The 12 percent standard proposed by petitioners was suggested on the basis of Exhibit BC-6008 submitted by the Board's Bureau of Economics in Phase 9 of the *DPFI*. (Tr. 741-42) Petitioners' witness, Mr. Klabzuba, had noted, both from that exhibit and from evidence in the record of this case,³⁶ that higher dilution figures tended to occur in the longer-haul markets, where load factors tended to be especially low. (Tr. 651-54, 720, 739) Mr. Klabzuba concluded that diluted fares were not serving their purpose of filling otherwise empty seats in those markets and that, indeed, the carriers were obviously adding capacity to carry diluted-fare traffic. He made a judgment that dilution up to 12 percent was tolerable, because load factors in markets where such dilution was experienced were generally not delinquent, but that dilution in excess of 12 percent represented a contribution to the overcapacity problem and therefore an unreasonable burden on fares. (Tr. 641-654, 739-40) Had the carriers not provided excess capacity to transport diluted-fare traffic, the fares that prevailed after October 1, 1969 could have been lower. (Tr. 727)³⁷

Instead of coming to terms with the problem of dilution in this case, the Board has limited itself to quibbling with petitioners' proposed standard—a standard significantly more generous to the carriers than the Board's own dilution policy—and excused the carriers on the ground that *DPFI* policies should not be applied "retroactively." The Board argues that the Phase 9 exhibit cited by Mr. Klabzuba does not precisely support his thesis that 12 percent constitutes "a reasonable line of demarcation between beneficial dilution and burdensome dilution." (73-7-39, p. 22, App. —; Tr. 651-53) In the first place, the exhibit cited by Mr. Klabzuba does support the point that dilution tends to rise as length of haul increases, reflecting an inverse relationship to load factors.³⁸

In the second place, there was ample evidence in the record of this case to support Mr. Klabzuba's thesis.³⁹ Finally, and most importantly, since dilution is a problem which the Board itself has emphatically recognized, it could not limit its inquiries in this area to the simple conclusion that petitioners' proposed 12 percent standard reflected an "unsupported judgment." (73-7-

39, p. 23, App. —)⁴⁰ The Board has failed to inquire into an area of ratemaking which petitioners specifically placed in issue and which the Board itself has perceived as critical. Taxing petitioners with failing to supply an "evidentiary basis" for their position (73-7-39, p. 22, App. —) is as much beside the point as noting that they did not make "studies" (Tr. 645), or that their witness never held a management position with an airline. (Tr. 700)⁴¹

The Board has given three other reasons for its lack of concern about dilution in this case: (a) "the fact that some passengers may have paid too much because others paid too little could not support a finding of unjust enrichment to the carriers to make amends or restitution." (73-7-39, p. 23, App. —); (b) "it would be plainly inequitable for the Board to refuse retroactively to recognize the dilution resulting from the charging of discount fares which had become embedded in the fare structure over a period of many years through the filing of tariffs which the Board had allowed to become effective" (73-7-39, p. 24, App. —); and (c) Order 69-9-68 "had the effect of decreasing the actual dilution." (73-7-39, p. 24, App. —)

But none of these points is persuasive. The issue at hand is not whether the carriers were "unjustly enriched" but whether the fares in question were "just and reasonable." And the fact that full-fare passengers were called upon to pay too much in order to subsidize diluted-yield passengers is very much a part of that issue. Moreover, the contention that "some passengers may have paid too much because others paid too little" is overly simplistic. The ratemaking problem under discussion here is not that discount fares were too low in some absolute sense, but that the carriers added excess capacity in order to carry diluted-yield traffic at a reduced profit margin. This invariably results in higher costs, lower returns, and, under the Board's cost-plus approach to ratemaking, fare increases. If capacity had been controlled by means of appropriate standards, fares could have been lower throughout the system. And if reasonable load factor and dilution adjustments are made now, it may well appear that discount-fare passengers did not in fact pay "too little" during the period in question. The problem, in other words, is not merely one of discrimination, but one of excess as well. The Board recognized as much in Order 72-12-18.

The short answer to the Board's contention with respect to "retroactivity" is, again, that the statutory provisions allowing for judicial review place the carriers on notice that fare increases may ultimately be found unreasonable. There is no "inequity" in such a finding.

Finally, it is irrelevant whether or not the October 1969 fares may have reflected some minor improvements on those that prevailed previously. The fares in question here are the responsibility of the Board and carriers. They assert that these fares can be reconciled with the statutory provisions governing "justness and reasonableness." Whether the previous fares were a "hodgepodge" or not (I.D., p. 34, App. —), they cannot legitimize subsequent fares which cannot withstand scrutiny on their own. Moreover, it is especially inappropriate to point to earlier fares for justification when the Board and carriers had devised a ratemaking system which effectively precluded judicial review.

The Board has sought to excuse the carriers on the basis of its poor ratemaking performance in the past and the carriers' poor financial performance under the October 1969 fares. This is consistent with neither the statute nor the Board's duties to the public. For the reasons set forth above, a dilution standard must be employed to delete from revenue need that portion of the carriers' costs reflecting excess capacity employed to carry diluted-yield traffic; in the absence

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of contrary suggestions, a 12 percent standard appears reasonable for this purpose.

3. Overcharges

Exhibit MOC-1 (App. —) demonstrates that the use of a 54 percent load factor standard and a 12 percent dilution standard produces overcharges with respect to the trunkline carriers of some \$238,519,000.⁴² The Exhibit also shows that a load factor standard of 52.5 percent, coupled with the 12 percent dilution standard, produces overcharges of some \$87,146,000. Similar calculations employing a 55 percent load factor standard and a 12 percent dilution standard—the standards which petitioners believe reasonable for purposes of this case—reveal overcharges for the trunklines of some \$339,756,000.

The October 1969 fares clearly exceeded just and reasonable fares by a very substantial margin. The sums set forth above are conservative because MOC-1 extends only through September 30, 1970, rather than May 6, 1971;⁴³ because it does not take account of the local service carriers at all; because it includes a perhaps too generous adjustment in favor of the carriers with respect to indirect costs;⁴⁴ and because it accepts all other aspects of the carriers' costs at face value, without regard to reasonableness.

The Board's approval of the October 1969 fares, in Order 73-7-39, reflects acceptance of capacity standards approximately 33 percent less stringent than what the Board has declared in the DPFI to be reasonable.⁴⁵ This means that the agency has considered airline fares some 33 percent greater than its own definitions of adequate and efficient service would have required, and found them "not unjust and unreasonable."

B. The Board Failed To Examine Other Carrier Costs for Reasonableness

Section 1002(e) of the statute subjects all carrier costs to examination for reasonableness. It refers to "adequate and efficient" service, to "honest, economical, and efficient management," and to the "lowest cost" as factors to be considered by the Board in establishing rates. Petitioners' approach to the issue of costs has been limited. They have simply asked that the reasonableness of all costs be examined, and have suggested the use of specific guidelines for load factors, dilution, and indirect costs.⁴⁶ With respect to indirect costs, petitioners have proposed recognition to the extent of 48.4 percent of direct costs. (MOC-T-1, App. —). This ratio was derived from forecasts prepared by the Bureau of Economics for use in the DPFI. (Tr. 714; Order 71-4-59/60, p. 30 (April 9, 1971).)

The Board notes that the DPFI ratio was "only for the purpose of forecasting" and not a "Board standard." (73-7-39, p. 19, App.—) It also observes that indirect costs for the year ending September 30, 1970 were 47.7 percent of direct costs, and that petitioners' proposed standard "results in higher unit costs than those experienced, and the carriers are not prejudiced by its use." (73-7-39, pp. 19-20, App. —)

The Board is, of course, free to reject petitioners' proposed standard as unreasonable, and to find that the experienced ratio of 47.7 percent represents reasonableness. It is not free to refuse to examine the question. See, e.g., *D.C. Transit System, Inc. v. W.M.A.T.C.*, 151 U.S. App. D.C. 223, 237, 466 F.2d 394, 408 (1972). The use of guideline standards is clearly one acceptable means of determining the reasonableness of costs and, indeed, the Board has noted that "without such yardsticks, the Board would have no standards of reasonableness . . . and would in effect be deprived of its statutory authority to establish fair and reasonable future rates after hearing except to the extent that it

might find projected expenses to be occasioned by dishonest, uneconomical, or inefficient management. Such a construction of section 1002 of the act would in our opinion nullify the Congressional intent that the Board regulate rates and fares in the public interest. . . ." (71-4-54, p. 13)

In the present case, there is no evidence of such concern and no effort to assess the reasonableness of carrier costs, direct or indirect. While the Board claims it has "extensively considered" the statutory factors relating to costs (73-7-39, p. 26, App. —), petitioners wonder where. It has not made appropriate findings either in Order 69-9-68, where the statutory criteria received only fleeting mention, or in Order 73-7-39.⁴⁷ In fact, the agency has seen its task as one of merely dispatching the specific points which petitioners have advanced.

In the recent case of *Democratic Central Committee of the District of Columbia v. W.M.A.T.C.*, No. 24,398, June 28, 1973, this Court considered a similar situation. Petitioners there maintained that the agency had failed to consider the efficiency of the carrier's management, one of the ratemaking factors specified by the governing statute, as it is by section 1002(e) of the Federal Aviation Act. The agency and carrier responded that the petitioners had not placed that particular factor in issue. This Court held that the agency had erred in refusing to consider management's efficiency simply because "the formal parties had not produced evidence of bad management." (slip opin., p. 33) The Court explained:

[T]he failure of the staff and the protestants to produce evidence of mismanagement certainly does not support an assumption that [the carrier] was efficiently managed, and that was too vital a matter to be simply assumed away. The [statute] placed an obligation upon the [agency] to develop the record on important matters when it was unsatisfied with the record produced by the parties. The [agency], like other agencies charged with the protection of the public interest, was not created simply to "provide a forum for the" proceeding. The [agency] was not at liberty to sit back and place "the responsibility for initiating or carrying through essential inquiries" on "private parties;" instead, it had "an affirmative duty to assist the development of a meaningful record." [slip opin., p. 36; citations omitted.]

The Court went on: "If the [agency] refused to perform its statutory duty to make an inquiry [into the carrier's efficiency], then [the carrier] had no incentive to discover and utilize cost-saving devices. The alternative to an inquiry into efficiency, then, was to turn [the carrier] into a high-cost plus profit company and that plainly was not in the public interest." (slip opin., pp. 39-40; citations omitted.)

As in the *Democratic Central Committee* case, the Board here has made no inquiry "into methods, other than a fare increase" for improving the carriers' earnings. (slip opin., p. 40) In these circumstances, the Board's conclusion that the fares in question were not unjust and unreasonable should not be permitted to stand.

C. The Board Erroneously Refused To Consider the Discriminatory Aspects of the Fares in Question

Section 102(c) forbids "unjust discriminations" and "undue preferences or advantages." The October 1969 fares are unacceptable under this provision because they unjustly discriminated against: (a) long-haul passengers, who were charged fares far in excess of the costs of the service provided them;⁴⁸ (b) passengers traveling between uncongested airports, who were charged according to a mileage formula when the miles they traveled required much less time and therefore cost far less than comparable miles traveled between congested airports;⁴⁹ (c) full-fare passengers, who were called

upon to subsidize very substantial discount-fare traffic;⁵⁰ and (d) passengers traveling in markets where one-carrier service was not available and no through fare for connecting service was published; these passengers were required to pay a combination of two or more fares, each of which reflected the fixed terminal charge established by Order 69-9-68.⁵¹

Rather than responding to petitioners' contention that the fares in question were unjustly discriminatory, the Board has taken the position that "fare structure is not a proper issue in this proceeding." (73-7-39, p. 28, App. —) Arguing that the "rational consequence" of petitioners' argument is that some passengers paid unreasonably low fares, the Board concludes that "the carriers were obviously not justly enriched, and it would be inequitable to compel them to make restitution to all fare payers." 73-7-39, pp. 29-30, App. —) The Board also contends that "Order 69-9-68 resulted in a fare structure superior to the pre-existing structure. . . ." (73-7-39, p. 30, App. —)

But again, the fares in question cannot be considered "just and reasonable" if they contained unjustly discriminatory features—and the issue here is "justness and reasonableness," not "unjust enrichment." Even if it were correct that "some passengers paid unreasonably high, and some paid unreasonably low, fares,"⁵² this is generally the case where discrimination is involved. The Board's argument is really that discrimination has nothing to do with "justness and reasonableness," and that is not what the statute says.⁵³

Finally, even if Order 69-9-68 did improve to some extent upon the prior fare structure—a point which petitioners were denied a full opportunity to examine⁵⁴—this hardly proves that the October 1969 fares were not unjust and unreasonable. It merely indicates, at the very most, that those fares were less unjustly discriminatory than prior fares. This is not enough to satisfy the Federal Aviation Act.

IV. This court should order appropriate relief for the traveling public

A. The Court Has the Power To Award Relief

There has been some dispute as to whether the Board has the power to grant the relief requested by petitioners. The carriers and Board have pointed to *T.I.M.E., Inc. v. United States*, 359 U.S. 464 (1959), for the proposition that the Board may not order reparations. Petitioners have maintained, however, that restitution or a similar remedy for agency-made rates successfully challenged on direct review is entirely different from reparations which are ordered for carrier-made rates challenged collaterally, after becoming final. Petitioners have relied on *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223 (1965) and the rule therein recognized that "an agency, like a court, can undo what is wrongfully done by virtue of its order." 382 U.S. at 229.

The Board did not address this issue in Order 73-7-39, and the issue has now been superseded by events. The fares under investigation have been replaced by new fares, and the Board has refused to order appropriate relief. The question now is whether this Court can award the requested relief itself.

Callery makes clear that the absence of a reparations remedy in the governing statute is not dispositive of this question. The Supreme Court clearly distinguishes between "reparation orders" and relief with respect to an "order, which has never become final, [and which] has been overturned by a reviewing court." As the *Callery* Court observed, "judicial review at times results in the return of benefits received under the upset administrative order." 382 U.S. at 229.

If *Callery* were not enough to establish the Court's power to award appropriate relief here, the decisions in *Williams v. W.M.A.T.C.*, 134 U.S. App. D.C. 321, 415 F.2d 922 (1968),

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and Democratic Central Committee of the District of Columbia v. W.M.A.T.C., No. 21-865, June 28, 1972 (slip opin., pp. 76-82) permit no doubts.⁵⁵ In *Williams*, the Court chose to exercise such power, rather than remanding to the administrative agency, because the agency lacked "continuing power . . . to deal with the subject matter of the proceeding." 134 U.S. App. D.C. at 339, 415 F.2d at 940. The same is true here. The fares in question were replaced in May 1971, and a remand to the Board for further consideration would therefore be inappropriate. The Court has ample power under *Callery*, *Williams*, and *Democratic Central Committee* to fashion relief itself.

B. Relief Should Be Awarded in the Form Established by This Court's Decision in *Bebchick v. Public Utilities Commission*, 115 U.S. App. D.C. 216, 318 F. 2d 187 (1963).

Petitioners believe the most appropriate relief in this case would be either restitution to members of the public who were called upon to pay the illegal October 1969 fares or the establishment of a fund or reserve against which future fare increases can be charged. Unfortunately, the carriers have destroyed their records for the period in question and have thereby made restitution a difficult matter. Moreover, it appears likely that many passengers who traveled by air more than three years ago have not retained the necessary records to establish their entitlement to restitution now. Accordingly, in view of the time that has elapsed since *Moss I*, petitioners suggest that establishment of a passengers' fund or reserve would not be the preferred form of relief for the traveling public. This Court ordered establishment of a similar fund or reserve in *Bebchick v. Public Utilities Commission*, 115 U.S. App. D.C. 216, 318 F.2d 187 (1963). The possibility of this type of relief was suggested by the Court's Order of January 9, 1970, in *Moss I*.

The Court has recognized that such a fund or reserve necessarily benefits a class that is not precisely identical to the class that was injured by the illegal fares, "since some riders would cease to use the transit, and new riders would replace them." *Bangor & Aroostock R.R. Co. v. Brotherhood of Locomotive Firemen and Engineers*, 143 U.S. App. D.C. 90, 99, 442 F. 2d 812, 821 (1971). But in *Bebchick*, "in the context of avoiding carrier retention of fares unlawfully charged and compensating those victimized by the unlawful action there was sufficient relationship and overlap of classes to permit a judgment that the compensation inure in substantial measure to the class of those who had suffered harm." 143 U.S. App. D.C. at 99, 442 F. 2d at 821. The same point applies here. As in *Bebchick*, there appears to be a "sufficient relationship and overlap of classes" to permit the conclusion that the public traveling by air in the future will be substantially the same as the public that was injured by the October 1969 fares. None of the carriers has raised serious objections on this point, nor with respect to the feasibility of establishing a *Bebchick* fund or reserve in this case. Accordingly, this form of relief appears most suitable.⁵⁶

C. The Extent of Relief Should Be Governed by Legal and Equitable Principles

1. Overcharges

The October 1969 fares produced additional revenues for the carriers, beyond what the prior fares would have produced, to the extent of \$265,913,000 for the period from October 1, 1969 through September 30, 1970.⁵⁷ Petitioners' Exhibit MOC-1 (App.), reflecting reasonable guidelines for capacity and indirect costs, demonstrated that revenues were at least \$238,519,000 in excess of what just and reasonable fares would have produced.⁵⁸ Both of these figures substantially understate the extent of the injury to the public caused by the fares in question.⁵⁹

Under the authorities already set forth in prior sections of this brief, the public is legally and equitably entitled to restitution in the full amount of the overcharges produced by the October 1969 fares. Accordingly, petitioners believe that relief to the extent of at least \$238,519,000 is warranted by the precedents.

2. The carriers' operating profits

The Board has noted that if the carriers were required to refund overcharges in this case, "this would more than wipe out the \$123 million in net operating profit for the trunks and local service carriers for the relevant period." (73-7-39, p. 9, App. —) In other words, while the carriers may have squandered more than half of the additional revenues produced by the fares in question, they have not reaped unconscionable profits. While petitioners believe that the carriers' poor financial performance does not substantially affect either the equities of the matter or the issue of justness and reasonableness, it may not be improper to consider that performance in determining the appropriate disposition of this case.⁶⁰

However, given the very strong case for relief to the public, denial of all monetary relief—the result reached in Order 73-7-39—is clearly wrong. This result has the effect of condoning a blatant violation of the Federal Aviation Act simply because the carriers did not earn the rate of return which the Board considers appropriate. Since the Board has established that rate at 12 percent for the trunkline carriers and 12.35 percent for the local service carriers,⁶¹ and since cost competition has effectively prevented such earnings for the past twenty years,⁶² the Board's approach in this case would effectively preclude relief to the public no matter how fares were established or how unreasonable they were. This seems neither fair to the public nor faithful to the statute.

Petitioners suggest, therefore, that it may be appropriate to limit the extent of relief in this case to the carriers' operating profits—\$123,417,000.⁶³ While the equities may not support placing the carriers in a loss position for the period in question, petitioners strongly support the Board's conclusion that "there is no reason why passengers rather than shareholders should pay for excess capacity" through fares which were illegal and unreasonable in every sense, 71-4-54, p. 40.

If this Court should conclude, however, that requiring the carriers to disgorge their entire profits is still too harsh a result, then petitioners propose, at the least, that relief be granted to an extent that is sufficient to provide a disincentive against illegal rate-making in the future. The minimum relief appropriate for these purposes would be that portion of the carriers' net operating profits which is allocable on a pro rata basis to the October 1969 fares, plus the costs that petitioners have incurred in prosecuting this case, including reasonable witness' and attorneys' fees. The ratio of carrier revenue attributable to the October 1969 fare increase (\$265,913,000) to total carrier revenue for the year ending September 30, 1970 (\$5,553,911,000) is 4.5 percent. If this percentage figure is applied to the carriers' net operating profit of \$123,417,000, the result is \$5,553,765. Although this figure is far less than the harm actually caused the public by the October 1969 fares, in petitioners' view it represents the bare minimum relief required in the circumstances of this case.

In any event, the relief ordered should be apportioned among the carriers on whatever reasonable basis the Board determines to be proper. The case should be remanded to the agency for the purpose of making this determination and in order to ascertain, as in *Bebchick*, whether a fund or a reserve is preferable.

CONCLUSION

For the reasons set forth above, Board Order 73-7-39 should be found erroneous and relief as described should be ordered for the benefit of the traveling public.

Respectfully submitted,

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Dated: December 26, 1973.

FOOTNOTES

⁵⁵This case was previously before the Court in Docket No. 23,627, and a decision was rendered. *Moss, et al. v. Civil Aeronautics Board*, 139 U.S. App. D.C. 150, 430 F. 2d 891 (July 9, 1970).

⁵⁶The Act will hereinafter be cited by section number only, without parallel citation to the United States Code. Sections 102, 1002(d), and 1002(e), the critical sections in this case, are reproduced in Addendum A attached to this brief.

⁵⁷Setting rates with reference to the reasonable costs of efficient service, rather than experienced costs regardless of reasonableness, discourages unreasonable costs by denying rate increases to cover them.

⁵⁸See Order 70-2-121 (February 26, 1970), and Order 70-11-91 (November 19, 1970).

⁵⁹The October 1969 fares had remained essentially unchanged until June 19, 1970, when the Board permitted the carriers to "round up" to the next highest dollar all fares which, by the formula announced in Order 69-9-68, did not produce an even dollar fare. The "round-up" decision, which the Board envisioned as a \$50 million additional fare increase for the carriers, was accomplished by an agency press release, without giving the public an opportunity to voice its views or lodge objections. It was the October 1969 fares, as increased by the "round up" decision, which prevailed on July 9, 1970.

⁶⁰See note 4, *supra*.

⁶¹Orders 71-4-59/60 found that intervening upward adjustments in first-class and discount fares represented a fare increase of approximately 3 percent over the fares prevailing as of July 9, 1970.

⁶²Subsequently, the tentative decision announced in Order 71-4-59 was made final, with slight modifications, by Order 72-8-50, dated August 10, 1972.

⁶³The July 30 order noted that "there is pending before the Board a complaint filed by these petitioners requesting the Board to institute an adjudicatory proceeding for the purpose of determining appropriate relief for rate overcharges exacted during the period extending from October 1, 1969 thru the date on which lawful domestic fares are re-established." The October 27 order noted that "the Board has assured this court that it is proceeding expeditiously to conclude the Domestic Passenger Fare Investigation and to determine the issues raised in petitioners' supplemental complaint. . . ."

⁶⁴This order is cited hereinafter by number only, with a page number.

⁶⁵The Judicial Panel on Multidistrict Litigation consolidated these various actions for pretrial proceedings in the United States District Court for the Northern District of Illinois. *In re Air Fare Litigation*, 322 F. Supp. 1013 (1971). Subsequently, all proceedings were stayed pending the outcome of the relief proceeding held by the Board. *Weidberg v. American Airlines*, 336 F. Supp. 407 (N.D. Ill., 1972). Petitioners are not parties to these class actions.

⁶⁶In early August 1971, petitioners learned that in July the Board had conducted private meetings with two airlines dealing with matters such as excess capacity, load factors, and fare adjustments. Petitioner Moss wrote to Board Chairman Secor D. Browne on August 5, 1971, expressing surprise at this news and posing specific questions regarding the meetings. On October 21, 1971, Chairman Browne responded that private meetings had

indeed been held, without public notice, and that they had dealt in part within "certain general topics of significance in regulation of the airlines." Chairman Browne claimed that Moss I did not hold that such meetings were illegal or improper; that since the DPFPI was under way, it made no difference if the Board met with carrier representatives in private sessions; and that the meetings in question were necessary to enable the Board to understand and appraise the industry.

¹² Cost and revenue-hour data was needed by petitioners to calculate precisely the extent of excessive carrier costs, particularly overcapacity, during the period under investigation. (Tr. 647-48, 709-11) Information with respect to representative city pairs was needed to investigate the discriminatory features of the fare structure. And the lack of information on *ex parte* contacts prevented petitioners from probing the circumstances under which the October 1969 fares were established and the circumstances under which the relief proceeding was instituted and limited by the Board.

¹³ Tr. 791-94. See also Bureau Response to Notice of Prehearing Conference, Request of Trial Examiner for Statement of Position, July 8, 1971.

¹⁴ Tr. 804: "The Bureau wears many hats in these proceedings. One, we are interested in seeing that the Examiner and the Board have a complete record so they will have a sufficient amount of facts to make their decision. Secondly, we represent the public in the sense that we are attempting to look out for the public's interest in that they get the lowest fares possible. At the same time we are looking out for the interests of the carriers, to see that they get what they are entitled to in the form of a return on investment." (Testimony of Bureau Witness Edward A. McKay.)

¹⁵ The decision is cited hereinafter as "I.D.," with a page number.

¹⁶ The Examiner concluded that the fares were not unjustly discriminatory because they were less discriminatory than the "hodgepodge" that prevailed prior to October 1, 1969 (I.D., p. 34, App.—); and that petitioners had been given a "full and fair hearing," since "no evidence which was relevant to the issues was ruled out." (I.D., pp. 15-17, App.—)

¹⁷ Petitioners also questioned the Examiner's assertion that the relief proceeding had been "full and fair," in light of the denial of requested information and the refusal to provide them with assistance for the presentation of their case.

¹⁸ The order will be cited hereinafter by its number, with a page number.

¹⁹ An Appendix to Order 73-7-39 (App. —) deals with petitioners' contention that the relief proceeding was unfair. The Appendix does not, however, discuss the denial of the assistance requested by petitioners. Insofar as it addresses the denial of requested information, it alleges that some of the requested information was available elsewhere, that some was proffered by a few of the carriers despite the Examiner's denials, and that some did not fit within the Board's limited concept of the relief proceeding. The other points treated in the Appendix deal with matters raised below and which, in order to avoid a multiplicity of issues, petitioners do not assert on this appeal.

²⁰ The Board has not seen fit to discontinue its practice of holding regular private meetings with the regulated industry to discuss matters relating to ratemaking. In response to petitioner Moss's letter of August 5, 1971 to Chairman Browne, see note 11, *supra*, the Chairman replied that private meetings between the Board as a whole and carrier representatives had been held, without public notice, on at least 40 occasions between October 1, 1969 and June 17, 1971. In response to a further letter from petitioner Moss on December 10, 1971, seeking information on

meetings of individual Board members and Board staff with carrier agents and employees, Acting Chairman Whitney Gilliland replied on January 27, 1972 that there were too many such meetings to describe. His letter stated that "perhaps more than 3,000 meetings may be covered by your request."

²¹ In fact, the revenue impact of the illegal October 1969 fares was considerably greater than the amount stated in text because Bureau Exhibit BE-41 (App. —), from which the amount in text is drawn, extends only through September 30, 1970—fully seven months less than the time over which those fares prevailed. See pages 5-9, *supra*.

²² Like petitioners, *Middlewest* finds *Alouette* a helpful "analogy." 433 F.2d at 224.

²³ Contrary to suggestions by Examiner Newman, the defect in the rates involved in *Alouette* was not that they were higher than the I.C.C. had found the carrier entitled to, but that they had been filed on too short notice and thus not in a "manner allowed by law." The I.C.C., like the Board in the present case, specifically found in *Alouette* that the rates in question were not unreasonably high. 253 F.2d at 454 & n. 4, 455 & n. 6.

²⁴ See 73-7-39, Appendix, pp. 3-4, App. —.

²⁵ Means by which carrier earnings may be taken into account in the ultimate disposition of this case, should the Court believe this proper, are suggested in part IV C of this brief, pages 63-66, *infra*.

²⁶ See *e.g.*, Order 71-2-109: "the measure of overcharges, if any, constitutes those sums in excess of just and reasonable fares as determined by the standards of the Federal Aviation Act..." (p. 9)

²⁷ The Board is obviously employing the term "unjust enrichment" to mean excessive net profits, not excessive gross revenues. If the term were employed in the latter sense, it might be the antithesis of "justness and reasonableness."

²⁸ Compare *Moss I*: "there is more to rate-making than providing carriers with sufficient revenue to meet their obligations to their creditors and to their stockholders." 139 U.S. App. D.C. at 160, 430 F.2d at 901.

²⁹ This Order, dated April 9, 1971, was the Board's final decision in Phase 6B of the DPFPI, dealing with load factors. It will be cited hereinafter by number only, with a page number.

³⁰ The Board has called it "more than mere chance that the deterioration of traffic growth over the [period from 1969 to 1972]... has coextended with a number of significant increases in the level of normal and promotional fares." Order 72-8-50, p. 38 (August 10, 1972).

³¹ Exhibit BE-19 (App. —). Order 71-4-54 indicates that the trunk carrier load factor for this period was 48 percent. (p. 15)

³² Order 72-8-50, dated August 10, 1972, was the Board's final decision in Phase 7 of the DPFPI, dealing with fare level. It will be cited hereinafter by number only, with a page number.

³³ Either standard would reveal substantial revenues in excess of reasonable need, as long as a reasonable standard governing "dilution" is also employed. See MOC-1, App. —, and pages 42-44 and 52-53, *infra*.

³⁴ While there are other kinds of dilution, the term is used in this case to refer only to diluted yields produced by discount and promotional fares. (Tr. 741-42, 801-03.)

³⁵ This order embodied the Board's decision in Phase 5 of the DPFPI, dealing with discount fares. It will be cited hereinafter by number only, with a page number.

³⁶ See Tr. 80, 103, 128, 143-45, 245, 287, 290, 302-03, 311, 321-22, 371-73, 445-56, 457, 463-64, 509, 511.

³⁷ Since fares are not generally made on a market-by-market basis but, as in this case, by use of a nationwide formula, the high costs of excessive capacity in the long hauls

is passed on to all users of air travel, throughout the system.

³⁸ While the exhibit was "a forecast of future dilution reflecting the changes which had taken place in the discount fare structure authorized in Phase 7" (73-7-39, p. 23, App. —) it was obviously based on past experience and, if anything, reflected a conservative demonstration of the trend that Mr. Klazuba described, since Phase 7 resulted in a raising of discount fares.

³⁹ See note 36, *supra*.

⁴⁰ In other contexts the Board has defended its own suggested standards as "necessarily based on judgment. However, we must begin at some point..." (71-4-54, p. 37)

⁴¹ It will be recalled that the Board refused to provide petitioners with assistance for the presentation of their case. See page 12, *supra*.

⁴² MOC-1 employed the 54 percent industry-wide load factor standard set in Order 71-4-54 rather than the 55 percent trunk-line standard.

⁴³ See pages 5-9, *supra*.

⁴⁴ See page 54, *infra*.

⁴⁵ The comparison is between the DPFPI requirements of a 55 percent load factor standard and a zero dilution standard, on the one hand, and the trunklines' experience during the year ending September 30, 1970-48.9 percent load factors and approximately 16 percent dilution.

⁴⁶ Direct costs are all operating costs directly associated with the expense of flight. Indirect costs refer to other expenses, including cabin service.

⁴⁷ Section 1002(e) (1) requires the Board to consider "the effect of... rates upon the movement of traffic." The Board's entire discussion of this factor in Order 73-7-39 was as follows:

[I]n Phase 7 (Fare Level), the Board determined that the impact on traffic of across-the-board increases in fare level should be measured by a coefficient of -.7. There is no basis to assume that elasticity during the past recent period is other than that found in Phase 7, and that the fare increases had a depressant effect on traffic of approximately, -.7. Nevertheless, as we have shown, the fare increase was required to provide needed additional revenues to the carriers." (pp. 26-27; citation omitted; App. —). Apart from an emphasis on carrier needs, this discussion is incomprehensible. Surely it does not satisfy the statute.

⁴⁸ The Board described these fares in Order 69-9-68 as having been "for some time... considerably in excess of costs..." (p. 7)

⁴⁹ The Board recognized this problem in Order 69-9-68, but brushed it aside. (pp. 5-6)

⁵⁰ Many discount fares were found unjustly discriminatory in the DPFPI, Order 72-12-18.

⁵¹ In May of 1969 the Board found "no reason for continuing such inequity." Order 69-5-28, p. 4. However, Order 69-9-68, six months later left the issue unresolved.

⁵² Petitioners do not concede that any passenger paid less than a reasonable fare, assuming fares had been established in a reasonable fashion. See pages 50-51, *supra*.

⁵³ Petitioners do not understand the Board to claim that it would be impossible to tailor relief in this case so that passengers paying "unreasonably low" fares would not receive a windfall. Like the issue of fare structure, the issue of appropriate relief was not reached in Order 73-7-39.

⁵⁴ Petitioners' efforts to secure information bearing on fare structure were rebuffed by the Trial Examiner. See pages 13-14, *supra*.

⁵⁵ Although these cases arose under the Washington Metropolitan Area Transit Regulation Compact, the relevant terms of that Compact are comparable to those of the Federal Aviation Act and the approach taken in the cited cases is, therefore, applicable here.

⁵⁶ Order 73-7-39 did not address this question.

⁵⁷ See Bureau Exhibit BE-41, App. —.

⁵⁸ See pages 52-53, *supra*.

⁵⁹ Both calculations extend only through September 30, 1970, while the October 1969 fares actually prevailed for approximately six months thereafter. See pages 5-9, *supra*. In addition, Exhibit MOC-1 (App. —) reflects highly conservative estimates of the amount by which revenues exceeded the just and reasonable. See pages 52-53, *supra*.

⁶⁰ See page 31 and note 25, *supra*.

⁶¹ See Order 71-4-58 (April 9, 1971), the final decision in Phase 8 of the DPFI, dealing with rate of return. It is not entirely clear that the carriers are entitled to these rates of return from the October 1969 fares since Order 69-9-68, which established those fares, explicitly employed a 10.5 percent rate of return. (p. 9) Exhibit MOC-1 reflects the rate used in Order 69-9-68.

⁶² See Bureau Exhibit BE-51, App. —, containing statistics with respect to the trunklines only. The local service carriers have historically earned considerably less than the trunklines.

⁶³ See I.D., Appendix A, App. —.

ADDENDUM A

PRINCIPAL STATUTES INVOLVED

Federal Aviation Act, § 102 (49 U.S.C. 1302)

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

Federal Aviation Act, § 1002(d)(e) (49 U.S.C. 1482)

(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the Service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective: *Provided*, That as to rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and

reasonable maximum or minimum, or maximum and minimum rate, fare, or charge.

(e) In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Board shall take into consideration, among other factors—

(1) The effect of such rates upon the movement of traffic;

(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

(3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;

(4) The inherent advantages of transportation by aircraft; and

(5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

ADDENDUM B

PRINCIPAL DEVELOPMENTS RELATING TO MOSS v. C.A.B.

April 21, 1969: Petitioners' Complaint and Request for a General Passenger Fare Investigation.

Petitioners alleged that carrier proposals for a fare increase did not comply with the standards of the Federal Aviation Act and that the proposed increase was unjust and unreasonable. Petitioners recommended that the Board suspend and investigate the carrier proposals and undertake a general investigation of domestic passenger fares.

May 8, 1969: C.A.B. Order 69-5-28.

This order suspended the carrier proposals pending Board investigation of their reasonableness, and deferred decision on a general rate investigation.

August 20, 1969: Petitioners' Complaint in the Matter of Tariffs Filed During the Month of August 1969.

Petitioners requested suspension and investigation of new carrier proposals on the grounds that the Board was without rate-making standards permitting assessment of these proposals and that the carriers had not shown that the level and structure of the proposed fares were just and reasonable. Petitioners again requested institution of a general investigation of passenger fares.

September 12, 1969: C.A.B. Order 69-9-68.

This order suspended the carrier proposals pending investigation, and suggested use of a comprehensive formula involving a line-haul rate and a terminal charge. Application of the formula would produce a 6.35 percent increase in fares which the Board said it would allow to become effective as of October 1, 1969. Tariffs embodying such increase were to have an expiration date of January 31, 1970. A general investigation of domestic passenger fares was again deferred.

September 22, 1969: Petitioners' Petition for Reconsideration of Order 69-9-68.

September 30, 1969: Board Order 69-9-150. This order denied reconsideration of Order 69-9-68.

November 10, 1969: Petitioners' Petition for Review of Orders.

Orders 69-9-68 and 69-9-150 in the United States Court of Appeals for the District of Columbia Circuit.

December 11, 1969: Petitioners' Motion to the Court of Appeals for Interlocutory Relief.

Petitioners sought an order setting aside the increased fares that had gone into effect on October 1, 1969 and reinstating the prior fares. Alternatively, petitioners sought an order permitting the carriers to continue charging the October 1969 fares but requiring them promptly to repay overcharges in the event those fares were ultimately declared illegal.

January 9, 1970: Petitioners' Complaint in the Matter of Tariffs Filed on December 31, 1969.

Petitioners requested that carrier proposals to extend the October 1969 fares be suspended and investigated. Petitioners alleged that Order 69-9-63 was illegal, and the tariffs filed pursuant thereto were unjust, unreasonable, and unlawful. Petitioners reiterated their request for a general domestic passenger fare investigation.

January 9, 1970: Court of Appeals Order.

This order deferred action on petitioners' motion for interlocutory relief for thirty days to permit the Board to consider petitioners' pending request for a passenger fare investigation. The order also called for supplemental memoranda from the parties on (1) the feasibility of monthly statements by the carriers setting forth the amounts attributable to the October 1969 fares, and (2) the power of the Court to suspend rates pending determination of the Court's jurisdiction.

January 29, 1970: C.A.B. Order 70-1-147.

This order instituted a Democratic Passenger Fare Investigation (DPFI), covering various aspects of airline ratemaking.

January 29, 1970: Press Release: C.A.B. 70-11.

The Board announced that it had decided to approve joint fare agreements proposed by local service carriers and would therefore allow such carriers to extend the October 1969 fares beyond January 31, 1970. The Board indicated that it would allow similar extensions by the trunk carriers if they agreed to a proposed joint fare formula.

January 30, 1970: Petitioners' Complaint in the Matter of Passenger-Fare Revisions and Extensions Proposed for February 1-15, 1970.

Petitioners complained against extension of the October 1969 fares pursuant to Press Release 70-11. Petitioners contended that Order 69-9-68 was illegal and that tariffs or tariff extensions based on that order were similarly illegal. Moreover, Press Release 70-11 was improper procedurally and had been issued without considering the ratemaking criteria specified by the Federal Aviation Act. Finally, the joint fare agreement that the Board indicated it would accept was discriminatory and unreasonable.

February 26, 1970: C.A.B. Order 70-2-121.

This order divided the DPFI into nine separate phases investigating: (1) aircraft depreciation; (2) leased aircraft; (3) deferred federal income taxes; (4) joint fares; (5) discount fares; (6) load factors and seating configurations; (7) fare level; (8) rate of return; and (9) fare structure.

June 19, 1970: Press Release: C.A.B. 70-79.

The Board announced that as of July 1, 1970, it would allow domestic carriers to round all fares up to the nearest dollar, resulting in increased revenues estimated to approximate \$50,000,000. The Board recognized "that the public had no notice of the carriers' proposal to increase fares on July 1st or opportunity to file comments. . . ."

July 9, 1970: Court of Appeals Decision in *Moss v. C.A.B.*, 139 U.S. App. D.C. 150, 430 F.2d 891 (*Moss I*).

Order 69-9-68 was declared invalid, and tariffs filed pursuant to that order were found unlawful. The case was remanded to the Board for further proceedings.

July 14, 1970: Letter from Petitioner John E. Moss to Secor D. Browne, Chairman of the C.A.B.

Congressman Moss requested: (1) that there be no *ex parte* communications between the Board and any carrier regarding fares; (2) that he be informed of any meetings between carriers and members or employees of the Board; and (3) that the Board notify him of any action taken in connection with the case or of any proposals made by the carriers or the Board regarding fares.

July 24, 1970: Petitioners' Supplemental Complaint.

Petitioners suggested re-establishment of the fares in effect prior to October 1, 1969, pending determination of lawful fares by the Board. In addition, they requested institution of an expedited adjudicatory proceeding to determine appropriate relief to the traveling public for the overcharges attributable to the October 1969 tariffs found unlawful in *Moss I*.

July 28, 1973: C.A.B. Order 70-7-128.

This order "accepted" the decision of the Court of Appeals in *Moss I* and vacated Order 69-9-68. Although the Board recognized that the prevailing fares, embodying the structure and the increase suggested in Order 69-9-68, fell within the condemnation of the Court's judgment, it declared that those fares were the only ones that could lawfully be charged pending establishment of new fares. The Board called for the carriers to submit new tariffs "free of any compulsion that may have been inherent in the invalid Order 69-9-68." It stated that the new carrier filings should bear an effective date of October 15, 1970 and indicated that it would rule on the proposals by September 15, 1970, in order to allow the carriers to make "competitive filings." The Board stated that it would not establish fares itself without duplicating efforts under way in the DPFI.

July 28, 1970: Petitioners' Complaint in the Matter of Proposed Extensions of Domestic Passenger Fares.

Petitioners opposed proposals by various carriers to extend the rounded-up October 1969 fares beyond their August 31, 1970 expiration date, on the ground that these fares were based on Order 69-9-68, held by the Court of Appeals to be unlawful, and the similarly unlawful June 1970 press release.

July 29, 1970: Respondent's Motion for Partial Stay of Mandate.

The Board moved the Court of Appeals to stay its mandate in *Moss I* for 90 days to permit establishment of new fares. Because the procedure it proposed to adopt for this purpose involved maintaining the fares held unlawful in *Moss I* in effect for approximately 90 days, the Board requested a stay of the Court's mandate to allow completion of that procedure.

July 29, 1970: Petitioners' Response to Motion for Partial Stay of Mandate.

Petitioners objected to the partial stay of mandate because (1) the Board proposed to continue the unlawful October 1969 fares for an additional 90 days; (2) the procedure adopted by the Board to establish new fares—involving tariff submissions from the carriers—would be unlikely to result in fares untainted by the unlawful Order 69-9-68; and (3) the Board, which was in part responsible for Order 69-9-68, should bear the responsibility of determining new rates itself, according to the criteria of sections 1002(e) and 102 of the Federal Aviation Act, and subject to judicial review. In the event the Court determined to grant a stay, petitioners requested that it take appropriate measures to protect the claim of the public to relief for the period up to the re-establishment of lawful fares.

July 30, 1970: Court of Appeals Order.

The Court granted the Board's motion for a partial stay of mandate. Because petitioners' supplemental complaint for relief for rate overcharges was pending before the Board, the Court deemed it unnecessary to address itself to the issue of protecting the traveling public during the period of the stay.

August 26, 1970: Petitioners' Complaint in the Matter of Tariffs Proposed by the Domestic Air Carriers To Take Effect on October 15, 1970.

Petitioners objected to the proposed tariffs because: (1) the Board could not rationally choose among them, since the carriers had failed to supply relevant data and standards or to submit appropriate justification for their proposals consistent with the Federal

Aviation Act; (2) the carrier filings were all based on Order 69-9-68, despite the Board's statement in Order 70-7-128 that new tariff proposals should be independently made; (3) the carriers had engaged in unauthorized exchanges of information regarding their fare proposals in apparent violation of section 102 of the governing statute and possibly in violation of the antitrust laws.

September 15, 1970: C.A.B. Order '70-9-73.

This order dismissed as moot petitioners' request that the Board re-establish the fares in effect prior to October 1, 1969. It also deferred action on petitioners' request for a proceeding to determine appropriate relief for the public and called for briefs on the Board's power to grant such relief, the nature of proof to be introduced to prove overcharges, the procedure to be employed, the relationship between the DPFI and the proposed relief proceeding, and the form of relief to be accorded.

September 24, 1970: C.A.B. Order 70-9-123.

This order suspended all carrier tariffs filed pursuant to Order 70-7-128 except those which re-established the rounded up October 1969 fares. The order justified continuation of those fares on the grounds that the new proposals were free from any compulsion inherent in Order 69-9-68 and did not appear prima facie unreasonable, since the carriers' earnings were sub-marginal and the problem of excess capacity could not "be remedied overnight." Objections to the "rounding-up" procedure would be resolved by the DPFI, and, in the interim, the amounts involved for individual passengers were minimal. Moreover, all of the carrier filings rejected by the Board proposed further increases in fares.

October 7, 1970: Petitioners' Motion for Further Stay of Mandate.

Petitioners alleged that the procedure adopted by the Board of Orders 70-7-128 and 70-9-123 did not comply with the Court's decision in *Moss I*, and that the Board's actions amounted to an extension of fares which had been found unlawful. The Board had accepted fares identical to the rounded-up October 1969 fares; the fact that it had declared the carriers free from any compulsion to adopt the formula presented in Order 69-9-68 did not prove tariffs reflecting that formula were carrier-made. Petitioners argued that the situation uncovered in *Moss I* could not be remedied through carrier-made filings since the Board possessed no ratemaking standards against which to examine such filings. Petitioners requested the Court to stay its mandate in *Moss I* again, pending re-establishment by the Board of lawful fares, and to order the Board to render a prompt decision on its power to grant the relief for the public which petitioners had requested.

October 15, 1970: Petitioners' Brief Concerning the Matters Discussed in C.A.B. Order 70-9-73.

Petitioners contended that the Board has ample power to award appropriate relief for the illegal October 1969 fares, that it should decide this jurisdictional question at the outset of the relief proceeding, and that there was no reason to combine the relief proceeding with the DPFI. With respect to the standards governing relief, petitioners contended that the public was presumptively entitled to the full amount of the October 1969 fare increase unless the carriers could show that some portion of the increase was justifiable under the Federal Aviation Act. Petitioners also asserted that the most equitable form of relief would be refunds to passengers who were overcharged or, in the event this proved not fully possible, the establishment of a fund or reserve to be offset against future tariff actions or otherwise used in the interest of the traveling public.

October 19, 1970: Respondent's Opposition to Petitioners' Motion for Further Stay of Mandate.

The Board alleged that the tariffs which went into effect on October 15, 1970 were lawful, carrier-made tariffs and that since the Court's mandate would be directed only at tariffs in effect prior to October 15, 1970, a further stay of that mandate would be an "empty gesture." Respondent also urged rejection of petitioners' request for an order requiring the Board to rule promptly on its power to grant relief.

October 27, 1970: Court of Appeals Order.

Petitioners' Motion for Further Stay of Mandate was denied on the ground that the Board had assured the Court that it was proceeding expeditiously to conclude the DPFI and to determine the issues raised in petitioners' supplemental complaint regarding relief.

November 19, 1970: C.A.B. Order 70-11-91.

This order subdivided Phase 6 of the DPFI into two parts, dealing respectively with seating configurations and load factors.

November 20, 1970: Letter from Petitioner Moss to C.A.B. Chairman Browne.

Congressman Moss stated petitioners' position that the existing fares were illegal—both because they were identical to those held illegal in *Moss I* and because the process by which they were established was substantially the same as that condemned in *Moss I*. Moss also noted that legal fares could not be re-established until the DPFI was completed and retrospective relief was granted to the public.

November 27, 1970: Letter from C.A.B. Chairman Browne to Petitioner Moss.

Chairman Browne asserted that the Board had complied with the procedure described to the Court of Appeals in Respondent's Motion for Partial Stay of Mandate and that the prevailing fares were "the lowest which could have been put into effect" pending completion of the DPFI.

February 25, 1971: C.A.B. Order 71-2-109.

This order initiated an investigation to determine whether the fares charged from October 1, 1969 through October 14, 1970 were unjust and unreasonable and, if so, the amount of any resulting overcharges. The Board rejected petitioners' request that it first determine whether it had power to grant the requested relief. The order noted that class actions had been brought against the carriers in various lower courts around the country, and stated that "the Board's resolution of the reasonableness issue at this time could be an aid to the district courts in fashioning relief, if indeed relief is due, or in determining whether the class actions should be entertained any further."

March 8, 1971: Petitioners' Petition for Reconsideration of Order 71-2-109.

Petitioners requested reconsideration and clarification of various aspects of Order 71-2-709, specifically: (1) that the investigation should include petitioners' contention that the fares which went into effect on October 15, 1970 were as unlawful as those that had prevailed previously; (2) that the investigation should cover the reasonableness of the fare structure as well as the reasonableness of fare level; (3) that the Board should clarify various statements in Order 71-2-109, which appeared either to misstate petitioners' position or to prejudice the investigation; (4) that the Board should specify the actions it would take if the fares were found unreasonable; (5) that the hearing examiner should be given authority to consider issues not anticipated by the Board; (6) that the burden in the relief proceeding should be placed squarely on the carriers in light of the finding in *Moss I* that the fares in question were illegal and because most of the relevant information lay in the carriers' hands; and (7) that the Board and carriers should provide petitioners with reasonable assistance, including attorneys' fees and witness' fees, to enable petitioners to present their position fully in the relief proceeding.

April 9, 1971: C.A.B. Order 71-4-54.
This order was the Board's decision in Phase 6B of the *DFFI*, dealing with load factor standards. The agency determined that such standards must be adopted by reason of section 1002(e) of the Federal Aviation Act and adopted standards of 55.0 percent of the trunklines, 44.4 percent for the local service carriers, and 54.1 percent for the industry.

April 9, 1971: C.A.B. Orders 71-4-59/60.
These orders announced the Board's tentative findings and conclusions in Phase 7 of the *DFFI*, dealing with fare level. The Board found that existing fare levels were unreasonably low, and that the carriers were entitled to a 12 percent increase over the rounded-up October 1969 fares. Because fares had already been increased approximately 3 percent since October 15, 1970, through various upward adjustments of discount and first-class fares, the Board tentatively ordered the maximum increase would be 9 percent above existing fares. Pending a final decision, the Board allowed an interim increase up to a maximum of 6 percent above existing fares.

May 3, 1971: Petitioners' Petition for Reconsideration of Orders 71-4-59/60.

Petitioners noted that the orders were not grounded in the statutory criteria governing ratemaking and that the Board had failed to indicate whether or how it applied those criteria in reaching its conclusions. In particular, petitioners objected to allocation of excess freight costs to passenger fares; estimation of carrier costs with reference to historical data and without determining whether such costs met the statutory standard of "honest, economical, and efficient management"; establishment of fares on a single nationwide and industrywide basis; and failure to assess the impact of a fare increase on the movement of traffic, as the statute requires. Petitioners urged that, if the Board was determined to grant a fare increase, it should institute a survey to determine the impact of that increase on particular classes of passengers.

May 13, 1971: C.A.B. Order 71-5-65.
This order denied petitioners' request for reconsideration of Order 71-2-109 on the grounds that: (1) The fares that went into effect on October 15, 1970 were lawful and properly excluded from the relief proceeding; (2) investigation of the reasonableness of specific fares were unwarranted and would be too burdensome; (3) the Board's delegation of authority to the hearing examiner was sufficient and petitioners had failed to specify the unanticipated issues they believed ought to be included in the proceeding; (4) Order 71-2-109 had made sufficient provision for the eventuality that the fares might be found unreasonable; and (5) there would be no presumption as to the reasonableness of the fares in question, and the burden of proof on the issue of reasonableness "would be apportioned as in any rate case." In addition, this order rejected petitioners' request for assistance in the presentation of their position in the relief proceeding.

May 20, 1971: Notice of Prehearing Conference.

Trial Examiner Ross I. Newmann set a preliminary conference for July 29, 1971, and instructed the Board's Bureau of Economics to submit by July 8, 1971 a proposed statement of issues, proposed stipulations, a request for evidence, statement of position, and proposed procedural dates. The parties were then to reply to the Bureau's submission.

June 28, 1971: C.A.B. Order 71-6-138.
This order denied petitioners' request for reconsideration of Orders 71-4-59/60.

July 8, 1971: Bureau Counsel's Proposed Statement of Issues, Request for Evidence, Proposed Stipulations, and Proposed Procedural Dates.

The Bureau restated the issues presented

as they had been defined in Order 71-2-109. It also proposed stipulations that certain of the Board's conclusions in the *DFFI* be employed in the relief proceeding and requested evidence regarding proposed forms of relief and summaries of revenues, expenses, investment, and capacity during the period under investigation. The Bureau took no position on the questions at issue.

July 20, 1971: Petitioners' Submission in Response to Notice of Prehearing Conference.

Petitioners proposed a detailed statement of the issues they believed involved in the relief proceeding, including the basis for the Board's original promulgation of Order 69-9-68, the reasonableness of the October 1969 fares in light of the criteria set out in the Federal Aviation Act, the extent to which fares were unreasonable with respect to particular carriers or classes of passengers, the Board's authority to grant relief, and the form which appropriate relief might take. In addition, petitioners requested information from each carrier in considerably greater detail than the Bureau had requested. They also asked that the carriers and Bureau be required to present their direct case before petitioners were called upon to respond.

July 27, 1971: Letter from Stanford G. Ross, Counsel for Petitioners, to Trial Examiner Ross I. Newmann.

Petitioners requested that a transcript of the Prehearing Conference be kept.

July 29, 1971: Prehearing Conference.
Petitioners' request that a transcript be kept was denied.

August 5, 1971: Letter from Petitioner Moss to C.A.B. Chairman Secor D. Browne.

Petitioner Moss noted the recent release of transcripts of *ex parte* meetings between the Board and Representatives of two carriers. In light of the potential effect of such meetings on the Board's decisions in the *DFFI* and the relief proceeding, petitioner Moss posed a series of questions regarding the meetings and asked whether the Board had made any revisions in its practices pertaining to *ex parte* meetings in light of *Moss I*.

August 9, 1971: Prehearing Conference Report of Examiner Ross I. Newmann.

The Examiner rejected all proposed issues and subissues suggested by petitioners and accepted only the basic issue adopted by the Bureau of Economics from Board Order 71-2-109. Much of petitioners' request for information was also rejected as "not relevant to the issues as defined by the Board," including (1) block times at 100-mile intervals, (2) available seat hours, (3) passenger hours flown, (4) data on actual and projected load factors, (5) terminal costs, (6) city-pair data, (7) information regarding *ex parte* contacts between the Board and the carriers. All parties were required to submit direct exhibits and testimony simultaneously, on December 3, 1971, and a public hearing was set for February 14, 1972.

August 16, 1971: Petitioners' Exceptions to Prehearing Conference Report.

Petitioners excepted to the Examiner's treatment of proposed issues on the grounds that he had failed to specify the subissues which he had rejected, leaving the parties without notice of the scope of the proceeding, and that he had apparently rejected consideration of fare structure, a matter highly pertinent to reasonableness. Petitioners also excepted to the Examiner's decision to reject most of their requests for evidence and specified the reasons why each requested item of information was relevant and necessary for assessing the reasonableness of the fares in issue. Petitioners again sought a date for the submission of their direct case following the direct submission by the carriers.

September 3, 1971: Supplemental Prehearing Conference Report of Examiner Ross I. Newmann.

The Examiner denied that any useful purpose would be served in an attempt to particularize the subissues involved in the relief proceeding. He rejected as erroneous petitioners' contention that he had excluded the issue of fare structure, claiming that only "extensive examination of each individual fare" was excluded. The remainder of petitioners' exceptions were either rejected or ignored.

September 13, 1971: Petitioners' Exceptions to Supplemental Prehearing Conference Report.

Petitioners stated that the Examiner's Prehearing Conference Reports had failed to establish a hearing that could fulfill the requirements of *Moss I* because relevant issues were excluded and petitioners were barred from obtaining necessary information from the carriers.

October 21, 1971: Letter from C.A.B. Chairman Browne to Petitioner Moss.

Chairman Browne responded to petitioner Moss's letter of August 5, 1971 regarding *ex parte* meetings between the Board and carrier representatives. He asserted that such meetings were a proper means of "understanding and appraising the industry [the Board] is required to promote and develop," and that the Board did not regard them as *ex parte* since they did not deal directly with issues involved in an adversary hearing or pending investigation. Chairman Browne stated, with respect to the particular meetings about which petitioner Moss had inquired, that no public notice was given, no one was present except representatives of the Board and a carrier or carriers, such meetings are very frequent, and that such meetings were unlike those involved in *Moss I* because, unlike the meetings which preceded Order 69-9-68, they did not involve all the trunkline carriers and were not concerned with matters involved in pending fare cases.

December 3, 1971: Direct Testimony of Petitioners' Witness, Richard W. Klabzuba.

Mr. Klabzuba stated that the data made available by the carriers was inadequate to permit a precise determination of overcharges produced by the October 1969 fares. He explained that such a determination should be made by applying specific ratemaking guidelines to determine the reasonable revenue need for adequate and efficient service and then by comparing this revenue need to the carriers' actual revenues.

December 10, 1971: Letter from Petitioner Moss to C.A.B. Chairman Browne.

Petitioner Moss objected that the information provided in Chairman Browne's letter of October 21, 1971 was incomplete. He requested further information on *ex parte* meetings between Board members or staff and private companies, groups, or individuals.

January 21, 1972: Rebuttal Testimony of Richard W. Klabzuba.

Mr. Klabzuba believed that the data and analysis presented by the carriers failed to demonstrate the reasonableness of the fares in issue. He expressed the view that the October 1969 fares were unreasonable because they underwrote unreasonable capacity and unreasonable costs. The amount of revenue required to provide adequate and efficient service during the period under investigation was considerably less than that provided by the October 1969 fares.

January 27, 1972: Letter from Whitney Gilliland, Acting Chairman of the C.A.B., to Petitioner Moss.

In response to petitioner Moss's letter of December 10, 1971, requesting information on all meetings between Board members and staff and private companies, groups, and individuals over the period from October 1, 1969 to October 5, 1971, Acting Chairman Gilliland replied that such meetings were so frequent (possibly in excess of 30,000) that even listing them would be impractical; moreover, no transcript is normally made

and no record is normally kept of such meetings or of the notice given and the persons present.

February 22 through March 1, 1972: Hearings Before Trial Examiner Newmann.

Mr. Klabzuba testified at length regarding his methodology for determining just and reasonable fares for the period under investigation. Petitioners submitted Exhibit MOC-1, demonstrating on the basis of the data made available by the carriers that the October 1969 fares had produced revenues substantially in excess of the amount needed for adequate and efficient service.

March 8, 1972: Submission of Petitioners' Exhibit MOC-2.

This exhibit, submitted pursuant to the request of the Bureau of Economics, refined somewhat the approach reflected in Exhibit MOC-1.

May 1, 1972: Petitioners' Brief to the Trial Examiner.

Petitioners argued that the October 1969 fares had occasioned overcharges to the traveling public of no less than \$250,000,000, that the Board had the power to grant refunds or other appropriate relief, and that the most appropriate form of relief would be refunds for the public or a fund against which future fare increases would be charged.

July 3, 1972: Initial Decision of Examiner Ross I. Newmann.

Examiner Newmann rejected petitioners' suggested guidelines for determining adequate and efficient service during the period in question. Instead, he hinged his decision on the carriers' return on investment. The Examiner found the fares in issue not unjust and unreasonable because they did not produce excessive earnings for the carriers.

July 24, 1972: Petitioners' Petition for Review of Initial Decision of Hearing Examiner.

Petitioners contended that the Examiner had failed to make necessary findings and had committed both errors of law and of procedure. His initial decision did not appear consistent with *Moss I*.

August 11, 1972: C.A.B. Order 72-8-50.

This order was the final decision in Phase 7 of the *DPFI*, dealing with fare level. It affirmed the tentative decision in Order 71-4-59, and the carriers were thus permitted to charge fares up to a maximum of 11.9 percent above the October 15, 1970 fare level.

September 7, 1972: C.A.B. Order 72-9-23.

This order granted Board review of Examiner Newmann's Initial Decision.

October 6, 1972: Petitioners' Brief to the Board.

Petitioners essentially repeated the arguments they had made to the Trial Examiner.

November 15, 1972: Oral Argument Before the Board.

December 8, 1972: C.A.B. Order 72-12-18.

This order was the Board's decision in Phase 5 of the *DPFI*, dealing with discount fares. It found that many promotional and discount fares were unjustly discriminatory and that fares would henceforth be set as if the discount fares were not a part of the fare structure. This decision was reached because the Board perceived that the effect of prior ratemaking policies with respect to discount and promotional fares was to encourage excess capacity and raise fares for all passengers.

July 11, 1973: C.A.B. Order 73-7-39.

This order accepted the Trial Examiner's analysis and rejected petitioners' arguments that the public is entitled to relief regardless of justness and reasonableness; and that a reasonable level and type of service must be determined in order to assess the justness and reasonableness of the fares in question. The Board declined to reach the issues of fare structure, its power to award relief, and the appropriate form of relief. Petitioners' Supplemental Complaint of July 24, 1970 was dismissed.

July 6, 1973: Petitioners' Petition to the

Court of Appeals for Review of C.A.B. Order 73-7-39.

THE PRESENT STATE OF THE ENERGY SHORTAGE IN RELATION TO THE ENERGY EMERGENCY BILL

(Mr. ECKHARDT asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. ECKHARDT. Mr. Speaker, it has been over a month now since the House of Representatives passed the Energy Emergency Act. Today there is a growing skepticism among the members of the public and among some Members of this body as to whether there is in fact an energy shortage which requires this emergency legislation. I shall undertake to show here that there is not. Certain information has come to light recently which must appear to any person of open mind to undermine much of the justification for the Emergency Act.

The Energy Emergency Act is the most sweeping grant of power to a President ever conceived by Congress. It is designed to attack the supposed shortage on two grounds, allocation and conservation.

I. THE ALLOCATION PROVISIONS DO NOT SUBSTANTIALLY ADD TO EXISTING AUTHORITY TO ALLOCATE AND RATION

The emergency bill clarifies and more clearly delineates the powers of the President to allocate—even to end-use-allocation—our present supply of fuel so that vital services will not be disrupted and so that equitable distribution will be assured to all.

In November Congress passed the Emergency Petroleum Allocation Act which gives sufficient powers to the President to act in the area of allocation. As I pointed out in my remarks to this body on December 18 and 19—pages 42350 and 42549 of the CONGRESSIONAL RECORD for those respective days—the Emergency Petroleum Allocation Act already gives the President full authority to allocate, even to the point of end-use-allocation—rationing. While some of the procedural refinements which this bill makes might be desirable, the need for them is not so immediate as to justify the enactment of this sweeping bill.

II. THE CONSERVATION PROVISIONS HAVE NOT BEEN PROVED NECESSARY

Because of voluntary conservation measures undertaken by individuals, price pressures, and specific legislative action in Congress and in State legislatures, demand for petroleum products has declined about 15 percent. This is equal to, or exceeds, the reduction in through-put of the refineries. Average reduction in through-put capacity is down from about 96 to 97 percent of capacity at normal operating levels to about 85 to 87 percent of capacity at the present time.

A. COAL CONVERSION

Just as the necessary allocation is already possible under existing statutory authority, the major conservation measures envisaged by this bill can be and in fact are already being taken. For instance, the major specific conservation measure provided in the legislation is the

mandatory conversion of some plants from oil to coal. Chairman Nassikas of the Federal Power Commission told the House Interstate and Foreign Commerce Committee that approximately 42 utilities could be converted from oil to coal within a period of 3 to 5 weeks, resulting in savings of oil equivalent to 104,000 barrels a day.

First. Mandatory coal conversion provisions: To achieve these conversions, we were told, we had to give the Executive the authority to mandate the conversions. Then, it was said, in fairness to the plants, we should grant long-term suspensions of the stationary source emission limitations so that plants which had converted could be assured that they would be able to burn coal for several years in order to offset the costs of the conversion. That is what was urged upon us at the time we reported, and then adopted, the House bill. Dutifully, the House of Representatives included in the Energy Emergency Act a provision which allowed the administration to require that plants with the ready capability to convert to coal to do so. This provision is contained within title I of the legislation. And most of title II of the bill deals with suspending the safeguards of the Clean Air Act until 1979 so that plants required to convert will be able to continue to operate with coal until January 1, 1979.

Second. Environmental protection relaxation under existing law: In the last week, I have been checking to see what the possibilities for coal conversion are without the emergency legislation. I have found that conversions are not only possible; they are already underway. Presently the Environmental Protection Agency can grant suspensions of the stationary source emission limitations up to June 30, 1977. Such suspensions must be approved by the State affected by the suspension after an opportunity for a public hearing. Thus it will be seen that statutory capability to grant variances exists within the bounds of the Clean Air Act. Conversions to coal have not been prevented, and industries that have not yet converted are preparing to do so and are quite willing to take their chances under existing law.

Third. Coal conversion now occurring: It is highly significant that, despite the lack of new legislative authority to mandate conversions and offer broader suspensions of environmental safeguards, nine electric powerplants on the east coast have already switched from oil to coal, representing a saving of 51,000 barrels of oil a day. The Federal Energy Office has also reported that four additional plants have indicated that they will convert to coal within 1 month, saving an additional 26,000 barrels per day. This means that under present law, 13 voluntary conversions resulting in savings of 77,000 barrels a day are already underway. This figure represents 75 percent of the savings the House Commerce Committee was told would result only if new legislation were enacted.

Fourth. Projected coal conversion: Not only are 13 voluntary conversions already underway, but regional offices of the Federal Energy Office are working to assist

still other plants to locate coal and obtain environmental variances to burn it, so that additional voluntary conversions are expected in the future. The FEO estimates that these conversions will reduce daily oil requirements by another 58,000 barrels. If the reports of the Federal Energy Office are correct, a total savings of 135,000 barrels a day will be achieved. This is 30,000 barrels more than was estimated could be achieved with the mandated conversions in the Energy Emergency Act.

Fifth. Price incentive for conversion: Recently I spoke with a gentleman in Houston, Tex., who manages one of the largest oil refineries in the world. He informed me that the bulk of the residual fuel oil which is used by utilities is imported from the Caribbean. The price of this oil is in some instances \$13 per barrel and is generally running much higher than the rate at which residual fuel has been obtained in plants using oil in the past. Clearly the economic incentive to convert to the use of coal will alone be sufficient to encourage conversion. That is, of course, the incentive which has brought about the conversions described above.

The administration has mounted an intense drive to convince Congress that the Energy Emergency Act must be enacted into law.

As I have pointed out, the major specific conservation measure provided for in the bill is already occurring without the Emergency Act, and the necessary allocation authority presently exists under the Emergency Petroleum Allocation Act. Therefore, I find that there is insufficient justification to approve this legislation which would afford the broadest grant ever given of authority to a President of the United States to take action without congressional approval.

III. THE EMERGENCY PETROLEUM ALLOCATION ACT IS WORKING AND IS SUFFICIENT

A. AUTHORITY UNDER THE ACT

At the time of the passage of the Emergency Petroleum Allocation Act the great danger was the possibility of homes going cold and the wheels of industry and commerce ceasing to turn for lack of middle distillates and residual fuel oil. The act gave the President authority to allocate petroleum products and to direct refineries to adjust their processes to produce that which must be produced to heat homes and keep the wheels of industry and commerce rolling. I believe the act has worked well to achieve these ends from my personal investigation.

This month FEO has taken necessary steps to mandate allocation of more crude oil in refineries for production of middle distillates. In the last several days Administrator Simon has said that such mandatory allocations do not appear necessary. This has come about in part due to FEO's exercising of pricing authority arising under the Economic Stabilization Act and being made applicable under the Allocation Act. The Agency has ordered a 1 cent per gallon reduction of the price of gas at the refinery level and has permitted a 2 cents per gallon increase on distillates and has provided other price incentives for additional middle distillate production.

B. OPERATION OF THE ACT IN PRACTICE

There is now no danger at all of fuel oil for home heating running short this winter. The refineries in my area have been splitting the barrel of crude at about 5 percentage points toward middle distillates, and away from gasoline, since about September.

Let us cite an example. It will be stated hypothetically because precise figures would need to be derived from more checking than has been possible in this short time. A refinery in my district has a throughput of about 220,000 barrels per day. It is now down about 10 percent. It may vary percentage of the barrel for gas, as against middle distillates, by about 6 percent, but the fluctuation is usually about 5 percent. A percent gain for distillates is about a percent loss for gasoline. I use the term "middle distillates" here to include No. 2 fuel oil, kerosene, kerosene jet fuel, and naphtha jet fuel.

The percentage of the barrel of crude that went for gasoline in that plant last summer was 44 percent. This has dropped to 39 percent now. Correspondingly middle distillates have gone up from about 35 percent to about 40 percent.

The manager of one very large refinery states that it usually utilizes its throughput of crude at the following percentages seasonally:

Season:	Percent
Summer:	
Middle distillates.....	30
Gasoline.....	50
Winter:	
Middle distillates.....	35
Gasoline.....	45

Its parameters have been stretched this winter and last, however. It is now producing 40 percent middle distillates and from 40 to 45 percent gasoline. The percentage of the barrel which may be used for such production is not the same in all refineries. For instance, in the Exxon refinery in Benicia, Calif., as much as 75 percent of the barrel may be used as gasoline.

I state these somewhat detailed examples to show how certain adaptations in the refining process can be used to meet real emergencies.

IV. THE PRESENT AND PROJECTED SHORTAGE IS NOT SO GREAT AS TO REQUIRE HASTY AND ILL-CONSIDERED ACTION

From my inquiries, both of management and labor, there appears to be no panic, and refineries would quickly move to maximum production if Mideast oil were released. Exxon at Baytown has normally used considerable Arab oil. It is now using mostly west Texas sour crude and some crude from Florida. Atlantic Richfield at Pasadena is now using domestic oil but usually also uses African, Venezuelan, and Mideast crude.

There are several situations in the oil industry which remain unsettled, and there are several areas in which the facts are not clear. The extent of the Arab embargo is not at all clear. There is evidence that considerable oil has reached American refineries through leaks. The information I receive through oil workers is that tanks of crude are generally well supplied, and Exxon recently reported that it has more crude oil, more distillates, and more heavy fuel oil in storage

today than it did a year ago. It reported having the same amount of stored gasoline.

In light of all of these facts, I have concluded that there is no such immediate emergency as to justify Congress giving up its constitutional function as policymaker and delegating it to the executive department.

We need more facts from the oil companies and from the Federal Energy Office if we are to pass legislation which intelligently meets the problems related to some ultimate fuel shortage crisis.

V. PASSAGE OF H.R. 11450 REQUIRES TOO DRASTIC AND EXPENSIVE TRADE-OFFS IN OTHER ECONOMIC AND SOCIAL LEGISLATION AND IN CONSTITUTIONAL FORMS AND PRINCIPLES

In our haste to avoid a crisis which had been so luridly depicted to Congress by the administration we passed H.R. 11450 in the House, a bill which affected many areas of law, relaxed many prudently established standards, and skirted on many important economic principles and social objectives. We relaxed stationary emission source standards and auto emission standards. We tampered with anti-trust law and Administrative Procedure Act provisions. We were even called upon to relax legal standards concerning conflicts of interest.

What occurred in conference, though, was far worse. We had eliminated in committee by a 19-to-10 vote broad delegation of authority to the President permitting him to make rules which, barring a House or Senate veto, would have the effect of law. An attempt to reinstate the provision in the Committee of the Whole was defeated by more than 100 votes. Yet such a process was reinstated in conference in an even more objectionable form.

With respect to energy conservation plans such as restricting store hours, setting shorter workweeks, et cetera, conferees agreed to the following system:

First. Energy conservation measures proposed by the administration between now and March 1 can go into effect immediately. But either House of Congress can repeal them by a majority vote within 15 legislative days of their taking effect.

Second. Energy conservation measures proposed between March 1 and June 30 will not take effect until Congress has had 15 legislative days to study them, during which time either House could veto a plan by majority vote.

Third. Energy conservation plans proposed after June 30 will require approval by Congress through the regular legislative process.

Administrator Simon sat in conference committee meetings urging that the President have unlimited authority to put into effect energy conservation plans by Presidential ukase.

Thus, on the point the conference report was a compromise, not between the House and the Senate bills but between the Senate and the administration. The right of the President to establish law by edict in any area where such was deemed necessary for conservation of energy was granted for the period until March 1, 1974. This was modified in the direction of congressional authority by the provision that either House of Congress

could repeal the Presidential edict by a majority vote within 15 legislative days of its taking effect.

VI. H.R. 11450 DOES NOT PRESENT AN ENTIRE PACKAGE OF BALANCED LEGISLATION BUT ONLY CONCESSIONS TO PRESIDENTIAL AND INDUSTRIAL LICENSE AND POWER

If legislation as comprehensive as H.R. 11450 purports to be should be enacted, it should do far more than make the concessions to Presidential and industrial license and power that are made in H.R. 11450. These concessions, as we have seen, lie primarily in the granting of more power to the President—authority to establish conservation plans by edict—and the relaxation of environmental standards.

A proper package of legislation in the field should consist of several bills going to various committees. Such bills should include two of the good features in H.R. 11450; these are, however, procedural:

First. The Moss amendment which provides for a Federal Energy Administration with well considered administrative procedures and due process safeguards for the exercise of price setting and allocation authority. The Economic Stabilization Act procedures now in effect are extremely defective in these respects. That agency, though subject to the Administrative Procedure Act generally, is not so restricted in emergencies, and all its actions have been taken as emergency action.

Second. The Dingell amendment which provides for the industry's divulging data on reserves, production, distribution and use of petroleum products, natural gas, and coal. Such would require disclosure of the nature of refinery runs and their products and byproducts.

In my opinion, the bill which should come out of the Interstate and Foreign Commerce Committee relating to the purpose of H.R. 11450 should contain only provisions dealing with allocation authority, including permissive language for rationing, language providing for tighter regulation against price gouging, and the Moss and Dingell provisions referred to above.

Such package of legislation should also include several bills within the jurisdiction of the Ways and Means Committee. Such would be—

First. An excess profits tax designed, first, to directly discourage increase in prices containing stiffer provisions triggered by such price increases and, second, to take the fruits of such inordinately high prices as might be allowed to get through the price control mechanism heretofore referred to;

Second. A bill to remove negative incentives to domestic production such as foreign tax writeoffs which may be used, in part at least, in lieu of royalties to foreign governments; and

Third. A bill to repeal the application of the depletion allowance to foreign oil, retaining the incentive of the depletion allowance on domestic oil production.

In addition to all this, the package should contain legislation providing the means of thwarting the oligopolistic practices in the oil industry which hinder the development of new refineries. Such might be in the nature of amend-

ments to the antitrust laws or to the Federal Trade Commission Act or might be in the nature of some of the Hart and Stevenson proposals in the Senate relating to Federal engagement in oil exploration and refining.

Of course, in addition to all of the legislation referred to above, there should be a maximum effort to stimulate research and development for energy production.

It is not envisaged that all of these provisions should necessarily become law, but they should all be before Congress for consideration as a rational approach to a developing oil crisis.

CONCLUSION

Considering all the later developed facts, the unduly peremptory pressures of the administration, the weakening of environmental protection, the absence of much important information concerning reserves, the embargo and its leaks, the important unresolved questions related to prices and profits, and the massive give-up of congressional authority, I respectfully suggest that we do not proceed further on H.R. 11450 and that we go back to the appropriate committees and consider the whole matter with greater deliberation and with more mature judgment.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. ABDNOR) and to revise and extend their remarks and include extraneous matter:)

Mr. HANSEN of Idaho for 10 minutes, today.

Mr. McCLOSKEY for 60 minutes, today.
Mr. KEMP for 15 minutes, today.

(The following Members (at the request of Mr. THORNTON), to revise and extend their remarks, and to include extraneous matter:)

Mr. DIGGS, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. O'HARA, for 15 minutes, today.
Mr. FLOOD, for 10 minutes, today.
Mr. ALEXANDER, for 5 minutes, today.
Mrs. COLLINS, for 5 minutes, today.
Mr. O'NEILL, for 5 minutes, today.
Mr. CULVER, for 5 minutes, today.

EXTENSIONS OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. McFALL, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost \$2,821.50.

(The following Members (at the request of Mr. ABDNOR) and to include extraneous matter:)

Mr. BROYHILL of Virginia.
Mr. QUITE.
Mr. KEMP in three instances.
Mr. DERWINSKI in three instances.
Mr. BAUMAN in two instances.
Mr. GOLDWATER in three instances.
Mr. ARCHER.
Mr. RAILSBACK in two instances.

Mr. SARASIN in two instances.
Mr. BUCHANAN.
Mr. DUNCAN in two instances.
Mr. GROSS.
Mr. ROUSSELOT.
Mr. WYMAN in two instances.
Mr. McCLORY.
Mr. BROOMFIELD.

(The following Members (at the request of Mr. THORNTON), and to include extraneous matter:)

Mr. ANNUNZIO in six instances.
Mr. GONZALEZ in three instances.
Mr. RARICK in three instances.
Mr. MITCHELL of Maryland.
Mr. ROYBAL in 10 instances.
Mr. McCORMACK in 10 instances.
Mr. OWENS in five instances.
Mr. GAYDOS in 10 instances.
Mr. STARK in 10 instances.
Mr. DINGELL in three instances.
Mr. GUNTER in three instances.
Mr. HOWARD.
Mr. THOMPSON of New Jersey in 10 instances.
Mrs. SULLIVAN in two instances.
Mr. DAN DANIEL.

ADJOURNMENT

Mr. THORNTON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 36 minutes p.m.) the House adjourned until tomorrow, Tuesday, January 29, 1974, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1771. A letter from the Attorney General, transmitting a report on the administration of the Truth-in-Lending Act during calendar year 1973, pursuant to section 114 of Public Law 90-321; to the Committee on Banking and Currency.

1772. A letter from the senior vice president, Potomac Electric Power Co., transmitting a copy of the company's balance sheet as of December 31, 1973, pursuant to 37 Stat. 979; to the Committee on the District of Columbia.

1773. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report of excess defense articles to be furnished foreign countries on a grant basis in addition to those previously reported for fiscal year 1974, pursuant to 22 U.S.C. 2321b(d); to the Committee on Foreign Affairs.

1774. A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to declare that 3,308 acres, more or less, of federally owned land is held by the United States in trust for the Pueblo of Cochiti; to the Committee on Interior and Insular Affairs.

1775. A letter from the Chairman, Indian Claims Commission, transmitting the final determination of the Commission in docket No. 13-A, *James Strong, et al., (Sag Naw Chipewa Indians)*, plaintiffs, v. *the United States of America*, defendant, pursuant to 25 U.S.C. 707; to the Committee on Interior and Insular Affairs.

1776. A letter from the Attorney General, transmitting a draft of proposed legislation to amend chapter 44, title 18, United States Code, to prohibit the unlawful possession of firearms, and for other purposes; to the Committee on the Judiciary.

1777. A letter from the Director, Community Relations Service, Department of Justice,

transmitting the annual report of the Service for fiscal year 1973, pursuant to section 1004 of Public Law 88-352; to the Committee on the Judiciary.

1778. A letter from the Secretary of the Army, transmitting a letter from the Chief of Engineers, Department of the Army, submitting a report on Smith River Basin, Calif. and Oreg., requested by two resolutions of the Committee on Public Works, House of Representatives, adopted July 12, 1954, and June 13, 1956; to the Committee on Public Works.

1779. A letter from the Secretary of the Army transmitting a letter from the Chief of Engineers, Department of the Army, submitting a report on Cedar Island Channel, Fla., requested by a resolution of the Committee on Public Works, House of Representatives, adopted April 14, 1964; to the Committee on Public Works.

1780. A letter from the Secretary of the Army, transmitting a letter from the Chief of Engineers, Department of the Army, submitting a report on Rock Creek and tributaries, Iowa and Missouri requested by a resolution of the Committee on Public Works, House of Representatives, adopted October 5, 1966; to the Committee on Public Works.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. TEAGUE: Committee on Science and Astronautics, H.R. 11864. A bill to provide for the early commercial demonstration of the technology of solar heating by the National Aeronautics and Space Administration and the Department of Housing and Urban Development, in cooperation with the National Bureau of Standards, the National Science Foundation, the General Services Administration, and other Federal agencies, and for the early development and commercial demonstration of technology for combined solar heating and cooling; (Rept. No. 93-769). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ASHBROOK:

H.R. 12294. A bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the authority of the Secretary of Health, Education, and Welfare with respect to foods for special dietary use; to the Committee on Interstate and Foreign Commerce.

H.R. 12295. A bill to repeal the Emergency Daylight Saving Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. BROYHILL of Virginia:

H.R. 12296. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to increase salaries, and for other purposes; to the Committee on the District of Columbia.

H.R. 12297. A bill to amend the Foreign Service Act of 1946 to allow credit for service with Radio Free Europe and Radio Liberty for purposes of retirement; to the Committee on Foreign Affairs.

By Mr. DORN (by request):

H.R. 12298. A bill to amend chapter 37 of title 38, United States Code, to permit interest on loans under section 1810 of the chapter to be as agreed upon by the lender and borrower, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. DORN (for himself, Mr. CLARK, Mr. TEAGUE, and Mr. ANNUNZIO):

H.R. 12299. A bill to amend title 38 of the United States Code in order to extend medical benefits to the survivors of certain severely service-connected disabled deceased veterans; to the Committee on Veterans' Affairs.

H.R. 12300. A bill to amend title 38, United States Code, to liberalize the provisions relating to payment of dependency and indemnity compensation, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. FASCELL:

H.R. 12301. A bill to repeal the Emergency Daylight Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. FLOOD:

H.R. 12302. A bill to provide for construction of certain bridges, approaches, and roads in the Panama Canal Zone, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. FUQUA:

H.R. 12303. A bill to repeal the Emergency Daylight Saving Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. GONZALEZ:

H.R. 12304. A bill to amend title XI of the Social Security Act to eliminate the provisions (which were added in 1972) with respect to professional standards review in the medicare and medicaid programs, and to require regular audits by the Government Accounting Office of all institutional providers under such programs; to the Committee on Ways and Means.

By Mr. HANSEN of Idaho (for himself, Mr. ANDERSON of Illinois, Mr. CLEVELAND, Mr. CRONIN, Mr. HARRINGTON, Mr. HUNT, Mr. KYROS, Mr. MAZZOLI, Mr. MELCHER, Mr. MITCHELL of Maryland, Mr. MOAKLEY, Mr. NIX, Mr. ROE, Mr. TALCOTT, Mr. VANDER JAGT, and Mr. WALDIE):

H.R. 12305. A bill to amend the Rail Passenger Service Act of 1970 in order to expand the basic rail passenger transportation system to provide service to certain States; to the Committee on Interstate and Foreign Commerce.

By Ms. HOLTZMAN:

H.R. 12306. A bill to amend the Economic Stabilization Act of 1970; to the Committee on Banking and Currency.

By Mr. HUTCHINSON:

H.R. 12307. A bill to amend chapter 44, title 18, United States Code, to prohibit the unlawful possession of firearms, and for other purposes; to the Committee on the Judiciary.

By Mr. KING:

H.R. 12308. A bill to repeal the Occupational Safety and Health Act; to the Committee on Education and Labor.

By Mr. LEHMAN:

H.R. 12309. A bill to repeal the Emergency Daylight Saving Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. LONG of Maryland:

H.R. 12310. A bill to amend the Internal Revenue Code of 1954 to provide that the credit for foreign taxes shall not be allowed in the case of taxes paid to a foreign country with respect to income derived from the production of petroleum (or petroleum byproducts) or natural gas; to the Committee on Ways and Means.

By Mr. MOAKLEY:

H.R. 12311. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to increase salaries, and for other purposes; to the Committee on the District of Columbia.

By Mr. PEPPER:

H.R. 12312. A bill to repeal the Emergency Daylight Savings Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. ROGERS:

H.R. 12313. A bill to repeal the Emergency Daylight Saving Time Energy Conservation

Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. ROGERS (for himself, Mr. STAGGERS, Mr. KYROS, Mr. PREYER, Mr. SYMINGTON, Mr. ROY, Mr. NELSEN, Mr. CARTER, Mr. HASTINGS, Mr. HEINE, and Mr. HUNNUT):

H.R. 12314. A bill to amend the Public Health Service to improve the national cancer program and to authorize appropriations for such program for the next 3 fiscal years; to the Committee on Interstate and Foreign Commerce.

By Mr. SISK:

H.R. 12315. A bill to amend the Immigration and Nationality Act to permit adoption of more than two children; to the Committee on the Judiciary.

H.R. 12316. A bill to assure that weather modification activities and the collection of hydrometeorological information necessary to the management of water resources can be conducted in conjunction with the management and administration of wilderness areas and other Federal lands; to the Committee on Interior and Insular Affairs.

By Mr. SISK (for himself, Mr. BOWEN, Mr. DANIELSON, Mr. DENHOLM, Mr. ELBERG, Mr. EVINS of Tennessee, Mrs. GREEN of Oregon, Mr. HELSTOSKI, Mr. MITCHELL of Maryland, Mr. MORGAN, Mr. POAGE, Mr. RYAN, Mr. SIKES, Mrs. SULLIVAN, Mr. TIERNAN, Mr. VEYSEY, Mr. WAGGONER, Mr. CHARLES WILSON of Texas, Mr. WON PAT, and Mr. WRIGHT):

H.R. 12317. A bill to abolish the U.S. Postal Service, to repeal the Postal Reorganization Act, to reenact the former provisions of title 39, U.S.C., and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. WYMAN:

H.R. 12318. A bill to temporarily suspend requested emissions controls on automobiles registered in certain parts of the United States, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. KING:

H.J. Res. 878. Joint resolution authorizing the President to proclaim the last Friday in September as American Indian Day; to the Committee on the Judiciary.

H.J. Res. 879. Joint resolution to authorize the President to issue annually a proclamation designating the period from October 12 through 19 of each year as "National Patriotic Education Week"; to the Committee on the Judiciary.

By Mr. BINGHAM:

H.J. Res. 880. Joint resolution proposing an amendment to the Constitution of the United States relating to the eligibility of a citizen to hold the Office of President; to the Committee on the Judiciary.

By Mr. DORN:

H. Con. Res. 415. Concurrent resolution authorizing the printing of summaries of veterans legislation reported in the House and Senate during the 93d Congress to the Committee on House Administration.

H. Res. 789. Resolution to provide funds for the further expenses of the investigation and study authorized by House Resolution 134; to the Committee on House Administration.

By Mr. HEBERT:

H. Res. 790. Resolution to provide for the further expenses of the investigations and studies authorized by House Resolution 185 for the Committee on Armed Services; to the Committee on House Administration.

By Mr. ICHORD (for himself, Mr. ASPIN, Mr. DENT, Mr. SARBANES, Mr. MONTGOMERY, Mr. CHARLES WILSON of Texas, Mr. MITCHELL of New York, Mr. DERWINSKI, Mr. SEIBERLING, Mr. RIEGLE, Mr. VEYSEY, Mr. GAYDOS, Mr. O'BRIEN, Mr. ST GERMAIN, Mr. BAPALIS, Mr. WHITEHURST, Mr. HUNT, Mr. ROY, Mr. SNYDER, Mr. RONCALLO of New York, Mr. STARK, Mr. MOL-

LOHAN, Mr. DONOHUE, Mr. BOLAND, and Mr. BADILLO):

H. Res. 791. 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. ICHORD (for himself, Mr. BELL, Mr. BURLESON of Texas, Mr. WON PAT, Mr. CONLAN, Mr. COCHRAN, Mr. BYRON, Mr. TOWELL of Nevada, Mr. SHROUP, Mr. SYMMS, Mrs. COLLINS, of Illinois, Mrs. HOLT, Mr. GILMAN, Mr. YOUNG of Alaska, Mr. LEGGETT, Mr. MARTIN of North Carolina, Mr. COTTEER, Mr. STEELE, Mr. FASCELL, Mr. THOMPSON of New Jersey, Mr. BLACKBURN, Mr. CRANE, and Mr. STEELMAN):

H. Res. 792. 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. TEAGUE:

H. Res. 793. Resolution to provide funds for the further expenses of the investigations and studies authorized by House Resolution 253; to the Committee on House Administration.

MEMORIALS

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

336. By the SPEAKER: A memorial of the

House of Representatives of the Commonwealth of Massachusetts, relative to construction of the Lincoln-Dickey Dam in Maine; to the Committee on Appropriations.

337. Also memorial of the Legislature of the State of Oklahoma, relative to the shortage of hay baling wire; to the Committee on Banking and Currency.

338. Also, memorial of the Legislature of the State of Oklahoma, relative to the date for the observance of Veterans' Day; to the Committee on the Judiciary.

339. Also, memorial of the Legislature of the State of Oklahoma, relative to the interest and discount rate for Federal-State water development projects; to the Committee on Public Works.

SENATE—Monday, January 28, 1974

The Senate met at 12 o'clock noon and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

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

Our Father God, as we turn again to waiting tasks, give to all who labor in this Chamber the wisdom, humility, and charity sufficient for the day. Through the toiling hours, in tense and testing times, keep our hearts and minds attuned to Thy spirit. Strengthen our weakness, calm our anxieties, save us from cynicism. May faith in Thee allay all fear. When we have done faithfully the work Thou givest us to do, may we leave the result to Thy higher judgment, and take supreme satisfaction in having served the Nation to the utmost and moved forward Thy coming kingdom.

We pray in His name, who is Lord and Master. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., January 28, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. ROBERT C. BYRD thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, January 24, 1974, be dispensed with.

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

CXX—55—Part 1

ATTENDANCE OF SENATORS

Hon. JESSE HELMS, a Senator from the State of North Carolina, Hon. JOHN SPARKMAN, a Senator from the State of Alabama, Hon. THOMAS J. MCINTYRE, a Senator from the State of New Hampshire, Hon. JOHN V. TUNNEY, a Senator from the State of California, and Hon. HOWARD W. CANNON, a Senator from the State of Nevada, attended the session of the Senate today.

WAIVER OF THE CALL OF THE CALENDAR

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

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

AMTRAK

Mr. MANSFIELD. Mr. President, ever since the advent of Amtrak and the significant reduction in passenger train service in many areas of the Nation, my able colleague, Senator LEE METCALF, and I have been attempting to convince Amtrak officials that they made a mistake in reducing service to a 3-day a week basis on the old Northern Pacific Railroad or the southern route. This route serves the most populous part of the State. The passenger demand is there and, in many cases, Amtrak has been unable to provide the service.

I am delighted to report that Amtrak has now agreed with Senator METCALF and me and that effective May 19 of this year they will begin daily rail passenger service on the southern Montana route. What happens after the summer season will depend on patronage during this period. There is no question in my mind that this passenger service will be utilized to the fullest if the service is provided in an efficient and competent manner.

Mr. President, I ask unanimous con-

sent to have printed at this point in my remarks a letter from Senator METCALF and me and one from Amtrak responding to it.

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

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, D.C., November 21, 1973.
Mr. ROGER LEWIS,
President, Amtrak,
Washington, D.C.

DEAR MR. LEWIS: We are informed that the Amtrak passenger trains serving the southern route in Montana are booked to capacity during the coming Christmas holidays. Advance reservations promise that travel will be heavier this year than last. We would be grateful if you would immediately investigate the situation and advise what steps Amtrak contemplates to secure additional cars to meet the expected demand.

Additionally, we feel it is particularly appropriate again to raise the issue of expanding the present three-day service to a seven-day service. Passenger ridership has been on the increase and will no doubt continue to expand as travelers seek alternatives to the private automobile. Would it not be wise to begin planning for an expansion of rail service that will surely be necessary in this time of gasoline shortages?

Your early response will be appreciated.

Very truly yours,

MIKE MANSFIELD,
LEE METCALF,
U.S. Senate.

AMTRAK,
January 18, 1974.

HON. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: Thank you for your letter of November 21, 1973, to Mr. Roger Lewis, which you sent jointly with Senator Lee Metcalf expressing your interest in seeing additional equipment operated through the Christmas holiday period on the Hiawatha trains and requesting that Amtrak take another look at the question of daily passenger service on the southern Montana route.

Early in December 1973, your office was provided an outline of the additional equipment that would be operated on both the northern and southern Montana trains through the past holiday period. In the meantime Amtrak had been continuing to examine the feasibility of daily rail passenger service on the southern Montana route. Effective May 19, 1974, Amtrak will begin daily service from Chicago to Seattle on the North Coast Hiawatha route. This service will be operated on a trial basis through the summer, but