Mr. PRITCHARD, Mr. QUIE, Mr. REID, Mr. REUSS, Mr. RINALDO, Mr. ROBERTS, Mr. RODINO, Mr. ROE, Mr RONCALIO of Wyoming, and Mr ROONEY of Pennsylvania):

H. Res. 1125 Resolution to condemn terrorist killings of schoolchildren in Israel; to the Committee on Foreign Affairs.

By Mr. O'NEILL (for himself, Mr. RHODES, Mr. ROSE, Mr. ROSENTHAL, Mr. ROSTENKOWSKI, Mr. ROUSH, Mr. ROUSSELOT, Mr. ROYBAL, Mr. RYAN, Mr. SARASIN, Mr. SATTERFIELD, Mr. SCHERLE, Mrs. SCHROEDER, Mr. SEIBERLING, Mr. SHIPLEY, Mr. SHRIVER, Mr. SHUSTER, Mr. SISK, Mr. SKUBITZ, Mr. SMITH of New York, Mr. SNYDER, Mr. SPENCE, Mr. J. WILLIAM STANTON, Mr. JAMES V. STANTON, and Mr. STEED):

H. Res. 1126. Resolution to condemn terrorist killings of schoolchildren in Israel; to the Committee on Foreign Affairs.

By Mr. O'NEILL (for himself, Mr. RHODES, Mr. STEELE, Mr. STEELMAN, Mr. STEIGER of Wisconsin, Mr. STEPHENS, Mr. STUDDS, Mr. SYMINGTON, Mr. TAYLOR of North Carolina, Mr. THOMSON of Wisconsin, Mr. THONE, Mr. THORNTON, Mr. TIERNAN, Mr. TRAXLER, Mr. TREEN, Mr. UDALL, Mr. VANDER VEEN, Mr. VANIK, Mr. VEYSEY, Mr. WALSH, Mr. WHALEN, Mr. WHITEHURST, Mr. WIDNALL, Mr. BOB WILSON, and Mr. CHARLES WILSON of Texas):

H. Res. 1127. Resolution to condemn terrorist killings of schoolchildren in Israel; to the Committee on Foreign Affairs.

By Mr. O'NEILL (for himself, Mr. RHODES, Mr. WOLFF, Mr. WRIGHT, Mr. WYDLER, Mr. YATES, Mr. YATRON, Mr. YOUNG of Georgia, Mr. YOUNG of Alaska, Mr. YOUNG of Texas, Mr. YOUNG of Texas, Mr. YOUNG of Illinois, Mr. ZABLOCKI, Mr. ZION, Mr. ZWACH, Mr. EDWARDS of California, Mr. COHEN, Mr. DERWINSKI, Mr. FASCELL, Mr. MCKINNEY, Mr. BELL, Mr. REES, Mr. ECKHARDT, Mr. SMITH of Iowa, and Mr. MOLLOHAN):

H. Res. 1128. Resolution to condemn terrorist killings of schoolchildren in Israel; to the Committee on Foreign Affairs.

By Mr. O'NEILL (for himself, Mr. RHODES, Mr. CLANCY, Mr. CLARK, Mr. DRINAN, Mr. BROOMFIELD, Mr. DICKINSON, Mr. CEDERBERG, Mr. GUBSER, Mr. HELSTOSKI, Mr. COUGHLIN, Mr. CAREY of New York, Mr. ARCHER, Mr. BLATNIK, Mr. BUCHANAN, Mr. CARTER, Ms. COLLINS of Illinois, Mr. DAVIS of Georgia, Mr. DEVINE, Mr. DORN, Mr. DULSKI, Mr. ESHLEMAN, Mr. FISHER, Mr. HENDERSON, and Mr. HOSMER):

H. Res. 1129. Resolution to condemn terrorist killings of schoolchildren in Israel; to the Committee on Foreign Affairs.

By Mr. O'NEILL (for himself, Mr. RHODES, Mr. HOWARD, Mr. HUBER, Mr. MCCLOSKEY, Mr. MAYNE, Mr. MINISH, Mr. MORGAN, Mr. NELSEN, Mr. OWENS, Mr. PARRIS, Mr. ROBINSON of Virginia, Mr. RONCALLO of New York, Mr. ST GERMAIN, Mr. SCHNEEBELI, Mr. SEBELIUS, Mr. SHOUP, Mr. SIKES, Mr. STARK, Mr. STRATTON, Mrs. SULLIVAN, Mr. ULLMAN, and Mr. VIGORITO):

H. Res. 1130. Resolution to condemn terrorist killings of schoolchildren in Israel; to the Committee on Foreign Affairs.

By Mr. O'NEILL (for himself, Mr. RHODES, Mr. WHITTEN, Mr. WON PAT, Mr. CRONIN, Mr. STOKES, Mr. TOWELL of Nevada, Mr. MCCLORY, Mr. MCEWEN, Mr. SARBANES, Mr. DELLENBACK, Mr. JARMAN, Mr. DELLUMS, Mrs. HANSEN of Washington, Mr. HUDNUT, Mr. LUKEN, Mr. RANGEL, Mr. REGULA, Mr. ROGERS, Mr. WINN, and Mr. WYMAN):

H. Res. 1131. Resolution to condemn terrorist killings of schoolchildren in Israel; to the Committee on Foreign Affairs.

By Mr. STARK:

H. Res. 1132. Resolution relating to the publication of population, economic, and social statistics for Philippine Americans; to the Committee on Post Office and Civil Service.

## MEMORIALS

Under clause of rule XXII,

480. The SPEAKER presented a memorial of the Legislature of the State of Michigan, relative to Phase IV regulations, which was referred to the Committee on Banking and Currency.

## PRIVATE BILLS AND RESOLUTIONS

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

By Mr. DRINAN:

H.R. 14880. A bill for the relief of Tapan K. Mukherjee; to the Committee on the Judiciary.

By Mr. ECKHARDT:

H.R. 14881. A bill for the relief of Yuk On Lee; to the Committee on the Judiciary.

By Mr. JAMES V. STANTON:

H.R. 14882. A bill for the relief of Francesco Giuttari; to the Committee on the Judiciary.

# SENATE—*Thursday, May 16, 1974*

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

### PRAYER

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

God our Father, infinite and eternal, the source of all strength and wisdom, we thank Thee for another day of life and service. Impart to our waiting spirits the gifts of self-mastery and self-control. Make us sensitive to the needs of all the people, careful to hear and evaluate the judgments of our colleagues, obedient to the directions of conscience, and always heedful of the promptings of Thy Spirit. In all our ways may we acknowledge Thy rulership and persevere for the enhancement of Thy kingdom.

We pray in the name of the Great Redeemer. Amen.

### THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, May 15, 1974, be dispensed with.

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

### COMMITTEE MEETINGS DURING SENATE SESSION

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

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

### EXECUTIVE SESSION

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

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

### BOARD FOR INTERNATIONAL BROADCASTING

The second assistant legislative clerk read the nomination of Foy D. Kohler, of Florida, to be a member of the Board for International Broadcasting for a term of 3 years.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

### THE JUDICIARY

The second assistant legislative clerk read the nomination of D. Dortch Warriner, of Virginia, to be U.S. district judge for the eastern district of Virginia.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

### DEPARTMENT OF JUSTICE

The second assistant legislative clerk read the nomination of James L. Browning, Jr., of California, to be U.S. attorney for the northern district of California for the term of 4 years.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

### NOMINATIONS ON THE SECRETARY'S DESK

The second assistant legislative clerk proceeded to read sundry nominations in the Diplomatic and Foreign Service, which had been placed on the Secretary's desk.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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

## LEGISLATIVE SESSION

Mr. MANSFIELD. Mr President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

## ESTABLISHMENT OF A NATIONAL INSTITUTE ON AGING

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 775.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 775) to amend the Public Health Service Act to provide for the establishment of a National Institute on Aging which was to strike out all after the enacting clause, and insert:

SECTION 1. This Act may be cited as the "Research on Aging Act of 1974".

SEC. 2. The Congress finds and declares that—

(1) the study of the aging process, the one biological condition common to all, has not received research support commensurate with its effects on the lives of every individual;

(2) in addition to the physical infirmities resulting from advanced age, the economic, social, and psychological factors associated with aging operate to exclude millions of older Americans from the full life and the place in our society to which their years of service and experience entitle them;

(3) recent research efforts point the way toward alleviation of the problems of old age by extending the healthy middle years of life;

(4) there is no American institution that has undertaken comprehensive systematic and intensive studies of the biomedical and behavioral aspects of aging and the related training of necessary personnel;

(5) the establishment of a National Institute on Aging within the National Institutes of Health will meet the need for such an institution.

SEC. 3. Title IV of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART H—NATIONAL INSTITUTE ON AGING

"ESTABLISHING OF NATIONAL INSTITUTE ON AGING

"SEC. 461. The Secretary shall establish in the Service an institute to be known as the National Institute on Aging (hereinafter in this part referred to as the 'Institute') for the conduct and support of biomedical, social, and behavioral research and training related to the aging process and the diseases and other special problems and needs of the aged.

"NATIONAL ADVISORY COUNCIL ON AGING

"SEC. 462. (a) The Secretary shall establish a National Advisory Council on Aging to advise, consult with, and make recommendations to him on programs relating to the aged which are administered by him and on those matters which relate to the Institute.

"(b) The provisions relating to the composition, terms of office of members, and reappointment of members of advisory councils under section 432(a) shall be applicable to the Advisory Council established under this section, except that (1) the Secretary may include on such Advisory Council such additional ex officio members as he deems necessary, and (2) the Secretary shall appoint to the Council leading medical or scientific authorities skilled in aspects of the biological and the behavioral sciences related to aging.

"(c) Upon appointment of such Advisory Council, it shall assume all, or such part as the Secretary may specify, of the duties, functions, and powers of the National Advisory Health Council relating to programs for the aged with which the Advisory Council established under this part is concerned and such portion as the Secretary may specify of the duties, functions, and powers of any other advisory council established under this Act relating to programs for the aged.

"FUNCTIONS

"SEC. 463. (a) The Secretary (1) shall, through the Institute, carry out the purposes of section 301 with respect to research investigations, experiments, demonstrations, and studies related to the aging process and the diseases and other special problems and needs of the aged, except that the Secretary shall determine the area in which and the extent to which he will carry out such activities in furtherance of the purposes of section 301 through the Institute or another institute established by or under other provisions of this Act, or both of them, when both such institutes have functions with respect to the same subject matter, and (2) shall be responsible for coordinating such activities so as to avoid unproductive and unnecessary overlap and duplication of such functions. The Secretary may also provide training and instruction and establish traineeships and fellowships, in the Institute and elsewhere, in matters relating to study and investigation of the aging process and the diseases and other special problems and needs of the aged. The Secretary may provide trainees and fellows participating in such training and instruction or in such traineeships and fellowships with such stipends and allowances (including travel and subsistence expenses and dependency allowances) as he deems necessary, and, in addition, provide for such training, instruction, traineeships, fellowships through grants to public or other nonprofit institutions. In carrying out his health manpower training responsibilities under this Act or any other Act, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

"(b) The Secretary shall, through the Institute, conduct scientific studies to measure the impact on the biological, medical, and psychological aspects of aging of all programs and activities assisted or conducted by the Department of Health, Education, and Welfare.

"(c) The Secretary, through the Institute, shall carry out public information and education programs designed to disseminate as widely as possible the findings of Institute-sponsored and other relevant aging research and studies and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

"RESEARCH PROGRAM

"SEC. 464. (a) The Secretary, in consultation with the Institute and the National Advisory Council on Aging and such other appropriate advisory bodies as he may establish, shall within one year after the effective date of this section develop a plan for a research program on aging designed to coordinate and promote research into the biological, medical, psychological, social, educational, and economic aspects of aging. Such program shall be carried out, as to research involving the functions of the Institute, primarily through the Institute, and as to other research shall be carried out through any other institute established by or under other provisions of this Act or through any appropriate agency or other organizational unit within the Department of Health, Education, and Welfare.

"(b) Upon its completion, the plan for a research program on aging, required by subsection (a) of this section, shall be transmitted to the Congress and to the President and shall set forth the staffing and funding requirements to carry out such program."

Mr. BEALL. Mr. President, early in the 93d Congress I joined the distinguished chairman of the Subcommittee on Aging (Mr. EAGLETON) in introducing S. 775, the Research on Aging Act. This legislation is designed to create a National Institute on Aging within the National Institutes of Health. It is our desire, in creating an Institute on Aging, to produce a coherent and coordinated research program that is capable of systematically unlocking the secrets of the aging process. It is important to note, Mr. President, that the subcommittee did not envision a National Institute on Aging as an agency that would overlap or compete with existing institutes within NIH. We expect the new Institute to primarily concern itself with the biomedical and behavioral aspects of the aging process, rather than undertaking in-depth research into the chronic diseases which tend to afflict the aged.

The biomedical aspects of aging have become a more severe problem in recent decades because of the improved nutrition and improved medical services which have dramatically extended the life expectancy of Americans. It is interesting to note that there are, today, over 20 million Americans age 65 and over. This constitutes an almost sevenfold increase since the turn of the century. In addition, the over-65 segment of our population is growing almost twice as fast as is the rest of our society.

In 1962, the Congress responded to the situation by creating the National Institute of Child Health and Human Development and placing within it the Center for Gerontological Research. This Institute conducts research into the developmental process as it affects all age groups within our society. Unfortunately, only approximately 11 percent of the budget at NICHD has been devoted to studing the aging process in the upper age ranges. On the other hand, approximately 59 percent of the Institute's budget has been devoted to its activities in the field of child health while an additional 31 percent has gone into various aspects of population research.

This unfortunate distribution of resources served to motivate the Subcommittee on Aging's deliberation with regard to the establishment of a separate National Institute on Aging. In addition to granting a greater degree of visibility and independence to research in the field of the aging process the establishment of a separate institute should serve to bring together the presently diffused and fragmented research efforts which are scattered among a variety of Federal departments and agencies.

The need for a separate institute was further demonstrated earlier this year when the fiscal year 1975 budget was submitted to the Congress. $13,855,000 was requested for aging research and training at the National Institute of Child

Health and Human Development. This budget request constitutes a significant reduction in appropriations for aging research at NIH. The fiscal year 1974 budget contained $15,985,000 for NICHD's aging research. I am deeply disappointed by the decision to reduce the funding for aging research and I believe that this budget cut demonstrates once again the need to increase the visibility and effectiveness of aging research at NIH. The director of a separate institute on aging would have the institutional position to fight his or her own budget battles within NIH, HEW, or OMB.

I might add, Mr. President, that I wrote to Senators MAGNUSON and COTTON, the chairman and ranking minority member of the Appropriations Committee's Subcommittee on Labor, Health, Education, and Welfare urging restoration of this $2.1 million reduction.

In closing, Mr. President, I would like to say that throughout my career in public service, I have been deeply concerned about the way our Government—on all levels—delivers services. A Nation that can put men on the Moon and explore the far reaches of outer space often finds itself unable to deliver coherent and comprehensive services to people in need of them. I believe that S. 775 can begin to coordinate the Federal activities in the field of aging research. If this can be achieved, I believe that the health and welfare of millions of older Americans will, over a period of time, be substantially improved as a result of the research conducted by the National Institute on Aging.

As an enthusiastic supporter of the provisions of S. 775, I would urge my colleagues to give prompt and favorable consideration to this important legislation. In addition, Mr. President, I ask unanimous consent that the text of a letter I intend to send to the President of the United States relative to this legislation be printed in the RECORD at the conclusion of my remarks.

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

U.S. SENATE,
*Washington, D.C., May 16, 1974.*

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

DEAR MR. PRESIDENT: Earlier today the Senate completed the legislative process with regard to S. 775, the Research on Aging Act. Within the not too distant future this legislation will be forwarded to the White House for your consideration.

There are currently 20 million senior citizens in this Nation. The low birth rate, coupled with greater life expectancy, will gradually increase the percentage of older Americans as we move further into the 20th century. The creation of a separate National Institute on Aging would give the proponents of aging research greater visibility and greater institutional strength within the overall framework of N.I.H., H.E.W., and O.M.B I believe that the health and welfare of millions of older Americans will be, over a period of time, substantially improved as a result of the research conducted by the National Institute on Aging

I would therefore urge you to act favorably on this measure when it comes before you for consideration. Thanking you once again for your cooperation and with best wishes, I am

Sincerely yours,

J. GLENN BEALL, JR.

Mr. EAGLETON. Mr. President, I am pleased that the Senate has seen fit today to accept the amendments of the House to my bill, S. 775, to create a National Institute on Aging and to send the bill to the President.

This bill passed the Senate on a voice vote on July 9 last year and was passed by the House with minor amendments on May 2, 1974, by a vote of 379 to 1.

The support that has been shown for this legislation is of great importance, Mr. President, in view of the fact that S. 775 is nearly identical to H.R. 14424 which passed the 92d Congress only to be pocket vetoed by President Nixon. The only major difference between the bill we passed today and the bill vetoed by the President is that the latter added a new part to the Community Mental Health Centers Act, relating to the mental health of the aged, which has been deleted from the present bill. Insofar as its primary elements are concerned—the creation of a National Institute on Aging and related activities—this bill is the same as the one vetoed by the President.

At the time I reintroduced this bill on February 6, 1973, I stated my belief that the President's veto was ill advised and not in the best interests of all Americans—those who are aged now as well as those who are aging. I am hopeful that the support demonstrated in repassing this legislation will convince the President that it is a worthy endeavor deserving of his support.

Basic research into the process of aging has now reached a point where major breakthroughs are possible. There remain, however critical questions yet to be answered.

That aging is a major biological process is undisputed. Moreover, aging underlies our increased susceptibility with advancing years to cancer, heart attacks, and degenerative diseases.

These facts have particular significance when viewed in relationship to the extraordinary growth of our Nation's elderly population and the corresponding increase in health costs associated with care and treatment for the elderly. Today there are more than 20 million Americans aged 65 or older—nearly seven times as many as at the beginning of this century—and the older population is increasing at a much faster rate than the under-35 population. Between 1960 and 1970, the over-65 population showed a rise of 21.1 percent while the under-65 population grew 12.5 percent. Within the next 30 years we can expect nearly 45 million persons to reach their 65th birthday. In this population group, health problems tend to be the rule, not the exception. Eighty percent of those aged 65 or older have a chronic health problem and 40 percent are impaired in their activities because of a health condition. They are twice as likely to be hospitalized as younger persons and, once hospitalized, their average stay is twice as long. As much as two-thirds of our total expenditures for health care can be attributed to treating older persons, according to some estimates.

Despite these facts, the level of federally supported research into phenomena associated with aging has been extremely low. As a nation, we recognize the importance of research—but unfortunately not in the field of aging. The amount expressly devoted to aging research in the National Institutes of Health represents only about one-tenth of 1 percent of Federal expenditures in health programs for the elderly. In sharp contrast, many businesses or governmental units may earmark as much as 5 to 10 percent of their available funds for research.

The focal point for aging research in the National Institutes of Health—NIH—is the National Institute of Child Health and Human Development—NICHD. This Institute was authorized by legislation enacted in 1962 and, as its programs have evolved, major emphasis has been given to research in child health, human reproduction, and fertility control. Aging research constitutes only about 10 percent of its budget and such increases in funding for aging research as have occurred in recent years have been achieved largely through the insistence of the Appropriations Committees of the Senate and the House of Representatives. In 1968, NICHD established the Gerontology Research Center for intramural research in aging. This center, located in Baltimore, was designed to be the largest center for aging research in the world, yet it has consistently operated at 50 percent, or less, of its intended capacity. The failure to staff this center on an adequate basis and to conduct the vigorous intramural program of gerontological research for which it was designed is reflective of the relatively low priority accorded this kind of research within the present organizational structure at the National Institutes of Health.

The creation of a National Institute of Aging, as provided in this bill, is an effort to reverse this trend. Expansion of the aging research and training program within NICHD cannot reasonably be expected to take place at the expense of the other programs which have dominated the activities of the Institute since its inception. Nor can it be anticipated that such expansion will occur as a result of overall NICHD budget increases, for the funding history shows the aging program remaining relatively static in comparison to the large increases received by other NICHD programs.

These are the considerations that led the delegates to the 1971 White House Conference on Aging to recommend the establishment of a separate institute to conduct research and training in aging.

Significantly, a similar recommendation made by the 1961 White House Conference on Aging was sought to be answered by including aging research and training within the responsibilities assigned to NICHD when it was created in 1962. The reiteration of this recommendation by the most recent White House conference points up the inadequacies of the aging program as conducted by NICHD.

In his memorandum of disapproval on

H.R. 14424, the President cited as a reason for his veto—in addition to the mental health centers provisions previously mentioned—the concern that a new Institute on Aging would duplicate the activities of the Technical Advisory Committee for Aging Research appointed in 1972 by the Secretary of Health, Education, and Welfare. This committee was established—perhaps coincidentally—at a time when it seemed clear that the Research in Aging Act was moving through Congress toward final passage. It was intended to develop a comprehensive and coordinated program of aging research including, in addition to biomedical research, such matters as economics, behavior and transportation problems. I cannot say with any certainty whether or not the establishment of the Technical Advisory Committee was merely an effort to head off this legislation, to which the administration previously announced its opposition. What is clear is that the operations of the Technical Advisory Committee on Aging Research over the last 2 years have had no significant impact on the problems that I have described. Indeed, the administration budget proposed a fiscal year 1975 figure that will represent a reduction in the amounts actually obligated in fiscal year 1974.

In any case, S. 775 makes clear that there will be a role in developing an aging research plan for any group such as the Technical Advisory Committee which the Secretary might care to designate. But the establishment of a committee and even the development of a comprehensive research plan in no way obviates the need for expanded research in aging of the kind that would be conducted by a National Institute on Aging. Such a committee can play a major role in developing a research plan as directed by this legislation. The research itself, however, can only be conducted under the auspices of an appropriate body and, for this, I am convinced that the new Institute on Aging is vitally needed.

RESEARCH ON AGING

Mr. CRANSTON. Mr. President, as ranking majority member of the Subcommittee on Aging of the Senate Labor and Public Welfare Committee, and as an original cosponsor during the last Congress of S. 887—the Senate version of H.R. 14424, the vetoed Research on Aging Act of last year—I am delighted to be urging the Senate today to accept the House amendment to S. 775, this year's Research on Aging Act, on which I again join with the Aging Subcommittee chairman (Mr. EAGLETON) as an original cosponsor. Acceptance by the Senate of this amendment will mean that once again the Congress has expressed its commitment to establish a strong Federal effort in the area of research into the process of aging.

I would like to take this opportunity to express my appreciation to Senator EAGLETON, the very dedicated chairman of the Aging Subcommittee, for the fine job he has done this Congress in so effectively responding to the President's pocket veto of two aging bills—not only of the legislation we have considered today, but of S. 50 the Comprehensive Older Americans Services Amendments Act of 1973, signed by the President last May, as Public Law 93-29. I am hopeful that the same spirit of cooperation which resulted in the enactment of the Older Americans Act will prevail when S. 775 reaches the President's desk.

I am particularly pleased that three amendments which I offered in subcommittee last year were retained in both the House and Senate version of this year's Research on Aging Act. These three provisions were designed to broaden the scope and forces of activities to be carried out by the new Institute on Aging by:

First, charging the Secretary with the responsibility of insuring the education and training of an adequate number of allied health, nursing, and paramedical personnel in the field of health care for the aged;

Second, mandating that the new institute conduct scientific studies to determine and measure the impact on the psychological, physiological, and sociological aspects of the process of aging of all programs and activities assisted or conducted by HEW and designed to meet the needs of the aging; and

Third, charging the institute with the responsibility of carrying out public information and education programs and disseminating the findings of relevant aging research and studies and other information about the process of aging which may assist all Americans in dealing with and understanding the problems and processes associated with growing older.

Mr. President, the White House Conference on Aging recommendations on research and demonstration called for the "immediate" establishment of a national institute "to support and conduct research and training in the biomedical and social-behavioral aspects of aging." This recommendation was made in December of 1971. It is now May of 1974.

Senior citizens are the fastest growing segment of our population—the total population of the United States has tripled in size since 1900, while the older population has increased more than twice as fast, multiplying sevenfold. We must do much more to enable older Americans, to enable all ages in our population, to make the most of their later years. We know through testimony we have heard on S. 775 that there is marvelous potential for enriching and lengthening the human lifespan in order to make it possible for each of us to live more creative, productive, and healthful lives. And it is long past time for us to begin to realize that potential.

The Congress has done its utmost to respond to these needs, as well as the specific recommendation of the White House Conference on Aging. I am hopeful that the White House now too will recognize the significance of this important legislation and sign S. 775 into public law.

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Does the Senator from Pennsylvania desire recognition?

Mr. HUGH SCOTT. Mr. President, I yield back my time in the interest of the Republic.

[Laughter.]

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Wisconsin (Mr. PROXMIRE) is recognized for not to exceed 15 minutes.

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## WHAT'S RIGHT WITH THE FEDERAL GOVERNMENT: THE FARM PICTURE

Mr. PROXMIRE. Mr. President, in my series of speeches on "What's Right with the Federal Government," it would be wrong to ignore the great progress made in the farm area.

Over the past 15 years our Federal farm policies have been responsible for creating a revolution in farm productivity that has enabled us to produce food and fiber literally 10 times more efficiently than the Soviet Union.

According to Central Intelligence Agency testimony before the Joint Economic Committee, which I will release in a few weeks, although the U.S.S.R. employs 31 percent of its population in agriculture, it produces 20 percent less food than the United States which employs less than 5 percent of its smaller population in farming.

This in one of the reasons I want to focus today, in the twelfth of my "What's Right with the Federal Government" talks on the tremendous strides that have been made by the American farmer in the 15 years I have been in the Senate.

Of course the focus of late has been on the skyrocketing increase in the cost of food. And the fall guy—the patsy—is all too often the American farmer. If the price of food is going up it must mean the farmer is making a killing. Right? Wrong.

For years the farmer through increasing productivity has offset the increased cost of processing, transporting and marketing food. Until the last 2 years the price of food rose very slowly from year to year. The food bill as a percentage of the average worker's take home pay was going down.

INFLATIONARY PRESSURE

But recently the farmer has been plagued by the same inflationary pressures that have hit the consumer. Shortages have driven up the price of fuel used on the farm—especially propane which is used to dry feed grains. Fertilizer, a mainstay of farm productivity, is hard to come by at any price in the Midwest this year. Even bailing twine costs are going through the roof.

Add to this increase in the cost of producing food a sharper than usual boost in transportation, processing, and selling costs and a record worldwide demand for American farm products and you have the prescription for raging food inflation. But the fact of the matter is that, thanks to a strong Federal farm policy over the past 15 years, the situa-

tion has not exploded and will not get out of hand.

Let us look at the American farm productivity record. In 1960 our farm population was 15.6 million or 8.7 percent of the total U.S. population. By 1973 the farm population had declined to less than 5 percent—9.5 million.

How could we continue to feed an ever increasing population as farms and farmers declined? The answer was an amazing increase in productivity in the decade of the 1960's. Here are a few examples.

Although the farm labor output dropped from 9.8 billion man-hours in 1960 to 6.5 billion man-hours in 1973, production per man-hour almost doubled. American farmers harvested almost the same crop acreage as in 1960, but production per acre had increased almost 30 percent.

In 1960 American farmers raised 96 million head of cattle. Livestock holdings had risen 26 percent—to 121.5 million head—by 1973. The number of hens and broilers rose from 2.1 billion in 1960 to 3.6 billion in 1973.

In their 1960 farm operations American farmers applied 24.9 million tons of fertilizer. By 1973 that was up by 68 percent—to 42 million tons. Between 1960 and 1973 the number of farm tractors increased by 25 percent and, more significant perhaps, their horsepower increased by 38 percent.

WHY PRODUCTION INCREASE?

What caused this amazing productivity increase? A great deal of it represents the cumulative payoff of years and years of Federal investment in programs that came to the fore in the 1930's, but which have continued through the 1940's, 1950's, and 1960's. I refer to such activities as the county agent system, soil conservation projects, agricultural extension programs and, of course, the Federal investment in agricultural research. These are the month after month, year after year programs that just cannot be ignored. If we are to continue to lead the world in food production.

But the story is not simply one of increasing productivity. It is also a tale of improving conditions in our rural areas. The burgeoning of our national highway system has made towns and cities with all their conveniences more accessible to the average farmer. As a result the number of cars as a proportion of the farm population increased by 20 percent between 1960 and 1970.

The average farmer has had the opportunity to better educate himself and his family than ever before. There was a 20-percent increase in the average number of school years completed in rural areas between 1960 and 1970 while the increase in urban education was only half that.

Perhaps most important, farm income on a per family basis more than doubled between 1960 and 1973, going from $3,387 per farm in 1960 to $6,862 per farm last year in constant 1967 dollars.

Running a farm continues to be just about the most time consuming, backbreaking, lowest paying job in America today. It requires a huge capital investment and the return on that investment is normally much less than you or I could earn by putting an equivalent amount of money into Federal bonds. Furthermore at least some of the dramatic income increase over the last 13 years is attributable to off-the-farm earnings.

But the fact remains that farmers are being more adequately rewarded for their tremendous efforts and their great ingenuity. Perhaps the best indication of this better payout is the parity ratio which reflects the relationship between cost of production and the price the average farmer gets for his produce. This ratio went from 80 in 1960 to 88 in 1973. One substantial reason for this sharp rise is a lack of surplus crops purchased and stored at Government expense which traditionally have depressed farm prices.

Farm products that were once surplus now are sold in great quantities in international markets. American agriculture has become more than competitive with world agriculture. As a result exports absorbed 70 percent of the 1973 wheat crop. And the total value of all agricultural exports reached a record $17.5 billion in 1973—keeping our balance of payments in the black for many months.

Throughout the 1960's Congress recognized the impact increasing productivity can have in a market plagued with surpluses by designing farm programs to limit agricultural production and support farm prices. A voluntary feed grains and wheat adjustment program in the early 1960's, plus a mandatory quota program for wheat, substantially reduced U.S. grain stocks which had accumulated during the 1950's.

1965 ACT

One of the more significant farm income support acts was passed in 1965. It recognized excess capacity as a continuing problem and gave the Secretary of Agriculture authority to deal with it on a flexible basis for a 4-year period. Government loans were set at or near world levels, not at higher levels as in earlier years, sharply limiting the need for export subsidies to keep the prices of American farm products competitive in world markets.

The Secretary of Agriculture was directed to reduce stocks, where excessive, to desirable reserve levels. Government expenditures were to be used primarily for payments to farmers to divert base acreages, maintain income, or for the purchase and distribution of products outside commercial markets.

1970 ACT

The provisions of this act prevailed until the Agricultural Act of 1970, the immediate predecessor of the 1973 act, was passed. The Agricultural Act of 1970 continued the wheat, feedgrains, cotton, wool, and dairy programs of the 1965 act. The 1970 wheat program included a set-aside provision which required producers to divert a portion of their crop acreage from the production of wheat or other crops in order to qualify for loans and payments. The voluntary feedgrain program also contained similar set-aside features.

As the expiration date of the 1970 agricultural price stabilization act approached in 1973, American farmers faced quite different circumstances than those which had shaped earlier agricultural legislation. The extension of the 1970 act which became the Agriculture and Consumer Protection Act of 1973 was designed to encourage all-out production, for the first time since World War II. Farmers were eager to comply, since their products are bringing attractive prices in the marketplace.

1973 ACT

Basically, the 1973 act extends for the next 4 years the major commodity price-support programs, plus food for peace and food stamp programs. Many features of earlier price-support and adjustment programs are continued. In several major respects, however, this act differs from those that preceded it.

Under the 1973 act, no minimum payments are guaranteed. Instead, farmers will receive payments only if the market prices during the first 5 months of the 1974 and 1975 marketing years fall below the target prices set in the law. The target prices are $2.05 per bushel for wheat, $1.38 per bushel for corn, and $0.38 per pound for cotton. Farmers will be required to set aside croplands or restrict production only if market prices fall below target levels. Present prices of these commodities are far above the target prices, as are the future's prices for next year's crops. The act calls for the adjustment of target prices in 1976 and 1977 to reflect changes in production costs and farm yields.

The 1973 act requires all exporters of grains, oilseeds and cotton and their products to report the kind, class, and quantity of the commodity sold and the regional geographical destination of the shipment. Reports of sales must be made weekly to the Secretary of Agriculture. He in turn must publish information compiled from these reports, usually on a weekly basis. The publishing of this export-sales information should help us avoid the chaotic market situation which occurred at the time of the Soviet wheat sales and again last summer in the soybean market.

The 1973 act incorporates 40 years of experience in farm legislation, yet it is designed to meet the new conditions of the 1970's. It protects farmers' income while guaranteeing an abundant supply of food and fiber at fair prices to domestic consumers and exporters.

OTHER ADVANCES

The Congress has taken a number of steps over the past 15 years to improve the quality of rural life while making sure that Americans receive adequate nourishment. The food stamp program is a major accomplishment. It provides high quality food at low prices to millions of Americans who otherwise could not afford to eat well. The school lunch program has been expanded to provide more food to more children than at any time in our history.

Another substantial initiative was the Rural Development Act of 1972. This act authorized the Farmers Home Administration to expand loans to farm op-

erators unable to get credit on reasonable terms from banks, make nonfarm loans to rural residents for business enterprises, and guarantee rural housing loans, including those for doctors, dentists, and other professional people as an incentive to settle in rural areas.

But the Rural Development Act is more than an expansion of credit in rural communities. It authorizes Federal grants for pollutant-abatement activities, creation of community fire-protection services and rural development planning. It works on the principal that if we want to stop the suffocating growth of megalopolis we must make it more attractive and more profitable for people to remain in the rural United States.

A few years ago Congress enacted the Farm Credit Act of 1971—another major improvement in farm policy. This legislation remodified and updated our cooperative farm credit program, which dates back to 1916. It provided for a better integration of Federal land banks, production credit associations, intermediate credit banks, and banks for cooperatives, with more control being placed in the hands of the local and regional directors of these institutions. Rural credit is vital to the functioning of the farm economy. This legislation helped to make that credit readily available.

We are now entering a phase of full utilization of cropland coupled with a substantial world demand for our food production. As I mentioned earlier we have also witnessed a food price spiral that has deeply distressed the American consumer. Thus it is more important than ever that we continue enlightened Federal policies that will permit the farmer to continue to increase his productivity.

Several policy issues are currently under discussion. We are reexamining governmental policies concerning the expansion of badly needed fertilizer production and the availability of fuel for farm operations. We are studying the adequacy of Government policy toward storage and transportation systems that are being strained by increased farm production. We are concerned about world cooperation in making needed supplies of scarce foods available to drought stricken countries lacking foreign exchange to purchase needed imports.

RESEARCH NEED

We must give particular attention to putting enough Federal dollars into agricultural research—research that will form the basis for future productivity increases. We must not force farmers to compete with heavily subsidized foreign imports—a type of competition we presently allow under the dairy import program. We must above all recognize that the farmer deserves to share in our national prosperity, even if this means that food prices at the supermarket rise, sometimes too sharply.

Representing as I do the largest dairy State in the country, I am particularly concerned about our dairy policy. At this time it leaves quite a bit to be desired. In the first quarter of 1974 dairy output dropped about 3 percent from a year earlier. Milk cow numbers were down about 3 percent. For the first time in 30 years milk yield per cow fell—from 10,271 pounds in 1972 to 10,125 pounds in 1973.

What has caused this drop in production in the dairy sector of the farm economy when most other crops are being produced in ever greater quantities? Just as we can credit Federal policies for improvements in other areas we must blame Federal policies, to a large extent, for the recent decline in dairy farming.

The Federal Government seems to have made a decision to trade our dairy market to other countries in return for their willingness to permit our feed grains to be sold overseas. This policy was outlined in the so-called Flanigan Report, which has never received official sanction but which was prepared at the request of Peter J. Flanigan, Assistant to the President for International Economic Affairs.

The report's recommendations are being carried out in violation of Federal law. Here is how it is being done. First the President declares an emergency requiring the immediate importation of vast quantities of cheese or nonfat dry milk. He has to proclaim this phony emergency to get around a legal requirement that the Tariff Commission hold hearings before import quotas are increased.

Then Tariff Commission hearings are held after the quota has been increased. One Commissioner has called these hearings "totally pointless and a waste of the taxpayer's money" because they are held after the fact. Another Commissioner says he has "serious doubts about the legality of the President's action."

These very same imports are subsidized in many cases by Common Market countries which pay their producers as much as 40 percent of their value. Of course this permits these countries to undersell the U.S. farmer and cheesemaker. Few businesses could survive if they had to compete with foreign goods that received subsidies of from 20 percent to 40 percent of their value. And dairy farmers in many instances are not surviving. Squeezed between low cost imports dumped on our shores and the high cost of the feed grain they have to feed their cows an estimated 10 percent of the dairy farmers in Wisconsin and Minnesota—the two biggest dairy States—sold out last year.

There is a law on the books that requires the Federal Government to apply a countervailing duty to subsidized imports to offset foreign sudsidies. Our Government violates this law every few days by refusing to apply the duty to dairy imports. A letter from Secretary of the Treasury Simon to Members of the Senate gave this tortured rationale for the administration's failure. His argument was that Common Market countries apply a tariff to cattle feed imported from the United States. Thus they should be allowed to pay a subsidy to their farmers on the export of dairy products made from that feed. In other words the Common Market has us coming and going. They can restrict the importation of our farm goods into their countries and subsidize exportation of their farm goods into our country.

The Government also continues to oppose the appropriation of funds for forage research—particularly a forage research laboratory—which could substantially reduce the costs of producing milk in this country. In fact, the Department's own experts have stated that the construction of a forage research lab could return $100 in benefits for each $1 expended.

These are the problems. But the record of the past 15 years has generally been one of impressive productivity increases as farmers strive to meet increasing food demands both within this Nation and around the world. We have every right to be proud of the way our farm economy has met the challenge and every reason to be optimistic for the future.

## QUORUM CALL

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

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

The legislative clerk proceeded to call the roll.

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

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

## OFFICIAL RESIDENCE FOR THE VICE PRESIDENT

Mr. MANSFIELD. Mr. President, what is the pending business?

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate Joint Resolution 202, which will be stated by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 202) designating the premises occupied by the Chief of Naval Operations as the official residence of the Vice President, effective upon the termination of service of the incumbent Chief of Naval Operations.

The Senate proceeded to consider the joint resolution, which had been reported from the Committee on Armed Services with amendments on page 1, line 6, after the word "grounds", insert "(consisting of 12 acres, more or less),"; on page 2, line 3, after the word "and", strike out "shall be" and insert "are hereby"; in line 6, after the figure "2.", strike out "As in the case of the White House, the", and insert "The"; after line 13, strike out:

SEC. 3. The Administrator of General Services is authorized to provide for the care, maintenance, repair, improvement, alteration, and furnishing of the official residence and grounds, including heating, lighting, and air conditioning, which service shall be provided at the expense of the United States.

And, in lieu thereof, insert:

SEC. 3. The Secretary of the Navy shall, subject to the supervision and control of the Vice President, provide for the staffing, care, maintenance, repair, improvement, alteration, and furnishing of the official residence and grounds of the Vice President.

On page 3, after line 1, insert "to the Department of Defense each fiscal year"; in line 2, after the word "such", strike out "sums" and insert "sum"; in line 3, after the word "necessary", strike out "from time to time"; in line 4, after the word "going", strike out "purposes" and insert "provisions of this Act."; after line 5, strike out "Department" and insert "Secretary"; in line 8, after the word "Vice", strike out "President, subject to reimbursement therefor out of any contive" and insert "President."; after line tingency funds available for the Execu-10, insert a new section, as follows:

SEC. 5. No funds may be expended for the maintenance, care, repair, furnishing, or security of any residence for the Vice President other than the official residence provided for in this Act unless the expenditure of such funds is specifically authorized by law enacted after the date of enactment of this Act.

At the beginning of line 17, change the section number from "5" to "6"; at the beginning of line 22, change the section number from "6" to "7"; and on page 4, after line 2, insert a new section, as follows:

SEC. 8. Section 202 of title 3, United States Code, is amended by striking out "and (5)" in the first sentence and inserting in lieu thereof the following: "(5) the official residence of the Vice President and grounds in the District of Columbia; and (6)".

So as to make the joint resolution read:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That, effective upon termination of service by the incumbent in the office of Chief of Naval Operations, Department of the Navy, the Government-owned house together with furnishings, associated grounds (constituting of 12 acres, more or less), and related facilities which are and have been used as the residence of the Chief of Naval Operations, shall thenceforth be available for and are hereby designated as, the official residence of the Vice President of the United States.

SEC. 2. The official residence of the Vice President shall be adequately staffed and provided with such appropriate equipment, furnishings, dining facilities services and other provisions as may be required, under the supervision and direction of the Vice President, to enable him to perform and discharge appropriately the duties, functions, and obligations associated with his high office.

SEC. 3. The Secretary of the Navy shall, subject to the supervision and control of the Vice President, provide for the staffing, care, maintenance, repair, improvement, alteration, and furnishing of the official residence and grounds of the Vice President.

SEC. 4. There is hereby authorized to be appropriated to the Department of Defense each fiscal year such sum as may be necessary to carry out the foregoing provisions of this Act. During any interim period until and before such funds are so appropriated, the Secretary of the Navy shall make provision for staffiing and other appropriate services in connection with the official residence of the Vice *President.*

SEC. 5. No funds may be expended for the maintenance, care, repair, furnishing, or security of any residenec for the Vice President other than the official residence provided for in this Act unless the expenditure of such funds is specifically authorized by law enacted after the date of enactment of this Act.

SEC. 6. It is the sense of Congress that living accommodations, generally equivalent to those available to the highest ranking officer on active duty in each of the other military services, should be provided for the Chief of Naval Operations.

SEC. 7. The Act entitled "An Act authorizing the planning, design, construction, furnishing, and maintenance of an official residence for the Vice President of the United States", approved April 9, 1966 (80 Stat. 106), is repealed.

SEC. 8. Section 202 of title 3, United States Code, is amended by striking out "and (5)" in the first sentence and inserting in lieu thereof the following: "(5) the official residence of the Vice President and grounds in the District of Columbia; and (6)."

The PRESIDING OFFICER. The time for debate on the joint resolution is limited to 15 minutes, to be equally divided between and controlled by the Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the Senator from Wisconsin (Mr. PROXMIRE).

Mr. HARRY F. BYRD, JR. I yield myself 3 minutes.

Mr. President, Senate Joint Resolution 202 provides for a permanent residence for the Vice President of the United States. This resolution was introduced by the distinguished Republican leader of the Senate. It was cosponsored by the distinguished Democratic leader of the Senate. The resolution has approximately 30 cosponsors.

I have a letter from the Office of Management and Budget approving this proposal. It is my understanding from a telephone conversation with the Office of Management and Budget that this proposal has the approval of the President of the United States. So it has good credentials. I am more concerned about the merits of the case than I am about the credentials of those who support it.

Mr. President, in recent years there has been quite a change in the security problems connected with the Presidency and the Vice-Presidency. It goes back to the tragic assassination of President Kennedy. Since then, it has been necessary for not only the President but also the Vice President to have heavy security.

In the last 6 years the United States has had three Vice Presidents. Two and a half years from now there will be another. In each of these cases a very large amount of tax funds was spent on the homes of the individuals involved. This was done to protect the security of the Vice President of the United States. Already there has been spent around $80,000 on the home of Vice President Ford in Alexandria, Virginia; $175,000 was spent on the home of former Vice President Agnew in Maryland; and I do not have the precise figure in my mind, but something well over $100,000 was spent on the property of former Vice President Humphrey.

Mr. President, I think that there are two aspects of this resolution that need to be considered.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself an additional 2 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. First, should there be a permanent home for the Vice President? Testimony before the Subcommittee on General Legislation of the Committee on Armed Services brought out the fact that almost every group and every individual who testified feels that there should be a permanent home for the Vice President. I think from the point of view of the subcommittee that it is desirable at this time because of, as I have mentioned, the heavy cost in the past of security arrangements for private residences owned by those who have served as Vice President, and we will be faced with the same thing 2½ years from now, where at least $150,000 will have to be spent to secure the home of whoever may be the new Vice President.

So I think the time has come when there should be a permanent residence for the Vice President. If that point is conceded, what home should be designated as the home of the Vice President? There are many ideas as to what should be done in this regard. There are almost as many ideas as there are individuals.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that I may proceed for an additional 10 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, there are almost as many ideas as there are individuals as to just what should be done about a home for the Vice President. This resolution, under very eminent sponsorship, suggests one way, and to the subcommittee of the Committee on Armed Services it is a desirable solution. It is not an ideal solution to the problem but it is, we believe, a desirable solution; namely, to use the already existing home and surrounding grounds on Observatory Hill currently occupied by the Chief of Naval Operations. That property would be designated the permanent home for the Vice President. The title, of course, will remain in the name of the Government.

It is particularly timely at this point because at the end of this month there will be a change in the occupancy of the office of Chief of Naval Operations. The term of Admiral Zumwalt expires and a new person has been selected as the Chief of Naval Operations, Adm. James Holloway. Admiral Zumwalt will be moving out of that home when his term expires at the end of June, and the home will be vacant. No one would be dispossed so if that home were to be taken over, now would be the desirable time to do so.

I think certainly the location on Observatory Circle is an ideal location for a governmental residence. The Secret Service testified before the subcommittee that of the 72 acres comprising Observatory Circle, there are only two sites, one being the site of the present residence, that they would approve from a security standpoint. The residence is a nice one. It is not another White House. Those who feel that the Vice President should have a residence similar to what the President has in the White House

will not get that under this resolution, but from the point of view of quickly making arrangements for the Vice President to move into an official residence and from the point of view of economy, I think that Senate Joint Resolution 202 is desirable.

The cost estimates vary as to how much will need to be spent for security services, but the Secret Service has testified that at least temporary arrangements can be made for the sum of $33,000. The Office of Budget and Management uses a higher figure—I forget the exact figure, but it is something over $100,000. The Secret Service uses $127,000 in equipment for permanent security at the home.

I might say in regard to the Vice President that I think it would be a very undesirable situation to be followed all day long by a group of persons whose job it is to protect one. It would be equally undesirable to have a group of individuals in one's home all night long for the purpose of protecting one.

The present Vice President lives in an extremely nice but modest home in the city of Alexandria, Va. I think if we could turn over this home on Observatory Circle to the Vice President it would be helpful to the present occupant and future occupants also.

Mr. President, I want to say again that this is not an ideal solution to the problem, particularly from the point of view of those who feel that there should be a more palatial residence provided for the Vice President. But I submit this is a good solution, in my judgment.

This will immediately provide a home, a permanent residence for the Vice President. It can be done at a minimum of cost; the Government already owns the home.

It is a question of whether the Chief of Naval Operations will live there or whether the Vice President of the United States will live there. With respect to what will happen to the Chief of Naval Operations, the Navy has 30 different homes for flag officers in the Washington, D.C. area.

The Vice Chief of Naval Operations, who will take over the duties of the Chief of Naval Operations, I am informed, lives in an extremely nice house now. There are many other homes owned by the Government, under the jurisdiction of the Department of Defense, one of which can be made available to the Chief of Naval Operations.

The Navy opposes this proposal, I want to say frankly to my colleagues. The Navy opposes Senate joint resolution 202 because the Navy would like to keep the home on Observatory Hill as the residence of the Chief of Naval Operations; but, all matters considered, it seems to me appropriate, and the committee so concluded, that providing a permanent residence for the Vice President of the Naval Obsrevatory through the use of the residence currently occupied by the Chief of Naval Operations would be the desirable solution at the present time.

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

Mr. HARRY F. BYRD, JR. I yield.

Mr. GRIFFIN. Mr. President, as one of the 34 cosponsors of this joint resolution, as one who has always believed that the Vice President should have an official residence, and as one who has been particularly aware of the importance of this since a fellow Member of Congress from my own State has been elevated to that high office, I want to commend the Senator from Virginia, chairman of the subcommitee, for his careful, deliberate, and very thorough consideration of this matter. I think he has performed a great service to the Senate and, more important, to the country.

After nearly 200 years, perhaps we will finally have an official residence for the Vice President of the United States.

I also want to commend the Senator from Mississippi (Mr. STENNIS), the chairman of the full committee, and the Senator from South Carolina (Mr. THURMOND), who is the ranking Republican member of the full committee.

I would also like to say, and I think the Senator from Virginia will agree, that a former Vice President, now a Member of this body, Senator HUMPHREY, was very active in his support of this resolution. He testified during the hearings, made a very fine statement, and, from first-hand experience, gave the committee a great deal of insight and background as to why this was a good move.

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

Mr. GRIFFIN. Mr. President, I ask unanimous consent to have 2 additional minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. GRIFFIN. I would also like to mention the active leadership provided by the Senator from Arizona (Mr. GOLDWATER), in bringing about some such action as is provided in this resolution.

I hope the Senate will approve the resolution and that the House will, too.

I thank the Senator for yielding to me.

Mr. HARRY F. BYRD, JR. Mr. President, I appreciate the generous words of the Senator from Michigan. It was he who first mentioned this matter to me. I know of the keen interest he has had in it from the beginning.

I may say, frankly, that when he first mentioned it, I was skeptical of the idea. I was fearful that it might not be an adequate residence for the Vice President, and I went to take a look at the property personally to try to reach a conclusion in that regard.

Having done so, it occurred to me, along with the testimony by the Secret Service, that it was a desirable solution to the problem facing the country today.

Mr. President, I ask unanimous consent to add as a cosponsor of Senate Joint Resolution 202 the distinguished senior Senator from South Dakota (Mr. MCGOVERN).

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

Mr. STENNIS. Mr. President, will the Senator yield me 2 minutes?

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that I may be granted an additional 5 minutes, and I yield 2 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is ordered.

Mr. STENNIS. Mr. President, I referred this bill to the subcommittee of which the Senator from Virginia is chairman. I tell you, Mr. President, when a bill emerges from his scrutiny, why, it has merit in it. He is very careful, thorough, and inexhaustible in the way he goes into matters, and I very strongly support his recommendation and that of the subcommittee.

I believe this matter was approved by our committee unanimously. Is that correct?

Mr. HARRY F. BYRD, Jr. The Senator is correct.

Mr. STENNIS. The idea being that we ought to provide a place for the Vice President of the United States; and in location and proximities and security possibilities, this is almost an ideal place.

If there is any criticism of the size of some of the rooms, and all, the only other alternative is to go out and buy a suitable place or to build a very expensive building. We are getting this at a bargain—the Government already owns it, of course—with some modification and some furnishings that will be acquired from time to time. I am very happy with the thought that we are going to have such a place, and it will avoid repetitive, repeated, almost, year-by-year expensive installations for security, and so forth.

I thank the Senator for yielding to me. I hope the joint resolution passes by a large vote.

Mr. PROXMIRE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, in opposing a measure of this kind, with the tremendous support by the majority leader, minority leader, the unanimous position taken by the Armed Services Committee, the distinguished Senator from South Dakota (Mr. MCGOVERN), the distinguished Senator from Arizona (Mr. GOLDWATER), the distinguished Senator from Minnesota (Mr. HUMPHREY), and, of course, managed by my good friend from Virginia (Mr. HARRY F. BYRD, JR.), I am not exactly optimistic about my chances for success in being able to stop it, but I would like to point out some problems in connection with it.

Mr. President, while I agree with the concept of providing a home to the Vice President, there are many outstanding financial questions as yet unresolved.

To pass this legislation with an open-ended approach to financing and without a full cost accounting of the expenses likely to be incurred is not in the best interests of the taxpayers.

I have carefully read the hearings held on this subject by my distinguished colleague the Senator from Virginia (Mr. BYRD), but I admit to some uneasiness when it comes to a full awareness of the costs involved.

For example, it appears that the General Services Administration estimates

that it will cost $276,000 to upgrade the house to Vice-Presidential standards and $359,000 to provide the protective improvements required by the Secret Service.

This totals $635,000. To this would be added another amount ranging from $33,000 to $125,000 for special Secret Service equipment, bringing a new total of as much as $760,000. I presume these figures are in current dollars and reflect the inflation we are all experiencing; otherwise the total cost would be even higher.

Now, the costs do not stop here. We are moving quickly to pass this legislation before the new Chief of Naval Operations moves into the house. If the Vice President is given this house, then, according to Senate Joint Resolution 202—regardless of any pleasant notion we may have—it is the sense of Congress that living accommodations generally equivalent to those available to the highest ranking officer on active duty should be provided for the new Chief of Naval Operations.

I should point out that that could mean that the Chief of Naval Operations will move into one of the 30 old houses there, but I have been around here long enough to see how the Army and the Navy operate, and I would certainly not hold my breath until the Chief of Naval Operations made his permanent home one of the old houses. He will want a bright, new house, which will cost, I am sure, a great deal more than the present house, according to my experience.

That means that we would have to restore a new residence for the new Chief of Naval Operations, occupied by a high-ranking military officer. One estimate, I have found, involves another house for the Chief of Naval Operations to the tune of approximately $250,000. That would come out of the military budget somewhere and means that at least $1 million will be paid for by the taxpayers, perhaps more. At that point we will be considering whether or not this is really cheaper than constructing a new house on Government property.

Back in 1966 Congress passed authorizing legislation to provide $750,000 for a new Vice-Presidential home. However, this money was never appropriated. With inflation, the $750,000 would now be around $1 million or more. So it turns out that the two figures—one for a new home and one for modifications of the old house—are relatively close, close enough in my opinion to warrant a thorough investigation of the actual costs of both alternatives. In short, Mr. President, there are hidden costs in the proposed legislation. Actually, we do not know what the final costs will be.

This is a perfect example of a situation that would be redressed by my bill, S. 3006, which would require cost estimates for 5 years ahead on all Senate bills. Again, I should like to make it clear that I do approve of a new home for the Vice President, but the financial implications of this bill are not entirely clear. I do not think that we should spend the taxpayers' dollars until we provide a thorough explanation of where the money is going and whether it is the best economic policy.

I know that some people will argue why bother about $1 million, when we are passing $100 million and $1 billion bills constantly with little debate.

But, Mr. President, this expenditure has been and will be in the public eye. The country will know about the expenditure for a new house for the Vice President.

So for those reasons, I hope that we might get a more comprehensive explanation of how the matter of the estimates of the costs which we get from the GSA would compare to the actual cost of building a new house for the Chief of Naval Operations. I think we should postpone action on the legislation until we get it.

Mr. HARRY F. BYRD, JR. Mr. President, I think it is important that we discuss an item of $1 million. That is not too small a sum to be discussed in the Senate. I am glad that the Senator from Wisconsin has raised the question.

One million dollars is a lot of money when we are dealing with business. When we deal in business, $1 million is a lot of money. We normally deal in billions, but $1 million is a lot of money, and I am glad that the Senator from Wisconsin has raised the point. However, $1 million is not involved in this matter, in the first place.

Mr. President, I have been talking with the Vice President of the United States. It is not his intention that a large sum of money will be spent on this new home.

The GSA and other bureaucracies would like to become involved in this massive proposal involving a lot of elaborate plans about what they would like to do.

However, if this legislation is passed, the decision will not be made by them. It will be made by the Vice President, who will handle this matter, I am convinced, in a frugal way.

The testimony has shown that the cost of the improvements to the house can be held to as little as $15,000, and that even the permanent security will not exceed $127,000. As I say, that is less than what would probably be needed to be spent on a home to provide security for the new Vice Persident who will come into office 2½ years from now.

The Senator from Wisconsin presents a good point with regard to a new home for the Chief of Naval Operations. So I will point out that under the law, if the Navy desires to spend more than $15,000 to renovate the house, then that request for approval must come through the Appropriations Subcommittee headed by the Senator from Wisconsin. I am sure that the Senator from Wisconsin—in fact, I know that he will—and other members of the subcommtitee will not permit any lavish expenditures on a home for the Chief of Naval Operations.

If, as I pointed out earlier, there are 30 different homes owned by the Navy and probably an equal number owned by the Army, there are many homes that can be made available at a reasonable cost.

The PRESIDING OFFICER. All time has expired.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that I might proceed for 5 additional minutes.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—and I shall not object—I believe that we ought not to continue to extend the time on this measure for a great deal longer because yesterday it was ordered that only 15 minutes would be allowed for morning business.

Mr. President, I do not object.

Mr. GRIFFIN. Mr. President, if I might add to that statement, we also have some very important legislation on which there is a limitation of 1 o'clock. We are cutting into that time, and there will be a problem.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on this measure be extended for 10 minutes, with 5 minutes allowed to the Senator from Virginia.

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

Mr. HARRY F. BYRD, JR. Mr. President, I do not wish to take the time of the Senate. However, I want the RECORD to be clear that the facts are that if we are to approve the concept of a permanent home for the Vice President, this is the most economical way to handle it. Even if the cost somewhat exceeds that now anticipated it will still be more economical than providing a new structure.

I want the RECORD to be clear also that if lavish expenditures are proposed as the Senator from Wisconsin has suggested, to provide a home for the Chief of Naval Operations, any expenditures for this purpose in excess of $15,000, must be authorized by the Armed Services Committee and approved by the Appropriations Committee.

I have one additional word.

There is one aspect of this matter that I do not like. The present Vice President, Mr. GERALD FORD, now resides in the city of Alexandria, in the State which I have the honor and responsibility to represent.

Vice President FORD is a popular resident of that community. He is a fine neighbor. The people there like him. He is a man of high integrity and great ability. He is the type of man that the people of Alexandria would like to have live in their community.

The passage of this joint resolution would take him out of Alexandria and bring him over to the city of Washington, D.C. That is an aspect that I do not like. I would like to have JERRY FORD remain in Alexandria. However, under the conditions facing him and facing the country, there is a need to have a Vice-Presidential residence where security arrangements can be made so as to provide a home that will exist year after year without additional cost to the taxpayers.

Mr. President, I believe that the joint resolution provides a better solution.

Mr. PROXMIRE. Mr. President, I shall take only 2 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin has 5 minutes remaining.

Mr. PROXMIRE. I shall only take a part of that time. The other side has taken far more time than I will take.

I should like to ask my good friend from Virginia whether he said that to renovate the house of the Chief of Naval Operations would, from the Vice-

Presidential standpoint, bring the cost up to $150,000.

Mr. HARRY F. BYRD, JR. No. I do not recall saying that.

Mr. PROXMIRE. Did the Senator say with frugality it could be held to that?

Mr. HARRY F. BYRD, JR. I said the testimony showed that it could be made, as they expressed it, "a habitable area" for $15,000. That figure, then, can be accelerated to almost any amount, depending upon what is done.

Mr. PROXMIRE. Mr. President, this is my problem on this: All the estimates are so vague. I do not see why we cannot get an estimate of what it will cost; then, of course, we can make an allowance for inflation or a reasonable upward adjustment if the Vice President wants some kind of change. But to go ahead and approve something without solid figures could mean an expenditure of, I say, a million dollars. The Senator from Virginia says that is impossible. He says it could be upgraded any amount from the $15,000 they have there.

The GSA said $276,000 to upgrade it. The Secret Service said $359,000 for security protection. Then another $250,000, another estimate indicates, for a new Chief of Naval Operations house.

Those figures may not be accurate. But they show the importance of getting a fairly precise estimate, so that then we will have some kind of control, some kind of measuring basis.

If in the future we have a great expansion of spending on such matters, as we have seen recently at Key Biscayne, San Clemente, and Camp David—everywhere the GSA spends money on a residence for a top official this has happened, so I think we ought to get a clear, hard basis for an estimate of what this cost should be, and then try to hold them to that estimate. That is what I am fighting for this morning.

Mr. HARRY F. BYRD, JR. I think the Senator is on sound ground, except that if he is talking about a sound, permanent home, he will not get it for these estimates.

I did not say it is impossible to spend a million dollars. The way this Government operates, it is possible to spend a million dollars buying cups of coffee here in the Senate. So it is not impossible. But I would say I have talked with the Vice President, and he has no intention of recommending any large increases in costs for renovating this home.

It is a good home. It has been testified I really believe that if we want a Vice-President for $15,000 plus security costs, and the security costs will be permanent, for all future Vice Presidents. So I really believe that if we want a Vice Presidential home, this is the quickest way to get it and the most economical way to get it. I also wish to point out that the costs of operating and maintaining this property will be provided for through an annual appropriation to the Department of Defense, which, of course, must be authorized and approved by the appropirate committees of the Congress.

Mr. President, I ask unanimous consent that the committee report on this resolution be printed in the RECORD.

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

EXPLANATION OF THE AMENDMENTS

The resolution, as drafted, would place the responsibility for the custody, control and maintenance of the residence and grounds to be occupied by the Vice President under the jurisdiction of the Administrator of the General Services Administration. The responsibility for the staffing, maintenance and operation of these premises is now, has been for many years, under the jurisdiction of the Secretary of the Navy. These functions have been carried out in a satisfactory manner during the many years the premises have been used as the residence of the Chief of Naval Operations. The committee will expect the same performance in the future and sees no reason to now transfer the property or the responsibility therefore to another government agency.

The Committee wants to make it clear, however, that the responsibilities of the Secretary of the Navy to be carried out under this joint resolution are subject to the supervision and control of the Vice President.

The specific boundaries of the associated grounds shall consist of twelve acres more or less, and shall be jointly determined by the Secretary of the Navy and the Secretary of the Treasury, the legal description of which shall be determined by a survey of such grounds.

Two new sections have been added. Section 5 is designed to preclude the expenditure of public funds on any other residence for the Vice President, unless such is specifically authorized by the Congress.

Section 8 will amend title 3 of the United States Code to permit the use of the Executive Protective Service to provide security for the premises.

The other amendments are technical in nature.

BACKGROUND

The residence in question is located on the grounds of the Naval Observatory in the District of Columbia. It was built in 1893 to serve as a home for the Observatory Superintendent, but has been used as the official residence of the Chief of Naval Operations for over forty years. It is ideally located for a permanent residence for the Vice President.

The committee believes it is fitting and proper that an official residence be provided for the Vice President.

Under current circumstances, the Vice President must provide his own residence at such location he deems desirable and is within his means. Such a residence must be properly secured by the Secret Service to assure the proper protection of the Vice President and his family. This is often difficult to do, and at a considerable expense to the taxpayers. During the past six years there have been three Vice Presidents. There will be another in two and a half years. These costly security expenditures will continue to be necessary in the future unless a permanent residence is provided.

There have been several approaches to the problem. In 1966, Public Law 89-386 was approved. It authorized the Administrator of the General Services Administration to plan, design and construct a residence for the Vice President on 10 acres of ground comprising a part of the Naval Observatory reservation. The sum of $750,000 was authorized for this purpose, including the initial furnishings. Due to world conditions at the time, the appropriation of funds was never requested. There is now a bill pending in the House of Representatives to fund Public Law 89-386, and yet another which would authorize $1.5 million to purchase a residence for the Vice President. Expert testimony has indicated that due to cost escalations over the past eight years it would now cost in the neighborhood of $1.8 million to build and properly secure such a structure today, exclusive of furnishings. It would probably take two years or more for the design and construction of such a residence.

S.J. Res. 202, which is now before us, seems to provide a desirable solution to the problem. This resolution was introduced by the distinguished Minority Leader of the Senate, and is co-sponsored by 29 other distinguished members of the Senate from both sides of the aisle. The proposal is favored by the President of the United States and the Office of Management and Budget.

It offers several distinct advantages over earlier proposals. Foremost, it will provide an immediate residence for the Vice President at a minimum cost. Only minor renovations and redecorations will be required, at an estimated cost of perhaps $10,000 to $15,000, before occupancy. The residence is located on one of the two sites on the Observatory grounds which the Secret Service considers satisfactory in terms of convenience and proximity for them to carry out protective functions. Testimony indicated that the residence and grounds can be properly secured on an interim basis for an expenditure of around $33,000 for equipment.

The residence is an integral part of the 72 acre Observatory reservation. The mansion and grounds are presently maintained in an excellent fashion by the Public Works Office of the Naval Observatory. The operation and maintenance cost over the past four years have averaged approximately $26,800 per year, which includes the cost of some furnishings totaling around $28,000. The committee sees no purpose in disrupting this relationship by placing the residence and the grounds under another government agency. Accordingly, this legislative proposal has been modified to leave the responsibility for the staffing, care and maintenance of the property as it is now, under the Secretary of the Navy.

The necessary funds would be provided to the Department of Defense through an annual appropriation. The committee does not envision either a large initial expenditure, or an annual appropriation much in excess of the current costs for staffing, maintaining and operating the establishment.

FISCAL DATA

The enactment of this legislation will provide an immediate residence for the Vice President with a minimum expenditure of funds, as indicated earlier in this report.

DEPARTMENTAL DATA

As earlier indicated, this proposal has the support of the President, and the Office of Management and Budget. The views of the interested governmental departments are set forth below:

UNITED STATES OF AMERICA,
GENERAL SERVICES ADMINISTRATION,
*Washington, D.C., April 29, 1974.*

Hon. JOHN C. STENNIS,
*Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of April 4, 1974, requested the views of the General Services Administration on Senate Joint Resolution 202, a joint resolution "Designating the premises occupied by the Chief of Naval Operations as the Official residence of the Vice President, effective upon the termination of service of the incumbent Chief of Naval Operations."

While endorsing the purpose of the joint resolution, we have a number of suggestions aimed toward better effectuation of that purpose. Those are incorporated in the attached draft bill which we propose in lieu of Senate Joint Resolution 202 as presently drafted.

Section 1 of the attached draft states that the area involved is approximately ten acres, and provides for joint establishment of

boundaries by the Department of the Navy, GSA, and the Secret Service. This provision is recommended to permit the different entities to take into account their programs in determining the boundaries. For example, the Secret Service will have to determine the boundaries necessary to provide adequate protection of the Vice President.

Section 2 provides that custody and control of the grounds and buildings be in GSA.

Section 3 of the attached draft would amend 3 U.S.C. 202 to provide that the Executive Protective Service shall have police jurisdiction over the area. The EPS now has jurisdiction over the White House and foreign embassies. Senate Joint Resolution 202 contains no provision for protection of the property.

Section 4, regarding a steward or housekeeper responsible for certain public property in the residence, is similar to a provision in 3 U.S.C. 109 applicable to the White House. Senate Joint Resolution 202 makes no such provision.

Section 5 provides an authority, missing in Senate Joint Resolution 202, to accept donations and loans of furniture and furnishings for use in the residence. A similar provision for the White House is contained in 3 U.S.C. 110.

Section 6 is adapted from section 2 of the joint resolution, providing that the Government shall furnish the house with the necessary facilities, furnishings, etc., to enable the Vice President to discharge his official duties.

Section 7 provides for the care and maintenance of the residence and grounds by GSA as in section 3 of Senate Joint Resolution 202, except that the word "furnishing" is omitted because it is covered in section 6 of our draft. It also makes clear that the cost to GSA will not be met from GSA's Federal Buildings Fund.

Section 8 authorizes appropriations, and provides that in the interim period the building will be operated by the Secretary of the Navy using funds appropriated to operate and maintain the building prior to the passage of the joint resolution. Senate Joint Resolution 202 provides that during the interim period the Navy will provide all services subject to reimbursement from the contingency fund of the "Executive" (meaning the "President").

Section 9 is identical with section 5 of the joint resolution regarding other accommodations for the Chief of Naval Operations.

Section 10 contains the provision of section 6 of the joint resolution providing for repeal of the 1966 Act authorizing GSA to construct on the site a residence for the Vice President.

In submitting this alternative proposal we take no firm position regarding custody, control, and maintenance of the residence by GSA. We would have no objection to the substitution of another agency, such as the National Park Service, which now maintains the President's residence at the White House (GSA maintaining only the offices).

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

Sincerely,

ALLEN G. KAUPINEN.

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DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
*Washington, D.C., April 29, 1974.*

Hon. JOHN C. STENNIS,
*Chairman, Committee on Armed Services,*
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Your request for comment on Senate Joint Resolution 202, a joint resolution "Designating the premises occupied by the Chief of Naval Operations as the official residence of the Vice President, effective upon the termination of service of the incumbent Chief of Naval Operations," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The move to provide a proper residence for the use of the Vice President is strongly supported. However, it is recommended that the 1966 authorization to provide a new facility for this purpose (Public Law 89-386, April 9, 1966) be reconsidered in lieu of utilizing the present quarters of the Chief of Naval Operations (Navy House) on Massachusetts Avenue.

Due to its basic architecture, Navy House, while adequate for functions conducted by the Chief of Naval Operations, appears to be inadequate for State functions expected to be conducted by the Vice President. To attempt to reconfigure and modernize the existing building (built in 1893), the cost would seem to be excessive to the benefits gained, particularly as compared to new construction. It is most assuredly of high importance that designated quarters for the Vice President give adequate consideration to this need.

Although a secondary consideration, but nevertheless not to be overlooked, is the fact that these quarters have been home for the Chiefs of Naval Operations for over forty years. It is considered altogether fitting that the effect of this resolution on traditions of the Naval Service be weighed in your deliberations.

The intent of the Congress to provide for a home for the Vice President is fully endorsed. In view of the concerns expressed above, however, it is recommended that the resolution provide for a more suitable solution by containment of a provision for building a proper building at an appropriate site which meets the full needs of the incumbent of the second highest office in the land.

The costs of the operation and maintenance of Navy House, including minor construction and improvements are:

| | Fiscal year— | | | |
|---|---|---|---|---|
| | 1971 | 1972 | 1973 | 1974 (6 mo) |
| Operations | $26,249 | $6,112 | $7,121 | $2,747 |
| Maintenance | 26,880 | 11,359 | 19,327 | 7,420 |
| Total | 53,129 | 17,471 | 26,448 | 10,167 |

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on Senate Joint Resolution 202 for the consideration of the Committee.

Sincerely yours,

E. K. SNYDER,
*Rear Admiral, USN, Chief of Legislative Affairs.*

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THE GENERAL COUNSEL
OF THE TREASURY,
*Washington, D.C., Apr. 30, 1974.*

Hon. JOHN C. STENNIS,
*Chairman, Committee on Armed Services,*
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on Senate Joint Resolution 202, "Designating the premises occupied by the Chief of Naval Operations as the official residence of the Vice President, effective upon the termination of service of the incumbent Chief of Naval Operations."

From the standpoint of its statutory duty to protect the Vice President, the Department fully endorses the objective of providing a permanent residence for the second-highest office holder in the United States, and we feel that the Naval Observatory grounds are ideal in terms of convenience and proximity for the Secret Service protective function.

The United States Naval Observatory grounds consist of 72 acres. The residence of the Chief of Naval Operations is located on 12 acres which is completely encircled by a five-foot high fence. The main house with garage and greenhouses is located on four of those 12 acres. The main residence apparently was constructed in 1893; it is a frame and masonry three story building, facing Massachusetts Avenue in a northeasterly direction; and the residence is approximately 270 feet from the street. Access to the house is by a driveway from the Observatory public driveway, Goldsborough Drive.

The Secret Service Protection and Technical Security experts have conducted a preliminary inspection of the residence of the Chief of Naval Operations as well as four other sites suggested to us as locations for new construction of a Vice Presidential residence. From this inspection, the Secret Service concludes there is no doubt that the Chief of Naval Operations residence can be secured at its location. It sits within an already controlled environment. It is in close proximity to areas already patrolled by the Executive Protective Service in providing security for foreign embassies. In this regard, we would recommend that the legislation be amended to include a provision transferring the 12 acres on which the building is located to the National Park Service. This would provide a greater measure of control over the property by the Secret Service and would facilitate its protective function. Also, we would recommend that Title 3, United States Code, section 3 be amended to authorize the Executive Protective Service to provide security for any areas designated as a permanent Vice Presidential residence.

There are, admittedly certain disadvantages due to the age and construction of the building. Its age alone presents a possible fire hazard. The present heating and electrical system may also present a hazard.

The Secret Service has made a tentative estimate of the basic cost of technical security equipment, exclusive of installation costs, needed to immediately secure the residence of the Chief of Naval Operations on a temporary type basis. That cost is $33,000. On a more long range basis to permanently secure the area and residence the Secret Service has estimated that $127,000 would be required.

Four other areas within the Naval Observatory grounds were surveyed by the Secret Service as possible locations for new construction for a permanent Vice Presidential residence, inasmuch as Public Law 89-386, approved April 9, 1966, provided for the construction of a Vice Presidential residence on 10 acres of those grounds. That survey has revealed that there is only one other location acceptable to the Secret Service from a security standpoint. This site, located in the northwest quadrant adjacent to Goldsborough Road, the main entrance to the Observatory grounds, may be preferable to the location of the Chief of Naval Operations residence. However, this location has on it two other buildings which would have to be relinquished if it were selected as a site for new construction. These buildings are a residence presently occupied by The Director of the Defense Intelligence Agency and a house utilized by the public works officer.

Regardless of the structure and area that the Secret Service secures, certain basic safety and other security installations will in the long run be necessary such as alarm systems, camera systems, bullet proof windows, locks, security related hardware, plumbing for adequate fire fighting equipment; a Secret Service Command post and

guard booths; communications systems; high intensity emergency lighting, and low level regular lighting, and an adequate garage to house and store official vehicles.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

EDWARD C. SCHMULTS,
*General Counsel.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, existing law proposed to be changed is printed below as follows: language in which no change is proposed is printed in roman; language to be deleted in brackets; and new language in italic.

The Act of April 9, 1966 (80 Stat. 106)

[AN ACT authorizing the planning, design, construction, furnishing, and maintenance of an official residence for the Vice President of the United States

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Administrator of General Services is hereby authorized to plan, design, and construct an official residence for the Vice President of the United States in the District of Columbia.

[SEC. 2. The Administrator is further authorized to use as a site for such residence Federal land and property comprising approximately ten acres at the United States Naval Observatory, the specific area and boundaries thereof to be determined jointly by the General Services Administration and the Department of the Navy: *Provided,* That any roads and improvements thereon for which there is a continued need may be relocated and reconstructed.

[SEC. 3. The Administrator is further authorized to provide for the care, maintenance, repair, improvement, alteration, and furnishing of the official residence and grounds, including heating, lighting, and air conditioning, which services shall be provided at the expense of the United States.

[SEC. 4. The Administrator of General Services is further authorized to accept cash gifts, furniture, and furnishings and other types of gifts on behalf of the United States for use in constructing and furnishing the official residence but without further conditions on use, all such articles thus given to become the property of the United States.

[SEC. 5. There is authorized to be appropriated to the General Services Administration, the sum of $750,000 for planning, design, construction, and costs incidental thereto, including the cost of initial furnishings.

[SEC. 6. There is further authorized to be appropriated to the General Services Administration, annually, such amounts as may be necessary to carry out the purposes of section 3.]

TITLE 3, UNITED STATES CODE—
THE PRESIDENT

* * * * *

Chapter 3.—PROTECTION OF THE PRESIDENT; THE EXECUTIVE PROTECTION SERVICE

* * * * *

§ 202. Executive Protective Service; establishment, control, and supervision; privileges, powers, and duties

There is hereby created and established a permanent police force, to be known as the "Executive Protective Service". Subject to the supervision of the Secretary of the Treasury, the Executive Protective Service shall perform such duties as the Director, United States Secret Service, may prescribe in connection with the protection of the following: (1) the Executive Mansion and grounds in the District of Columbia; (2) any building in which Presidential offices are located; (3) the President and members of his immediate family; (4) foreign diplomatic missions located in the metropolitan area of the District of Columbia; (5) *the official residence of the Vice President and grounds in the District of Columbia;* and [(5)] *(6)* foreign diplomatic missions located in such other areas in the United States, its territories and possessions, as the President, on a case-by-case basis, may direct. The members of such force shall possess privileges and powers similar to those of the members of the Metropolitan Police of the District of Columbia.

* * * * *

Mr. PROXMIRE. Mr. President, let me simply say in conclusion that I am not going to oppose this bill further. I hope we will be able to measure how much is spent on the Vice President's home based on the $15,000 estimate which the Senator from Virginia has given us this morning. I am sure it will be far more than he estimates, but if it is much more than that, I think we will have a basis for a protest.

Furthermore, I thank the Senator from Virginia for referring to the Appropriations Committee as my committee. I am on the committee, but it is not my committee by a long shot. When these requests come from the armed services for big increases in spending, such as will come for a new lavish mansion for the Chief of Naval Operations, disguised as a hundred billion of other defense spending, I will try to find it. But if they can sneak by with $750 million in this budget for the CIA without anyone knowing about it, think how easy it will be to toss in a million here and a million there for the Navy's top admiral. This bill opens us up for just that.

The PRESIDING OFFICER. The question is on agreeing to the first committee amendment.

Mr. HARRY F. BYRD, JR. I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, as cosponsor of Senate Joint Resolution 202, I urge the Senate give this matter speedy and favorable action. The Senate Armed Services Committee, on the recommendation of its General Legislation Subcommittee, has unanimously approved this resolution.

The able chairman of the subcommittee, Mr. BYRD of Virginia, and the ranking minority member of the subcommittee, Mr. TAFT of Ohio, held hearings April 29 on Senate Joint Resolution 202. These hearings revealed that transfer of the current residence of the Chief of Naval Operations on the grounds of the Naval Observatory in the District of Columbia was a cost effective way of providing a residence for our Vice President.

Among those testifying in support of this resolution was the distinguished Senator from Minnesota (Mr. HUMPHREY) a former Vice President.

Senator HUMPHREY explained the advantages both to the Vice President and to the Federal Government which would be offered through an official residence for our No. 2 elected Government official. He stressed that the current practice of providing protection and communications to the private residences of the Various Vice Presidents was expensive and in many cases the funds could not be recovered.

Mr. President, as the Senate knows this Nation has had four Vice Presidents in the last 10 years and in each case the Secret Service has had to make expensive renovations of their respective private residences.

In the case of the CNO's quarters at the Naval Observatory, we have a building already owned by the Government which could be occupied almost immediately by the current Vice President. This would take place when the term of Adm. Elmo Zumwalt ends on June 30.

Mr. President, it is my hope the Senate will act promptly in approving this resolution.

As far as spending large amounts is concerned, Vice President FORD does not want an elaborate home. It has been suggested that this home of the Chief of Naval Operations be reworked or rebuilt, but he does not want that. He is a very frugal man, and I admire him for it and commend him for it.

I think in the end this is going to be the most economical, the most appropriate, and the most practical manner in which to handle this particular important matter for the Government.

The PRESIDING OFFICER. All time on the joint resolution has expired. The question is on agreeing to the first committee amendment.

Mr. GRIFFIN. Mr. President, unless there is objection, I ask unanimous consent that the several committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the committee amendments are considered and agreed to en bloc. The question is on the engrossment and third reading of the joint resolution.

The joint resolution (S.J. Res. 202) was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

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## EDUCATION AMENDMENTS OF 1974

The PRESIDING OFFICER (Mr. MCGOVERN). Under the previous order, the Senate will now resume the consideration of the unfinished business, S. 1539, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

The Senate resumed the consideration of the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRIFFIN. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the text of the amendment will be printed in the RECORD.

The text of the amendment is as follows:

At the end of the bill add a new title:

"TITLE IX—EQUAL EDUCATIONAL OPPORTUNITIES

"SHORT TITLE

"SEC. 901. This title may be cited as the 'Equal Educational Opportunities Act of 1974'.

"PART A—POLICY AND PURPOSE

"DECLARATION OF POLICY

"SEC. 902. (a) The Congress declares it to be the policy of the United States that—

"(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

"(2) the neighborhood is the appropriate basis for determining public school assignments.

"(b) In order to carry out this policy, it is the purpose of this Act to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

"FINDINGS

"SEC. 903. (a) The Congress finds that—

"(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

"(2) for the purpose of abolishing dual schools solely on the basis of race, color, sex, thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

"(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

"(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

"(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

"(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, 'incomplete and imperfect', and have not established a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems.

"PART B—UNLAWFUL PRACTICES

"DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

"SEC. 904. No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

"(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools.

"(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part D of this title, to remove the vestiges of a dual school system;

"(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency of providing the appropriate grade level and type of education for such student;

"(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

"(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

"(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instruction programs.

"BALANCE NOT REQUIRED

"SEC. 905. The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

"ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

"SEC. 906. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

"PART C—ENFORCEMENT

"CIVIL ACTIONS

"SEC. 907. An individual denied an equal educational opportunity, as defined by this title, may constitute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this title referred to as the 'Attorney General'), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

"EFFECT OF CERTAIN POPULATION CHANGES ON CIVIL ACTIONS

"SEC. 908. When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

"JURISDICTION BY THE ATTORNEY GENERAL

"SEC. 909. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 807.

"INTERVENTION BY ATTORNEY GENERAL

"SEC. 910. Whenever a civil action is instituted under section 807 by an individual, the Attorney General may intervene in such action upon timely application.

"SUITS BY THE ATTORNEY GENERAL

"SEC. 911. The Attorney General shall not institute a civil action under section 807 before he—

"(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part B of this title; and

"(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate action.

"ATTORNEYS' FEES

"SEC. 912. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

"PART D—REMEDIES

"FORMULATING REMEDIES; APPLICABILITY

"SEC. 913. In formulating a remedy for a denial of educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

"PRIORITY OF REMEDIES

"SEC. 914. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

"(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

"(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

"(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

"(d) the creation or revision of attendance zones or grades structures without requiring transportation beyond that described in section 815;

"(e) the construction of new schools or the closing of inferior schools;

"(f) the construction or establishment of magnet schools; or

"(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 815 and 816 of this title.

"TRANSPORTATION OF STUDENTS

"SEC. 915. (a) No court, department, or agency of the United States shall, pursuant to section 814, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

"(b) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

"(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

"DISTRICT LINES

"SEC. 916. In the formulation of remedies under section 813 or 814 of this title the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

"VOLUNTARY ADOPTION OF REMEDIES

"SEC. 917. Nothing in this title prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

"REOPENING PROCEEDINGS

"SEC. 918. On the application of an educational agency, court orders, or desegregation plans under title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this title and intended to end segregation of students on the basis of race, color, or national origin, shall be reopened and modified to comply with the provisions of this title. The Attorney General shall assist such educational agency in such reopening proceedings and modifications.

"LIMITATION ON ORDERS

"SEC. 919. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, be terminated if the court finds the defendant educational agency is not effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found to be effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto.

"TERMINATION OF COURT ORDER

"SEC. 920. Any court order requiring the desegregation of a school system shall be terminated, if the court finds the schools of the defendant educational agency are a unitary school system, one within which no person is to be effectively excluded from any school because of race, color, or national origin, and this shall be so, whether or not such school system was in the past segregated de jure or de facto. No additional order shall be entered against such agency for such purposes unless the schools of such agency are no longer a unitary school system.

"PART E—DEFINITIONS

"DEFINITIONS

"SEC. 921. For the purposes of this title—

"(a) the term 'educational agency' means a local educational agency or a 'State educational agency' as defined by section 801(k) of the Elementary and Secondary Education Act of 1965;

"(b) the term 'local educational agency' means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965;

"(c) the term 'segregation' means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin;

"(d) the term 'desegregation' means desegregation as defined by section 401(b) of the Civil Rights Act of 1964; and

"(e) an educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

"PART F—MISCELLANEOUS PROVISIONS

"REPEALER

"SEC. 922. Section 709(a)(3) of the Emergency School Aid Act is hereby repealed.

"SEC. 923. This title shall be effective 90 days after enactment."

Amend the table of contents by striking out title VIII and items 901 through 906, and inserting in lieu thereof the following:

"TITLE IX—EQUAL EDUCATIONAL OPPORTUNITIES

"Sec. 901. Short title.

"PART A—POLICY AND PURPOSE

"Sec. 902. Declaration of policy.
"Sec. 903. Findings.

"PART B—UNLAWFUL PRACTICES

"Sec. 904. Denial of equal educational opportunity.
"Sec. 905. Balance not required.
"Sec. 906. Assignment on neighborhood basis not a denial of equal educational opportunity.

"PART C—ENFORCEMENT

"Sec. 907. Civil actions.
"Sec. 908. Effect of certain population changes on civil actions.
"Sec. 909. Jurisdiction by the Attorney General.
"Sec. 910. Intervention by Attorney General.
"Sec. 911. Suits by the Attorney General.
"Sec. 912. Attorneys' fees.

"PART D—REMEDIES

"Sec. 913. Formulating remedies; applicability.
"Sec. 914. Priority of remedies.
"Sec. 915. Transportation of students.
"Sec. 916. District lines.
"Sec. 917. Voluntary adoption of remedies.
"Sec. 918. Reopening proceedings.
"Sec. 919. Limitations on orders.
"Sec. 920. Termination of court orders.

"PART E—DEFINITIONS

"Sec. 921. Definitions.

"PART F—MISCELLANEOUS PROVISIONS

"Sec. 922. Repealer.
"Sec. 923. Effective date.".

Mr. GRIFFIN. Mr. President, this is essentially the Esch amendment which was adopted by an overwhelming vote in the House, and which was offered by the Senator from Florida (Mr. GURNEY) on yesterday. I have made only minimum changes in the language of the amendment, which have been made for the purpose of qualifying the amendment for reconsideration, in effect, today.

The changes made are these:

A section relating to separability has been stricken, and a new section making the provisions effective 90 days after enactment, has been added.

I believe that, after consultation with the Parliamentarian, that those changes would be considered substantial enough so that it will be in order to consider the amendment, even though the Senate did vote on a similar amendment yesterday.

I am glad to notice the presence of the distinguished Senator from New York (Mr. JAVITS), the ranking minority member of the Committee on Labor and Public Welfare, in the Chamber. I would like to say to him that, if we could get an up-and-down vote on the merits of this amendment today, it would not be necessary to go up the hill and down again next Tuesday by offering the House bill as a substitute. It will be recalled that such an option was reserved, admittedly, in order to be able to have a second opportunity to consider the Esch amendment on busing.

In view of the very close vote on yesterday—with a margin of only one vote—I am sure it is understandable that those of us who feel very strongly about the importance of this amendment would want to have the basic question reconsidered.

At this time, I would like to yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I am pleased to join the Senator from Michigan in this effort to get what I think is essentially an up or down vote on the basic issue, not a motion to table it.

As the Senator from Michigan has indicated, some changes were made in the amendment. I hope that some agreement can be reached so that we can have a vote, win or lose, so that we might move on to other business.

As I said yesterday in support of the Gurney amendment, this matter is becoming an issue in more and more States. The votes are becoming closer and closer. I believe that only the pas-

sage of time will see some meaningful resolution of this problem by Congress.

I join the Senator from Michigan as a coauthor of the amendment. I hope that the managers of the bill might work out some arrangement or agreement whereby we could have an up or down vote at 10:30 or 11 o'clock. The matter has been debated. Everybody understands in essence what the amendment would do.

That is all I have to say at this time.

Mr. GRIFFIN. I thank the Senator for his contribution and for his cosponsorship of the amendment.

Mr. JAVITS. I yield myself 5 minutes in opposition to the amendment.

Mr. President, the difficulty with this procedure as outlined by the distinguished Senator from Michigan is that it changes materially the understanding of the Senate about how this matter was going to be handled. I am sure that he does not wish to lend himself to that without thinking it over very carefully.

As I see the situation, the Senate had a right to assume that, with the Gurney amendment having 6 hours yesterday, completely debated, explored, and then voted on, with an absolute right, which was reserved in the unanimous-consent agreement, to table, that was for this phase, which ends at 1 o'clock today—the end of that situation—and that on next Tuesday, when Senator GRIFFIN reserved the right—we understood it and we said it when the unanimous-consent agreement was discussed—to propose the whole House package, we would have a go at this again. But I do not believe that Members had any right to assume that on an hour's debate, which is all we have today on any amendment, including this amendment, this question would again be revisited.

Other amendments relating to busing were absolutely in order. As a matter of fact, we dealt with one last night, and it was actually adopted by the Senate. But I cannot—and I will not—give any undertaking not to move to table this amendment again, even if we reach it by 1 o'clock—and perhaps we will not—because I think that the Senate had a right to assume that that was it on the Gurney amendment and that we are not going to revisit it this morning at a time chosen by those who are dissatisfied with last night's vote. Senators had a right to assume that this matter would be reconsidered again on Tuesday or Monday, whenever the Senator had the reservation on the total House bill.

The Senator is completely within his rights in raising the matter again, but I do not yield any of mine, and I hope very much that the manager of the bill will not, either. We may lose it or win it, but I deeply believe that, in saying what I am saying, I am reading correctly what the Senate had in mind when this matter first occurred.

So I will not—I am very sorry, but I am very clear on this—relinquish any rights whatever respecting this amendment.

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

Mr. JAVITS. I yield.

Mr. GRIFFIN. I want to clear up one point and make sure there is no misunderstanding.

I am sure the Senator would agree that there was a clear understanding that amendments relating to busing could be offered and voted upon today until 1 o'clock.

Certainly, what we are doing now is not in conflict with that understanding we had. Indeed, I would say that the Senator from Kansas (Mr. DOLE) was planning to offer this amendment in substantially the same form today.

So, I do not want the Senator to be under the impression or that anything being done here this morning is in any way out of line or inconsistent with the earlier understanding. If the Senator wishes not to waive any of his rights, of course, I can understand that.

Mr. JAVITS. I was addressing myself—very clearly, I thought—to the fact that I was not in a position to give up nor would I give up any of my rights. That is what the Senator asked me. That is all I was answering—why I would not give up any rights. I am not critical of any Member's exercise of his rights. I never have been, and I am not starting today.

In explanation of why I cannot comply with the Senator's request, I stated what I have as to what I believe to be the general consideration of the Senate of this matter. Therefore, rather than giving up any rights, I would consider it my duty, as one of the managers of the bill, to protect what I consider to be the Senate's understanding of how this thing was shaping up—no agreements, but just the understanding. I am just explaining my attitude, nothing else.

Mr. GRIFFIN. I understand. I want to add the further point that, not only is there the opportunity today under the unanimous-consent agreement to reconsider, in effect, the amendment but, obviously, it can also be reconsidered again next week, in effect, if I should offer the House passed bill as a substitute.

It was my suggestion, however, that I might forgo the opportunity to offer the measure again next week if we could get a vote on it today.

That is what we would be giving up. In other words, both sides would be giving up a little, in a procedural sense, but we would be giving the Senate an opportunity to vote up or down on the merits of this amendment that would seem to be a reasonable kind of expectation: the Senate should have an opportunity to work its will on the merits, rather than having to vote on a tabling motion.

Mr. JAVITS. Mr. President, again on my time, I do not consider that the Senate passes any less on the merits when it votes to table than when it votes on the merits. That is its business. It decides that it wishes to cut off further consideration at that point. That is just as much a considered decision by the Senate as any other.

Second, knowing very well how this place works, when it is stated in the unanimous-consent agreement that a certain matter is going to be revisited, and we all knew it on Monday and Tuesday, it makes quite a difference as to whether it is revisited on Thursday, immediately after the previous vote.

I do not know what the absentee situation is, and I have not paused to find out, because it is immaterial. Members had a right, in my judgment, looking at it from our side, to read the situation as I am reading it. Therefore, for my action, I will do whatever I can to protect a reading of the situation which I would have made if I were other Members and which perhaps other Members have made. If they have not, it is not an undue precaution.

Now, Mr. President, on my own time I would like to ask the Chair if any rights are waived to points of order in connection with further debate on this amendment.

The PRESIDING OFFICER. The Chair suggests the absence of a quorum on the Chair's time.

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

Mr. HELMS. Mr. President, can we withhold the quorum call for just a moment so that I may make a unanimous-consent request?

Mr. JAVITS. Yes, of course.

Mr. HELMS. Mr. President, I ask unanimous consent that James L. Lucier and Rom Parker, Jr., of my staff, be permitted on the floor.

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

The clerk will call the roll.

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

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

Mr. GRIFFIN. Mr. President, I modify my proposed amendment by deleting section 918, as it has been presented by the desk. Then, I ask as a parliamentary inquiry, having deleted that section which has to do with the reopening of lawsuits and thereby making the amendment prospective only in its operation, whether the amendment is in order.

Mr. JAVITS. Mr. President, may I ask the Senator to yield so that I may add to the inquiry, so that we will have one inquiry pending, and making both in one.

May I add to that question to the Chair the effect of the unanimous-consent agreement upon a point of order.

Mr. GRIFFIN. Mr. President, before the Chair rules, after checking with my staff and others, I modify the amendment by deleting sections 918, 919, and 920, in order to make clear the purpose that the operation of the amendment would be prospective only.

The PRESIDING OFFICER. The Chair would rule there has been a substantial change, and that the amendment is in order as it is now.

The amendment, as now modified, reads as follows:

At the end of the bill add a new title as follows:

"TITLE IX—EQUAL EDUCATIONAL OPPORTUNITIES

"SHORT TITLE

"SEC. 901. This title may be cited as the 'Equal Educational Opportunities Act of 1974'.

"PART A—POLICY AND PURPOSE

"DECLARATION OF POLICY

"SEC. 902. (a) The Congress declares it to be the policy of the United States that—

"(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

"(2) the neighborhood is the appropriate basis for determining public school assignments.

"(b) In order to carry out this policy, it is the purpose of this Act to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

"FINDINGS

"SEC. 903. (a) The Congress finds that—

"(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

"(2) for the purpose of abolishing dual schools solely on the basis of race, color, sex, thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

"(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

"(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

"(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

"(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, 'incomplete and imperfect', and have not established a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems.

"PART B—UNLAWFUL PRACTICES

"DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

"SEC. 904. No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

"(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

"(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part D of this title, to remove the vestiges of a dual school system;

"(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency of providing the appropriate grade level and type of education for such student;

"(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

"(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

"(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instruction programs.

"BALANCE NOT REQUIRED

"SEC. 905. The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

"ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

"SEC. 906. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

"PART C—ENFORCEMENT

"CIVIL ACTIONS

"SEC. 907. An individual denied an equal educational opportunity, as defined by this title, may constitute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this title referred to as the 'Attorney General'), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

"EFFECT OF CERTAIN POPULATION CHANGES ON CIVIL ACTIONS

"SEC. 908. When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

"JURISDICTION BY THE ATTORNEY GENERAL

"SEC. 909. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 907.

"INTERVENTION BY ATTORNEY GENERAL

"SEC. 910. Whenever a civil action is instituted under section 807 by an individual, the Attorney General may intervene in such action upon timely application.

"SUITS BY THE ATTORNEY GENERAL

"SEC. 911. The Attorney General shall not institute a civil action under section 807 before he—

"(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part B of this title; and

"(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate action.

"ATTORNEYS' FEES

"SEC. 912. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

"PART D—REMEDIES

"FORMULATING REMEDIES; APPLICABILITY

"SEC. 913. In formulating a remedy for a denial of educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

"PRIORITY OF REMEDIES

"SEC. 914. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

"(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

"(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

"(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

"(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 815;

"(e) the construction of new schools or the closing of inferior schools;

"(f) the construction or establishment of magnet schools; or

"(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 815 and 816 of this title.

"TRANSPORTATION OF STUDENTS

"SEC. 915. (a) No court, department, or agency of the United States shall, pursuant to section 814, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

"(b) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

"(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary

system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

"DISTRICT LINES

"SEC. 916. In the formulation of remedies under section 913 or 914 of this title the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

"VOLUNTARY ADOPTION OF REMEDIES

"SEC. 917. Nothing in this title prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the approriate educational agency.

"PART E—DEFINITIONS

"DEFINITIONS

"SEC. 918. For the purposes of this title—

"(a) the term 'educational agency' means a local educational agency or a 'State educational agency' as defined by section 801(k) of the Elementary and Secondary Education Act of 1965;

"(b) the term 'local educational agency' means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965;

"(c) the term 'segregation' means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin;

"(d) the term 'desegregation' means desegregation as defined by section 401(b) of the Civil Rights Act of 1964; and

"(e) an educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

"PART F—MISCELLANEOUS PROVISIONS

"REPEALER

"SEC. 919. Section 709(a)(3) of the Emergency School Aid Act is hereby repealed.

SEC. 920. This title shall be effective 90 days after enactment.

Amend the table of contents by striking out title VIII and items 901 through 906, and inserting in lieu thereof the following:

"TITLE IX—EQUAL EDUCATIONAL OPPORTUNITIES

"Sec. 901. Short title.

"PART A—POLICY AND PURPOSE

"Sec. 902. Declaration of policy.
"Sec. 903. Findings.

"PART B—UNLAWFUL PRACTICES

"Sec. 904. Denial of equal educational opportunity.
"Sec. 905. Balance not required.
"Sec. 906. Assignment on neighborhood basis not a denial of equal educational opportunity.

"PART C—ENFORCEMENT

"Sec. 907. Civil actions.
"Sec. 908. Effects of certain population changes on civil actions.
"Sec. 909. Jurisdiction by the Attorney General.
"Sec. 910. Intervention by Attorney General.
"Sec. 911. Suits by the Attorney General.
"Sec. 912. Attorneys' fees.

"PART D—REMEDIES

"Sec. 913. Formulating remedies; applicability.
"Sec. 914. Priority of remedies.
"Sec. 915. Transportation of students.
"Sec. 916. District lines.
"Sec. 917. Voluntary adoption of remedies.

"PART E—DEFINITIONS

"Sec. 918. Definitions.

"PART F—MISCELLANEOUS PROVISIONS

"Sec. 919. Repealer.
"Sec. 920. Effective date.

Mr. JAVITS. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is it not necessary to withdraw the previous amendment and to get unanimous consent or in some other way to make the change?

The PRESIDING OFFICER. The Chair rules that this was a regular amendment, with a 1-hour limitation allowance on it, and therefore the Senator is allowed to modify his amendment without unanimous consent.

Mr. JAVITS. Mr. President, upon modification of the amendment, is not a new amendment submitted, so that a quorum call may be requested or any other proceeding taken before the time for the debate begins?

The PRESIDING OFFICER. The Chair rules that a modifying amendment does not give additional time, but there is time on the bill.

Mr. JAVITS. I do not think the question of time is my question, Mr. President. My question is: Is it not an original amendment open for debate, so that there is a break between the amendment as submitted and the amendment as now modified, and if I choose to, or any other Senator chooses to, he may ask for a quorum call? That is all I am asking.

Mr. GRIFFIN. Mr. President, if the Senator desires to have a quorum call, I will be glad to have it on my time.

Mr. JAVITS. Mr. President, I think we have solved the problem.

I ask unanimous consent that a quorum may be called for without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

UNANIMOUS-CONSENT REQUEST

Mr. GRIFFIN. Mr. President, the Senator from Maryland (Mr. BEALL) has an amendment to the bill. My suggestion was going to be that we ask unanimous consent to lay the pending amendment aside temoparily and have a time agreement of 30 minutes on the Beall amendment so that it could be considered and voted on, and then return to the pending amendment.

We will see whether that meets with any objection.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object——

Mr. PELL. Mr. President, reserving the right to object, I cannot agree with that request at this point until after I have cleared it with the ranking minority member of the committee.

Mr. GRIFFIN. All right.

Mr. BUCKLEY. Mr. President, without intending to object and reserving the right to object, would it be possible to add to this unanimous-consent request an additional request that following the consideration of the Beall amendment there be a time agreement of 10 minutes for the consideration of the Buckley amendment.

Mr. GRIFFIN. Mr. President, I will so modify my request, but for the time being the Senator from Rhode Island is constrained to object.

Mr. ERVIN. Mr. President, I have an amendment I want to present, and I understood that this morning was set aside for antibusing amendments. If other Senators are recognized, I might not get an opportunity to present my amendment, which I believe would effectively put an end to the busing of little children. Therefore, I would have to object.

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

Mr. GRIFFIN. I yield.

Mr. BUCKLEY. The amendment I am speaking of is an antibusing amendment.

Mr. ERVIN. I understood that the amendment which the distinguished Senator from Maryland wants to call up is an amendment which has no relationship to busing.

Mr. BEALL. Mr. President, if the Senator will yield, my amendment is a busing amendment.

My reason for seeking to do this is that the hour of 1 o'clock approaches, we are in a holding action, and I did not want to be precluded the opportunity to offer it.

Several Senators addressed the Chair.

Mr. GRIFFIN. Mr. President, who has the floor?

Mr. ROBERT C. BYRD. Mr. President, objection has already been heard.

Mr. GRIFFIN. Mr. President, I think I can clarify the situation a bit by saying this: I believe the debate on this proposal was full and adequate on yesterday. At this time I would be willing to yield back all but 2 minutes of the time allotted to me if the other side will yield back its time, so that we can go to a vote on the pending amendment.

Mr. ROBERT C. BYRD. Mr. President, before the Senator yields his time back——

Mr. GRIFFIN. All but 2 minutes.

Mr. ROBERT C. BYRD. Well, before the Senator yields any of it back, would he not consider yielding time to the Senator from Maryland so that the time of the Senator would be used in a valuable way, and we could be utilizing the Sen-

ator's time and at the same time be moving along the debate on the amendment of the Senator from Maryland?

Mr. GRIFFIN. I would be glad to, if any Senator wishes to talk on another amendment. I am sure there would not be any objection. I will be glad to utilize my time in that manner.

Mr. BEALL. Mr. President, how much time does the Senator from Michigan have remaining?

Mr. GRIFFIN. How much time do I have remaining on my amendment?

The PRESIDING OFFICER. The Senator has 22 minutes.

Mr. GRIFFIN. Mr. President, I yield 10 minutes to the Senator from Maryland.

Mr. BEALL. I thank the Senator from Michigan for yielding.

Mr. President, whenever it is permissible under the rules, or whenever we can obtain unanimous consent to do it, I have sent to the desk an amendment.

This amendment merely prevents the implementation of busing orders during the school year. It applies to all orders not implemented at the beginning of the 1974–75 school year. It is a measure which I believe can, and should be, supported by all of my colleagues in the Senate.

Mr. President, in 1973 the U.S. district court in Maryland ordered Prince Georges County, the Nation's 10th largest school system, to move approximately one-fifth of its pupil population, effective January 29, in order to achieve racial balance.

In my judgment, this decision is educationally unsound and administratively indefensible. Busing is one of the most controversial issues facing the Nation. The majority of our citizens clearly oppose busing to achieve racial balance. Implementation of such orders is difficult at best and becomes even more controversial when commonsense is tossed out the window. The situation in Prince Georges County underscores the need for congressional action on the busing issue during this session of Congress.

Mr. President, personally, I oppose forced busing to achieve racial balance. Children should be allowed to attend their neighborhood school and neighborhoods should be open to all people regardless of race, creed, or color.

I have repeatedly supported efforts to prevent such busing. Unfortunately, the Senate has defeated the Gurney amendment which would have placed uniform limits on busing. Congress cannot continue to ignore this problem. It will not go away. The judicial and administrative excesses in this area must be restrained.

While the Prince George's County situation initially prompted the proposal I advance today, this is not the first occasion that I have encountered and opposed transfers and busing during the school year. I will relate to my colleagues two separate occasions, one of which had nothing to do with racial matters, involving such transfers which I successfully fought.

In the first example, I was contacted by a parochial school in Baltimore County, Md., which employed as a sixth grade teacher, a lady from the Philippines. I was advised that the Labor Department was refusing to extend this foreign teacher's Alien Employment Certification to permit her to complete the school year. In this instance, I agreed with the principle of the Labor Department's ruling; namely, that foreign citizens should not be allowed to continue to stay if there exists a surplus of qualified teachers in the United States. But, I was also concerned that the educational process of these elementary students would be harmed and that the special relationship and rapport, which everyone said existed between that teacher and her class, would be sacrificed to the detriment of the elementary children. I pleaded with the Labor Department to extend the foreign teacher's deportation. As a result of this meeting, HEW agreed to postpone the teacher's transfer and delayed the implementation order until September. The teacher thus was able to complete the school year and the education process of the students was uninterrupted. Upon the completion of the school year, the teacher departed for the Philippines.

The second contact I had with the problem of transfers during the school term involved Somerset County, Md. This case was unbelievable and, I think, indicative of the bureaucratic excesses just as the Prince Georges situation reflects judicial excesses. In the Somerset County case, the school system had achieved the integration of the student body but that was not enough, according to the Department of Health, Education, and Welfare officials. They demanded that the black-white teacher ratio in each of the county's schools equal the overall black-white teacher ratio that existed in the county, and what is more incredible, to achieve this ratio, HEW was requiring the complete transfer of teachers 9 weeks prior to the close of the school year. I immediately requested a meeting in my office with the HEW and Somerset officials. As a result of this meeting, HEW agreed to postpone the teacher transfers and delayed their implementation order until September.

As I have indicated, I personally do not favor forced busing to achieve racial balance. I have consistently voted against it in the Senate. Many of my colleagues feel otherwise. The Senate is almost evenly divided on the busing question in the last Congress. I am convinced, based on my discussions with some of the proponents of busing, that they would not support or condone decisions and the examples of the type I have cited. I also believe that Members of Congress, even if they believe in busing, want such orders to be educationally and administratively sound with a minimum of dislocation and disruption to the educational process of the students and the school system. The Supreme Court has declared there are obvious limits to busing. One such example was when busing significantly impinged on the education process of the students. I believe that massive mid-year busing is inimical to the educational process of all the students.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. GRIFFIN. How much more time does the Senator require?

Mr. BEALL. About 2 minutes.

Mr. GRIFFIN. I yield the Senator 2 additional minutes.

Mr. BEALL. It causes disruption and harms the continuity of the education process and breaks the special relationship and rapport teachers develop with their pupils. This is true for all students, but particularly for elementary pupils. It causes serious scheduling problems for junior and senior high school students and it increases problems of reorganizing special compensatory education programs for disadvantaged children, as well as other real and practical problems such as a catastrophic effect on extracurricular activities. It should be pointed out that although academic considerations are primary, extracurricular activities are also very important not only to the development of a cohesive and unifier school spirit, but also to the development of the child as an individual and in his relationship to his classmates. Under midyear busing orders, the players of a basketball team would be dispersed among different schools and the spirit that took almost an entire season to develop would be lost. Yearbook and newspaper staffs and other club and class activities will be disrupted.

In addition, midterm busing orders could hamper the growth of the individual student who has established himself in an extracurricular activity and at this point in time has gained confidence as a member of a particular peer group and is suddenly uprooted from his social grouping to be placed in an alien atmosphere.

Not only is this harmful to the student, but it is also inconvenient to parents and pupils alike. Granted, some of these problems are presented when the order takes effect at the commencement of the school year; nevertheless, midterm orders to borrow an old expression are like "throwing salt on a wound." I believe that when courts rule they should attempt to minimize the inherent problems not magnify them, as would be the case with a midyear effective date.

Finally, as a member of the Education Subcommittee, I want to reiterate a concern that I share with respect to the busing issue. I am deeply bothered that the controversy over busing is preventing us from addressing the great educational deficiencies and needs that exist in many of the schools in this country. I believe that there would be public support for correcting such deficiencies and doing, in general, what is necessary to make certain that all of our schools are quality schools. Yet, too much of our energy and effort is being centered and dissipated on the busing issue rather than focusing on quality education. The debate on S. 1539 illustrates this.

I strongly urge my colleagues to join me to eliminate what I regard as a clear excess in this area and to make certain that all of our students might be able to have an education that is not disrupted in the middle of the school year.

Congress at the least should move to prevent the disruption of the education

process by requiring that judicial and administrative orders commence at the beginning of a school year.

Mr. GRIFFIN. Mr. President, as I indicated earlier, I would be willing to yield back the time remaining on this side if the other side would do likewise, and go ahead and vote on the pending amendment so that other amendments can be considered. But such an agreement apparently cannot be reached at the moment.

So, I would like to suggest to the ranking minority member of the Committee on Labor and Public Welfare that since he would apparently like to vote on the pending amendment later, perhaps it would be possible to have time agreements on the Beall, the Buckley, and other amendments—and if the Senator from North Carolina has an amendment—and take those up one by one, and then vote on each, with the understanding that the pending amendment be temporarily laid aside.

For example, the Beall amendment has been explained and I assume that not much more time would be needed on that side of the argument.

So, could we take up that amendment, for example, and use a brief time limit, with the understanding that we have a vote and then return to the pending amendment?

Mr. JAVITS. Is that a unanimous-consent request?

Mr. GRIFFIN. No, I have not put it in the form of a unanimous-consent request yet.

Mr. JAVITS. I see no reason why that should not be done. Frankly, we are seeking to bring over, for example, the distinguished Senator from Massachusetts (Mr. BROOKE) who spoke so eloquently on the Gurney amendment yesterday, and he should have a chance again to address himself to this one.

Mr. GRIFFIN. May I ask the Senator from Maryland, what would be a reasonable time limit?

Mr. BEALL. So far as I am concerned, in answer to the question by the Senator from Michigan, I have completed my explanation of the amendment. I do not know how members or the chairman of the committee feel about the amendment, and I do not know how much time they would need to favor or oppose it. I would like to have a rollcall vote on the amendment, though; but so far as I am concerned, 5 minutes will be plenty of time for me. I do not believe I would need all that time.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside and that there be a 15-minute time limitation on the Beall amendment, 5 minutes to the Senator from Maryland and 10 minutes to the manager of the bill; and after disposition of the Beall amendment, the Senate would return to the consideration of the pending amendment.

I realize that the Senator from New York and other Senators would like their amendments also considered, but I would like to suggest that we take them one at a time and see if we cannot work out similar agreements at an appropriate time.

Mr. BEALL. I have no objection.

Mr. JAVITS. Mr. President, what is the unanimous-consent request?

The PRESIDING OFFICER (Mr. BAYH). The 15 minutes on the amendment of the Senator from Maryland, to be divided 5 minutes to the Senator from Maryland and 10 minutes to the manager of the bill.

Is there objection to the unanimous-consent request of the Senator from Michigan? The Chair hears none, and it is so ordered.

Will the Senator from Maryland please send his amendment to the desk

Mr. BEALL. Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. BEALL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The text of the amendment is as follows:

At the end of the bill, add the following new section:

PROHIBITION OF FORCED BUSING DURING SCHOOL YEAR

SEC. (a) The Congress finds that—

(1) the forced transportation of elementary and secondary school students in implementation of the constitutional requirement for the desegregation of such schools is controversial and difficult under the best planning and administration; and

(2) the forced transportation of elementary and secondary school students after the commencement of an academic school year is educationally unsound and administratively inefficient.

(b) Notwithstanding any other provisions of law, no order of a court, department, or agency of the United States, requiring the transportation of any student incident to the transfer of that student from one elementary or secondary school to another such school in a local educational agency pursuant to a plan requiring such transportation for the racial desegregation of any school in that agency, shall be effective until the beginning of an academic school year.

(c) For the purpose of this section, the term "academic school year" means, pursuant to regulations promulgated by the Commissioner of Education, the customary beginning of classes for the school year at an elementary or secondary school of a local educational agency for a school year that occurs not more often than once in any twelve-month period.

(d) The provisions of this section apply to any order which was not implemented at the beginning of the 1974–1975 academic year.

Mr. BEALL. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BEALL. Mr. President, I have explained the amendment. It is not very complicated. It says that if a court decides that busing orders are to be implemented, they should not be implemented in the middle of a school year. They could only be ordered in a school district at the beginning of the school year, which is usually in September.

Mr. President, I reserve the remainder of my time.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, today we are going to be faced with a whole series of amendments—we already have and we will have more—on this busing question which proposes, in an interesting way, to go precisely contrary to the arguments made by the antibusing Senators, that there should be rigidity instead of flexibility in the use of this remedy.

Generally speaking, the arguments made against busing are that it is a remedy to be employed very sparingly, if at all—and of course, its opponents do not want it employed at all—and where employed that it be employed only as it is absolutely and essentially required in a flexible way.

This is another amendment, well intentioned, by the Senator from Maryland (Mr. BEALL), dictated unquestionably by his home situation, of which he has spoken to me very feelingly, but is generally designed to restrict and make more rigid the decision by a court.

Interestingly enough, this question has already been decided by the Supreme Court in Alexander against Holmes. Prince Georges County was desegregated at a semester break in the fall of 1969, and the Court ruled in that particular case it would not accept a delay, that in some other case it may rule it would accept a delay. That ruling is subject to review. If it appeared in accordance with the criteria which the Senate sustains, that it was unwise from the educational point of view of the student who was being bused, or the school to which he was going to be bused, or unwise from the point of view of the health of the student, and so forth, not to delay the matter, the Court could do so.

Obviously, again, one would not be able to argue that this is some monumental, earth-shaking development akin to what we have been debating so arduously in respect of the Gurney amendment, and so forth. But it simply is another item in taking away and making more rigid the use of this one among many tools in order to effectuate the desegregation of schools.

For those reasons, Mr. President, the Senate, it seems to me, should be true to the principles it espouses, as laid down in the Scott-Mansfield compromise, so-called, a set of principles which it requires the Court to observe, and within the principles, which are broad, and allow for a particularized decision in given cases by the courts. Within those principles, there is ample latitude for the courts to operate in given factual situations.

I believe that this is one of a generic group of amendments which restrict that flexibility and which, therefore, run counter to the basic principles which the Senate has so far adhered to in respect of the very much debated issue of busing—to wit, that busing is to be one of a number of means by which desegregation, which is contrary to the Constitu-

tion and to the law, may be corrected, that it is to be a flexible instrument depending on the unique facts, and that it is to be used as sparingly as possible. These are all the criteria set by the Senate, but it is not to be confined in the sense of directions, as in this case, by the Senate as to exactly what judge is to give a given set of circumstances but within the general guidelines which the Senate has laid down, that the court may determine the applicability of the law within those principles to any given set of circumstances.

So, Mr. President, for all of those reasons, I would hope that the Senate would reject the amendment.

Mr. BEALL. Mr. President, I point out that at the time the district court in Maryland ordered the busing to be implemented in Prince Georges County, Scott-Mansfield had been adopted. It was of no help to Prince Georges system. It is interesting to note that the Federal district court in the Prince Georges case acknowledge the plea for a delay in the implementation of the order until the beginning of the school year.

It is my understanding that testimony from educators was strongly supportive of a delay. Educators, with whom I have spoken, feel quite strongly that midyear busing is educationally unsound. In my judgment, this is an area that cries out for congressional direction and guidelines. The court in the Prince Georges County case said it has no judicial discretion to postpone the guidelines in implementation of the order. We can and should provide the courts with such authority. Indeed, we should, as does this amendment, find forced busing during the course of the school year unsound and unwise.

It seems to me that in this case and in other cases, the court has been asking for some Congressional direction as to the implementation of these orders. I think it is not only logical but also desirable that Congress today suggest to the court that, above all, we should do things that are both educationally sound and administratively feasible. The implementation of a busing order in the middle of the school year is educationally unsound, undesirable, and administratively inefficient. Therefore, it is something that should be avoided. All we are doing in this amendment is giving that kind of assistance to the courts, so that they cannot use the excuse that Congress has not spoken on this matter.

Mr. President, I yield back the remainder of my time.

Mr. JAVITS. Mr. President, I yield myself 1 minute to state that I think the Senator has very accurately stated the point at issue, and I would like to join in that statement of the point at issue.

The question is, Should the Senate go beyond the general guidelines and should it add what I consider to be a highly specific direction which would limit the flexibility of the use of busing in respect of desegregation in the respect which the Senator states? I believe that we should leave that question, case by case, to the courts and that that is the best way for the student and the educational system.

Senator BEALL believes—and he will correct me if I am wrong—that this belongs as one of the ordered guidelines, even though it is more specific than the guidelines we have established heretofore. The Senate will be voting on that; and I hope the Senate will agree with me that the matter should be left to the courts, on a case-by-case basis, and will reject the amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Maryland. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), and the Senator from Hawaii (Mr. INOUYE), are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. HOLLINGS) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), and the Senator from New Jersey (Mr. CASE) are necessarily absent.

The result was announced—yeas 71, nays 20, as follows:

[No. 201 Leg.]

YEAS—71

| | | |
|---|---|---|
| Aiken | Eastland | Nelson |
| Allen | Ervin | Nunn |
| Baker | Fannin | Packwood |
| Bartlett | Fong | Pearson |
| Bayh | Goldwater | Percy |
| Beall | Griffin | Proxmire |
| Bentsen | Gurney | Randolph |
| Bible | Hansen | Roth |
| Biden | Hartke | Schweiker |
| Brock | Haskell | Scott, William L. |
| Buckley | Hatfield | Sparkman |
| Burdick | Helms | Stafford |
| Byrd, Harry F., Jr. | Hruska | Stennis |
| Byrd, Robert C. | Huddleston | Stevens |
| Cannon | Johnston | Stevenson |
| Chiles | Long | Symington |
| Cook | Mansfield | Talmadge |
| Cotton | Mathias | Thurmond |
| Cranston | McClellan | Tower |
| Curtis | McClure | Tunney |
| Dole | McGee | Williams |
| Domenici | McGovern | Young |
| Dominick | Montoya | |
| Eagleton | Moss | |
| | Muskie | |

NAYS—20

| | | |
|---|---|---|
| Abourezk | Javits | Pastore |
| Brooke | Kennedy | Pell |
| Clark | Magnuson | Ribicoff |
| Hart | McIntyre | Scott, Hugh |
| Hathaway | Metcalf | Taft |
| Humphrey | Metzenbaum | Weicker |
| Jackson | Mondale | |

NOT VOTING—9

| | | |
|---|---|---|
| Bellmon | Church | Hollings |
| Bennett | Fulbright | Hughes |
| Case | Gravel | Inouye |

So Mr. BEALL's amendment was agreed to.

Mr. BEALL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BROCK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I ask unanimous consent that Emily Berlin, of my staff, be given privileges of the floor during debate on the busing amendments.

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

Mr. CRANSTON. Mr. President, on behalf of my colleague (Mr. TUNNEY), I ask unanimous consent that Bob Wilson, of his staff, be granted privileges of the floor during the consideration of this measure.

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

The PRESIDING OFFICER. The question now recurs on the Griffin amendment.

Mr. GRIFFIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Michigan has 15 minutes.

Mr. GRIFFIN. Mr. President, I yield to the Senator from Tennessee (Mr. BAKER).

Mr. BAKER. Mr. President, I ask unanimous consent that my staff member, Miss Lynne Davis, may have privileges of the floor during consideration of this matter.

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

Mr. GRIFFIN. Mr. President, after consulting with the distinguished ranking member (Mr. JAVITS), I am going to make a suggestion. There are several other so-called busing amendments to be considered. There is one by the Senator from North Carolina (Mr. HELMS), one by the Senator from New York (Mr. BUCKLEY), and one by the Senator from North Carolina (Mr. ERVIN), and we want to be sure, not only that there will be a vote on those amendments, which there will be, but also that time will be available for a discussion of them.

The suggestion is that we go now to the Buckley amendment, with a 10-minute limitation and a vote, and then vote on the pending Griffin amendment at 12:30, or the motion to table if that motion is made. Then, there would be 15 minutes before the 1 o'clock hour, which could be divided between Mr. ERVIN and Mr. HELMS.

Mr. ERVIN. Mr. President, I cannot discuss my amendment in 10 or 15 minutes. I would suggest that we allow the amendments to be presented and then vote on the amendments one after another at 1 o'clock.

Mr. GRIFFIN. I will say to the Senator from North Carolina that I am willing to do that. I am willing to vote on my amendment right now.

Mr. ERVIN. But a rollcall will take about 15 minutes' time.

Mr. JAVITS and Mr. BUCKLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, is there a unanimous-consent request pending, and if so, what is it?

The PRESIDING OFFICER. No, there is no unanimous-consent request pending.

Mr. GRIFFIN. No; I am merely trying to test the waters.

Mr. BUCKLEY. Mr. President——

Mr. ERVIN. Mr. President, I would suggest that we take the time that is left and divide it equally among the Members

having amendments and then vote on all of them at 1 o'clock.

Mr. BUCKLEY. Mr. President, if the Senator will yield, under the current time agreement, a substitute amendment to be offered by the Senator from Idaho, the Senator from Nebraska, and me is scheduled at 1 o'clock. We have reduced the time on that from 6 hours to 4 hours. We would be glad to postpone taking up that amendment by an hour or 2 hours if it would suit the needs or desires of the Senate.

Mr. GRIFFIN. Mr. President, in order to allow time to the Senator from North Carolina (Mr. ERVIN), I ask unanimous consent that the 1 o'clock agreement with respect to busing amendments today be extended to 2 o'clock.

Mr. MOSS. Mr. President, I would have to object to that. Based on a firm agreement on time, I have made commitments that just would make it impossible for me to be here at 2 o'clock.

Mr. GRIFFIN. I am ready to yield back my time and vote on my amendment now.

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

Mr. GRIFFIN. I yield.

Mr. MANSFIELD. Why not take the suggestion of the Senator from North Carolina (Mr. ERVIN), starting at 1 o'clock, and then vote one, two, three, and four?

Mr. JAVITS. Mr. President, if the Senator will yield, I believe we should accommodate Senators who counted on the 1 o'clock time. I approached the leadership myself in the effort to get an extra hour or two, and was turned down, for reasons which are now obvious.

I think the Senator from North Carolina's suggestion is the one that should be followed, in fairness to all Senators, but I believe with respect to the crucial amendment, what I call "Revisiting GURNEY," or the Griffin amendment, as he calls it, that should be the first vote, so that Senators, like the Senator from Utah (Mr. Moss), who has to get away, may vote on it.

Mr. GRIFFIN. The time that will be required to vote is 15 minutes, whether the rollcall is called at one time or another, so we are taking the same amount of time that would be available for debate. I would agree if we could vote on the pending amendment at 12:30. Would that be possible?

Mr. JAVITS. That would be agreeable to me. It would be agreeable to me to vote on the pending amendment at 12:30.

Mr. GRIFFIN. And I will make the rest of the time available under my amendment to other Senators.

Mr. ERVIN. But that would leave me two and a half minutes.

Mr. GRIFFIN. We will make all the time left available.

Mr. ERVIN. I do not want all the time, but I want time to explain it. I think the amendment is crucial because it says there shall be no busing for the purpose of changing the racial composition of any school anywhere. I think we should face the issue and be done with it.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Michigan

Mr. GRIFFIN. Mr. President, I am willing to yield back the time on this side if the other side is willing to yield back its time, and we will go to a vote on it.

Mr. JAVITS. Mr. President, I am not willing to yield back the time. We need to explain it. It took all day yesterday, and all of a sudden we are going to deal with it in a minute now. It is not fair. I object if it is a unanimous-consent request.

Mr. HANSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HANSEN. How much time has been set aside for the discussion of the Griffin amendment?

The PRESIDING OFFICER. The Senator from Michigan now has about 5 minutes on the Griffin amendment, and the Senator from New York has about 22 minutes.

Mr. HANSEN. If the Senator from Michigan were to yield back his time, could we assume that we would vote in 22 minutes?

The PRESIDING OFFICER. That is a reasonable assumption—as reasonable as any assumption could be here.

Mr. JAVITS and Mr. ERVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, in order to accommodate all Senators—and I must say the answer of the Chair to the Senator from Wyoming is not absolutely correct——

The PRESIDING OFFICER. The Chair realizes that he had a little leeway in answering.

Mr. JAVITS. We have no desire to delay or play games with the 1 o'clock hour. I think the suggestion of the Senator from North Carolina (Mr. ERVIN) was the best, and, as modified by the Senator from Michigan (Mr. GRIFFIN), to vote on his amendment at 12:30, and then proceed to take up whatever additional time there may be in discussion, and then vote on the amendments of Senator ERVIN, Senator BUCKLEY, and Senator HELMS at 1 o'clock. I think that would be the best solution; but if there is objection to that, of course, it cannot be done and we will have to take our chances.

Mr. GRIFFIN. Mr. President, I would agree to that. Is it in the form of a unanimous-consent request?

Mr. JAVITS. I would like to know if the Senator from North Carolina (Mr. ERVIN) is agreeable to that.

Mr. GRIFFIN. Mr. President, I make that in the form of a unanimous-consent request.

Mr. ERVIN. Mr. President, if I could get a vote pretty quickly, I would agree to 5 minutes to a side on my amendment and be done with it, if I could have my amendment called up after the Buckley amendment. My amendment is very simple.

Mr. JAVITS. Mr. President, does the Senator from North Carolina (Mr. ERVIN) desire his amendment to stand in the place of the amendment of the Senator from Michigan (Mr. GRIFFIN) at this stage? Is that his desire?

Mr. ERVIN. Mr. President, I do not mean to displace his amendment.

Mr. JAVITS. Mr. President, that is what it would have to do.

Mr. GRIFFIN. Mr. President, I understand that the Senator from New York (Mr. BUCKLEY) wanted to go ahead and present an amendment.

Mr. GRIFFIN. Mr. President, if the Senator will yield, will the Senator allow us to reach an agreement to vote on the amendment at 12:30? Once we got that agreement, the Senator could have all the time he wants.

Mr. ROBERT C. BYRD. Mr. President, we have only 15 minutes. Why not let the time continue to run on the Griffin amendment and let the vote occur on the Griffin amendment when the time expires? That would leave almost three-quarters of an hour in which to debate the other amendments prior to 1 o'clock.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, I think that we have heard enough now to know that this situation will work out and that we need not be concerned that any Senator will be shut out. We have no desire to do that. I will do everything that I can do to see that that does not happen.

The proposition we are faced with this morning is in regard to the reintroduction of the Gurney amendment with the so-called reopener clause excluded. That is the only difference between the Gurney amendment as it was last night when the Senate tabled it and as it is today.

The reopener clause was certainly one of the very serious matters which we opposed. However, the amendment is nonetheless a vitiating amendment to the whole concept of school desegregation in terms of the use of a particular way, one of many, in which school desegregation may be dealt with.

Mr. President, may I have order?

The PRESIDING OFFICER. The Chair advises Senators that we must have order, so that the Senator from New York can be granted the courtesy he is entitled to, and so that he may be heard.

Mr. JAVITS. Mr. President, as I had understood it, the vote of the Senate last night on the Gurney amendment was intended to sustain its previous position which, in my judgment, is most statesmanlike and sound. That was the view last night respecting the Scott-Mansfield compromise which gives clear guidelines to the court with respect to the health of the child, the educational ability of the child, and the educational situation in the school to which the child would be bused.

Then, we had added to that the Bayh amendment, which dealt with buses crossing from one educational district to another. Now we have the Beall amendment, which deals with the nonoperative character of an order during the school year.

If we adopt the Gurney amendment, even as amended, we would go far be-

yond that kind of restriction; as, for example, we would be dealing with the matter of the so-called next door school, the neighborhood school.

It was very interesting to me, as I listened to yesterday's discussion, that no Senator mentioned the fact that for years, ever since the end or toward the end of the 19th century, black children were bused right by the doors of their neighborhood schools. This was one of the worst features that brought about the Brown against the Board of Education decision. It was revolting to see, because it has been demonstrated and pointed out time and time again that 40 percent of the schoolchildren are being bused now. It goes on all the time.

Therefore, in summation, the striking out of the reopener clause is good. We do not oppose it. We welcome it. I certainly do not oppose it. However, the viciousness of the amendment persists, and that is it. This is no remedy. This is one possible tool. It is a concept. It is no remedy. In some cases, no remedy is possible. We have already cited it as a most reasonable ground.

In addition, I do not believe that the courts could possibly accept the Gurney amendment as being constitutional. Again, this makes for a bitter confrontation between the court and Congress, which we have successfully avoided in terms of the Scott-Mansfield compromise.

Finally, there is one other change which was made by the amendment of the Senator from Michigan (Mr. GRIFFIN), and that is to strike out the separability clause, so that the confrontation between the court and Congress is even more precisely pinpointed. The fact is that we now have good stated guidelines which the States can accept and work on. So we should not disturb that situation.

Mr. President, I now yield 10 minutes to the Senator from Massachusetts.

Mr. HUMPHREY. Mr. President, is the Senator from New York able to yield me 2 minutes at this time?

Mr. BROOKE. Mr. President, I shall be glad to yield 2 minutes to the Senator from Minnesota.

Mr. HUMPHREY. That will be all right. I will be glad to follow the Senator from Massachusetts.

Mr. JAVITS. Mr. President, I announce for the benefit of other Senators who are waiting with amendments that I yield 10 minutes to the Senator from Massachusetts and 2 minutes to the Senator from Minnesota; and that will close our debate.

Mr. BROOKE. Mr. President, I thank the distinguished Senator from New York for yielding to me at this time.

Mr. President, yesterday I spoke at great length on the Gurney amendment. The Senate took action on that amendment, and by a very close vote that amendment was rejected. We now have presented to us practically the same amendment we had yesterday with the exception of the reopener clause, which I must admit was a very important part of the Gurney amendment.

Mr. President, the Gurney amendment was objectionable for many reasons. Although the reopener clause has been deleted, the revised Gurney amendment now offered by the Senator from Michigan (Mr. GRIFFIN) remains objectionable. It is still what I believe to be a cynical attempt to circumvent the law of the country and to bring about a constitutional confrontation.

We are within a day of the 20th anniversary of the Brown decision. I shall read a statement which was issued by Mr. George Meany, the head of the AFL–CIO, relative to this anniversary. I think it is appropriate at this time.

I could continue to discuss the individual sections of this amendment, but I believe that my remarks yesterday covered them thoroughly. And I think that the Senate is well aware of the meaning and the import of the Griffin amendment which, as I have said, is the Gurney amendment with just one major exception.

I think it is important to show what Americans and the labor unions think about this amendment and about the progress which the Nation has made since the Brown decision was handed down in 1954.

Mr. Meany says:

The benchmark of the struggle for equality of opportunity in the United States was the May 17, 1954 decision of the United States Supreme Court in the case of Brown v. the Board of Education of Topeka, Kansas.

That decision, which discarded the infamous doctrine of separate but equal that had prevailed since 1897, was hailed by the American labor movement. Indeed both the AFL and the CIO, then separate organizations, had filed amicus briefs with the Court urging that it declare once and for all that segregation by race was inherently unequal.

As we mark the 20th anniversary of that momentous decision, it is a time for a national assessment of its impact. Frankly, we are not happy with what we see.

There has, of course, been tremendous progress in many fields, as evidenced by the achievement of Blacks and other minorities in the areas of housing, employment and in the political life of the country.

Yet, many of our fellow Americans remain, to a large extent, in the vicious cycle of substandard housing, education and employment.

The AFL–CIO, having recognized the serious problems inherent in closing the gap between majority and minority groups in American education has consistently fought for progressive legislation and adequate funds to do the job.

There has been twenty years of acrimonious delay, haggling and distortion of fact in America's experience with school desegregation. Throughout it all, one fact is clear: children generally learn better when attending an integrated school—especially when school administrators, teachers and parents cooperate in the development of the proper environment conducive to learning.

While we don't like it, we must recognize the fact that some schools will remain predominantly Black or White for some time to come. In those instances, there must be added effort and necessary funds to raise the standards and quality of education for those children who are denied an equal opportunity to a decent education.

So we will remain in the fight until the job is completed. We will not retreat from the progressive steps enacted by the 89th Congress. We will not join those who attempt to stampede the American people into retrogressive steps surrounding the controversial issue of busing.

It is sad to realize, on the 20th anniversary of the Brown decision, how much more remains to be done.

But no matter how long the struggle, the AFL–CIO will continue its efforts to get this major American dilemma behind us. So long as one child is denied quality education because of race, the American labor movement cannot be satisfied.

Mr. President, that is American labor speaking to this Nation. And we here in the Senate of the United States are called upon, two decades after the Brown decision, to accept an amendment offered by the Senator from Michigan which would put us back practically 20 years to the time of the Brown decision in 1954.

Progress has been made in this country. It has been slow, and it has been painful, but certainly Members of the U.S. Senate can be no less concerned about the integration of public schools than is the head of the AFL–CIO.

Having understood its significance, I think it is incumbent upon us to reject this amendment. I think it is time that we stopped playing politics with the lives of black and white children in this country.

This amendment is nothing but raw political expediency, and we know it. There is not a man in this U.S. Senate who does not understand what is at stake here.

Look at what happened when the Bayh amendment was introduced yesterday. That amendment is wrong, morally as well as legally, but we saw how Members of the Senate flocked to get on that amendment—the same Members of the Senate who, just a few minutes before, had voted against it. If that is not political expediency at its worst, what is it?

And now the junior Senator from Michigan is again offering a politically expedient amendment, because he believes that some of our Members want to get in under the umbrella because of the emotional issue that has been presented to this country.

"How long?" I ask.

John Adams, in a similar state of exasperation, once asked, "Is anyone there? Is anyone listening?"

I ask today, May 16, 1974, "Is anyone there? Is anyone listening? Or is the U.S. Senate going to embarrass itself and this Nation by lacking political courage, by lacking the courage the people elected it to have?"

We talk about the executive branch usurping our powers. Perhaps they should usurp our powers, because we have given them up. We have abdicated. As Senators have not shown the backbone, the courage, and the strength expected and demanded of us.

Mr. President, it is a sad day if this Griffin amendment is adopted by the U.S. Senate, and I ask my colleagues to reject it.

Mr. JAVITS. Mr. President, I yield 3 minutes to the Senator from Minnesota.

Mr. HUMPHREY. I thank the Senator from New York.

Mr. President, the Senator from Massachusetts yesterday gave us a dissertation on the whole subject of civil rights

laws as they relate to desegregation in our school systems. We are indebted to him. It was a masterful presentation, and it was a historic document.

I shall not take the time to go into the legal aspects or the court decisions. But 10 years ago, we were embattled, in this body, over the Civil Rights Act of 1964. I was privileged to be floor leader in that debate. The passage of that legislation was a historic landmark toward the achievement of equal opportunity in this country. We were years late in the accomplishment of this goal, but finally we were able, in the latter part of June of that year, to defeat a filibuster and break through and pass some of the most important legislation in the history of the American Congress.

What is needed by the Senate of the United States is not quibbling over a particular court decision or interpretation of the law, but the setting of a standard around which good people can rally.

We have made progress, as has been said, in the area of desegregation. We have made progress in schooling. We have made progress in educational opportunity. And we have made it by consistent, persistent efforts in desegregating schools and bringing together our young people.

To do anything that would permit us to take one step backward would be unforgivable. We have all this pontification about moral leadership; and then when the chips are down we run away from it. When it gets difficult, we have rationalizations. When there is a particular problem in our respective jurisdictions, we find ways to walk away.

Mr. President, we will not answer the problems of education easily. They may never all be answered. We will not answer the problems of desegregation of the American society strictly through the school system. The whole structure of America needs to be reexamined, including the housing patterns of this Nation, and the employment patterns of this Nation. But I want the Senate to know there are 22 million or more black citizens in America, and if we do not have their faith, trust, and confidence, if they cannot believe in this system, then we are through as a great power and as a nation worthy of being called a democracy.

All the money that we are going to appropriate here for national defense, all that we are going to do in terms of seeing whether something has been wrong in the executive branch—all of it will be nothing if we cannot restore or at least bring about faith and confidence on the part of people in America who have been here as long as any white man, and bring them fully into the system of our social order. I strongly oppose this amendment, and I opposed the other antibusing amendments, because every one of them is filled with political and legal trickery.

The PRESIDING OFFICER. The Senator's time has expired. Does the Senator from New York yield further to the Senator from Minnesota?

Mr. JAVITS. I yield him another minute.

Mr. HUMPHREY. Mr. President, I repeat, I oppose the amendments even when they look good, because they are open hunting ground for lawyers and others to try to stop the progress which we have been making.

Progress does not come easily. Progress is sometimes unruly. Progress at times causes great discomfort for some; but the degree of discomfort that the blacks of this country have had to survive and suffer for two centuries no white man can say he has equaled.

I have been in the front lines of civil rights battles all of my public life, and I am not ready, at this time of my life, to step backward 1 single inch.

The PRESIDING OFFICER. The Chair is advised that the Senator's 1 additional minute has expired.

Mr. HUMPHREY. I do not need any more.

Mr. JAVITS. I yield to the assistant majority leader.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote occur on the amendment by Mr. GRIFFIN at the hour of 12:15 p.m. today; that immediately following the vote on the amendment by Mr. GRIFFIN, Mr. ERVIN be recognized on his amendment, that there be a 10-minute limitation thereon to be equally divided; immediately after the running of the time on the Ervin amendment, that the Senator from North Carolina (Mr. HELMS) be recognized to call up his amendment on which there be a 10-minute limitation, to be equally divided; that immediately after that, the Senator from New York (Mr. BUCKLEY) be recognized to call up his amendment, which is a busing amendment, and that there be a 10-minute time limitation on that amendment, to be equally divided.

Furthermore, that at 1 p.m., according to the previous agreement, votes start running back to back on the Ervin, the Helms, and the Buckley amendments, with a 10-minute limitation on each of those back-to-back rollcall votes.

Mr. JAVITS. Mr. President, I have a little problem, since the Senator has asked me about this, and he has represented it exactly to the Senate, I have had word from the Senator from New Jersey (Mr. CASE) asking for an additional 15-minute indulgence. Therefore I make this suggestion in the hope that Senators can accommodate to it, to have the amendment of the Senator from North Carolina (Mr. ERVIN) discussed from 12:15 to 12:30 and then have the vote on the Griffin amendment and then the vote on the Ervin amendment immediately to follow the Griffin amendment. That will not disturb anything, as we go right on to the others. So, if that takes up a little more time, perhaps the distinguished Senator from North Carolina (Mr. ERVIN) would be kind enough to debate his amendment between 12:15 and 12:30 and then have a vote on it at 1 o'clock.

Mr. ERVIN. I appreciate the suggestion of the Senator from New York, but I have some people who want to be here at 1 o'clock who want to support my amendment and for that reason I will be willing if we could vote on my amendment now and just take 5 minutes. It is a very simple amendment.

Mr. JAVITS. Can we vote then, first, on Senator ERVIN's amendment? Say he started at 12:15 and finished at 12:25 and then vote on the Ervin amendment.

Mr. GRIFFIN. Mr. President, I could not accept that. I would be willing to allow us to vote now on the Ervin amendment but I certainly could not agree to go beyond 12:30 to have a vote on my amendment. I am ready now.

Mr. ERVIN. That would be satisfactory. Just give us 5 minutes to a side.

Mr. JAVITS. That would be agreeable to me, provided I can yield 2 minutes to the Senator from Michigan (Mr. HART).

Mr. BROOKE. Mr. President, I am going to object. The Senator from New Jersey (Mr. CASE) wants to be here for the votes on the Ervin and Griffin amendments, but unfortunately, his car has broken down and he will not be here until between 12:15 and 12:30. So if we cannot do any better than what has been proposed, I would want to stay as we are, rather than having the Ervin amendment voted on at this time, and having the Senator from New Jersey (Mr. CASE) unable to cast his votes on these important amendments.

Mr. ROBERT C. BYRD. Mr. President, was there any objection to my unanimous-consent request?

Mr. JAVITS. Mr. President, I will object unless it is modified to make the Griffin vote at 12:30.

Mr. ROBERT C. BYRD. Mr. President, then may I propose the following unanimous-consent request:

Mr. President, I ask unanimous consent that a vote occur on the amendment—I am going to have to have the attention of the Senator from North Carolina (Mr. ERVIN) now—I ask unanimous consent that at the hour of 12:15 p.m. today, the Senator from New York, Mr. ERVIN, be recognized to call up his amendment——

Mr. ERVIN. North Carolina, please. [Laughter.]

Mr. ROBERT C. BYRD (continuing). The Senator from North Carolina (Mr. ERVIN) be recognized to call up his amendment at 12:15 p.m. today; that there be a 15-minute time limitation allotted for debate on that amendment, 10 minutes to Senator ERVIN and 5 minutes to Senator PELL; that at 12:30 p.m. the vote occur on the amendment by the Senator from Michigan (Mr. GRIFFIN); that immediately after the vote on the Griffin amendment the vote occur on the amendment of the Senator from North Carolina (Mr. ERVIN); that there be a 10-minute rollcall vote on the Ervin amendment, with the warning bells to be sounded after the first 2½ minutes; that following disposition of the Ervin amendment, the Senator from North Carolina (Mr. HELMS) then be recognized to call up his amendment, and that he be allotted half the remaining time before 1 o'clock; and that upon disposition of half the remaining time, the Senator from New York (Mr. BUCKLEY) be recognized to call up his amendment; and that at 1 o'clock, votes occur, back to back, on the Helms amendment and the

Buckley amendment, with 10 minutes for each rollcall vote.

Mr. JAVITS. That is satisfactory to me, provided I do not waive the right to tabling motions, which I do not wish to do.

Mr. BAYH. Mr. President, reserving the right to object, I am presently trying to explore where the Helms amendment goes. I have not yet made up my mind whether to offer a substitute which will probably take only 2 or 3 minutes to discuss; but until I have a chance to make that decision, or unless the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) wants to give me 2 minutes to offer the substitute, in the event I feel that it is necessary, then I would have no objection.

Mr. ROBERT C. BYRD. Very well. I modify the request accordingly, and ask that if the Senator from Indiana (Mr. BAYH) wishes to offer a substitute to the Helms amendment, that he, Mr. BAYH, be allotted 2 minutes at that time.

Mr. JAVITS. We cannot give up the right to move to table or to move amendments to amendments without debate.

Mr. ROBERT C. BYRD. Mr. President, I modify my request to protect the Senator's right to move to table.

Mr. JAVITS. And also to amend without debate.

Mr. ROBERT C. BYRD. Yes.

The VICE PRESIDENT. Is there objection to the unanimous-consent request of the Senator from West Virginia (Mr. ROBERT C. BYRD)?

Mr. HANSEN. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Wyoming will state it.

Mr. HANSEN. In the event that amendments are made to amendments, or a motion to table is made and, assuming that rollcall votes are asked for on each of these procedures, what effect will that have on the time limitation on which earlier agreements have already been made?

Mr. ROBERT C. BYRD. It would have the effect of probably pushing the 1 o'clock time back a bit, but not a great deal.

Mr. GRIFFIN. Mr. President, I wonder whether I might ask the Senator from New York—of course reserving the right to move to table is understandable, but would not he agree that offering amendments to amendments without any advance indication whatsoever would be rather an awkward situation for the Senate?

Mr. JAVITS. No; because I have been asked by other Members to protect their rights and I must do so. Let us remember that we did not expect the Ervin amendment to be here.

Mr. GRIFFIN. We have been debating it all morning.

Mr. JAVITS. But we did not have it at 10 o'clock this morning, so I do not think we can be charged there.

Mr. GRIFFIN. Right.

The VICE PRESIDENT. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President, I yield 2 minutes to the Senator from Michigan (Mr. HART).

The VICE PRESIDENT. The Senator from Michigan is recognized for 2 minutes.

Mr. HART. Mr. President, in the time that has elapsed where efforts were made to negotiate a unanimous-consent agreement, the spirit which had persuaded me, after listening to the eloquent remarks of the Senator from Massachusetts (Mr. BROOKE) and the Senator from Minnesota (Mr. HUMPHREY), to ask for these 2 minutes, has somewhat subsided.

However, I still rise to make my basic point, and that is that Senators BROOKE and HUMPHREY drew a clearer and more vivid picture than we normally paint with respect to the motivation behind votes and amendments.

I am glad that they did. Anyone from Michigan knows that this is not a politically easy set of votes, including the distinguished Vice President now in the chair. The reason we have a Constitution is to insure that not always must we do or even are we permitted to do that which at the moment may be popular. Each of us here took an oath to support that document. Some of these amendments, including the one offered by my colleague, are dead wrong in terms of what the Constitution says we may or may not do.

I am glad that the distinguished Senator from Massachusetts (Mr. BROOKE) made that clear. I am also glad that the distinguished Senator from Minnesota (Mr. HUMPHREY) made clear that if, after all these years of lecturing black Americans to stay within the system and play by the rules, and now that they have won within the rules, we are going to change the rules—again, that will mean real trouble. Worse, we do violence to the Constitution in making the new rules.

Finally, if all the people of America could be persuaded to another effort—to direct the energy we are giving to this effort to stop busing—to making it work a better America would result.

When a court concluded some busing is required to protect a constitutional right, I would hope the leaders in that community would direct their energy to "making it work"—not feeding fires of disruption. We in the Congress and the executive branch have that same obligation. It has no relation to whether or not it is popular.

Mr. JAVITS. I thank the Senator.

I yield the remaining 5 minutes to the Senator from Massachusetts.

Mr. BROOKE. I thank the Senator.

I thank the distinguished Senator from Michigan (Mr. HART) and the distinguished Senator from Minnesota (Mr. HUMPHREY), for never have either of them failed to take a stand on the moral issues of the day. I think that is important. That is why we are elected. I do not think we are elected merely to mouth the sentiments that we read in the polls that are taken.

I believe we have responsibility to lead and to inform and to educate the public. I certainly do not think my Senate seat is worth a compromise of my principles on any moral issue facing this Nation. I would rather give up my Senate seat than to compromise those principles.

We thought that we did not have time to get into all the issues involved in the amendment now before the Senate. We thought it best to appeal to the few Senators who are here listening to this debate—a very important debate, I should say—on the basis of constitutionality, legality, and morality. But I just want to discuss a matter that is still left in this amendment—most of the objectionable matters are still left in this amendment—and that pertains——

The PRESIDING OFFICER (Mr. HANSEN). All the time of the Senator from New York on the amendment has expired.

Mr. JAVITS. I yield 2 minutes on the bill to the Senator.

Mr. BROOKE. That has to do with the payment of attorneys' fees. It says:

> The prevailing party in any action under the act may, at the court's discretion, request a reasonable attorneys' fee as part of the cost.

That provision might seem very simple, but what does it mean? There is no doubt of the consequences of such a provision. It strikes at the very foundation of American justice by intimidating and deterring the poor from asserting the constitutional rights of their children. How many poor black mothers—or white mothers—could afford attorneys' fees in a case where they wanted to raise an objection to the segregation of their children?

The authors pulled out all stops in the proposed amendment. They tried to cover all areas, to make sure that busing could not be used as an effective, reasonable, and limited tool to desegregate public schools in this country. It is inconceivable to me that the Senate of the United States, in 1974, should be debating this issue.

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

Mr. JAVITS. I yield myself 1 minute on the bill.

Mr. President, I yield myself this minute only to point out one thing that, it seems to me, has not been said.

It is interesting to me, and it should be interesting to the country, that so many of the antibusing Senators are themselves deep believers in conservative stability for this country. Yet, I know of no single act that could more jar that stability that reversing ourselves in this particular matter from the decent and wise principles of the Scott-Mansfield compromise. That is indicated by the passion that Senator BROOKE has thrown into this debate. I hope very much that my colleagues will think about that.

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

Mr. JAVITS. I yield.

Mr. HUMPHREY. Mr. Presdent, I can only repeat what a distinguished American general said at Bastogne when he was asked to surrender. He said, "Nuts." That is what I say.

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

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. I wish to move to table the Griffin amendment. At what point will that be in order?

The PRESIDING OFFICER. The Senator may make the motion at this time. That is the pending question. However, we have an agreement to move to the consideration of the Ervin amendment. The Senator may ask unanimous consent to make his tabling motion at this time.

Mr. JAVITS. I am willing to make it now or at 12:30—whatever the Parliamentarian says.

The PRESIDING OFFICER. Whatever the Senator desires.

Mr. JAVITS. I will make it at 12:30.

The PRESIDING OFFICER. The amendment by the Senator from North Carolina (Mr. ERVIN) will be stated.

The assistant legislative clerk read as follows:

At the end of the bill add an appropriately numbered new title and an appropriately numbered new section reading as follows:

"No court of the United States shall have jurisdiction to make or enter any decree, judgment, or order requiring the public school authorities of any State or any political subdivision of any State to transport public school students from one school to another school, or from one district to another district, or from one place to another place for the purpose of altering the racial composition of the student body at any public school: *Provided, however,* That this provision shall not apply to the Supreme Court when acting within the scope of its original jurisdiction."

Mr. ERVIN. Mr. President, in view of the fact that the distinguished Senator from New York, in opposing the amendment I offered yesterday, stated that it was unconstitutional, I refer to the decision of the Supreme Court in the case of *United States* v. *Klein*, 80 U.S. 128. I ask unanimous consent that a portion of the discussion of this case in the 1972 edition of the "Constitution of the United States of America, Revised and Annotated," appearing on pages 758 and 759, be printed in the RECORD.

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

Another Reconstruction Congress attempt to curb the judiciary failed in *United States* v. *Klein*, in which a statute couched in jurisdictional terms which attempted to set aside both the effect of a presidential pardon and the judicial effectuation of such a pardon was voided. The statute declared that no pardon was to be admissible in evidence in support of any claim against the United States in the Court of Claims for the return of confiscated property of Confederates nor, if already put in evidence in a pending case, should it be considered on behalf of the claimant by the Court of Claims or by the Supreme Court on appeal. Proof of loyalty was required to be made according to provisions of certain congressional enactments and when judgment had already been rendered on other proof of loyalty the Supreme Court on appeal should have no further jurisdiction and should dismiss for want of jurisdiction. Moreover, it was provided that the recitation in any pardon which had been received that the claimant had taken part in the rebellion was to be taken as conclusive evidence that the claimant had been disloyal and was not entitled to regain his property.

The Court began by reaffirming that Congress controlled the existence of the inferior federal courts and the jurisdiction vested in them and the appellate jurisdiction of the Supreme Court. "But the language of this provision shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. . . . It is evident . . . that the denial of jurisdiction to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending, prescribed by Congress. The Court has jurisdiction of the cause to a given point; but when it ascertains that a certain state of things exists, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction.

"It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power." The statute was void for two reasons; it "infring[ed] the constitutional power of the Executive", and it "prescrib[ed] a rule for the decision of a cause in a particular way." *Klein* thus stands for the proposition that Congress may not violate the principle of separation of powers and that it may not accomplish certain forbidden substantive acts by casting them in jurisdictional terms.

Mr. ERVIN. I invite the attention of the Senate to this statement by the Supreme Court in this case:

It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

In order to show that this amendment is constitutional insofar as it curtails the appellate jurisdiction of the U.S. Supreme Court, I read this portion of section 2 of article III of the Constitution:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

In order to establish the constitutionality of the provisions of this amendment as it applies to courts of the United States inferior to the Supreme Court, I read this portion of the analysis of the decision of the Supreme Court of the United States in *Lockerty* v. *Phillips*, 319 U.S. 182, which also appears in the 1972 edition of the volume referred to above:

A unanimous Court, speaking through Chief Justice Stone, declared that there "is nothing in the Constitution which requires Congress to confer equity jurisdiction on any particular inferior federal court." All federal courts, other than the Supreme Court, it was asserted, derive their jurisdiction solely from the exercise of the authority to ordain and establish inferior courts conferred on Congress by Article III, § 1, of the Constitution. This power, which Congress is left free to exercise or not, was held to include the power " 'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.' "

Mr. President, forced busing, by any reasonable interpretation of the equal-protection clause, is unconstitutional.

The equal-protection clause says that no State shall deny any person within its jurisdiction the equal protection of the laws. That clause has been interpreted in literally hundreds upon hundreds of Federal judicial decisions. It requires every State to treat in like manner all persons in similar circumstances. When a Federal court enters a compulsory busing decree, it clearly violates that clause of the Constitution in two respects. First, it says to a school board—

You are required to divide the children in your district into two groups. The first group you can permit to attend neighborhood schools, and the other group you must deny permission to attend neighborhood schools.

That is a clear violation of the equal protection clause under literally hundreds of decisions because it treats in a different manner two different groups of children similarly situated.

Furthermore, when a court enters a busing decree to force busing it says a second thing to the school board. It says:

The reason that you cannot let the second group of these children attend their neighborhood schools is that you are required to bus them elsewhere to other schools, either to decrease the number of children of their race in their neighborhood schools or increase the number of children of their race in the schools elsewhere.

Oceans and oceans of judicial sophistry cannot wash out the fact that this is denying the children who are bused the right to attend neighborhood schools, solely on the basis of their race. That is precisely what Brown versus Board of Education, City of Topeka, said was unconstitutional.

This amendment merely requires that the Constitution be obeyed by recognizing it is wrong to make guinea pigs out of little children, black and white, and herd them like cattle to and fro, not for the purpose of enlightening their minds but for the purpose of mingling their bodies.

It is time to put an end to the tyranny practiced on these children, black and white. It is an insult to the black race to say to them that they cannot get an adequate education unless they are forced to associate with white children.

This amendment, as far as busing is concerned, would give liberty back to the little children of this country—black, white, yellow, and red. It would enforce the equal protection clause as it was designed to be enforced. Furthermore, it would leave all other methods of enforcing desegregation available to the courts but it would merely deny them the right to herd little children like cattle, bused to and fro, just to integrate their bodies rather than to enlighten their minds.

Mr. JAVITS. Mr. President, I wish to simply answer the Senator from North Carolina, as follows: As a lawyer, I understand how to make a blanket amendment and he has certainly made one here. This amendment would absolutely, positively, unquestionably, without any possible reasonable doubt outlaw busing for any purpose whatever in respect of altering the racial composition of the student body of any public school.

Indeed, if agreed to, it might go far beyond desegregation because normal busing in central school districts would

alter the racial composition of any school.

If this is an effort to exorcise what the Senator from North Carolina considers to be the great evil, the remedy is more offensive than the evil could be. This would absolutely blanket prohibition without any risk or restraint whatever.

The other thing about the amendment which is troublesome is the scope of its original jurisdiction as to the jurisdiction of the Supreme Court. That raises a very fundamental question with respect to the Constitution of the United States. There has been for a long time a major debate in legal circles as to whether even in declaring acts unconstitutional the Supreme Court went beyond its original jurisdiction, which dates back to the time the Constitution was written. The rationale for many Supreme Court decisions, not only in connection with this bill, but in many other fields, is that when Congress created the lower courts, they were, as we all know, created by the Judiciary Act of 1789; they created lower courts and they gave them jurisdiction of various kinds. The Supreme Court was the ultimate court for appellate jurisdiction.

If we get into an argument on original jurisdiction, we are in an enormous constitutional crisis.

For those reasons, I believe, with all respect to the Senator from North Carolina, because he is one Senator, as we all know, who practices what he preaches—this is what he deeply believes—he has contrived an amendment which is copper riveted and locked in and goes far beyond its own purposes in saying that busing is used under no circumstances, certainly in desegregation cases, and indeed, respecting any other cases in public schools.

Mr. President, for all those reasons I hope the Senate will reject the amendment.

The unanimous-consent agreement, as I understand it, is to start the vote on the Griffin amendment at 12:30 p.m.

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. If the Senator from Michigan is willing, we can anticipate that time by 3 minutes, and I ask unanimous consent that the Griffin amendment may now be called up. I intend to move to table it at this time.

Mr. ROBERT C. BYRD. Mr. President, is it agreeable that the first vote also be a 10-minute rollcall vote?

Mr. JAVITS. Oh, yes.

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

Mr. JAVITS. Mr. President, I move to table the Griffin amendment, and I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

On this vote, the Senator from Idaho (Mr. CHURCH) is paired with the Senator from South Carolina (Mr. HOLLINGS).

If present and voting, the Senator from Idaho would vote "yea" and the Senator from South Carolina would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), and the Senator from Utah (Mr. BENNETT) are necessarily absent.

The result was announced—yeas 46, nays 47, as follows:

[No. 202 Leg.]

YEAS—46

| | | |
|---|---|---|
| Abourezk | Javits | Pastore |
| Aiken | Kennedy | Pearson |
| Bayh | Magnuson | Pell |
| Biden | Mansfield | Percy |
| Brooke | Mathias | Randolph |
| Burdick | McGee | Ribicoff |
| Case | McGovern | Scott, Hugh |
| Clark | McIntyre | Stafford |
| Cranston | Metcalf | Stevenson |
| Eagleton | Metzenbaum | Symington |
| Hart | Mondale | Taft |
| Hatfield | Montoya | Tunney |
| Hathaway | Moss | Weicker |
| Hughes | Muskie | Williams |
| Humphrey | Nelson | |
| Jackson | Packwood | |

NAYS—47

| | | |
|---|---|---|
| Allen | Domenici | McClellan |
| Baker | Dominick | McClure |
| Bartlett | Eastland | Nunn |
| Beall | Ervin | Proxmire |
| Bentsen | Fannin | Roth |
| Bible | Fong | Schweiker |
| Brock | Goldwater | Scott, William L. |
| Buckley | Griffin | Sparkman |
| Byrd, Harry F., Jr. | Gurney | Stennis |
| Byrd, Robert C. | Hansen | Stevens |
| Cannon | Hartke | Talmadge |
| Chiles | Haskell | Thurmond |
| Cook | Helms | Tower |
| Cotton | Hruska | Young |
| Curtis | Huddleston | |
| Dole | Johnston | |
| | Long | |

NOT VOTING—7

| | | |
|---|---|---|
| Bellmon | Fulbright | Hollings |
| Bennett | Gravel | Inouye |
| Church | | |

So the motion to lay on the table Mr. GRIFFIN'S amendment was rejected.

Mr. HUGH SCOTT. Mr. President, on behalf of myself and the Senator from Montana (Mr. MANSFIELD), I send an amendment to the desk and ask that it be stated.

The VICE PRESIDENT. The clerk will report the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with in view of the fact that I have a short one-page statement, which I have had placed on the desk of each Senator, explaining the amendment.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment reads as follows:

In lieu of the language proposed to be inserted by amendment numbered , insert the following:

"TITLE IX—EQUAL EDUCATIONAL OPPORTUNITIES

"SHORT TITLE

"SEC. 901. This title may be cited as the 'Equal Educational Opportunities Act of 1974'.

"PART A—POLICY AND PURPOSE

"DECLARATION OF POLICY

"SEC. 902. (a) The Congress declares it to be the policy of the United States that—

"(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

"(2) the neighborhood is the appropriate basis for determining public school assignments.

"(b) In order to carry out this policy, it is the purpose of this Act to specify appropriate remedies for the orderly removal of the vestiges of the dual school system. The provisions of this Title and Title VIII are not intended to modify or diminish the authority of the courts of the United States to enforce fully the Fifth and Fourteenth Amendments to the United States Constitution.

"FINDINGS

"SEC. 903. (a) The Congress finds that—

"(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

"(2) for the purpose of abolishing dual schools solely on the basis of race, color, sex, thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

"(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

"(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

"(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

"(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, 'incomplete and imperfect', and have not established a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems, except to the extent such specification is inconsistent with the requirements of the Fifth and Fourteenth Amendments to the United States Constitution regarding the elimination of such vestiges of dual school systems.

"PART B—UNLAWFUL PRACTICES

"DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

"SEC. 904. No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

"(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

"(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part D of this title, to remove the vestiges of a dual school system;

"(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

"(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

"(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

"(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instruction programs.

"BALANCE NOT REQUIRED

"SEC. 905. The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

"ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

"SEC. 906. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

"PART C—ENFORCEMENT

"CIVIL ACTIONS

"SEC. 907. An individual denied an equal educational opportunity, as defined by this title, may constitute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this title referred to as the 'Attorney General'), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

"EFFECT OF CERTAIN POPULATION CHANGES ON CIVIL ACTIONS

"SEC. 908. When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

"JURISDICTION BY THE ATTORNEY GENERAL

"SEC. 909. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 807.

"INTERVENTION BY ATTORNEY GENERAL

"SEC. 910. Whenever a civil action is instituted under section 807 by an individual, the Attorney General may intervene in such action upon timely application.

"SUITS BY THE ATTORNEY GENERAL

"SEC. 911. The Attorney General shall not institute a civil action under section 807 before he—

"(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part B of this title; and

"(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate action.

"ATTORNEYS' FEES

"SEC. 912. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

"PART D—REMEDIES

"FORMULATING REMEDIES; APPLICABILITY

"SEC. 913. In formulating a remedy for a denial of educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

"PRIORITY OF REMEDIES

"SEC. 914. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

"(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

"(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

"(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

"(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 815;

"(e) the construction of new schools or the closing of inferior schools;

"(f) the construction or establishment of magnet schools; or

"(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 815 and 816 of this title.

"TRANSPORTATION OF STUDENTS

"SEC. 915. (a) No court, department, or agency of the United States shall, pursuant to section 814, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

"(b) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

"(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

"DISTRICT LINES

"SEC 916. In the formulation of remedies under section 913 or 914 of this title the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.

"VOLUNTARY ADOPTION OF REMEDIES

"SEC. 917. Nothing in this title prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

"PART E—DEFINITIONS

"DEFINITIONS

"SEC. 918. For the purposes of this title—

"(a) the term 'educational agency' means a local educational agency or a 'State educational agency' as defined by section 801(k) of the Elementary and Secondary Education Act of 1965;

"(b) the term 'local educational agency' means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965;

"(c) the term 'segregation' means the operation of a school system in which students are wholly or substantially separated among the schools of an education agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin;

"(d) the term 'desegregation' means desegregation as defined by section 401(b) of the Civil Rights Act of 1964; and

"(e) an educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

"PART F—MISCELLANEOUS PROVISIONS

"REPEALER

"SEC. 918. Section 709(a)(3) of the Emergency School Aid Act is hereby repealed.

"SEPARABILITY OF POWERS

"SEC. 919. If any provision of this title or of any amendment made by this title, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this title and of the amendments made by this title and

the application of such provision to other persons or circumstances shall not be affected."

Amend the table of contents by striking out title VIII and items 801 through 806, and inserting in lieu thereof the following:

"TITLE VIII—EQUAL EDUCATIONAL OPPORTUNITIES

"Sec. 801. Short title.

"PART A—POLICY AND PURPOSE

"Sec. 802. Declaration of policy.
"Sec. 803. Findings.

"PART B—UNLAWFUL PRACTICES

"Sec. 804. Denial of equal educational opportunity.
"Sec. 805. Balance not required.
"Sec. 806. Assignment on neighborhood basis not a denial of equal educational opportunity.

"PART C—ENFORCEMENT

"Sec. 807. Civil actions.
"Sec. 808. Effect of certain population changes on civil actions.
"Sec. 809. Jurisdiction by the Attorney General.
"Sec. 810. Intervention by Attorney General.
"Sec. 811. Suits by the Attorney General.
"Sec. 812. Attorneys' fees.

"PART D—REMEDIES

"Sec. 813. Formulating remedies; applicability.
"Sec. 814. Priority of remedies.
"Sec. 815. Transportation of students.
"Sec. 816. District lines.
"Sec. 817. Voluntary adoption of remedies.
"Sec. 818. Reopening proceedings.
"Sec. 819. Limitations on orders.
"Sec. 820. Termination of court orders.

"PART E—DEFINITIONS

"Sec. 821. Definitions.

"PART F—MISCELLANEOUS PROVISIONS

"Sec. 822. Repealer.
"Sec. 823. Separability of provisions.".

Mr. HUGH SCOTT. Mr. President, my statement reads as follows:

EXPLANATION OF PROPOSED SCOTT-MANSFIELD SUBSTITUTE FOR GRIFFIN AMENDMENT

1. This would be a *complete substitute* for the Griffin Amndt ("Esch")—*not merely a perfecting amendment.*

2. This Scott-Mansfield substitute is not a revision or modification of the 1972 Scott-Mansfield provision repeated in the present Senate Committee bill. Rather, this Scott-Mansfield substitute essentially accepts all the language of the Griffin (Esch) proposal, itself, with one exception:

(A) The original language of Griffin Amndt. is retained intact.

(B) Clarifying language has been added to the Policy and to the Findings sections of the Gurney Amendment to make clear that the bill is not intended to purport to prevent the courts from upholding the Constitution.

In Section 802(b), the following is added:

"The provisions of this title and title VIII are not intended to modify or diminish the authority of the courts of the United States to enforce fully the Fifth and Fourteenth amendments to the United States Constitution."

and in Section 803(b), the following is added:

"For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems, *except to the extent such specification is inconsistent with the requirements of the Fifth and Fourteenth Amendments to the United States Constitution with regard to the elimination of such vestiges of dual school systems.*" (Added language italicized.)

As for the added language regarding constitutionality, that puts the issue squarely to Senators who (a) insist Gurney is constitutional as is, or (b) say they are unsure but wish to leave it to the courts. This language does leave it to the courts, but makes clear that Senators will follow their oath to uphold the Constitution, too, and will not try to tell the Court that it cannot enforce the constitution.

To oppose this clarification would undermine the integrity of our system and respect for the Constitution as interpreted by the Courts. If a Senator votes "no" on this Scott-Mansfield substitute, he is saying "Yes, I am prepared to try to go beyond what the Constitution permits." It does not require Senators to decide if this or that provision is constitutional; it merely requires them to stand by the Constitution as interpreted by the judicial branch, as called for by our system short of Constitutional amendment. In the atmosphere of Watergate, that is a healthy and important posture for the Senate to take.

It will be noted that the statement refers to a substitute for the Gurney amendment, because we had anticipated the possibility of offering it yesterday to the amendment of the Senator from Florida.

However, it is essentially the same amendment except that we have further conformed our substitute to the amendment now being offered by the Senator from Michigan.

That means that our substitute now has deleted the "reopener" and also, sections 818, and 819 of the original Gurney amendment, as has the Senator from Michigan in his amendment.

Since the Senator from Michigan has also knocked out the "reopener," the only difference between our and his, apart from the effective date, is that statement of fidelity to the Constitution.

The only question the Senator will now be voting on is whether the Senate will add the language reprinted in the statement on your desk which simply states that the Senate does not intend to violate the Constitution of the United States.

Mr. PASTORE. Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order. There is no debate on this amendment.

Mr. GRIFFIN. Mr. President, I move to table the amendment and ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ABOUREZK. Mr. President, what are we voting on?

The VICE PRESIDENT. If the Senate will please be in order, the Chair will explain the parliamentary situation. There is a motion to table the amendment offered by the Senator from Pennsylvania and the Senator from Montana. On this motion the yeas and nays have been ordered, and the clerk will call the roll.

Mr. HUMPHREY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. HUMPHREY. Mr. President, are the members of the staff circulating a description of that amendment?

The VICE PRESIDENT. The Chair will state that he is informed that the Senator from Pennsylvania (Mr. HUGH SCOTT) had instructed that such information be made available to all Members of the Senate.

Several Senators addressed the Chair.

[Cries of regular order.]

The VICE PRESIDENT. Regular order has been called for. The question is on agreeing to the motion of the Senator from Michigan (Mr. GRIFFIN) to lay on the table the Scott-Mansfield amendment. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

On this vote, the Senator from South Carolina (Mr. HOLLINGS) is paired with the Senator from Idaho (Mr. CHURCH).

If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Idaho would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Utah (Mr. BENNETT) are necessarily absent.

The result was announced—yeas 45, nays 48, as follows:

[No. 203 Leg.]

YEAS—45

| | | |
|---|---|---|
| Allen | Domenici | Long |
| Baker | Dominick | McClellan |
| Bartlett | Eastland | McClure |
| Beall | Ervin | Nunn |
| Bentsen | Fannin | Proxmire |
| Bible | Fong | Roth |
| Buckley | Goldwater | Schweiker |
| Byrd, Harry F., Jr. | Griffin | Scott, William L. |
| Byrd, Robert C. | Gurney | Sparkman |
| Cannon | Hansen | Stennis |
| Chiles | Hartke | Talmadge |
| Cook | Haskell | Thurmond |
| Cotton | Helms | Tower |
| Curtis | Hruska | Young |
| Dole | Huddleston | |
| | Johnston | |

NAYS—48

| | | |
|---|---|---|
| Abourezk | Jackson | Packwood |
| Aiken | Javits | Pastore |
| Bayh | Kennedy | Pearson |
| Biden | Magnuson | Pell |
| Brock | Mansfield | Percy |
| Brooke | Mathias | Randolph |
| Burdick | McGee | Ribicoff |
| Case | McGovern | Scott, Hugh |
| Clark | McIntyre | Stafford |
| Cranston | Metcalf | Stevens |
| Eagleton | Metzenbaum | Stevenson |
| Hart | Mondale | Symington |
| Hatfield | Montoya | Taft |
| Hathaway | Moss | Tunney |
| Hughes | Muskie | Weicker |
| Humphrey | Nelson | Williams |

NOT VOTING—7

| | | |
|---|---|---|
| Bellmon | Fulbright | Inouye |
| Bennett | Gravel | |
| Church | Hollings | |

So Mr. GRIFFIN's motion to table the Scott-Mansfield amendment to the Griffin amendment was rejected.

The VICE PRESIDENT. The question recurs on agreeing to the amendment of the Senator from Pennsylvania.

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BROCK. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BROCK. Is not the Griffin amendment in order?

The VICE PRESIDENT. The question is on agreeing to the amendment to the Griffin amendment offered by the Senator from Pennsylvania (Mr. HUGH SCOTT).

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

The VICE PRESIDENT. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

The question is on agreeing to the amendment offered by the Senator from Pennsylvania (Mr. HUGH SCOTT) as a substitute for the amendment of the Senator from Michigan (Mr. GRIFFIN). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

On this vote, the Senator from Idaho (Mr. CHURCH) is paired with the Senator from South Carolina (Mr. HOLLINGS).

If present and voting, the Senator from Idaho would vote "yea" and the Senator from South Carolina would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), and Senator from Utah (Mr. BENNETT), are necessarily absent.

The result was announced—yeas 47, nays 46, as follows:

[No. 204 Leg.]

YEAS—47

| | | |
|---|---|---|
| Abourezk | Javits | Pastore |
| Aiken | Kennedy | Pearson |
| Bayh | Magnuson | Pell |
| Biden | Mansfield | Percy |
| Brooke | Mathias | Randolph |
| Burdick | McGee | Ribicoff |
| Case | McGovern | Scott, Hugh |
| Clark | McIntyre | Stafford |
| Cranston | Metcalf | Stevens |
| Eagleton | Metzenbaum | Stevenson |
| Hart | Mondale | Symington |
| Hatfield | Montoya | Taft |
| Hathaway | Moss | Tunney |
| Hughes | Muskie | Weicker |
| Humphrey | Nelson | Williams |
| Jackson | Packwood | |

NAYS—46

| | | |
|---|---|---|
| Allen | Dole | Johnston |
| Baker | Domenici | Long |
| Bartlett | Dominick | McClellan |
| Beall | Eastland | McClure |
| Bentsen | Ervin | Nunn |
| Bible | Fannin | Proxmire |
| Brock | Fong | Roth |
| Buckley | Goldwater | Schweiker |
| Byrd, Harry F., Jr. | Griffin | Scott, William L. |
| Byrd, Robert C. | Gurney | Sparkman |
| Cannon | Hansen | Stennis |
| Chiles | Hartke | Talmadge |
| Cook | Haskell | Thurmond |
| Cotton | Helms | Tower |
| Curtis | Hruska | Young |
| | Huddleston | |

NOT VOTING—7

| | | |
|---|---|---|
| Bellmon | Fulbright | Inouye |
| Bennett | Gravel | |
| Church | Hollings | |

So the Scott-Mansfield amendment to the Griffin amendment was agreed to.

Mr. GRIFFIN. Mr. President, a parliamentary inquiry——

Mr. BROOKE. Mr. President, a parliamentary inquiry——

The VICE PRESIDENT. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, is it in order now to offer an amendment to the Scott-Mansfield substitute or to the Griffin amendment?

The VICE PRESIDENT. No further amendments are in order on this amendment.

Mr. GRIFFIN. I thank the Chair.

The VICE PRESIDENT. The Senator from Massachusetts (Mr. BROOKE) is recognized.

Mr. BROOKE. Mr. President, is a motion to table the Griffin amendment as substituted by the Scott-Mansfield amendment in order?

The VICE PRESIDENT. In the opinion of the Chair, a motion to table at this point would be in order.

Mr. BROOKE. Mr. President, I move to table the Griffin amendment as substituted by the Scott-Mansfield amendment, and I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Massachusetts (Mr. BROOKE) to table the Griffin amendment as substituted by the Scott-Mansfield amendment.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

On this vote, the Senator from Idaho (Mr. CHURCH) is paired with the Senator from South Carolina (Mr. HOLLINGS).

If present and voting, the Senator from Idaho would vote "yea" and the Senator from South Carolina would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), and the Senator from Nebraska (Mr. CURTIS) are necessarily absent.

The result was announced—yeas 45, nays 47, as follows:

[No. 205 Leg.]

YEAS—45

| | | |
|---|---|---|
| Abourezk | Javits | Packwood |
| Bayh | Kennedy | Pastore |
| Biden | Magnuson | Pearson |
| Brooke | Mansfield | Pell |
| Burdick | Mathias | Percy |
| Case | McGee | Randolph |
| Clark | McGovern | Ribicoff |
| Cranston | McIntyre | Scott, Hugh |
| Eagleton | Metcalf | Stafford |
| Hart | Metzenbaum | Stevenson |
| Hatfield | Mondale | Symington |
| Hathaway | Montoya | Taft |
| Hughes | Moss | Tunney |
| Humphrey | Muskie | Weicker |
| Jackson | Nelson | Williams |

NAYS—47

| | | |
|---|---|---|
| Aiken | Domenici | McClellan |
| Allen | Dominick | McClure |
| Baker | Eastland | Nunn |
| Bartlett | Ervin | Proxmire |
| Beall | Fannin | Roth |
| Bentsen | Fong | Schweiker |
| Bible | Goldwater | Scott, William L. |
| Brock | Griffin | Sparkman |
| Buckley | Gurney | Stennis |
| Byrd, Harry F., Jr. | Hansen | Stevens |
| Byrd, Robert C. | Hartke | Talmadge |
| Cannon | Haskell | Thurmond |
| Chiles | Helms | Tower |
| Cook | Hruska | Young |
| Cotton | Huddleston | |
| Dole | Johnston | |
| | Long | |

NOT VOTING—8

| | | |
|---|---|---|
| Bellmon | Curtis | Hollings |
| Bennett | Fulbright | Inouye |
| Church | Gravel | |

So the motion to table was rejected.

The VICE PRESIDENT. The question now is on the amendment of the Senator from Michigan as amended by the Senator from Pennsylvania (Mr. HUGH SCOTT).

Mr. ROBERT C. BYRD. Mr. President, had not the yeas and nays been ordered previously on the Griffin amendment?

The VICE PRESIDENT. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the yeas and nays on the Griffin amendment be vacated.

The VICE PRESIDENT. Is there objection? Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Michigan as amended by the Senator from Pennsylvania (Mr. HUGH SCOTT). [Putting the question.]

The amendment, as amended, was agreed to.

The VICE PRESIDENT. The question now recurs on the amendment of the Senator from North Carolina (Mr. ERVIN).

Mr. HATHAWAY. Mr. President, I move to lay that motion on the table, and I ask for the yeas and nays.

Mr. BROCK. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BROCK. Mr. President, the Senator from Tennessee was on his feet seeking recognition for a motion to reconsider the previous vote. Would that not be in order?

The VICE PRESIDENT. The Chair recognized the Senator from Maine.

Mr. GRIFFIN. Mr. President, what was the motion made by the Senator from Maine?

Mr. HATHAWAY. I moved to table.

Mr. BROCK. Mr. President, I move to reconsider the vote by which the motion to table the Griffin amendment, as amended, was rejected.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATHAWAY. I renew my motion to lay on the table the Ervin amendment, and I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the motion to lay on the table the amendment of the Senator from North Carolina (Mr. ERVIN). The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH), is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. HOLLINGS) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), and the Senator from Nebraska (Mr. CURTIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. CURTIS) would vote "nay."

The result was announced—yeas 51, nays 41, as follows:

[No. 206 Leg.]

YEAS—51

| | | |
|---|---|---|
| Abourezk | Humphrey | Packwood |
| Aiken | Jackson | Pastore |
| Bayh | Javits | Pearson |
| Biden | Kennedy | Pell |
| Brooke | Magnuson | Percy |
| Burdick | Mansfield | Randolph |
| Case | Mathias | Ribicoff |
| Clark | McGee | Schweiker |
| Cranston | McGovern | Scott, Hugh |
| Domenici | McIntyre | Stafford |
| Eagleton | Metcalf | Stevens |
| Fong | Metzenbaum | Stevenson |
| Hart | Mondale | Symington |
| Haskell | Montoya | Taft |
| Hatfield | Moss | Tunney |
| Hathaway | Muskie | Weicker |
| Hughes | Nelson | Williams |

NAYS—41

| | | |
|---|---|---|
| Allen | Dole | McClellan |
| Baker | Dominick | McClure |
| Bartlett | Eastland | Nunn |
| Beall | Ervin | Proxmire |
| Bentsen | Fannin | Roth |
| Bible | Goldwater | Scott, William L. |
| Brock | Griffin | Sparkman |
| Buckley | Gurney | Stennis |
| Byrd, Harry F., Jr. | Hansen | Talmadge |
| Byrd, Robert C. | Hartke | Thurmond |
| Cannon | Helms | Tower |
| Chiles | Hruska | Young |
| Cook | Huddleston | |
| Cotton | Johnston | |
| | Long | |

NOT VOTING—8

| | | |
|---|---|---|
| Bellmon | Curtis | Hollings |
| Bennett | Fulbright | Inouye |
| Church | Gravel | |

So the motion to lay on the table the Ervin amendment was agreed to.

The PRESIDING OFFICER (Mr. ABOUREZK. Under the previous order the Senate will now proceed to a vote on the Helms amendment No. 1263, which the clerk will state.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the previous order for the recognition of Mr. HELMS at this time to be followed by Mr. BUCKLEY, be reversed.

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

Mr. BUCKLEY. Mr. President, I call up my amendment No. 1263.

The PRESIDING OFFICER. The clerk will state the amendment.

The second assistant legislative clerk proceeded to read the amendment.

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

Mr. BUCKLEY. I am glad to yield.

The PRESIDING OFFICER. The Chair will advise that there is no time for debate on this amendment. The Senator from Louisiana can get unanimous consent to be recognized at this time.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I be recognized for the purpose of calling up an amendment which will not receive any debate.

The PRESIDING OFFICER. Is there objection?

Mr. BUCKLEY and Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. BUCKLEY. I am afraid I misunderstood when the Senator asked me to yield to him briefly. Apparently what he meant was to call up his amendment. Is this amendment agreeable?

Mr. JOHNSTON. We have an amendment which was agreed to by the Senator from New York and the Senator from Rhode Island and it should not have any rollcall or lengthy discussion.

Mr. JAVITS. Mr. President, whatever the Senator from New York wishes will be the way we are controlled. I was just rising to ask the purpose of the Senator's recognition. If it is to call up an amendment to make a base year in respect of adult education, it is an education amendment, and I think, with all respect, if we are going into that, unless the Senate demurs, it should wait until the busing amendments are disposed of.

Mr. JOHNSTON. Mr. President, I thought the Buckley amendment was a non-busing amendment. I will withhold my amendment until the busing amendment is disposed of.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from New York.

Mr. COTTON. Mr. President, I did not hear the reading of the amendment by the clerk. The reading was waived and there cannot be any debate. We ought to have the right to hear the amendment read.

The PRESIDING OFFICER. The Clerk will read the amendment in full.

The second assistant legislative clerk read amendment No. 1263 as follows:

On page 384, line 15 delete everything after the comma, through to and including the period on line 20, and insert the following: "except in cases involving children whose parents have made an express, written, voluntary request for, or have given their written, voluntary consent to such transportation, or teachers who have made an express, written, voluntary request for, or have given their written, voluntary consent to such transportation.".

Mr. BUCKLEY. Mr. President, I ask unanimous consent that I may give a one-sentence description of what my amendment would accomplish.

Mr. JAVITS. Mr. President, I must object unless we have equal time.

Mr. ROBERT C. BYRD. Mr President, I ask unanimous consent that each side may have 1 minute to debate the amendment.

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

Mr. BUCKLEY. Mr. President, it may well be that my amendment (No. 1263) to alter the language of section 802(a) of title XVIII is the least complex of the many concerned with busing that will have been introduced during the course of this debate. That is not to say that it is not an effective as well as reasonable manner with which to confront the real problem which is the forced busing of children to achieve certain racial or ethnic quotas. The committee bill would permit the use of Federal funds for purposes of transportation of students to overcome racial imbalance if the local school authorities so request. The effect of my amendment is to substitute parental discretion for that of school authorities.

Mr. President, most Americans have come to the conclusion that forced busing of students without parental consent is inappropriate social policy. Those citizens are watching for congressional action to put an end to a problem which is dividing America, causing serious personal and familiar anguish and even exposing children to dangers which they would otherwise avoid. It is important that the law recognize the parents' fundamental role and responsibility in the schooling of their children. And there, Mr. President, is the central issue: Parental consent. The purpose of my amendment is to recognize the fundamental parental role and to insure that the parents are very much involved in the planning of any program which would involve the busing of their children.

The Senate does little, if anything, should it adopt the committee language. Reports are well known that school authorities can be "encouraged" by overly aggressive social planners employed by certain agencies of the Federal Government to concur that this or that busing plan to achieve a certain ethnic or racial mix must be implemented. Local school authorities under a sophisticated duress could, in effect, be required to comply and therefore "request," thus bringing them into the exception as provided for in the committee language.

But, Mr. President, the people who are deeply concerned and the persons most agonized are the parents. It is they who should give the permission. My amendment if adopted will prohibit the use of Federal funds for the busing of students unless the parents of the children involved consent to it.

Mr. JAVITS. Mr. President, our opposition to the amendment simply is that we would allow the whole Constitution of the United States to depend upon a few families. That proposition is simply self-defeating. The country cannot be run—or the Government or a school district, or anything else—on any such theory. For these reasons I believe the amendment should be defeated on the merits. We should not move to table the amendment. It is simply wrong on the merits. I object to it. I believe the Senate will reject it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York (Mr. BUCKLEY).

Mr. BUCKLEY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York. (Mr. BUCKLEY). The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. HOLLINGS) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), and the Senator from Nebraska (Mr. CURTIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. CURTIS) would vote "yea."

The result was announced—yeas 35, nays 57, as follows:

[No. 207 Leg.]

YEAS—35

| | | |
|---|---|---|
| Allen | Ervin | Nunn |
| Bartlett | Fannin | Proxmire |
| Bentsen | Goldwater | Roth |
| Bible | Griffin | Schweiker |
| Brock | Gurney | Scott, William L. |
| Buckley | Hansen | Sparkman |
| Byrd, Harry F., Jr. | Helms | Stennis |
| Chiles | Hruska | Talmadge |
| Cotton | Huddleston | Thurmond |
| Dole | Johnston | Tower |
| Dominick | Long | |
| Eastland | McClellan | |
| | McClure | |

NAYS—57

| | | |
|---|---|---|
| Abourezk | Haskell | Muskie |
| Aiken | Hatfield | Nelson |
| Baker | Hathaway | Packwood |
| Bayh | Hughes | Pastore |
| Beall | Humphrey | Pearson |
| Biden | Jackson | Pell |
| Brooke | Javits | Percy |
| Burdick | Kennedy | Randolph |
| Byrd, Robert C. | Magnuson | Ribicoff |
| Cannon | Mansfield | Scott, Hugh |
| Case | Mathias | Stafford |
| Clark | McGee | Stevens |
| Cook | McGovern | Stevenson |
| Cranston | McIntyre | Symington |
| Domenici | Metcalf | Taft |
| Eagleton | Metzenbaum | Tunney |
| Fong | Mondale | Weicker |
| Hart | Montoya | Williams |
| Hartke | Moss | Young |

NOT VOTING—8

| | | |
|---|---|---|
| Bellmon | Curtis | Hollings |
| Bennett | Fulbright | Inouye |
| Church | Gravel | |

So Mr. BUCKLEY's amendment (No. 1263) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, the amendment that I am offering is one that is not only important to public education in my State of North Carolina; it is equally important to public schools throughout the Nation.

As Senators are aware, the Federal courts throughout the country have, during the past 20 years, ordered various school systems to adopt and implement desegregation plans. In recent years, these school systems have complied with such court orders, and in my State all remnants of the former dual school system have in fact been abolished. The public schools of North Carolina are operated in compliance with the applicable court orders regarding desegregation.

Congress over the years has enacted legislation providing various forms of Federal financial assistance to public schools. This assistance money is generally distributed by the Department of Health, Education, and Welfare. In this legislation, Congress provided that no such financial assistance was to be given to school systems that operate in a racially discriminatory manner. These strings were attached because it was felt that they were necessary as a part of the general effort by the Federal Government to abolish all remnants of dual school systems. This is history, and it is well-known to everyone.

It happens that from time to time some programs and policies of Government continue to survive long after the reason for their existence has ceased to be a real consideration. The Federal Government is riddled with such programs. Often they are counterproductive and do not serve the real best interests of the American people.

It is to such an anachronism that I refer today: the needless "strings" that allow the Department of Health, Education, and Welfare to withhold assistance funds from public school systems that are operating under a court-ordered—and therefore, court-approved—desegregation plan, if that bureaucracy determines that a school system is maintaining discriminatory policies.

This provision is no longer needed because the Federal courts have already accomplished the abolition of dual school systems, racial discrimination, and the like. The court-ordered desegregation plans that accomplished this are still on the books. They survive as a deterrent to the reinstitution of discriminatory policies. Where the courts have already acted, there is no current reason for the existence of a power within the Department of Health, Education, and Welfare to make a determination as to whether a given school system is maintaining discriminatory policies. I therefore propose an amendment which provides that no officer or employee of the Department of Health, Education, and Welfare administering any federally assisted program may withhold funds from any State educational agency, local educational agency, institution of higher education, or other educational institution based upon a determination that such agency or institution is operating any such program in a racially discriminatory manner, if such agency or institution is operating under a desegregation plan ordered by any court of the United States.

It should be noted that this limitation on the power of the Department of Health, Education, and Welfare to withhold funds only applies in the situation where the school system is operating under a desegregation plan ordered by any court of the United States. Where the courts have acted, this amendment will remove the determination of whether a school system is maintaining discriminatory policies from HEW and leave this matter in the judiciary where it more properly belongs.

Now, one might well wonder why I choose to offer this amendment if the discrimination question has become solely academic. I offer this amendment because there currently exists within the Department of Health, Education, and Welfare a collection of bureaucrats who under the guise of racial equality are destroying the public schools of my State, and, I have no doubt, the schools of many other States. These individuals are guided solely by statistics. Under the threat of withholding Federal assistance funds from a school system, they extort large quantities of detailed information from school superintendents.

This information is primarily of a statistical nature. They inquire as to the numerical, racial balance of each classroom, and each educational program. If the numerical, racial balance in a given classroom or educational program is different from the racial balance in the community served by the school system, these bureaucrats conclude that racial discrimination exists, and that HEW should therefore withhold certain assistance funds.

Such a procedure has two detrimental effects upon the quality of education. First, the information that is extorted from the school officials is so detailed that it requires weeks to compile. School superintendents of necessity are forced to take time away from their primary duties and devote much valuable time to compiling and sending statistics to data-hungry bureaucrats in some distant region who are seeking a new means of justifying their existence. In many rural areas, school superintendents are, again, of necessity, forced to take teachers and other personnel away from their primary duties in order that they may assist with this compilation.

Mr. President, so there can be no question as to the magnitude and authenticity of this problem, I ask unanimous consent that a copy of a letter dated February 21, 1974, from Mr. W. Lamar Clements of the Office of Civil Rights of the Department of Health, Education, and Welfare to the superintendent of the Winston-Salem/Forsyth County schools together with a copy of the superintendent's reply be printed in the

RECORD at this point in my remarks. And, so no one can suppose that the aforementioned letter is a mere isolated example, I ask unanimous consent that copies of two letters from Mr. Cecil L. Yarbrough, Acting Regional Commissioner of the Office of Education of the Department of Health, Education, and Welfare, dated January 16, 1974, and March 27, 1974, respectively, be printed in the RECORD at this point in my remarks. The first letter is to the superintendent of the Bertie County schools and the second letter is to the superintendent of the Gates County schools.

The letter to the superintendent of the Winston-Salem/Forsyth County schools of February 21, 1974, contains a statement so preposterous that I feel compelled to direct special attention to it. On page 5 of that letter, the following paragraph appears:

The April 14, 1973 letter from Mr. Sarbaugh reports that seventh grade Language Arts assignments are based on reading performance, recommendations of elementary teachers and the principal, and scores on the Metropolitan Achievement Test. You offered no evidence that would support the position that educational success in social studies is related to or dependent upon English language skills. Therefore, you do not meet the requirements of Section 185.43(c)(2).

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

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
*Atlanta, Ga., February 21, 1974.*

Mr. MARVIN WARD,
*Superintendent, Winston Salem/Forsyth Schools, Winston Salem, N.C.*

Re Emergency School Aid Act Application.

DEAR SUPERINTENDENT WARD: We have received your district's application for assistance under the Emergency School Aid Act (ESAA) and have reviewed it to determine your district's eligibility under the Act and implementing regulations. To complete our review of your district's eligibility for funding, we must request information relative to disciplinary sanctions and student assignments.

The number of suspensions reported on your Fall Civil Rights Survey Forms indicates that 989 or 56 percent of the suspensions in 1972–73 were minority group members. Since your overall minority student enrollment is 31 percent, there were disproportionate minority suspensions. Please provide:

a. A data display for school years 1971 and 1972 by secondary school and grade level showing the reason disciplined and punishment received by race and/or ethnic group. (See Attachment C)

b. A district summary for all junior high schools and separately for all senior high schools. (See Attachment D)

c. A narrative description of the district's disciplinary practices, policies, and procedures including: expulsions, suspensions, corporal or other punishment; statement of general rules of conduct; who determines violations; how are the violations determined; what standards are used; how are the standards established, communicated, implemented; who metes out punishment; how; what options are available?

d. Same as (c) above for each school.

The above information is requested on your disciplinary practices and procedures to determine your compliance with Section 185.43(d)(4) of 45 CFR which states that:

(d) *Discrimination against children.* No educational agency shall be eligible for assistance under the Act if, . . . it has had or maintains in effect any practice, policy, or procedure which results or have resulted in. . . .

(4) Imposing disciplinary sanctions, including expulsions, suspensions, or corporal or other punishment, in a manner which discriminates against minority group children on the basis of race, color, or national origin.

A review of the information contained in your application in conjunction with a review of your Fall Civil Rights Survey Forms (OS/CR 102) revealed that of the 896 students assigned to your district's EMR classes 606 or 68 percent are minority group members. Since your overall minority student enrollment is 31 percent, your EMR classes are racially identifiable.

In addition, this review revealed that the district has moved the following number of students by race from the special education programs since the 1972–73 school term:

EMR

B, 32; W, 95; I, 4; Total, 131.

SPEECH IMPAIRED

B, 515; W, 104; I, 2; SS, 109; Total 730.

TMR

B, 29; W, 12; I, 1; Total, 42.

OTHER HEALTH IMPAIRED

B, 92; W, 52; I, 2; Total, 146.

Please provide the information listed below on your special education programs:

1. A copy of current district policy and practices for screening, referral, examination, placement, and post placement evaluation of students for the Special Education Program.

2. The number of students by school and race who during the 1973–74 school term were screened, referred for evaluation, tested with a full psychological and scored below the range of 50, between the 50–60 range, 61–70 range, 71–75 range and above the 75 range. Also indicate the number of students in each range by race who were:

a. placed in self-contained classes;

b. placed in a special education class for 50 percent or more of the school day;

c. placed in a special education class or section for less than 25 percent of the academic day;

d. assigned to a special teacher to assist the students in their normal classrooms;

e. placed on a waiting list of students who will not be assigned to a special education class at this time; and

f. whose parents or guardians refused to permit testing and or placement in the special education program.

3. The number of students by race and school who were previously assigned to the special education program and were evaluated by a psychologist since June 30, 1973. Please include the ability measure and adaptive behavior measure used. Also indicate the number by race and school who scored below 50, between 51 and 60, between 61 and 70, between 71 and 75, and above 75, with an indication of the number by race in each range who were removed from the special education program.

4. Describe in detail the special curricula developed for or supportive services being provided for any student shown in number 3 above who has been removed from the special education program.

5. A program-by-program explanation for the significant removal of students from the special education programs previously mentioned.

As you know, 45 CFR Section 185.43(d) provides:

No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure which results or has resulted in discrimination against children on the basis of race, color, or national origin, including but not limited to:

(5) Assigning students to ability groups, tracks, special education classes, classes for the mentally retarded, or other curricular or extracurricular activities on the basis of race, color, or national origin. Racially or ethnically identifiable groups, tracks, or classes which cannot be justified educationally under the criteria set out in paragraph (c) of this section shall be presumed to be assigned on the basis of race, color, or national origin.

In addition, 45 CFR 185.43(c) provides:

No educational agency shall be eligible for assistance under the Act if, after June 23, 1972 it has had or maintained in effect any procedure for the assignment of children to or within classes which results in any separation of minority group from nonminority group children for more than 25 percent of the school day classroom periods, in conjunction with desegregation or the conduct of any activity described in Section 706 of the Act. This paragraph shall not be construed to prohibit bona fide ability grouping as a standard pedagogical practice. Such grouping is that which is:

(1) Based upon nondiscriminatory, objective standards of measurement which are educationally relevant to the purposes of such grouping and which, in the case of national origin minority group children, do not essentially measure English language skills;

(2) Determined by the nondiscriminatory application of standards described in subparagraph (1) of this paragraph, and maintained for only such portion of the school day classroom periods as is necessary to achieve the purposes of such grouping;

(3) Designed to meet the special needs of the students in each group determined by the application of the standards described in subparagraph (1) of this paragraph and to improve the academic performance and achievement of students determined to be in the less academically advanced groups, by means of specially developed curricula, specially trained or certified instructional personnel, and periodic retesting to determine academic progress and eligibility for promotion; and

(4) Validated by test scores or other reliable objective evidence indicating the educational benefits of such grouping.

A review of the information available in our office reveals that your system groups children homogeneously for instructional purposes for parts of the day on the elementary level and has various levels of curriculum for grades 7–12.

Both of the grouping processes listed above result in a large number of racially isolated and racially identifiable classes. The current class level placement procedure, beginning at the seventh grade and continuing through the secondary grades, is the source of the numerous racially identifiable and racially isolated classes in your secondary schools.

On June 5, 1973, Mr. Palmer G. Friende signed an assurance in our office with regard to class assignments as follows:

On the authority of Superintendent Marvin Ward, I assure: during the school year 1973–74, students in the Junior High Schools of the Winston-Salem/Forsyth County system will be assigned to block classes in a manner not racially identifiable.

Also, a conscious effort will be made to place minority students in all curricula levels of the High and Senior High Schools of said system.

This assurance established your district's eligibility for ESAA funds for fiscal year 1974.

The class schedules submitted for the current school year revealed 817 racially identifiable classes in the required course in your grades 7–12 schools. In addition, there are 200 racially isolated in these same schools. These numbers reflect an increase in the number of racially isolated and racially identifiable classes than existed in the 1972–73 school term.

The information submitted to our office in an effort to justify the ability grouping

being employed by the district has not been sufficient to fulfill the requirements pursuant to Section 185.43(d)(5) and (c)(1–4) of the ESSA regulations.

Section 185.43(c)(1) has not been met because you have not shown how the judgment of teachers and principals is objective or based on objective criteria when making class assignments. You have not shown how achievement scores are used for placement, nor have you shown that they are objective criteria or that they are educationally relevant.

The April 4, 1973 letter from Mr. Sarbaugh reports that seventh grade Language Arts assignments are based on reading performance, recommendation of elementary teachers and principal, and score on the Metropolitan Achievement Test. You offered no evidence that would support the position that educational success in social studies is related to or dependent upon English language skills. Therefore, you do not meet the requirements of Section 185.43(c)(2).

You have not provided this office with an explanation of how your ability grouping is designed to meet the special needs of the students in each group and therefore fail to meet the requirements of Section 185.43(c)(3).

No evidence has been presented and Mr. Sarbaugh reports in his April 4, 1973 letter that no evidence is available to demonstrate the effectiveness of your grouping practices. The district does not meet the requirements of 185.43(c)(4), and in fact fails to provide any of the information required under section 185.43(c) from school systems where assignment by ability grouping or leveling results in racial isolation or racially identifiable classes which remain together for 25 percent of the school day.

If the above assignment practices continue to exist, your district is not meeting the requirements for continuing eligibility under 185.43(e). Please provide the following:

1. Current student assignments to classes by race for any schools where substantive changes have been made in student assignment since the October 1, 1973 report.

2. Copies of all information and/or materials used by students, student's parents, guidance counselors, teachers, and principals or other officials in selecting courses or the assignment of student to classes at all 6th grade and secondary schools in your district.

3. If factors other than student choice (e.g., grades teacher recommendation, prerequisites) considered when students are placed, please provide full details regarding these factors and how they are applied at each school. Please indicate fully who determines the course numbers and how the selection is made.

4. If changes in methods of assigning students to classes are planned for 1974–75 please provide full details regarding these changes.

We have attempted to outline above the areas where there is question regarding your eligibility for continued receipt of funds under your current ESAA grant, and regarding your eligibility for FY 1975 funds. In addition, we have listed the information required before a decision can be made regarding your eligibility. We will be unable to continue processing your application for funds until this information is provided. We request that this information be provided as soon as possible.

If you have any question, or if you are unable to provide any portion of the requested information within ten days of the date of this letter, please advise. You may reach us by phone at Area Code (404) 526–3307.

Sincerely yours,

W. LAMAR CLEMENTS,
*Chief Elementary and Secondary Education Branch, Office for Civil Rights.*

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WINSTON-SALEM/FORSYTH COUNTY SCHOOLS,
*Winston-Salem, N.C., March 4, 1974.*

Mr. W. LAMAR CLEMENTS,
*Office for Civil Rights, Department of Health, Education, and Welfare, Atlanta, Ga.*

DEAR MR. CLEMENTS: This letter and the accompanying materials and information are in response to your letter dated February 21, 1974, in which you advise us that we are not in compliance with certain provisions of the Emergency School Aid Act legislation. In the attached materials, we have attempted to respond to the questions you have raised.

In making this reply, I want to register my very strong objections to what clearly seem to be unwarranted and unreasonable requirements for the data called for in your letter. I say this for the following reasons:

1. The Winston-Salem/Forsyth County School System is a totally integrated school system, operating under a pupil assignment plan which has been approved by the Federal courts.

2. It is the written policy of the Board of Education that we shall operate a unitary school system in all respects.

3. Educators in this school system are working continuously and consistently to ensure that there is no discrimination against students or staff on the grounds of race, religion, sex, national origin or other reasons. We are achieving this objective as well as—if not better than—any other comparable school system in the nation.

This is the second year in which your review of our ESAA application has required untold hours of staff time in an effort to supply you with information which, in our opinion, is no test of the extent to which we operate a unitary and non-discriminatory school system. The test of that fact can be determined by observing our school system in action and not by counting suspensions or the makeup of school classes on a racial basis. On several occasions we have encouraged a visit from your office hoping that you would come and see for yourself. The invitation is still open.

We are alarmed not only at the amount of our staff time which these requirements waste but also the amount of time which obviously has been required of your staff to even prepare such a letter. Surely both you and we can further the cause of civil rights in more productive ways.

The enclosed information does not fully address all of the questions raised in your letter. It does represent considerable effort on our part, however, and is our best possible response. If, upon receipt of this information, you determine that we are not in compliance, we should like to be advised immediately of the appropriate steps which we may take to appeal your decision.

Please note that we are sending copies of this letter along with your letter of *February 21, 1974* to members of the North Carolina Congressional delegation.

Sincerely,

MARVIN WARD, *Superintendent.*

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
*Atlanta, Ga., January 16, 1974.*

Re Emergency School Aid Act Grant No. 195.

Mr. LARRY T. IVEY,
*Superintendent, Bertie County Schools, Windsor, N.C.*

DEAR MR. IVEY: Thank you for the cooperation extended to the staff of the Office for Civil Rights during their visit to your district October 9–12, 1973 to review your district's compliance with the civil rights related assurances of the Emergency School Aid Act.

Their report shows violations of Sections 185.43(d)(5), 185.43(c)(1–4) and 185.43(e) of the program regulations in the assignment of students to regular and special education classes in your district. These sections of the regulations read as follows:

Section 45 CFR 185.43(d)(5).

No educational agency shall be eligible for assistance under the Act if, after June 23, 1973, it has had or maintained in effect any practice, policy, or procedure which results or has resulted in discrimination against children on the basis of race, color, or national origin, including but not limited to . . .

(5) Assigning students to ability groups, tracks, special education classes, classes for the mentally retarded, or other curricular or extracurricular activities on the basis of race, color, or national origin. Racially or ethnically identifiable groups, tracks, or classes which cannot be justified educationally under the criteria set out in paragraph (c) of this section shall be presumed to be assigned on the basis of race, color, or national origin.

(Public Law 92–318, Section 706(d)(1)(D)).

Section 45 CFR 185.43(c).

No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any procedure for the assignment of children to or within classes which results in any separation of minority group from nonminority group children for more than 25 percent of the school day classroom periods, in conjunction with desegregation or the conduct of any activity described in Section 706 of the Act. This paragraph shall not be construed to prohibit bona fide ability grouping as a standard pedagogical practice. Such grouping is that which is:

(1) Based upon nondiscriminatory, objective standards of measurement which are educationally relevant to the purposes of such grouping and which, in the case of national origin minority group children, do not essentially measure English language skills;

(2) Determined by the nondiscriminatory application of the standards described in subparagraph (1) of this paragraph, and maintained for only such portion of the school day classroom periods as is necessary to achieve the purposes of such grouping;

(3) Designed to meet the special needs of the students in each group determined by the application of the standards described in subparagraph (1) of this paragraph and to improve the academic performance and achievement of students determined to be in the less academically advanced groups, by means of specially developed curricula, specially trained or certified instructional personnel, and periodic retesting to determine academic progress and eligibility for promotion; and

(4) Validated by test scores or other reliable objective evidence indicating the educational benefits of such grouping.

(Public Law 92–318, Section 706(d)(1)(C)).

Section 45 CFR 185.43.

(e) Continuing conditions of eligibility. The limitations on eligibility set forth in this section shall be continuing conditions of eligibility during the entire period for which assistance is made available to an educational agency under the Act, and such agency's failure to comply with such conditions after the award of such assistance shall be grounds for termination of assistance and for such other sanctions as the Assistant Secretary may determine.

(Public Law 92–318, Section 706(d)(1)).

The information you provided during the pre-grant review by the Office for Civil Rights indicated racially isolated or identifiable classes only at Bertie Junior High School. Your June 7, 1973 telegram reported, "Bertie Junior High School . . . students will be assigned to classes or transferred horizontally within comparable groups to achieve a racial composition comparable to racial make-up of school population."

The review team reported racially identifiable and racially isolated classes at Colerain, West Colerain, South Aulander, Eth-

ridge, Windsor, Bertie Junior High and Bertie Senior High, which are a result of ability grouping practices. Your Fall 1973 HEW Civil Rights Survey Report shows that ten of the 14 schools of your district, including all of the above-mentioned schools, use some form of ability grouping practices to assign students to classes. The review team reports that no evidence has been provided to support a position that any of the Bertie County grouping practices meet the requirements of bona fide ability grouping as defined in 185.43(c)(1-4).

The standard of measurement for grouping children varies to some extent from school to school and from subject to subject in your district. At South Aulander, Colerain, West Colerain, Ethridge, and to some extent at Windsor, Bertie Junior and Bertie Senior, the student's composite grade equivalent score on the previous year's standardized achievement test is the basis for grouping. It was also confirmed that teacher judgment was used to move students from groups at Colerain, West Colerain, Ethridge, Windsor, and Bertie Junior. There is no evidence that this composite grade equivalent score on a standardized achievement test is relevant for the purpose of grouping students for specific instruction such as mathematics. One of the four Ethridge kindergarten classes is racially isolated as a result of assignment based on teacher judgment. These are examples observed and reported by the Office for Civil Rights of how the standards of measurement used to group students in your district fail to meet the requirements of 185.43(c)(1).

Students at South Aulander, Ethridge, and West Colerain are grouped for all instruction rather than just for the periods of the school necessary to achieve the purposes of the grouping. Students at Colerain and Windsor are grouped for all language arts instruction based on the student's composite grade equivalent score on standardized achievement test.

The language arts sections at these schools involve spelling, English, and reading but the composite scores used to group these students include test sections in mathematics and other areas. The students at Bertie Junior are grouped for math and science based on their mathematics skill attainment. These are examples of the ways observed by the Office for Civil Rights that your grouping practices fail to meet the requirements of 185.43(c)(2).

The same materials were used for some levels of instruction at Colerain and West Colerain, with the top group progressing at a more rapid rate through the materials. The same mathematics materials and reading materials are used for the groups at Ethridge and Windsor, with the top groups acquiring a significantly greater number of essential skills in these areas prior to being assigned to the levels of instruction at Bertie Junior.

The faculties at South Aulander, Colerain, and West Colerain reported no special training for teaching ability grouped children. There is no supervisor of curricula and instruction who coordinates the instructional program. The students generally are tested with a standardized achievement test each year and the results are the basis for the next year's groups. There is no evidence that the curricula are designed to meet the special needs of the students, or that teachers are specially trained, or that periodic retesting is made to determine academic progress. This is required in 185.43(c)(3).

No evidence has been provided to indicate educational benefit to the students grouped in the current racially identifiable or racially isolated classes that is equal to or greater than the educational benefit of the students assigned to classes in a manner which does not tend to separate minority and majority group children. This is required by Section 185.43(c)(4).

Your letter of November 14, 1973 confirms that students were moved from one class to another because of their race, with racially isolated classes resulting at both Colerain and West Colerain. These student reassignments violate the provisions of 185.43(c) and (d)(5).

During the pre-grant review, the Office for Civil Rights found that your EMR program significantly over-includes minority group students. In addition, these students at that time had been placed in the EMR program without the benefit of a psychological exam. You assured in your June 7, 1973 telegram that efforts were being undertaken to provide psychological services for each EMR student prior to January 1, 1974.

The Office for Civil Rights review report confirmed that few EMR students had received a psychological exam. They found EMR students placed in racially isolated or identifiable classes (separated from their peers) for one-third to one-half of the total school day at several of your elementary schools. Other schools, including the secondary schools, were using resource EMR classes. The class rolls of these teachers were not checked to determine if students are actually assigned to the resource class for more than one-fourth of the school day.

The placement of students in racially isolated or racially identifiable EMR classes for one-fourth or more of the school day without the benefit of a full psychological, and without meeting the other requirements of Section 185.43(c)(1-4) of the ESAA regulations constitutes a failure to meet the provisions of Section 185.43(e).

Another limitation on eligibility contained in the ESAA regulations concerns nondiscriminatory faculty assignment. Section 45 CFR 185.43(b)(2) states:

(2) No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any other practice, policy, or procedure which resulted in discrimination on the basis of race, color or national origin in the recruiting, hiring, promotion, payment, demotion, dismissal, or assignment of any of its employees (or other personnel for which such agency has any administrative responsibility), including the assignment of full-time classroom teachers to the schools of such schools as intended for students of a particular race, color, or national origin.

Your court order provides, "Teachers shall be assigned without regard to race." The review team reports that racially identifiable faculties continue at the secondary schools, as well as the Askewville and Roxobel-Kelford Elementary Schools. Prior to 1964, all faculties were one race faculties with each faculty reflecting the race of the student body.

When the two racially separate high schools with identical grade structures and approximately the same number of teachers, were reorganized for student assignment for the 1968-69 school year, the formerly minority group students school (Bertie Junior) had a faculty of 43 teachers, 28 (65%) of whom were minority; and the formerly majority group student school (Bertie Senior) had a faculty of 51 teachers, 20 (39%) of whom were minority. The principal at Bertie Junior has always been black, and the principal at Bertie Senior has always been white. For the current term, you report a faculty of 51 at Bertie Junior, 34 (67%) of whom are minority group teachers; and a faculty of 60 at Bertie Senior, 22 (37%) of whom are minority group teachers. This year the district employed 17 new secondary teachers, eight of whom were minority.

Similarily, Askewville formerly was an all majority group student school, and Roxobel-Kelford was an all minority group student school. There is no evidence that special training or certificates other than normal elementary certification are required before a teacher may teach in any of the district's elementary centers. The Askewville School which has seven percent minority group student population is the only school in your district with less than 60 percent minority group enrollment. The faculty at Askewville has never exceeded the current one minority group teacher. The six teacher faculty at Roxobel-Kelford (a school with 87 percent minority group students) has one majority group teacher this term. Review of records for 1972-73 and 1971-72 revealed that during these years even though the size of the faculty fluctuated from five to nine, only one majority group teacher was assigned to Roxobel-Kelford.

The obligation upon the local school district to eliminate the racially identifiable faculties by assignment and/or reassignment of faculty was defined in the *Singleton vs. Jackson Municipal Separate School District* case (419F. 2nd. 1211). This program regulation is based on the requirement as defined in that case.

Under Section 185.44(d)(3), the regulations provide that districts with no specific plan for assignment of faculty may correct discriminatory practices by assigning full-time classroom teachers to each school so that the proportion of minority group teachers at every school is between 75 per centum and 125 per centum of the proportion of the total district full-time classroom minoriy group teachers.

In order to establish your eligibility for continued assistance under the Act, your district must provide by no later than January 22, 1974:

1. Evidence (including the number of pupils by race to be assigned to each teacher for each period in each school) that current grouping practices and procedures will be revised by no later than the beginning of the second semester, with all classes reorganized in accordance with the plan which established your eligibility for ESAA funds, so that no class is racially isolated or racially identifiable for more than one-fourth of the school day. In addition, outline any programs of compensatory education for students who have been assigned to lower or slower classes or tracks.

2. Evidence (including the number of classroom teachers by race assigned to each school) that action has been or will be taken to eliminate the racial identifiability of all school faculties by the beginning of the second semester.

3. Evidence that all students currently placed in the district EMR program have had a full psychological or the date such an evaluation is scheduled. Also, outline the program of compensatory education that is or will be provided for any student who previously was improperly placed in the EMR program.

We appreciate your cooperation. If you need further assistance, please contact Mr. W. Lamar Clements, Chief, Elementary and Secondary Education Branch, Office for Civil Rights. He may be reached by phone at Area Code (404) 526-3307.

Sincerely yours,

CECIL L. YARBROUGH,
*Acting Regional Commissioner, Office of Education.*

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DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
*Atlanta, Ga., March 27, 1974.*

Re: ESSA application 503 TB.

Mr. GEORGE STANCIL,
*Superintendent, Gates County Board of Education, Gatesville, N.C.*

DEAR MR. STANCIL: We have received your district's application for assistance under the Emergency School Aid Act (ESAA) and it has been reviewed to determine the district's eligibility under the Act and implementing regulations.

We have determined that your district does not meet the eligibility requirements of the Act and the regulations for the reasons described below.

1. Assignment of Students to Classes. (45 CFR 185.43(d)(5) and 185.43(c) of the regulations; Sections 706(d)(1)(c) and (D) of the Act). The information contained in your district's application and in your subsequent letter of March 13, 1974 to the Office for Civil Rights above the following:

a. All schools in your district have racially identifiable clases for more than 25% of the day.

b. In the elementary schools and Central Junior High School, assignment to classes is based on Stanford Achievement Test scores in arithmetic and language arts. Students are ranked from high to low and the classes are formed in equal numbers homogenously from high to low.

c. The result of this achievement grouping practices is an over-inclusion of whites in the high groups and an over-inclusion of blacks in the lower groups, resulting in racially identifiable classes in language arts, math, social studies and other required courses.

d. High school classes are designed for categories of achievement ranging from "fair" through "below average" and "average" to "above average". This scheme is applied not only to required courses but also to elective courses such as speech and drama, French, algebra, general math, home economics, bricklaying and mechanical drawing. Racially identifiable classes are found to over-include white students in upper (above average) classes and over-include black students in the lower classes.

e. While your letter suggests that class assignment at the high school is due to student choice, the student handbook makes no mention of achievement oriented classes with the exception of advanced English and advanced biology classes.

f. Your district did not provide objective evidence indicating the benefits of the student assignment policy utilized in your schools.

g. The current student assignment practice (homogeneous grouping by achievement test scores and teacher judgment) was initiated by the school board within a month after desegregation at the Junior High School due to dissatisfaction of white parents with the then heterogeneous class structures. It was instituted at the elementary schools the following year. Initial implementation of this district policy was thus not brought about by academic considerations.

h. Students in your program for gifted and talented students in the seventh, eighth, and ninth grade language arts classes are evidently part of the grouping procedure, in that they are placed on the same basis as other groups, i.e., S.A.T. test scores alone. There are no written placement policies or placement committee as required by the N. C. State Department of Public Instruction regulations for Gifted and Talented Children.

2. Special Education Classes. (45 CFR 185.43(d)(5) and 185.43(c) of the regulations Sections 706(d)(1)(c) and (D) of the Act)).

a. Your special education program for the mentally retarded is racially identifiable in that while 65% of your total student enrollment is black, 95% of the students in this program are black (115 out of 122 total students).

b. There are no fully certified special education teachers serving the 122 FMR and TMR students, although all the teachers are studying toward certification.

c. Only 13 black and 2 white students have been administered either the Stanford Binet or Weschler Intelligence scale, as required by the N. C. Department of Public Instruction.

The other 107 have been placed on the basis of the Peabody Picture Vocabulary Test. The Otis Lennon Mental Ability Test, The Otis Lennon Quick Scoring Test and The Slossen Screening Test. These are screening tests, and are not capable of determining placement in a class for the mentally retarded, nor are they acceptable by the N.C. State Department of Public Instruction for such purposes. While you state that students who have been screened are then referred to the Mental Health Clinic for psychological evaluation, only 15 students have apparently been so referred.

d. At least 19 students were found to have been placed in EMR classes who scored over 75 on the mental ability test given them, in violation of your stated policy and that of the N.C. Department of Public Instruction.

e. State Department of Instruction regulations require that TMR students have I.Q. scores ranging from 30 to 50. In the TMR class at Central Junior High, however, out of 11 black and one white students, 8 scored over 50 and two scored below 30.

f. Thirty-four students (32 black and 2 white) have not been retested in the past two years.

g. No hearing and vision screening or test of adaptive behavior is used in the process of determining placement in special education.

h. No evidence was offered which indicates the benefits of special education classes in your district.

i. The parental permission form used by the district makes reference only to the Exceptional Children Program" without further description. This inadequately describes the program for which parental permission is being granted.

j. In short the Gates County School District has a special education program including 115 black and seven white students classified as mentally retarded and 16 black and 45 white students classified as gifted. None of these students have been reliably evaluated for such placement, either in terms of ESAA regulations or those of the N.C. Department of Public Instruction. None of the teachers of these special classes are fully certified to teach the classes.

3. Administration of Discipline (45 CFR 185.43(d)(4) of the regulation; Section 706(d)(1) of the Act))

a. At Central Junior High School and Gates County High School black students as a whole were suspended for longer periods of time than were white students during 1972–73 and the beginning of the 1973–74 school year. At the junior high school, for example, the most common punishment was three days suspension. Thirty (58%) of the 52 three day suspensions were administered to black students. On the other hand, for suspensions of 5 and 10 days, 27 (82%) of 33 such suspensions were administered to black students. In another example, 14 (78%) of the 18 suspensions for fighting were administered to black students; and while six black students received five and 10 day suspensions for fighting, none of the white students received more than three days suspension for fighting.

At the high school, during 1972–73, two white students were suspended 3 days each for coming to school "under influence." Two black students were expelled for "passed out from drinking." None of these had a record of previous offenses. During 1972–73 and 1st semester 1973, all while others suspended (13) were for "leaving school without permission" except the two mentioned above and one who used "obscene language". The 27 black students suspended or expelled during this period, were also disciplined for fighting, misbehavior, stealing and skipping classes, categories for which no white students were suspended.

b. The district has no written policy concerning disciplinary sanctions.

Because of the above practice, your district is ineligible for assistance under ESAA. Your district may apply to the Secretary of Health, Education and Welfare for a waiver of ineligibility following the procedures outlined under Section 185.44(a) and (f)(3) of the program regulations. Such an application for waiver should be mailed to Mr. Peter E. Holmes, Director, Office for Civil Rights, Office of the Secretary, Department of Health, Education and Welfare, 330 Independence Avenue, S. W., Washington D.C. 20201.

Information submitted with your application for waiver must include such information and assurances as will insure that any practice, policy, procedure or other activity resulting in ineligibility has ceased to exist or occur, and such provisions as are necessary to insure that such practice, policy, procedure or activity will not reoccur after the submission of such application. Specifically, you must include:

1. Special Education:

a. Evidence that your district has completely eliminated the special education classes and reassigned students to the regular curriculum on a non-discriminatory basis and that students so reassigned are being provided such compensatory educational assistance as is necessary to enable them to compete successfully in the regular classroom and to overcome the effect of any past discriminatory assignment, or

b. Evidence that such student currently assigned to special education classes has already been retested; reevaluated and reassigned to classes which satisfy the requirements of Section 185.43(c) of the program regulations.

Should you choose the second alternative, include the racial composition and duration of each class to which any student is reassigned or remains assigned; the standards used for each child in re-evaluation and reassignment (including hearing, vision and other medical assessment, measurement or adaptive behavior, any intelligence test administered, the effect of previous placement in a special education class, and the specific recommendation of a placement committee), the race and qualifications of persons who conducted the re-evaluations; a description of the specialized curicula for, and the special training of teachers of any special education classes to which students are assigned, a description of the compensatory or remedial assistance to be provided to any students not reassigned to special education classes; and specific plans for the regular re-evaluation of children in special education classes.

2. Student Assignment to Racially Identifiable Groups;

a. Evidence that the class grouping patterns resulting from your district's past assignment practices have been completely eliminated and the students so assigned have been reassigned to classes on a non-discriminatory basis, or;

b. Evidence that students not assigned have been re-tested, re-evaluated and reassigned to groups which satisfy the requirements of Section 185.43(c) of the program regulations.

3. Disciplinary Sanctions. The district must provide an assurance that:

a. In the future, disciplinary sanctions will be administered in Gates County on a non-discriminatory basis, and;

b. Before the beginning of the 1974–75 school year, the Gates County School District will have developed uniform discipline policies for its schools, including, at least: a list of rules of conduct with violations of such rules defines; criteria for determining when a rule has been violated; the specific punishment provided for such violation, including the administration of progressively

severe measures of punishment for reported offenses; and provision for due process in appealing disciplinary sanctions. Copies of the discipline policies must be distributed to students, teachers and parents.

If you have any questions regarding this letter, please call Mr. W. Lamar Clements, Elementary and Secondary Education Branch Chief, Office for Civil Rights, Atlanta, Ga., at (404) 526-3307.

Sincerely yours,

CECIL L. YARBROUGH,
*Acting Regional Commissioner.*

Mr. HELMS. Mr. President, in this instance, school officials assigned students to a class based upon their reading performance, teacher's recommendation, and their score on an achievement test. The students were assigned on the basis of objective criteria and the judgment of professional educators, and the bureaucratic response was to invite the school officials to prove that "educational success in social studies is related to or dependent upon English language skills."

Now, I am not a professional educator, but in my view, it is too obvious to need citation that as long as schoolbooks continue to be printed in the English language, educational success in various courses will be related to a student's proficiency in that language. To ask a school superintendent to prove such a proposition is outrageous. It is harassment, plain and simple. It is destructive of the primary goals of public education, and it is counterproductive to meeting of the needs of the students.

Mr. President, there is a second reason that I am proposing this amendment. All educators with whom I have talked—and they are many—have uanimously agreed that it is desirable to group students according to their proficiency, or lack of proficiency, in certain educational skills. This is considered to be desirable because it enables teachers to be more responsive to the needs of the students. For example, suppose that in the ninth grade in a given school there are a number of students with a reading deficiency. Under the skills-grouping concept, these students could be placed in one class for a certain period of the day, and a teacher could provide instruction designed to remedy this deficiency. Such remedial classes have been widely advocated among educators.

However, if perchance it should happen that such a remedial class contained a disproportionate share of a minority race as compared with the racial balance in the community served by the school, the Department of Health, Education, and Welfare may very likely conclude that racial discrimination exists, and therefore, HEW may withhold assistance funds from the school system. Not only can this happen; it does happen, as evidenced by the letters that I have inserted in the RECORD. HEW bases its determination upon statistical data. Cold, hard numbers. HEW does not consider whether valid reasons exist for a disproportionately large number of a minority race being placed in a remedial class. Rather, HEW presumes that such statistics are prima facie evidence of discrimination and places the burden upon the school superintendent to rebut the presumption of discrimination. A superintendent in a rural county with limited funds has neither the staff nor the time to engage in such needless combat with an overpowering Federal bureaucracy.

The real tragedy of the situation then emerges. The school officials either redistribute the students in the various classes so that the required racial balance is achieved, or they simply give up trying to obtain assistance funds. In either event, the students are the losers, because on the one hand they are denied the remedial help they need, or on the other hand, their school is denied the assistance funds it needs to help them. Thus, the Department of Health, Education, and Welfare is operating in a manner that is counterproductive to the needs of the children of America. It is denying the benefit of assistance programs to the students who are said to need them most.

Under this amendment, if a school system is already operating under a court-ordered desegregation plan, HEW would no longer have the authority to withhold assistance funds based upon a determination that a school system is operating in a racially discriminatory manner. By approving this amendment, the Senate will be taking a constructive step toward saving our school children from the whims of overzealous bureaucrats. The Senate will be placing such a determination of discrimination in the hands of the courts where it more properly belongs.

The PRESIDING OFFICER (Mr. ABOUREZK). Under the previous order, the Senator from North Carolina (Mr. HELMS) is recognized to offer his amendment.

Mr. HELMS. Mr. President, I call up amendment No. 1290, and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from North Carolina (Mr. HELMS) offers an amendment numbered 1290.

Mr. JAVITS. Mr. President, I ask that the clerk read the amendment. There is no debate allowed.

The assistant legislative clerk read as follows:

On page 387, between lines 14 and 15, insert the following new section:

"LIMITATION ON THE WITHHOLDING OF FUNDS

"SEC. 806. Notwithstanding any other provision of law, no officer or employee of the Department of Health, Education, and Welfare administering any federally assisted program may withhold funds from any State educational agency, local educational agency, or institution of higher education, as the same are defined in section 801 of the Elementary and Secondary Education Act of 1965, or any other educational institution, based upon a determination that such agency or institution is operating any such program in a discriminatory manner with regard to race, color, or national origin, if such agency, or institution is operating under a desegregation plan ordered by any court of the United States.".

On page 387, line 17, strike out "SEC. 806." and insert in lieu thereof "SEC. 807.".

On page 124, in the table of contents, redesignate item "Sec. 806." as "Sec 807." and insert immediately after item "Sec. 805." the following:

"Sec. 806. Limitation on the withholding of funds.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. HELMS. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 1290) of the Senator from North Carolina (Mr. HELMS). On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE), are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH), is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. HOLLINGS), would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), and the Senator from Utah (Mr. BENNETT), are necessarily absent.

The result was announced—yeas 41, nays 52, as follows:

[No. 208 Leg.]

YEAS—41

| | | |
|---|---|---|
| Allen | Domenici | Long |
| Baker | Dominick | McClellan |
| Bartlett | Eastland | McClure |
| Beall | Ervin | Nunn |
| Bentsen | Fannin | Roth |
| Brock | Fong | Scott, |
| Buckley | Goldwater | William L. |
| Byrd, | Griffin | Sparkman |
| Harry F., Jr. | Gurney | Stennis |
| Byrd, Robert C. | Hansen | Talmadge |
| Chiles | Hartke | Thurmond |
| Cook | Helms | Tower |
| Cotton | Hruska | Young |
| Curtis | Huddleston | |
| Dole | Johnston | |

NAYS—52

| | | |
|---|---|---|
| Abourezk | Jackson | Pearson |
| Aiken | Javits | Pell |
| Bayh | Kennedy | Percy |
| Bible | Magnuson | Proxmire |
| Biden | Mansfield | Randolph |
| Brooke | Mathias | Ribicoff |
| Burdick | McGee | Schweiker |
| Cannon | McGovern | Scott, Hugh |
| Case | McIntyre | Stafford |
| Clark | Metcalf | Stevens |
| Cranston | Metzenbaum | Stevenson |
| Eagleton | Mondale | Symington |
| Hart | Montoya | Taft |
| Haskell | Moss | Tunney |
| Hatfield | Muskie | Weicker |
| Hathaway | Nelson | Williams |
| Hughes | Packwood | |
| Humphrey | Pastore | |

NOT VOTING—7

| | | |
|---|---|---|
| Bellmon | Fulbright | Hollings |
| Bennett | Gravel | Inouye |
| Church | | |

So Mr. HELMS' amendment was rejected.

Mr. JAVITS. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. PELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1325

The PRESIDING OFFICER (Mr. ABOUREZK). Under the previous order, the Senate will now proceed to consider Amendment No. 1325 of the Senator from New York (Mr. BUCKLEY), under which order there will be 6 hours for debate with 3 hours per side.

The amendment will be stated.

The assistant legislative clerk read as follows:

S. 1539

On page 126, line 1, strike out everything through page 130, line 24.

Beginning on page 154, line 21, strike out everything through page 383, line 23, and insert in lieu thereof the following:

"TITLE II—CONSOLIDATION OF STATE-ADMINISTERED EDUCATION PROGRAMS

"SEC. 201. This title may be cited as the 'Consolidated Educational Assistance Act'.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 202. There are authorized to be appropriated for each fiscal year ending prior to July 1, 1978, such sums as may be necessary for carrying out this title.

"ALLOTMENT AND USE OF APPROPRIATED FUNDS

"SEC. 203. (a) From the sums appropriated pursuant to section 3 for any fiscal year, the Secretary shall allot to each State an amount equal to 100 per centum of the average per pupil expenditure in the United States multiplied by the number of children in average daily attendance in the public elementary or secondary schools of such State during such year who resided on Federal property, which amount shall be available for any educational purpose.

"(b) From the remainder of such sums, the Secretary shall allot to each State an amount which bears the same ratio to such remainder as the sum of the products determined under paragraphs (1) and (2) of this subsection with respect to such State bears to the total of the sums of such products with respect to all States. Such products for any state shall be—

"(1) 0.6 multiplied by the number of children in average daily attendance in the public elementary or secondary schools of such State during such fiscal year who (A) resided on other than Federal property with a parent employed on Federal property, or (B) had a parent on active duty in the uniformed services (as defined in section 101 of title 37, United States Code); and

"(2) 0.1 multiplied by the number of children aged 5 to 17, inclusive, in the State.

"(C) (1) That portion of each State's allotment derived from application of the provisions of paragraph (1) of subsection (b) shall be available for any educational activity.

"(2) Except as provided in section 205—

"(A) one-sixth of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for programs and projects at the preschool or any other educational level designed to meet the special educational needs of handicapped children;

"(B) one-third of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for vocational education activities; and

"(C) one-half of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for supporting materials and services.

"(d) Programs, projects, or activities assisted under this Act may include construction.

"(e) In the event that any State is not eligible to receive funds under this title for any fiscal year, or notifies the Secretary that it does not desire to receive such funds, the allotment of such State for such fiscal year derived from any provision of subsection (b) shall be available for reallotment from time to time, on such date or dates during such year as the Secretary may fix, to other States in proportion to the original amount of the allotment to such other States which was derived from any such provision for that year. Any amount for a fiscal year so reallotted to a State under this subsection shall be deemed part of its allotment derived from the same provision of subsection (b) for such year.

"(f) The amounts appropriated and allocated pursuant to this Act shall be paid to the States at such intervals and in such installments as the Secretary may determine, taking account of the objective that the time elapsing between the transfer of funds from the United States Treasury and the disbursement thereof by States shall be minimized.

"(g) For purposes of this title, the Secretary shall determine average daily attendance, average per pupil expenditure, and numbers of children, and in doing so he shall use the most recent satisfactory data available to him, referrable with respect to data used for each purpose to the same time period for all jurisdictions. All determinations and computations by the Secretary under this section shall be final and conclusive.

"DISTRIBUTION OF FUNDS WITHIN EACH STATE

"SEC. 204. (a) Each State shall pay to each of its local educational agencies for a fiscal year an amount equal to the sum allotted to such State pursuant to section 203(a) for such year on account of the number of children in average daily attendance who resided on Federal property in the school district of such agency.

"(b) The remainder of each State's allotment shall be available—

"(1) for use, in accordance with the provisions of sections 203 and 205 and the plan developed pursuant to section 207(b), by the State agency designated pursuant to section 207(a); and

"(2) for distribution, for use by them in accordance with the provisions of sections 204 and 206 and such plan, among the local educational agencies of such State on a basis reflecting the relative needs of each of such agencies for the types of assistance for which appropriations under this title are available;

except that not more than 30 per centum of such allotment derived from application of the provisions of section 203(b)(1), relating to the presence within the State of children with a parent employed on Federal property or with a parent on active duty in the uniformed services, may be paid to local educational agencies not having any of such children in average daily attendance in their schools.

"TRANSFERS AMONG PURPOSES

"SEC. 205. (a) Thirty per centum of that portion of each State's allotment which is available for the purposes described in clause (A), (B), or (C) of section 203(c)(2) may be made available for any of the other purposes described in section 203(c).

"(b) The 30 per centum limitations in subsection (a) may be exceeded if the State demonstrates to the satisfaction of the Secretary that such action will achieve more effectively the purposes of this title.

"PARTICIPATION OF NONPUBLIC SCHOOL CHILDREN

"SEC. 206. (a) The State agency designated pursuant to section 207(a) shall provide that—

"(1) except as provided in subsection (b), children enrolled in nonprofit private elementary or secondary schools, will be given an opportunity to participate, on an equitable basis, in activities for which funds are made available under clause (A), (B), or (C) of paragraph (2) of section 203(c); and

"(2) title to and control of funds received under this title and other property derived therefrom will remain in one or more public agencies.

"(b) If the Secretary determines that provisions of State law prevent any State agency designated pursuant to section 207(a) from complying with subsection (a), the Secretary shall, if he finds that the State is otherwise eligible to participate in the program under this title, permit such State to participate, but in such case he shall—

"(1) arrange, by contract or otherwise, for children enrolled in the nonprofit private elementary or secondary schools within such State to receive, on an equitable basis, services similar to those provided from the funds made available under clause (A), (B), or (C) of paragraph (2) of section 203(c) to public school children within such State; and

"(2) pay the cost thereof out of that portion of the allotment to such State for carrying out each such paragraph or clause.

"STATE ADMINISTRATION

"SEC. 207. (a) The chief executive officer of each State which desires to participate in the program under this title shall designate a State agency which shall be the single State agency for administration (or supervision of the administration) of such program in such State, except that this requirement may be waived in accordance with the provisions of section 204 of the Intergovernmental Corporation Act of 1968 (42 U.S.C. 4214).

"(b) The State agency designated pursuant to subsection (a) shall, for each fiscal year, develop and publish a plan for the distribution and expenditure of funds available therefore under section 204(c). Such plan shall be developed after consultation with the advisory council appointed pursuant to section 208, shall not finally be adopted by such State agency until a reasonable opportunity has been given to interested persons for comment thereon, and shall be made available to the Secretary.

"(c) In administering the program under this title, the State shall comply with the provisions of this title and with regulations prescribed by the Secretary pursuant thereto.

"STATE ADVISORY COUNCIL

"SEC. 208. (a) The chief executive officer of each State which desires to participate in the program under this title shall appoint an advisory council which shall be broadly representative of the education community in the State and of the public, including at least one person representative of the public elementary or secondary schools of the State; at least one person representative of the nonprofit private elementary or secondary schools of the State; at least five parents of school age children in the State who will be affected by the activities authorized under section 203; and at least one person who has special competence in each of the educational areas described in sections 203(c)(2)(A) and 203(c)(2)(B).

"(b) The State advisory council shall—

"(1) advise the State agency designated pursuant to section 207(a) on the preparation of, and on matters of general policy arising in the administration of, the plan developed under section 207(b);

"(2) evaluate activities assisted under this title;

"(3) advise State or local officials who have responsibility for carrying out activities assisted under this title with respect to the planning, evaluation, administration, and assessment of such activities; and

"(4) prepare and submit to the Secretary not less often than annually a report of its

activities, recommendations, and evaluations, together with such comments thereon as the State agency designated pursuant to section 207(a) and the chief executive officer of the State deem appropriate.

"TREATMENT OF FEDERALLY CONNECTED CHILDREN

"SEC. 209. The State agency designated pursuant to section 207(a) shall provide that children attending school within the State who reside with a parent on Federal property, who reside with a parent employed on Federal property, or have a parent who is a member of the uniformed services will receive public elementary or secondary education on a basis comparable to that provided to other children in the State.

"DEFINITIONS

SEC. 210. For purposes of this title—

"(1) the term 'adult education' means services or instruction below the college level for individuals (A) who have attained the age of 16, (B) who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education, (C) who are not currently required to be enrolled in schools;

"(2) the term 'average per pupil expenditure in the United States' means the aggregate current expenditures of all local educational agencies in the United States for any fiscal year, plus any direct current expenditures by the States in which such agencies are located for the operation of such agencies during such year (without regard to the sources of funds from which either of such expenditures is made), divided by the aggregate number of children in average daily attendance to whom such agencies provided public education during such year;

"(3) the term 'construction' means the erection, acquisition, alteration, remodeling, or improvement of facilities, including the acquisition of land necessary therefor, and the cost of construction includes the cost of architect's fees;

"(4) the term 'current expenditures' means expenditures for public education, but not including expenditures for community services, capital outlay, and debt services, or any expenditures made from funds allotted under this Act;

"(5) the term 'elementary school' means a day or residential school which provides elementary education, as determined under State law;

"(6) the term 'Federal property' means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes (A) real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or tribes which is subject to restrictions on alienation imposed by the United States, (B) for one year beyond the end of the fiscal year in which occurred the sale or transfer thereof by the United States, any property considered prior to such sale or transfer to be Federal property for the purposes of this title, and (C) any school which is providing flight training to members of the Air Force under contractual arrangements with the Department of the Air Force at an airport which is owned by a State or political subdivision of a State. Such term also includes any interest in Federal property (as defined in the foregoing provisions of this paragraph) under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature (other than pipelines or utility lines) on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia. Notwithstanding the foregoing provisions of this paragraph, such term does not include (D) any real property used for a labor suppy center, labor home, or labor camp for migratory farmworkers, (E) any real property under the jurisdiction of the United States Postal Service and used primarily for the provision of postal services, or (F) any low-rent housing project held under title II of the National Industrial Recovery Act, the Emergency Relief Appropriation Act of 1935, the United States Housing Act of 1937, the Act of June 28, 1940 (Public Law 871 of the Seventy-sixth Congress), or any law amendatory of or supplementary to any of such Acts;

"(7) the term 'handicapped children' means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special educational services;

"(8) the term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school;

"(9) the term 'nonprofit', as applied to a school, means a school owned and operated by one or more nonprofit corporations or associations no part of net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(10) the term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12;

"(11) the term 'Secretary' means the Secretary of Health, Education, and Welfare;

"(12) the term 'State' includes, in addition to the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"(13) the term 'supporting materials and services' means such materials and services as the purchase of school textbooks, library resources, and educational equipment; the provision of supplementary educational centers and services, of school pupil personnel services, of adult education, and of school meals; the training or retraining of teachers, teacher aides, and other school personnel; the strengthening of State or local educational agency capabilities and of educational planning at the State or local level; the support of the advisory council appointed under section 208; and the administration at the State level of the program carried out under this Act; and

"(14) the term 'vocational education' includes vocational or technical training or retraining (including field or laboratory work and remedial or related academic and technical instruction incident thereto and work-study programs for students who need the earnings from work in order to commence or continue their education) conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations or to prepare individuals for enrollment in advanced technical education programs, but excluding any program to prepare individuals for employment in occupations generally considered professional or which require a baccalaureate or higher degree; and such term also includes vocational guidance and counseling in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; job placement; and the training of persons engaged as, or preparing to become, teachers in a vocational education program or teachers, supervisors, or directors of such teachers.

"REPEAL OF PROGRAMS REPLACED BY THIS TITLE

"SEC. 211. (a) Effective with respect to appropriations for fiscal years beginning after June 30, 1974, the following statutes and parts of statutes are repealed:

"(1) title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 821–827);

"(2) title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 841–848);

"(3) title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 861–870);

"(4) part B of the Education of the Handicapped Act (20 U.S.C. 871–877);

"(5) the Smith-Hughes Act (20 U.S.C. 11–15, 16–28);

"(6) sections 3 and 4 and 7 of Public Law 81–874 (20 U.S.C. 238–239);

"(7) Public Law 81–815 (20 U.S.C. 631–647);

"(8) title III of the National Defense Education Act of 1958 (20 U.S.C. 441–455);

"(9) subpart 2 of part B of title V of the Higher Education Act of 1965 (20 U.S.C. 1108–1110c);

"(10) the Vocational Education Act of 1963 (20 U.S.C. 1241–1391); and

"(11) the Adult Education Act (20 U.S.C. 1201–1211a).

"TITLE III—SPECIAL PROJECTS

"SHORT TITLE

"SEC. 301. This title may be cited as the 'Special Projects Act'.

"PURPOSE

"S53. 302. It is the purpose of this title to provide financial assistance to the States to enable them to carry out special projects—

"(1) to experiment with new educational and administrative methods, techniques, and practices;

"(2) to meet special or unique education needs or problems; and

"(3) to place special emphasis on educational priorities of the State.

"AUTHORIZATION OF APPRORIATIONS

"SEC. 303. There are authorized to be appriated for the purpose of carrying out this title $1,700,000,000 for the fiscal year ending June 30, 1975, $1,800,000,000 for the fiscal year ending June 30, 1976, $1,900,000,000 for the fiscal year ending June 30, 1977, and $2,000,000,000 for the fiscal year ending June 30, 1978.

"ALLOTMENT OF FUNDS

"SEC. 304. (a) From the sums appropriated pursuant to section 303 for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total of such amounts as the number of children enrolled in the public and private elementary and secondary schools of that State bears to the total number of children so enrolled in such schools in all of the States.

"(b) There is hereby authorized to be appropriated for each fiscal year for the purposes of this subsection an amount equal to not more than 3 per centum of the amount appropriated for such year for payments to States under subsection (a). The Commissioner shall allot the amount appropriated pursuant to this subsection among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands accord-

ing to their respective needs for assistance under this title. In addition, he shall allot from such amount to the Secretary of the Interior the amount necessary for such assistance for children and teachers in elementary and secondary schools operated for Indian children by the Department of the Interior. The terms upon which payments for such purpose shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

"(c) For the purposes of this section, the term "State" means the 50 States and the District of Columbia.

"USE OF FUNDS

"SEC. 305. The funds allotted to each State pursuant to section 304 may be used by such State for the purposes of this title set forth in section 302. Such purposes shall include the carrying out of programs and projects related to, but not necessarily limited to, any of the following:

"(1) education for the use of the metric system of measurement;
"(2) gifted and talented children;
"(3) community schools;
"(4) consumers education;
"(5) educational equity for women;
"(6) arts in education programs;
"(7) dropout prevention;
"(8) school nutrition and health services;
"(9) correction education services;
"(10) ethnic heritage studies;
"(11) reading improvement;
"(12) desegregation assistance;
"(13) drug abuse prevention;
"(14) bilingual education (including bilingual vocational education);
"(15) Indian education; and
"(16) education of the handicapped.

"REPEAL OF PROGRAMS REPLACED BY THIS ACT

"SEC. 306. Effective with respect to appropriations for fiscal years beginning after June 30, 1974, the following statutes and parts of statutes are repealed:

"(1) title VII of the Elementary and Secondary Education Act of 1965;
"(2) title VIII of the Elementary and Secondary Education Act of 1965;
"(3) the Drug Abuse Education Act of 1970;
"(4) the Cooperative Research Act;
"(5) the Emergency School Aid Act;
"(6) the Indian Education Act; and
"(7) parts A, C, D, E, F, and G of the Education of the Handicapped Act.".

Beginning on page 384, redesignate title VIII as title IV and renumber sections 801 through 806 as sections 401 through 406, respectively.

On page 384, line 15, delete everything after the comma, through and including the period in line 20, and insert in lieu thereof the following: "except in cases involving children whose parents have made an express, written, voluntary request for, or have given their written, voluntary consent to such transportation, or teachers who have made an express, written, voluntary request for, or have given their written, voluntary consent to such transportation."

At the end of the bill, add the following new title:

"TITLE IV—MISCELLANEOUS

"DISPOSITION OF ADMINISTRATIVE SAVINGS

"SEC. 401. (a) The amount of funds which, by reason of the enactment of this Act, are not required to be appropriated for salaries and expenses of the education division but which would have been required to be so appropriated had this Act not been enacted, is hereby authorized to be appropriated for the purpose of making grants to States for the purpose specified in subsection (c).

"(b) The funds appropriated for any fiscal year pursuant to subsection (a) shall be allotted by the Secretary to each State in an amount which bears the same ratio to the total of such sums as the number of children enrolled in the public and private elementary and secondary schools of that State bears to the total number of children so enrolled in such schools in all of the States. For the purpose of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(c) Sums allotted to States in accordance with this section shall be available for any educational purpose.

"MINIMUM STATE ALLOTMENTS

"SEC. 402. The total amount of funds received by each State pursuant to titles II and III of this Act for any fiscal year shall in no case be less than the total amount of funds received by such State in the fiscal year ending June 30, 1974, under the statutes or parts of statutes repealed by those titles. The Secretary is authorized to modify any allocations required to be made pursuant to those titles as necessary to carry out this section.".

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

Mr. BUCKLEY. I yield.

Mr. ROBERT C. BYRD. May I ask Senators whether or not it would be possible to shorten the time for debate on this substitute at this point, so that Senators may know what to expect for the rest of the afternoon?

Mr. BUCKLEY. Mr. President, it was the Senator from New York's understanding that the proponents of the bill were willing to reduce their time from 3 hours to 1.

Mr. JAVITS. Mr. President, the proponents of the bill—meaning the Senator from New York?

Mr. PELL. The proponents or the opponents?

Mr. BUCKLEY. The proponents of the bill; the opponents of the amendment.

Mr. JAVITS. That is different. We ought to have an hour and a half. We can get as much time as we need on the bill, but, in fairness to the Senate, we would like to keep the time reasonable. I suggest that they keep their 3 hours and we have an hour and a half.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time on the substitute be limited to four and a half hours, rather than 6 hours, with 3 hours under the control of the movers of the amendment.

Mr. JAVITS. And an hour and a half to the opponents.

Mr. ROBERT C. BYRD. That is understood.

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

Mr. MONTOYA. Mr. President, with these amendments to the act, we reaffirm our commitment to the educational needs of the children of America. The Committee on Labor and Public Welfare has spent many long and difficult hours reexamining every part of the Federal law relating to elementary and secondary education programs and other related educational problems. The Education Amendments of 1974, S. 1539, is the result of that effort, and is now presented to us with the committee's approval. It deserves the full attention of every Member of this body, and I believe, our support.

I wish to address my remarks today to several urgently important sections of this bill.

I have spoken to the Senate many times concerning the need for educational equality for children who speak a language other than English. In 1967, we first attempted to provide Federal assistance to schools where minority-language children were, because of their culture and language differences, receiving less than a complete education. At that time we were looking at the specific needs of children who were educationally handicapped because of their inability to speak English, the language of the majority and the language in which classes were taught.

Since then we have become better educated ourselves—educated in facts about the amount and kind of need, the numbers of children involved, and the bilingual-bicultural education which would be most effective in solving the problems of these bicultural children.

We know, now, that there are millions of children who are being deprived of both academic and vocational education as a direct result of their special language problems.

The United States is the fifth largest Spanish-speaking nation in this hemisphere, and yet the Spanish-speaking children in this country are only now beginning to receive recognition as a cultural and linguistic group with distinct needs and special problems. The Census Bureau has now begun to provide statistics about the numbers, the economic problems, the educational limitations, and the sociological differences of this group, our second largest minority. These statistics, combined with reporting from schools, from local and State government groups, as well as from the Office of Education and the Civil Rights Commission, taught us that the problems of the bilingual-bicultural child will not solve themselves, will not go away, and instead grow steadily worse with each passing year.

We know, now, that there is a practical and valuable educational solution: bilingual and bicultural education, in which the child learns first in the language of his home, and then in English combined with his home language. When handled correctly this special kind of education produces young people who are truly bilingual, bicultural, and biliterate; they are able to read and write and function in two languages, and as a result have an increased ability to earn a living to become self-sufficient, and to share in the opportunities and advantages of their communities and their Nation. Research has been done, and is continuing, into the motivations for learning, into teacher preparation, into other educational resources which assist in teaching bilingually, and into the testing of bicultural children in order to evaluate educational success in these programs.

So, we know a great deal more than we did know 7 years ago, when we first began to look at this problem, about the need and the solution.

We know, too, that our most severe problem is no longer recognition, or ac-

ceptance of the idea of bilingual teaching and learning. Our most severe problem is providing the teachers and the textbooks for the numbers of classes which will have to be provided if we are to do the job. The hearings before the committee clearly show that educators recognize this as the most difficult problem facing them in this special educational area. The National Education Association reports that minority teachers are under-represented throughout our school systems—but that under-representation is most severe for the Spanish-speaking minority. With an average pupil/teacher ratio of 1 to 22 overall in the United States, the ratio is 1 to 107 for the Spanish speaking. In my own State of New Mexico it is 1 to 52. To correct that situation we would need more than 84,000 teachers from the Spanish-speaking minority groups. But even this, of course, would not provide the teachers who are specially trained to teach bilingually—that would require additional and specialized training which we are nowhere able to provide yet in sufficient amounts.

There is one more thing that we know, now, which we did not know when we first began to provide help to bilingual education programs throughout the country. That is perhaps the most important new knowledge, and the most difficult for us to assimilate: the Supreme Court ruling this year which said that schools must provide education in a language this child can understand. This decision may be as far-reaching as the *1954* decision which eliminated skin color as a barrier to equal opportunity in our schools. This decision said that a child whose language was different from that of the majority was still entitled to equal educational opportunity under our law—and that equality of opportunity meant being able to understand the teacher. So we know now, that the civil rights of these minority children are involved—and that we must assist the States to provide equality of education to these children. That will mean, in many States, radical changes in programs and policies and in funding.

This body of new knowledge about the *problems of the* bilingual and bicultural children in our schools has already resulted in efforts by local and State education agencies to change their laws and to increase their funding to provide better solutions. But we are nowhere close to being ready to serve the five to seven million children who should be receiving bilingual education. We are not yet beginning to prepare the teachers, texts, testing, counselors, and other educational material needed. We are not yet supporting the research, to any degree, which must be completed before we can go ahead.

For this reason Senators KENNEDY, CRANSTON, and I submitted the Bilingual Education Act amendments which have now been incorporated into S. 1539. This part of the Education Amendments of 1974 will increase the number and the quality of the demonstration projects which are supported with Federal moneys; will coordinate and upgrade these programs with other national educational programs; will provide teacher training and training for other bilingual education personnel, and will provide a thorough national survey of bilingual needs and programs so that our data will be sound and we progress along these pioneering educational avenues.

These amendments will provide the bare bones of Federal support for a national need which is now apparent and growing more severe and more important every day. I urge the support of my colleagues for this section of the bill.

There are two other parts of this legislation which relate to bilingual education and the problems of the Spanish-speaking minority. One of these is the provision for bilingual programs to be added to the Vocational Education Act. Of course, all of the information and knowledge which we have not acquired about bilingual education in primary and secondary schools applies with even more force and danger in vocational education. As young people learn to live and work in their own communities, it is essential that they learn both academically and vocationally—that is, it is essential that they be literate in both the language of the majority and in their own community language and culture. The coordination of bilingual programs in our vocational education programs is an essential part of the educational problems which face us today, and this bill addresses that problem with a beginning program in the vocational education amendment. I urge your support.

The third section of the amendments which I wish to comment on specifically, is section 522 of the amendments to the Higher Education Act.

In this section the Commissioner is authorized to waive 3 years of the required 5 years existence for a developing institution before it is eligible to receive assistance, in the case of institutions located in or near communities with large numbers of Spanish-speaking people. This requirement has handicapped many community and junior colleges which are developing to serve Spanish-speaking communities. The need for assistance to these new institutions is exemplified by the statistics given in my statement today concerning the underrepresentation of Spanish-speaking in the teaching profession. That same underrepresentation is present in many professions, in business, and in other career fields. However, the increasing demand by Spanish-speaking students for better schools and particularly for higher education facilities in or near their home communities, has resulted in the development of institutions in many States aimed at increasing postsecondary education opportunities for the Spanish-speaking student. These new and developing institutions are entitled to, and should receive, their fair share of assistance from Federal programs, and it is my hope that with the amendment proposed today the Commissioner will be able to see that these programs are distributed more equitably in the future. It will, of course, be important for Congress to oversee this new authority in order to insure full compliance by the Office of Education with the intent of this amendment.

In the past there has not been equal treatment for the Spanish-speaking students and schools under this program, and I believe it is essential that corrective action be taken quickly. The regulations will now make it easier for the Commissioner to provide equal opportunity to the Spanish-speaking minority. I had proposed an amendment which would have made this kind of waiver mandatory, but I am pleased that the committee has provided this modified version of my proposal.

There are, Mr. President, many other sections of this bill which I feel are important and which I believe it is essential we support. I have confined my remarks to these three areas because of the special concern which I have in providing increased equality of educational opportunity for the minority children whose language problems have compounded their other problems in the past.

As a national resource the dual language capability of our minority citizens should not be wasted. Our multicultural and multilingual heritage can be the basis for a renewed national unity and can help us to communicate better with one another and will the other peoples of the world. I believe that our educational goal should be the best possible education for every child and the corresponding vocational abilities which can begin to erase our welfare and poverty population statistics.

Continuing to improve our ability to provide for the full education of bicultural and bilingual children is essential, it seems to me. I especially urge the support of my colleagues for those parts of the Education Amendments of 1974 which address that problem.

## SUBSTITUTION OF A CONFEREE

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

Mr. BUCKLEY. I yield.

Mr. BAKER. Mr. President, the Senate has appointed conferees on H.R. 14368. It has come to our attention that the distinguished junior Senator from New York (Mr. BUCKLEY) will not be able to be present for a conference on that bill.

I ask unanimous consent that Mr. STAFFORD be substituted in his place instead.

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

## JOINING FORCES TO REPEAL PERCENTAGE DEPLETION

Mr. HUMPHREY. Mr. President, I am very pleased to observe that a powerful movement is developing in both Houses of Congress to repeal one of the most iniquitous loopholes of the present tax law—the percentage depletion allowance for oil and gas.

Yesterday the House Democratic caucus voted under the new House procedures to instruct the Rules Committee to permit floor consideration of an amendment sponsored by Representative GREEN of Pennsylvania to repeal percentage depletion as of the beginning of 1974, instead of drawing out its repeal over a 5-year period, as provided in the Energy

Tax Act of 1974 reported out by the Ways and Means Committee. This is a historic exercise of the new Democratic rules of the House, and it is undertaken for a good cause.

A corresponding move is gathering force in the Senate. Last week all Senators received a letter from seven of their colleagues, including myself, urging support for the Kennedy-Mondale tax reduction proposal in conjunction with a package of revenue-raising tax reforms, including the repeal of percentage depletion. This package is to be offered as an amendment to H.R. 8217, which should reach the floor soon. And yesterday Senator RIBICOFF and Senator MAGNUSON introduced a virtually identical amendment to the same bill on the Senate floor.

This amendment is identical also to the version under consideration in the House.

Today I wish to announce that the eight cosponsors of the tax reduction-tax reform amendments announced last week wish to associate themselves with the Ribicoff-Magnuson amendment as cosponsors. The eight Senators involved are Senators BAYH, CLARK, HART, KENNEDY, MONDALE, MUSKIE, METZENBAUM, and myself. We invite other Members of the Senate to join us also. I ask unanimous consent that the names of these eight Senators be added as cosponsors of the Ribicoff-Magnuson amendment.

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

Mr. HUMPHREY. I am very pleased that so many of my influential colleagues are joining forces behind this urgent reform. Repeal of percentage depletion is the first and most obvious step needed to restore equity to our tax system and also to restrain the extraordinary profits garnered by the petroleum industry in the wake of the worldwide energy shortage and the fantastic increases in oil prices.

## MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 3398) to amend title 38, United States Code, to provide a 10-year delimiting period for the pursuit of educational programs by veterans, wives, and widows, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. MACDONALD, Mr. MOSS, Mr. DINGELL, Mr. DEVINE, Mr. BROYHILL of North Carolina, and Mr. HASTINGS were appointed managers on the part of the House at the conference.

The message further announced that the House had passed a bill (H.R. 12000) to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improved, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl, in which it requested the concurrence of the Senate.

## ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

S. 3062. An act entitled the "Disaster Relief Act Amendments of 1974"; and

H.R. 5621. An act to amend title 10, United States Code, to provide for the presentation of a flag of the United States for deceased members of the Ready Reserve and for deceased members of the Reserve who die after completing 20 years of service, but before becoming entitled to retired pay.

The enrolled bills were subsequently signed by the Vice President.

The message informed the Senate that, pursuant to the provisions of section 1, Public Law 86-420, the Speaker had appointed Mr. DERWINSKI as a member of the U.S. Delegation of the Mexico-United States Interparliamentary Group, vice Mr. BROOMFIELD, resigned.

## HOUSE BILL REFERRED

The bill (H.R. 12000) to enable egg producers to establish, finance, and carry out a coordinated program of research, producer, and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl, was read twice by its title and referred to the Committee on Agriculture and Forestry.

## EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

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

Mr. BUCKLEY. I yield.

Mr. McCLURE. Mr. President, I ask unanimous consent that James Streeter, a member of my staff, have the privilege of the floor during all stages of the proceedings on this amendment.

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

The junior Senator from New York has the floor.

Mr. JAVITS. Mr. President, will the Senator yield for a question on his substitute?

Mr. BUCKLEY. I yield.

Mr. JAVITS. We understood that the Senator was going to conform such provisions of the substitute as related to the issues which have just been considered and disposed of.

Mr. BUCKLEY. That I shall do.

Mr. JAVITS. To the Senate's final act.

Mr. BUCKLEY. That is correct.

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

Mr. BUCKLEY. I yield.

Mr. DOLE. Mr. President, I ask unanimous consent that Ken Benjamin, a member of my staff, have the privilege of the floor during the consideration of this and other amendments.

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

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

Mr. BUCKLEY. I yield.

Mr. CRANSTON. Mr. President, I ask unanimous consent that John Steinberg, a member of my staff, may have the privilege of the floor during the consideration of this amendment and amendments I will call up this afternoon.

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

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

Mr. BUCKLEY. I yield.

Mr. JOHNSTON. Mr. President, I thank the Senator from New York for yielding to me so that I may call up a noncontroversial amendment that has been agreed to by both sides.

I ask unanimous consent that it be in order that I call up an amendment at this time, without the Senator from New York losing his right to the floor under the previous unanimous-consent agreement.

Mr. JAVITS. Mr. President, reserving the right to object—and I shall not object—will the Senator identify the amendment?

Mr. JOHNSTON. This is the amendment relating to the adult education program, which we previously discussed.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

What is the number of the amendment?

Mr. JOHNSTON. It is an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 220, line 21, insert the following: after "1978,"

*Provided*, That grants to each State for this program shall not be less than grants made to such State agencies in fiscal year 1973.

Mr. JOHNSTON. Mr. President, today I offer a very important amendment to the adult education provisions of the Elementary and Secondary Education Act Amendments of 1974 that the Congress is now considering. This amendment will insure that the basic purpose of the adult education program, a most vital program to our country, will be realized. The major emphasis on this program in the past has been toward overcoming the illiteracy of our adult aged population and in focusing in on areas with high rates of illiteracy among adults.

As Senators know, in 1966, the Adult Education Act was passed to provide adult basic education opportunities for those persons whose inability to read, write, and speak the English language constituted a substantial impairment of

their ability to obtain, retain, or improve their employment.

This program has more than proven its worth. In a report submitted to the Members of the House and Senate in January 1974, a recently completed study concluded that noticeable reading and mathematics achievement gains were achieved by those enrolled in adult basic education programs, that steady gains in employment occurred and the problem of participants on welfare decreased, that earnings of those who worked definite increases, and that job performance was enhanced.

The Adult Education Act of 1966 was amended in 1970. The amended act extended educational opportunities for adults and encouraged the development of programs which would enable all adults to continue their education to at least a level of completion of secondary school. These amendments enlarged the group of eligible adults from those *who had* received less than an 8th grade education to those who had received less than a 12th grade education, and provided for the allocation of funds to States on the basis of those adults in each State with less than 12 years of public education. However, no increase in appropriations was provided to fund this expanded program. The immediate effect was to redistribute significant amounts of funds committed to adult basic education in States with high rates of illiteracy to States with low levels of illiteracy but with higher incidences of dropouts at the secondary level.

Mr. President, Congress recognized the difficulty then and to avert it, a hold harmless clause was included in the appropriations language for each of the last 3 years.

Obviously, Mr. President, this is a mere stopgap measure, but it is absolutely essential under the circumstances. My State of Louisiana would lose an estimated 40 percent of their total State grant, without this provision. Our neighboring State of Texas would lose over $1,000,000 on 33 percent of their funds for their ongoing program. Arkansas would lose over $200,000 or 25 percent. In all, approximately 17 States throughout the Southwest, South, and Southeast would be affected in about the same proportion.

Simply stated, this amendment is important, because without a hold harmless provision and with the allocation of funds to States as provided under the expiring act and the new act, large sums of money will be shifted out of ongoing adult basic education programs in the South and Southwest into adult secondary programs in other parts of the country. These are areas from which these moneys should not be diverted. Where adults are deficient in basic educational requirements the incidence of unemployment and of upward job mobility is obviously the highest. It is in this area that adult education programs can do the most good for the most people. I urge the adoption of this amendment in order that we can hold on to our present level of programing in these areas of our country and others until sufficient funds can be pumped into our adult education effort to make it feasible to carry on both our basic education and secondary adult education program at sufficient levels. I certainly want to see our adult effort expanded and upgraded, but not at the expense of those who are deficient in the fundamental skills of reading, writing and simple mathematics.

Mr. President, the ultimate goal of the adult education section of this bill cannot be realized if we divert attention from assisting those adults in achieving the minimum performance levels required to make it on their own in our present technological society.

I believe the amendment is acceptable to the Senator from Rhode Island (Mr. PELL) and the Senator from New York (Mr. JAVITS).

Mr. JAVITS. Mr. President, the adult education program is especially dear to me, as it is a program I had the privilege of authoring.

I think the amendment which is proposed is very understandable. Indeed, that is the whole thrust of the formula we have hoped for and were rebuffed in by Senator MCCLELLAN'S amendment in respect to the whole bill. It is really a great step forward that we have raised adult education support to the high-school level. For myself, I see no objection to the amendment.

I hope very much that Members will give equal consideration to the problems of the great metropolitan areas—and we will bring that up at a later point—which has been very seriously hurt by the McClellan amendment; and we are going to try to do a little something to repair that damage. It involves much the same principle. I find the amendment acceptable on this side.

Mr. CRANSTON. Mr. President, on behalf of the distinguished chairman of the subcommittee, Senator PELL, I am delighted to say that the amendment is deemed to be both commendable and acceptable, and I compliment the Senator from Louisiana for offering it.

Mr. JOHNSTON. I thank the Senator from New York (Mr. JAVITS), the Senator from Rhode Island (Mr. PELL), and particularly the junior Senators from New York, who yielded time to me.

Mr. JAVITS. Mr. President, I yield back the remainder of my time.

Mr. JOHNSTON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BUCKLEY. Mr. President, as I indicated earlier to my distinguished senior colleague, we have agreed—the Senator from Nebraska and the Senator from Idaho and I—that we would make adjustments in our amendment No. 1325 so as to reflect business that has transpired on the floor of the Senate since the amendment was originally substituted.

The amendment is as follows:

On page 126, line 1, strike out everything through page 130, line 24.

Beginning on page 215, line 11, strike out everything through page 383, line 23, and insert in lieu thereof the following:

"TITLE III—CONSOLIDATION OF STATE-ADMINISTERED EDUCATION PROGRAMS

"SEC. 301. This title may be cited as the 'Consolidated Educational Assistance Act'.

"AUTHORIZATION OF APPROPRIATIONS

SEC. 302. There are authorized to be appropriated for fiscal year ending June 30, 1975, $1,250,000,000; for the fiscal year ending June 30, 1976, $1,425,000,000; for the fiscal year ending June 30, 1977, $1,800,000,000; and for the fiscal year ending June 30, 1978, $2,100,000,000.

SEC. 303. (a) From the sums appropriated pursuant to section 302 for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total of such amounts as the number of children enrolled in the public and private elementary and secondary schools of that State bears to the total number of children so enrolled in such schools in all of the States.

"(b)(1) That portion of each State's allotment derived from application of the provisions of paragraph (1) of subsection (b) shall be available for any educational activity.

"(2) Except as provided in section 205—

"(A) one-sixth of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for programs and projects at the preschool or any other educational level designed to meet the special educational needs of handicapped children;

"(B) one-third of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for vocational education activities; and

"(C) one-half of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for supporting materials and services.

"(c) Programs, projects, or activities assisted under this Act may include construction.

"(e) In the event that any State is not eligible to receive funds under this title for any fiscal year, or notifies the Secretary that it does not desire to receive such funds, the allotment of such State for such fiscal year derived from any provision of subsection (b) shall be available for reallotment from time to time, on such date or dates during such year as the Secretary may fix, to other States in proportion to the original amount of the allotment to such other States which was derived from any such provision for that year. Any amount for a fiscal year so reallotted to a State under this subsection shall be deemed part of its allotment derived from the same provision of subsection (b) for such year.

"(f) The amounts appropriated and allocated pursuant to this Act shall be paid to the States at such intervals and in such installments as the Secretary may determine, taking account of the objective that the time elapsing between the transfer of funds from the United States Treasury and the disbursement thereof by States shall be minimized.

"(g) For purposes of this title, the Secretary shall determine average daily attendance, average per pupil expenditure, and numbers of children, and in doing so he shall use the most recent satisfactory data available to him, referrable with respect to data used for each purpose to the same time period for all jurisdictions. All determinations and computations by the Secretary under this section shall be final and conclusive.

"DISTRIBUTION OF FUNDS WITHIN EACH STATE

"SEC. 304. Each State's allotment shall be available—

"(1) for use, in accordance with the provisions of sections 303 and 305 and the plan developed pursuant to section 307(b), by the State agency designated pursuant to section 307(a); and

"(2) for distribution, for use by them in accordance with the provisions of sections 204 and 206 and such plan, among the local educational agencies of such State on a basis reflecting the relative needs of each of

such agencies for the types of assistance for which appropriations under this title are available;

"TRANSFERS AMONG PURPOSES

"SEC. 305. (a) Thirty per centum of that portion of each State's allotment which is available for the purposes described in clause (A), (B), or (C) of section 203(c)(2) may be made available for any of the other purposes described in section 203(c).

"(b) The 30 per centum limitations in subsection (a) may be exceeded if the State demonstrates to the satisfaction of the Secretary that such action will achieve more effectively the purposes of this title.

"PARTICIPATION OF NONPUBLIC SCHOOL CHILDREN

"SEC. 306. (a) The State agency designated pursuant to section 207(a) shall provide that—

"(1) except as provided in subsection (b), children enrolled in nonprofit private elementary or secondary schools will be given an opportunity to participate, on an equitable basis, in activities for which funds are made available under clause (A), (B), or (C) of paragraph (2) of section 203(c); and

"(2) title to and control of funds received under this title and other property derived therefrom will remain in one or more public agencies.

"(b) If the Secretary determines that provisions of State law prevent any State agency designated pursuant to section 207(a) from complying with subsection (a), the Secretary shall, if he finds that the State is otherwise eligible to participate in the program under this title, permit such State to participate, but in such case he shall—

"(1) arrange, by contract or otherwise, for children enrolled in the nonprofit private elementary or secondary schools within such State to receive, on an equitable basis, services similar to those provided from the funds made available under clause (A), (B), or (C) of paragraph (2) of section 203(c) to public school children within such State; and

"(2) pay the cost thereof out of that portion of the allotment to such State for carrying out each such paragraph or clause.

"STATE ADMINISTRATION

"SEC. 307. (a) The chief executive officer of each State which desires to participate in the program under this title shall designate a State agency which shall be the single State agency for administration (or supervision of the administration) of such program in such State, except that this requirement may be waived in accordance with the provisions of section 204 of the Intergovernmental Corporation Act of 1968 (42 U.S.C. 4214).

"(b) The State agency designated pursuant to subsection (a) shall, for each fiscal year, develop and publish a plan for the distribution and expenditure of funds available therefor under section 204(c). Such plan shall be developed after consultation with the advisory council appointed pursuant to section 208, shall not finally be adopted by such State agency until a reasonable opportunity has been given to interested persons for comment thereon, and shall be made available to the Secretary.

"(c) In administering the program under this title, the State shall comply with the provisions of this title and with regulations prescribed by the Secretary pursuant thereto.

"STATE ADVISORY COUNCIL

"SEC. 208. (a) The chief executive officer of each State which desires to participate in the program under this title shall appoint an advisory council which shall be broadly representative of the education community in the State and of the public, including at least one person representative of the public elementary or secondary schools of the State; at least one person representative of the nonprofit private elementary or secondary schools of the State; at least five parents of school age children in the State who will be affected by the activities authorized under section 203; and at least one person who has special competence in each of the educational areas described in sections 203(c)(2)(A) and 203(c)(2)(B).

"(b) The State advisory council shall—

"(1) advise the State agency designated pursuant to section 207(a) on the preparation of, and on matters of general policy arising in the administration of, the plan developed under section 207(b);

"(2) evaluate activities assisted under this title;

"(3) advise State or local officials who have responsibility for carrying out activities assisted under this title with respect to the planning, evaluation, administration, and assessment of such activities; and

"(4) prepare and submit to the Secretary not less often than annually a report of its activities, recommendations, and evaluations, together with such comments thereon as the State agency designated pursuant to section 207(a) and the chief executive officer of the State deem appropriate.

DEFINITIONS

SEC. 310. For purposes of this title—

"(1) the term 'adult education' means services or instruction below the college level for individuals (A) who have attained the age of 16, (B) who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education, (C) who are not currently required to be enrolled in schools;

"(2) the term 'average per pupil expenditure in the United States' means the aggregate current expenditures of all local educational agencies in the United States for any fiscal year, plus any direct current expenditures by the States in which such agencies are located for the operation of such agencies during such year (without regard to the sources of funds from which either of such expenditures is made), divided by the aggregate number of children in average daily attendance to whom such agencies provided public education during such year;

"(3) the term 'construction' means the erection, acquisition, alteration, remodeling, or improvement of facilities, including the acquisition of land necessary therefor, and the cost of construction includes the cost of architect's fees;

"(4) the term 'current expenditures' means expenditures for public education, but not including expenditures for community services, capital outlay, and debt services, or any expenditures made from funds allotted under this Act;

"(5) the term 'elementary school' means a day or residential school which provides elementary education, as determined under State law;

"(6) the term 'handicapped children' means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special educational services;

"(7) the term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school;

"(8) the term 'nonprofit', as applied to a school, means a school owned and operated by one or more nonprofit corporations or associations no part of net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(9) the term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12;

"(10) the term 'Secretary' means the Secretary of Health, Education, and Welfare;

"(11) the term 'State' includes, in addition to the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"(12) the term 'supporting materials and services' means such materials and services as the purchase of school textbooks, library resources, and educational equipment; the provision of supplementary educational centers and services, of school pupil personnel services, of adult education, and of school meals; the training or retraining of teachers, teacher aides, and other school personnel; the strengthening of State or local educational agency capabilities and of educational planning at the State or local level; the support of the advisory council appointed under section 208; and the administration at the State level of the program carried out under this Act; and

"(13) the term 'vocational education' includes vocational or technical training or retraining (including field or laboratory work and remedial or related academic and technical instruction incident thereto and work-study programs for students who need the earnings from work in order to commence or continue their education) conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations or to prepare individuals for enrollment in advanced technical education programs, but excluding any program to prepare individuals for employment in occupations generally considered professional of which require a baccalaureate or higher degree; and such term also includes vocational guidance and counseling in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; job placement; and the training of persons engaged as, or preparing to become, teachers in a vocational education program or teachers, supervisors, or directors of such teachers.

"REPEAL OF PROGRAMS REPLACED BY THIS TITLE

"SEC. 311. (a) Effective with respect to appropriations for fiscal years beginning after June 30, 1974, the following statutes and parts of statutes are repealed:

"(1) title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 821–827);

"(2) title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 841–848);

"(3) title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 861–870);

"(4) part B of the Education of the Handicapped Act (20 U.S.C. 871–877);

"(5) the Smith-Hughes Act (20 U.S.C. 11–15, 16–28);

"(8) title III of the National Defense Education Act of 1958 (20 U.S.C. 441–455);

"(9) subpart 2 of part B of title V of the Higher Education Act of 1965 (20 U.S.C. 1108–1110c);

"(10) the Vocational Education Act of 1963 (20 U.S.C. 1241–1391); and

"(11) the Adult Education Act (20 U.S.C. 1201–1211a).

"TITLE III—SPECIAL PROJECTS

"SHORT TITLE

"SEC. 301. This title may be cited as the 'Special Projects Act'.

"PURPOSE

"SEC. 302. It is the purpose of this title to provide financial assistance to the States to enable them to carry out special projects—

"(1) to experiment with new educational and administrative methods, techniques, and practices;

"(2) to meet special or unique education needs or problems; and

"(3) to place special emphasis on educational priorities of the State.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 303. There are authorized to be appropriated for the purpose of carrying out this title $1,700,000,000 for the fiscal year ending June 30, 1975, $1,800,000,000 for the fiscal year ending June 30, 1976, $1,900,000,000 for the fiscal year ending June 30, 1977, and $2,000,000,000 for the fiscal year ending June 30, 1978.

"ALLOTMENT OF FUNDS

"SEC. 304. (a) From the sums appropriated pursuant to section 303 for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total of such amounts as the number of children enrolled in the public and private elementary and secondary schools of that State bears to the total number of children so enrolled in such schools in all of the States.

"(b) There is hereby authorized to be appropriated for each fiscal year for the purposes of this subsection an amount equal to not more than 3 per centum of the amount appropriated for such year for payments to States under subsection (a). The Commissioner shall allot the amount appropriated pursuant to this subsection among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective needs for assistance under this title. In addition, he shall allot from such amount to the Secretary of the Interior the amount necessary for such assistance for children and teachers in elementary and secondary schools operated for Indian children by the Department of the Interior. The terms upon which payments for such purpose shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

"(c) For the purposes of this section, the term 'State' means the 50 States and the District of Columbia.

"USE OF FUNDS

"SEC. 405. The funds allotted to each State pursuant to section 304 may be used by such State for the purposes of this title set forth in section 302. Such purposes shall include the carrying out of programs and projects related to, but not necessarily limited to, any of the following:

"(1) education for the use of the metric system of measurement;

"(2) gifted and talented children;

"(3) community schools;

"(4) consumers education;

"(5) educational equity for women;

"(6) arts in education programs;

"(7) dropout prevention;

"(8) school nutrition and health services;

"(9) correction education services;

"(10) ethnic heritage studies;

"(11) reading improvement;

"(12) desegregation assistance;

"(13) drug abuse prevention;

"(14) bilingual education (including bilingual vocational education);

"(15) Indian education; and

"(16) education of the handicapped.

"REPEAL OF PROGRAMS REPLACED BY THIS ACT

"SEC. 406. Effective with respect to appropriations for fiscal years beginning after June 30, 1974, the following statutes and parts of statutes are repealed:

"(1) title VII of the Elementary and Secondary Education Act of 1965;

"(2) title VIII of the Elementary and Secondary Education Act of 1965;

"(3) the Drug Abuse Education Act of 1970;

"(4) the Cooperative Research Act;

"(5) the Emergency School Aid Act;

"(6) the Indian Education Act; and

"(7) parts A, C, D, E, F, and G of the Education of the Handicapped Act.".

At the end of the bill, add the following new title:

"TITLE V—MISCELLANEOUS

"DISPOSITION OF ADMINISTRATIVE SAVINGS

"SEC. 501. (a) The amount of funds which, by reason of the enactment of this Act, are not required to be appropriated for salaries and expenses of the education division but which would have been required to be so appropriated had this Act not been enacted, is hereby authorized to be appropriated for the purpose of making grants to States for the purpose specified in subsection (c).

"(b) The funds appropriated for any fiscal year pursuant to subsection (a) shall be allotted by the Secretary to each State in an amount which bears the same ratio to the total of such sums as the number of children enrolled in the public and private elementary nad secondary schools of that State bears to the total number of children so enrolled in such schools in all of the States. For the purpose of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(c) Sums allotted to States in accordance with this section shall be available for any educational purpose.

"MINIMUM STATE ALLOTMENTS

"SEC. 502. The total amount of funds received by each State pursuant to titles II and III of this Act for any fiscal year shall in no case be less than the total amount of funds received by such State in the fiscal year ending June 30, 1974, under the statutes or parts of statutes repealed by those titles. The Secretary is authorized to modify any allocations required to be made pursuant to those titles as necessary to carry out this section.".

Mr. BUCKLEY. Also, in the interim, we have been able to secure necessary figures to outline the funds to be authorized to cover the consolidated programs. Accordingly, I have sent to the desk a modification of the amendment reflecting these changes. I ask unanimous consent that the modified amendment incorporate title II of S. 1539, the Federal impact aid title, as it has been modified on the floor, and that appropriate conforming changes be made in the language of the bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Will the Senator from New York indicate whether or not such changes are on the copy sent to the desk?

Mr. BUCKLEY. Yes, they are.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, may we know what the unanimous-consent request is?

The PRESIDING OFFICER. Will the junior Senator from New York please restate the unanimous-consent request?

Mr. BUCKLEY. Mr. President, I ask unanimous consent that the Federal impact aid title, title II of S. 1539, as modified on the floor, be incorporated as title II into our substitute amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator will please send it to the desk.

Title II is not at the desk.

Mr. BUCKLEY. Mr. President, I am referring the provisions of the law that already have been enacted. I do not have a separate title II. This is incorporation by reference.

The PRESIDING OFFICER. Do we understand the Senator is asking that title II as it exists at this stage is what the Senator is referring to?

Mr. BUCKLEY. That is correct.

The PRESIDING OFFICER. And it is to be included in the Senator's amendment as if printed therein?

Mr. BUCKLEY. That is correct.

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

The Senator from New York is recognized.

Mr. BUCKLEY. Mr. President, I also ask unanimous consent that the busing provisions contained in my amendment be deleted, in accordance with the agreement of the Senate that no more busing amendments would be in order after 1 p.m. today. Therefore I ask unanimous consent to delete lines 15 through 29, page 20 of the original. We now have a blank there on page 19 of the modified amendment. I understand that this is the most economical way to deal with this question.

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

Mr. BUCKLEY. Mr. President, Federal expenditures for elementary and secondary schooling in all categories have risen from less than $1 billion in fiscal year 1961 to nearly $6 billion in fiscal year 1974. With the nearly 500 percent increase in Federal aid to education have come a vast array of authorizations and agencies. Education grants are now available to schools under at least 38 separate authorizations for "instruction," at least 37 separate authorizations for low-income students, and at least 22 separate authorizations for reading instruction. Dozens of Federal offices, agencies, bureaus, et cetera, handle these programs. In fact, at least 26 Federal agencies other than the Office of Education administer Federal education programs.

What has been the educational result of all this Federal support for, involvement in, and direction to the Nation's elementary and secondary schools, and its children?

Some answer can perhaps be given. Results of the nationally administered Scholastic Aptitude Test indicate a serious decline in literacy among teenagers in the past decade. Scores have dropped every year, for a total decline of 35 points. The National Assessment of Educational Progress found recently that 15 to 20 percent of 9-year-olds cannot read at all, ranging from 7 percent in the affluent suburbs to more than 35 percent in the inner cities.

Virtually every long-term evaluation, most of them done by and for government agencies, of federally sponsored compensatory education programs has found little or no academic gain, and

even some evidence of retrogression. And although more Americans go to school for more years than ever before, some 15 to 20 percent of all adults are now functionally illiterate.

The director of secondary education in Sioux Falls, S. Dak., recently wrote to one of his Senators that—

> Even though schools are in existence for one purpose—to educate young people to the limit of their potentials—one is hard-pressed (some say it is impossible) to demonstrate any lasing benefits to students because of federal funding of elementary and secondary education.

The American public by a large margin holds similar views. Earlier this year, the Senate Subcommittee on Intergovernmental Relations published the results of a survey on the state of citizen regard for and involvement in government. The report, entitled "Confidence and Concern: Citizens View American Government," contained many informative facts and statistics.

When asked which level of government can best improve public schools, those polled responded as follows: 50 percent thought that State and local government could best improve public education while only 14 percent thought the Federal Government could do that important job.

The survey also found that "the public underscores its belief in shared governmental responsibilities with an overwhelming endorsement of two policy propositions:

First. State and local governments should be strengthened; and

Second. The Federal Government should have power taken away from it.

The less-than-happy state of American education may in part be a result of the near monopoly control and direction the Federal Government exerts over educational research and innovation through its discretionary control of the great bulk of funds available for such activities. By selectively funding certain fields and certain approaches to teaching, the Federal Government has had a tremendous influence over the nature and goals of education in the past decade—whether for good or ill is hotly disputed. An article in the New York Times in 1972 described the role of the Federal Government in affecting course content in social studies as follows:

> A diffuse but massive and nationally based *curriculum development effort* was undertaken in the early '60s, by numerous teachers, academics and curriculum specialists. The federal government poured millions of dollars into literally dozens of such projects. The resulting new materials are only now bursting fully upon the educational scene as virtually every textbook publisher in the country adopts the concept-and-inquiry approach, at least in part.

Federal education agencies supported a great deal of experimentation and program development in the past decade. Yet, Dr. Frank Brown, chairman of the National Commission for Reform of Secondary Education, states:

> What has been proven by the decade of experimentation in the 1960s is that realignment of time in class, allowing children to "learn at their own pace," teaching by computers and knocking down walls will not make a major difference in the quality of American education.

Nonetheless, these are the kind of new programs the Federal education bureaucrats have continued to emphasize. And in the monopolistic pursuit of their own limited visions of innovation, they have stifled diversity and valuable educational progress and reform. If the present approach is demonstrated to be ineffective, one would logically expect that the approach would be changed. Why is it then, that in the face of such evidence, the cry goes out for still more bureaucratically administered Federal programs and more rigid Federal guidelines? Why is it that the education bill before us offers us essentially only more of the same?

One possible answer can be inferred from observations of the National Commission on Marijuana and Drug Abuse about the drug bureaucracy:

> To justify the ongoing programs, the drug bureaucracy must simultaneously demonstrate that the problem is being effectively attacked, and that it is not diminishing. Throughout this process fundamental assumptions are not questioned, programs are not evaluated and the problem is perpetuated from year to year.

Since the drug and education bureaucracies extensively overlap, I suspect that a very similar process occurs in the area of education.

The present system of Federal aid to education is a restrictive and cumbersome maze of bureaucratic requirements and redtape. As the President recently pointed out:

> To get Federal money—your tax money—for teachers or books or equipment, your school board has to sort out over 50 Federal educational programs to find the one that comes closest to matching its needs. Next your school board and officials have to check a stock of Office of Education publications to discover the right way to apply for the available money. And finally, they have to wait for a decision from Washington to find out whether they get any money. All of this can take from three to nine months, depending on the Washington timetable—not the timetable of the school year, which, of course, is the important one to you.

The excessive program fragmentation makes local educational planning difficult. States and communities have to make numerous separate applications to numerous different Federal officials for funds for the same basic program or purpose. The uncertainty of the success of these applications makes the preparation of a comprehensive coordinated program all but impossible.

The present system discourages local accountability. Complaints and failures can simply be bucked up to the Federal officials and Federal requirements controlling various programs. Local officials do not have to account to the voters from their district on these issues, and the Federal bureaucracy has demonstrated its inability or unwillingness to take effective action and make corrective changes.

For several reasons, the present system prevents States and localities from meeting their special and particular needs. The categorical and matching requirements of Federal aid force States and local agencies to spend their funds and use their resources in ways which they, in seeking the most desirable and effective use of resources, might not otherwise choose. The vast array of program and administrative requirements that the Federal Government demands in State plans and administration also tend to divert and waste resources that might be put to better use—not to mention the fact that this makes educational agencies litte more than administrative arms of the Federal Office of Education. Rigid qualifications and limitations on grants further limit flexibility in the use of resources and frequently stifle any creative change. Finally, outworn and discredited Federal programs never die, they just keep being funded—and therefore, deprive States and localities of funds for new and more appropriate educational activities.

The present system wastes time, money, and personnel. The intricacy and hodge-podge is so great that many States and local agencies have to hire larger staffs charged with the sole responsibility of cutting through the maze of applications, guidelines, regulations, and reporting requirements which are an intrinsic part of the present grant system. On the Federal side, an army of bureaucrats is required to process and review applications and grants to attempt to make sure that every petty regulation and requirement is complied with. All in all, these procedures require thousands of unnecessary scribblers and paper shufflers. As Secretary Weinberger has noted——

> At both the State and local levels, the paperwork involved in individual grant applications sometimes results in administrative costs that may almost match the amount of the eventual grant—if, indeed, a grant is received at all.

Under the present system, funds do not necessarily go to those States and localities whose needs are genuine and greatest, but to those who are most adept at the game of grantsmanship. Presently those States and districts which can afford to hire talented special staffs to thread their way through the thicket of Federal regulations and finesse their grant applications are able to get more than their fair share of Federal funds.

Former Congressman Roman Pucinski, one of the architects of Federal aid to education programs, has called them a monumental flop. And Congresswoman EDITH GREEN, a nationally recognized expert on education, wrote in an article in the New York Times on January 16, 1974, that—

> "Each new program spawns at least one new administrative unit within the Government. This involves new office space, new staff of many ranks, new organization charts, new regulations. Administrative growth is a galloping cancer. Many listed as new state or city employees are there solely because of Federal funds or Federal requirements . . . As a long-time supporter of Federal financial aid for education, I have come to realize with much pain that many billions of Federal tax dollars have not brought the significant improvement we anticipated.

Mr. President, we have here, it seems to me, one of those rare occasions in which the opinion of the public and the opinion of many experts are in total agreement. The high motives and obvious compassion for the needy that have been the hallmarks of our Federal education

programs are too often thwarted by the clumsy and often impenetrable set of rules and regulations that accompany Federal aid. The States and localities need Federal aid; they most certainly do not need the bureaucratic redtape and regulatory shackles that by now are an integral part of the educational Federal aid to States.

I wish to again commend the able chairman, members, and staff of the Education Subcommittee for their sincere and hard work in producing S. 1539. But for all of their hard work, nothing has really changed. We are only given the opportunity to continue in the same deep and frustrating rut as before.

Not only does S. 1539 perpetuate the programs, the waste and ineffectiveness of current law and policy, it adds to them.

Instead of remedying many basic flaws and inadequacies in the current programs, it increases them. Instead of streamlining the inefficient and costly Federal bureaucracy, it enlarges it. The bill adds some 14 new bureaus, centers and offices to the Federal education bureaucracy, along with the attendant increase in personnel.

At a time when people everywhere are calling for increased economy and efficiency in government, this bill increases overhead costs and mandates additional unwieldy, inefficient administrative requirements and it restricts efforts toward regional administrative decentralization. HEW itself criticizes the administratively hamstringing provisions of the bill, and the President observed that these and other provisions of the bill would create "A bureaucratic nightmare, entwined in its own redtape, making it impossible for the Department of Health, Education, and Welfare to carry out its responsibilities."

As a result, children in educational need will stand to suffer from the bill we are now debating.

More fundamentally, the bill does not genuinely break new ground in the direction of flexibility. It does not provide adequate program consolidation needed to simplify the Federal funding process for elementary and secondary education—thus it continues to restrict the ability of States and local districts to set their own priorities and meet their special needs.

While the bill does propose some consolidated categorical funding, it is virtually in name only, inasmuch as it only allows consolidation for 50 percent of the funds above 100 percent of the amounts appropriated in prior years. The requirements that States must use funds appropriated under the new consolidation to continue particular categorical programs at designated previous year levels, and that State educational agencies must spend 50 percent of the funds appropriated in excess of these hold-harmless" levels for the same categorical programs, would hamstring the consolidation of State-administered formula grant programs and render it virtually meaningless.

For all the reasons mentioned, and more, the times cry out for a basic change in the very nature of Federal education programs. Tinkering with various programs will not remedy the waste, the abuses, and the ineffectiveness that plague so many of them. A more fundamental and far-reaching reform is necessary for the benefit of our children and our Nation. That is what our amendment proposes to do.

As Representative GREEN noted in her New York Times article:

> The enormous Federal influence has not yet really entrenched itself, either structurally or philosophically, in the American experience. It is by no means too late to cut discretionary funds to a justifiable and manageable amount, and to do away with the myriad categorical programs. To the extent that financial assistance is required for education programs, such assistance can be supplied through outright block grants with minimum restrictions on how or for what they are spent, once a basic overall need has been established. Decentralization and general aid are key concepts in the rehabilitation of our educational system; they and they alone permit each locality to determine its own priorities, plans and objectives—to focus on its own particular educational problems.

This is precisely what the Buckley-Curtis-McClure subcommittee amendment will accomplish. It proposes major changes in the way the Federal Government would use and distribute Federal tax dollars for elementary and secondary education.

The amendment is in several respects similar to the administration's education revenue sharing proposal of 1971. In introducing that measure, the late Senator Winston Prouty made some comments that apply equally well to our amendment. At the time, Senator Prouty said:

> The well-intentioned efforts of Congress in recent years have resulted in a maze of elementary and secondary education programs, which while noble in their intent are cumbersome in their implementation.
>
> Guidelines regulations, matching fund requirements ensnarl the educator in time-consuming trivia which is counter-productive to the educator's primary role—education.
>
> Clearly remedial action is necessary to make Federal aid to education more responsive and less cumbersome.
>
> Now that Federal support for elementary and secondary education is well established, it is time to move from categorization to consolidation in such a way that the goals of educational equality and opportunity are met.

As Prof. Daniel Moynihan noted some years ago, the Federal Government is good at some things—it is good at collecting money, for example. But it is not very good at effectively administering large scale programs to deal with broad and diversified social concerns and problems. The size and complexity of these problems, and the unwieldy size and complexity of the Federal bureaucracy rationally dictate that efforts to deal with these problems be decentralized and entrusted to smaller administrative units of government, closer to the people involved and more responsive to the diversities of the problems.

The Buckley-Curtis-McClure substitute is an educational revenue sharing alternative to the present system of Federal control over education. It is a small but important step on the road toward returning power, funds, and responsibility for local problems to locally elected officials. It responds to the mandate of the 1972 election, and it follows the desire of the American people, as expressed in the national survey done for the Senate Subcommittee on Intergovernmental Relations from which I quoted earlier. It offers a possible way out of the educational morass that seems to beset our country, by permitting State and local education agencies to be more responsive to the particular needs and problems of their students and communities. And it offers them more money to do so.

The National Association of School Boards supported this approach in hearings in 1971, as did the Council of Chief State School Officers, the National Chamber of Commerce, various State boards of education, and others.

Let me summarize the amendment briefly. When President Nixon first offered his educational revenue sharing proposal in 1971, he pointed out that it consolidated "more than 30 Federal aid categories." Our amendment does the same, reducing the categories to a basic six. It would make funds available to States and local education agencies in five areas of longstanding concern: Education of the disadvantaged, education of the handicapped, vocational education, education of children connected with the Federal Government, and supporting materials and services. In addition, there is a sixth category, reading and special projects, into which the authorizations of the special categorical programs authorized or extended by S. 1539 are consolidated.

Our amendment will retain the provisions of title I of the ESEA, as amended on the floor by the Senate. Title I already operates essentially as a revenue sharing program for districts with significant numbers of disadvantaged children. We have also now incorporated the committee impact aid title, as amended on the floor, into our amendment. This program is also in effect already a revenue sharing program.

Second, funds would flow to the States on the basis of an automatic formula, with the provision that no State would receive less money than it did in fiscal year 1974 from the programs being consolidated.

Third, each State would be required to prepare a plan for distribution of funds, in consultation with a State advisory council broadly representative of public and private education interests and members of the public, with an opportunity for interested persons to comment on the published plan. However, in a major change from present law, no Federal approval of the plan would be required. Thus, a State will be able to plan for its own needs and priorities, rather than having to adapt to some predetermined Federal plan and agenda.

Fourth, other education revenue sharing funds would be distributed among the local educational agencies by the State agency, on the basis of formula in the bill, in the areas of education of the handicapped, vocational education, supporting materials, and reading and special projects. The State education agency would have the flexibility to transfer up to 30 percent of the funds

from any one category, with the exception of those funds passed through to local education agencies. Thus, additional funds could be made available for the education of the handicapped, if the State and local school districts felt that they were needed.

Fifth, in addition, any administrative savings realized as a result of the consolidation of Federal programs will be distributed back to the States. Savings created by a reduction in the Federal education bureaucracy and its activities should run into the tens of millions of dollars.

Sixth, under our special projects title, States will receive significant amounts of new funds, allocated on a per capita basis, in order to carry out programs in the areas enumerated on page 18 of our amendment, as modified, as well as other special projects. States will be able to make use of these funds in the areas where that State has special needs, as determined by those State and local officials. If this substitute were to become law, all States will receive at least as much additional aid in fiscal year 1975 as they would under the committee's S. 1539. In fact it can be said with some assurance that every State will receive more than they would have under the committee bill because of the administrative costs savings which are inherent in this approach. Support for my substitute constitutes support for more dollars to the States; opposition serves to keep a relative greater amount of money within the discretionary control of policy planners in Washington.

Is there any justification for continuing to permit the Federal education bureaucracy to exercise its cumbersome, costly and stultifying control over American education? Is there any justification for continuing to prevent State and local education officials from having far greater flexibility in making program decisions more responsive to the needs of their students and communities? I submit that the answer to these questions can only be "No," Mr. President.

It is time for the Congress to establish a new relationship between the Federal Government and State and local governments in the field of education, one which demonstrates confidence in the good sense and responsibility of State and local officials, one which will better deal with educational problems of the present, and better anticipate problems and needs of the future. As the President said:

> I believe we must recognize that the Federal Government cannot substitute its good intentions for the local understanding of local problems, for local energy in attacking these problems, and for local initiatives in improving the quality of education in America. We must also recognize that State and local authorities need Federal resources if they are to meet their obligations and if they are to use the peculiar advantages of state and local knowledge, responsibility and authority to their fullest potential. Education Revenue Sharing accommodates the federal role in national education to both these realities, and it lays the foundation for a new and more productive Federal-State relationship in this area of vital national concern.
>
> The time has now come in America to reverse the flow of power and resources from the States and communities to Washington, and start power and resources flowing back from Washington to the States and communities, and, more important, to the people all across America.
>
> The time has come for a new partnership between the Federal Government and the States and localities—a partnership in which we entrust the States and localities with a larger share of the nation's responsibilities, and in which we share our Federal revenues with them so that they can meet these responsibilities.

I believe, Mr. President, that the Senate at this time has a tremendous opportunity to move in the direction in which we must move if we are to restore quality and vitality to education in this country, if we are to encourage local schools to use those initiatives to exercise that responsibility which they are uniquely in a position to exercise.

If I may just summarize before yielding the floor, Mr. President, I would like to say that, contrary to the present system that is incorporated and expanded in S. 1539, the Curtis-Buckley-McClure substitute insures that a State has discretion to use funds where most needed, so school districts are better able to plan for their own needs—and actually have the funds needed.

Our amendment offers greater flexibility in making programs responsive to needs of students—

It is less cumbersome in implementation than the present maze of categorical grants;

It cuts redtape and paperwork;

It insures more equitable distribution of Federal funds;

It allows educators to return to primary responsibilty and concentrate on educating rather than searching for Federal aid;

It eliminates duplication and overlapping;

It will reach the schools which need aid rather than those who are knowledgeable about the available forms of Federal aid and where to find it;

It avoids the frequent delay and confusion now occurring because of the proliferation of grants; and

It assures that local money will not be drawn to purposes only because the Federal Government considers them important.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I suggest the absence of a quorum, the time to be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Mr. President, will the Senator withhold that?

Mr. PELL. I withdraw it.

Mr. McCLURE. Will the Senator from New York yield?

Mr. BUCKLEY. Mr. President, I yield the Senator from Idaho such time as he may require.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, I would like to commence by commending the Senator from New York not only for his leadership on this proposal, but for the clarity and forcefulness of the statement he has just concluded.

Mr. President, there is a gnawing irony in the fact that as we approach our Nation's 200th anniversary, the same terrible complaints that sparked our war of independence are with us again. The usurpation of power by a remote government, unjust taxation, and an intolerable arrogance in the exercise of that power. But this time, the villain is not a monarch. It is not a King George. It is the Federal Government. It is us.

There is a malaise throughout the country. People sense they have no control over the institutions that govern and shape their lives. It is a control they have lost. Institutions set up to serve people have become their masters. Our masters. The distances between England and her colonies then and Washington and its colonies today have become the same.

The answer to King George is the same as the answer to our Federal tyrant. Self-government.

One area where there is a common cry for the kind of self-government we are in danger of losing is in our schools. We hear it from all sides of the political spectrum. From the extremes to the middle. The desire for control over our schools, and access to and participation in individual school systems is a common bond between most American parents. People want a direct part in shaping the formal education of their children.

Some communities have already lost that kind of control. Some are losing it. And in Idaho, unfortunately, we seem to be losing it.

One reason is that our people have been oversold on the idea that money makes for better schools. Surely it takes money to run schools: To educate our children. But in our eagerness to get money, our communities have turned to the Federal Government. And through the Federal education-aid system which the Congress has created, our communities are inevitably losing their local control. If it is true for Idaho, it is true for other States. It does not have to be that way. Congress can change the system.

This is not to say that money from the Federal Government is a terrible evil. It is not. What is dangerous is the way the Congress has chosen to dole that money away. With strings and more strings. It is endless.

It does not have to be that way.

We in the Congress, with the best of intentions have created program after program with strings. All this money is contingent on something—and that something may well be exactly what an individual community does not want, or does not need.

Back in the postsputnik era, when anything in the name of science was good, and when you could get unlimited Federal money if it were for science, the Boise, Idaho, school district got a grant to build a planetarium. There is nothing wrong with a planetarium. It is good to have. But there was a critical need in the school systems of Idaho then—better salaries for our teachers. If we had been able to use that Federal money for teachers' salaries instead of building our planetarium, there is no question—none—that we would have provided better pay for our teachers. But there

was no option. We could get that Federal money for something which did not have the highest priority, but for something that would have had far greater effect on the quality of education, money was not available.

It should not have been that way.

And the sad thing is—things have gotten worse. Sure there is more money and there are Federal programs.

But we have created a vast system that we really don't need—an expensive system. Bureaucracies within bureaucracies. We have built a system where grantsmanship is the key to getting Federal money, not need. We have programs in which the administrative costs here in Washington dwarf the real good accomplished and local communities that cannot hire these experts schooled in the new-speak that touches the right nerves in Washington, stay poor. Communities rich enough to hire droves of *these* grantsmen get richer, and, again, richer. Simply put, "Those that has, gets." It is tragic.

Program analysis. Audits. Systems research. Socioeconomic data.

For our poor communities, all this means nothing. At least two dozen Federal agencies other than the Office of Education have administered Federal aid to education programs. It is madness. Maybe not to bureaucrats. But to the average American, it is madness. It is infuriating. It is saddening.

But it does not have to be that way.

I remember a conversation with the superintendent of the schools in Lewiston, Idaho. He made a point that struck home. His school district is typical of many across the Nation in which the total amount of impact aid amounted to only a small percentage of his total budget—5 percent. But he said to me:

> Five percent of my budget is worth a lot more than just five percent. Because it's easy to qualify; it's simple to account for; and I don't have to justify the expenditure. All you have to do is certify the number of students you have. You get a check based on that certification. It goes into your general fund budget and you don't have to tell them how it was spent.

Now that makes sense.

But, sadly, most of the Federal aid to *education programs* we are dealing with are not that simple. They have strings that run all the way to Washington. And Washington pulls those strings.

For the most part, people can blame the Congress. They are right.

Just look at this bill. We have countless amendments, providing a still more confusing litany of categorical programs. It is a terrible mess. Sure, each of us is looking out for the best interest of his own State, but the problem is that from program to program, what might well be good for students in Washington, D.C. or Montgomery County, Md., just does not make sense for students in Garden Valley, Idaho.

But what does make sense, what is in the best interests of those students, is to replace those confusing, tangled and sometimes hard-to-get categorical grants with something simple—something they can all benefit from equally—revenue sharing.

It is simple. It fits everybody's needs. It will work. And for the people who need help, for communities that need help, funds are available and they can apply it themselves in the way they want, in ways to best serve their communities and their children.

We have recognized the value of revenue sharing in other areas of Federal participation. It is nothing new. And we know it works.

It will work here.

But I suspect that some of the inertia we see in the Federal education bureaucracy is that somebody over there—or many somebodies—think they know better. They think the children of Garden Valley need sensitivity training. These somebodies—the well-intentioned who make the rules, draft the criteria, attach the strings, and set the new funds for the grantsmen to follow—do not care about the real needs of Garden Valley. They do not care about how the parents of those children want their kids educated. That is the rub. If the parents in Garden Valley want sensitivity training, let them decide. If they want a planetarium, let them decide. If they want the three-R's, let them decide. It is their money. It is their kids. I believe in them. I believe the parents in New York City, in Montgomery County, in Garden Valley—all have that same thing in common. It is best that they decide on how they want their kids educated.

Our colleague from Arizona, Senator GOLDWATER, put it better than anybody else, To paraphrase his words :

> We're not losing power to the Presidency. We are losing it to the bureaucrats. And nobody elects bureaucrats. Bureaucrats are not accountable to anybody. We are giving away that power daily in this Congress.

And the terrible thing is— it is not ours to give. It belongs to people in our local communities. We are just custodians of that power. And nowhere is that giveaway of power more clearly seen than in Federal aid to education.

Just look at what we are doing.

We are considering an education bill that runs 388 pages—without amendments.

The bill adds 14 new bureaus and offices to the Federal education bureaucracy. Its aid formulas are bewildering and complex. It is not necessary. It does not have to be that way.

In the past two Presidential elections, the American people have voted in overwhelming preponderance for candidates who pledged to reverse the flow of power. And still, out of sheer inertia, the leviathan grows.

This political hodge-podge of an education bill has very little support from anybody other than those who have a vested interest in the existing education establishment.

The dismaying conclusion of Arthur Rice, emeritus professor of education at Indiana University, was reported in a national school journal. He wrote:

> The leadership of the national organizations, particularly key officials and professional staff members, realize that if the flow of money for education goes back to the state and local organizations, it will lessen very much the importance, power and the prestige of the national groups.

Let us begin to recognize honestly that the push for Federal dominance of education is really an attempt to impose values or programs, which if left to local decisionmaking will not be chosen at all. Such advocates as there are of this Federal dominance claim that educational needs will not be met without control from the Federal education bureaucracy. When they initiated many of these programs, it was because they claimed the States did not have the resources to meet those specific needs.

That is not at issue today.

Revenue sharing provides more money than categorical grants by eliminating the bureaucracy. Financing of education is not the issue here. Neither is forced segregation. That is behind us. The key now is who makes the decision.

Is it not the belief of the coercive do-gooders that only they know what is best—that sensitivity training, consumerism, or ethnic studies will be passed over in favor of the three R's if parents in local communities are allowed to determine education policy? If local communities want those things, fine. But for heaven's sake, let them decide for themselves.

With this amendment we are considering now, we can change the picture. We can provide more funds to individual school systems without calling for more taxes. And we can return the power to control that money to the individual local communities.

Revenue sharing allows educators to devote their time to education. The categorical grant approach requires them to devote their time to the arcane act of grantsmanship.

Mr. President, in summation, the debate on the Elementary and Secondary Education Act has taken a different turn this year. In the past, our concern has been almost solely confined to dollar amounts. This year, our attention seems to be focusing on some of the underlying concepts upon which this massive Federal aid system has been built.

I think this is all to the good. For quite some time now, I have been fascinated by public opinion polls, and I have conducted several rather unscientific—but highly accurate, I think—surveys in my own State. Whenever an issue poll is taken, education always surfaces near the top as a major concern of the American people everywhere. It seems to me we have to credit this to a certain amount of dissatisfaction and frustration with educational problems. After all, nothing is more precious to Americans than the liberty guaranteed them by the Constitution—but "liberty" seldom is mentioned in an opinion poll. So, I am convinced that the American people are not entirely happy with education in America today.

The debate on this bill begins to show us why. We have heard it said that children have been the subject of experimental programs, some involving the use of behavioral drugs, without the consent of their families. We hear it said that the use of the busing device has been to achieve a social goal and has no bearing whatsoever on the quality of education itself. We hear it said that studies by the Office of Education itself show that mas-

sive Federal aid has had no real impact on educational programs. We hear that parents are not permitted to inspect the records of their children, and we have heard that very knowledgeable lady, Congresswoman EDITH GREEN, quoted as saying that Federal aid to education has been a total failure.

At the same time, every single one of us has also heard from the educators in our home States. They have become dependent upon Federal funding, of course. That is the inevitable price that must be paid for Government assistance. And Congress is seldom so considerable as to act on education bills in sufficient amount of time for the school districts to develop their budgets, hire their teachers, and begin the job for which they are there, educating our children.

Now it seems to me that a pattern is beginning to emerge through all of this. Whether the disenchantment surfaces in opinion polls or is expressed in a Senate speech, or contained in a letter from a school superintendent back home, it begins to boil down to this, quite simply: "Get the Government off our backs."

There is no little irony in the fact that the Congress has transformed most of the Nation's school districts into helpless entities which cannot exist without help from Washington, D.C. And at the same time, with the weight of the Government around their necks, those same districts have got to get rid of Federal control if the educational demands of the coming generations are to be met. Consequently, with no little sense of frustration and in the belief that there is no other alternative available, I have joined my two distinguished colleagues today in offering this substitute to the Elementary and Secondary Education Act. It is revenue-sharing, pure and simple, and it lets the States and local communities make decisions that should rightfully be theirs.

There is a better way.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time consumed be charged equally to both sides.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, I strongly urge my colleagues to vote against the proposed amendment, No. 1325. Its passage would undo everything we have achieved in Federal aid to elementary and secondary education in the past decade. It would eliminate a number of highly popular and successful programs, programs in which I know my colleagues have a personal interest. It would negate all the work that we have put in on S. 1539, both in committee, over the past year, and on the floor, in the past several days.

The proposed substitute would strike the proposed White House Conference on Education, to be convened in 1977. This conference has enjoyed wide support from parents and education groups alike, since there has been no such high level national policy discussion on education since 1964. Obviously, there is a need for an overall examination of our educational system, at the Federal, State, and local levels. The conference provision, with satellite State conferences, would provide the mechanism for such a study.

The proposed substitute would keep the title I formula adopted by the Senate, but would replace the rest of S. 1539 with two revenue-sharing measures.

The first one, the substitute's proposed title III, is essentially the administration's so-called Better Schools Act of 1972. This proposal was, almost uniformly, opposed by every witness appearing before the Subcommittee on Education.

The National School Boards Association spokesman said:

With respect to the Better Schools Act, I can say categorically we would oppose its passage, period.

The National Education Association similarly opposed the legislation, since it believed that its intent was primarily to reduce the amount of money flowing to education.

The American Federation of Teachers, while recognizing a need for some grant consolidation, felt that revenue sharing really amounted to "passing the buck on policy."

The proposed substitute would consolidate school library, equipment, and innovative programs into a single program, without any protection for the programs already in existence in all of our States. Many witnesses before my subcommittee discussed the need for some consolidation of existing categorical programs, in order to reduce the paperwork burden on State and local school officials. Their case was persuasive, as we saw the amount of paper necessary to apply for a single Federal program. For that reason, the committee bill contains three consolidations of existing programs—an administrative consolidation, to eliminate much of the unnecessary paperwork now entangling our Federal education programs; a consolidation of State formula grant programs, with protections for existing programs, but discretion in the States concerning how to spend additional appropriations; and a consolidation of discretionary grant programs into a Special Projects Act, with new categorical programs included under this consolidated authority. I ask unanimous consent to have printed in the RECORD at this point a chart describing the three consolidations contained in the committee bill.

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

THREE CONSOLIDATIONS

I. ADMINISTRATIVE

A. Programs Whose Paperwork Is Consolidated (All Elementary and Secondary State Plan Programs)

1. ESEA Title I—Aid to Disadvantaged
2. ESEA Title II—Library Assistance
3. ESEA Title III—Innovative Programs
4. NDEA Title III—Equipment
5. Adult Education
6. Vocational Education

B. Changed From Many State Plans to One State Plan

1. Long-range Plan Filed
2. Single Program Plan Updated Yearly

C. No money Involved

II. CONSOLIDATION OF STATE FORMULA PROGRAMS

A. Consolidated Programs

1. Title II ESEA (Textbooks and Library Resources)
2. Title III ESEA, 85% State Share (Supplementary Centers and Services)
3. Title V ESEA (Strengthening State Educational Agencies)
4. Title III NDEA (Equipment)
5. Title V–B–2 EPDA (Attracting and Qualifying Teachers)

B. Consolidated Into a Single Program

1. Hold Harmless for Programs Consolidated at Most Recent Appropriations Level
2. When Appropriations Exceed Existing Levels, All of the New Money Could Be Used at the Discretion of the State Agency for Any of the Purposes Consolidated
3. 15% Set Aside of Title III ESEA for Handicapped Remains

C. New Eligibility Formula Applies to Funds Appropriated Over Existing Levels, Based on Three Factors:

1. Number of Children in the State, Multiplied by $20
2. State Average Per Pupil Expenditure, Multiplied By the Number of Children in Families with Incomes Below $3,000
3. The Relative Wealth of the State

D. Authorization: Existing Levels (Approximately $340 Million), Plus $600 Million for Additional Consolidated Programs Under the New Formula

III. COMMISSIONER'S DISCRETION—"SPECIAL PROJECTS ACT"

A. Consolidated Programs (Remaining OE Discretionary Programs)

1. Cooperative Rseearch Act
2. Dropout Prevention
3. Health and Nutrition
4. Consumer Education
5. Correction Education
6. 15% Set Aside of Title III ESEA (Innovative Programs)
7. Education Professions Development Act

B. New Discret onary Fund—"Special Projects Act"

1. Old Programs and Purposes Cease to Exist, But Are Given Priority in Funding

C. Congressional Oversight and Control

1. Authorizing Committee Approval of:

(a) Yearly Spending Plan, Including Report on All Contracts Over $100,000

(b) Commissioner's Proposal to End Priority Status for Old Programs Consolidated

D. Money to Be Determined by Programs Included

E. Set Aside of 50% of Funds for New Categorical Programs As Follows:

AUTHORIZATION OF FUNDS

[In millions]

| Section and subject | Fiscal year 1974 | Fiscal year 1975 through fiscal year 1978 Amount | Percent |
|---|---|---|---|
| 404—Metric education | | $10 | 5 |
| 405—Gifted and talented | | 12.25 | 6.125 |
| 406—Community schools (LEA) | | 15 | 7.5 |
| (Higher Ed.) | | 2 | 1 |
| 407—Career education | | 15 | 7.5 |
| 408—Consumers' education | $15 | 15 | 7.5 |
| 409—Women's educational equity | | 30 | 15 |
| 410—Arts education | | .75 | .375 |
| Total | 15 | 100 | 50 |
| Total authorization for Special Projects Act for each fiscal year | | 200 | 50 |

Mr. PELL. The proposed substitute

would do away with existing programs for the handicapped and for vocational education, substituting for each a single authority. There is nothing in the subcommittee record to support such a step.

Title VI of S. 1539 extends and amends existing programs of aid for the handicapped, and the committee report, in pages 106 to 124, outlines in extensive detail the reasons behind the committee's actions in extending the separate components of existing law. In addition, there is before the Subcommittee on the Handicapped, S. 6, which has major implication for the education of the handicapped. Programs for the handicapped should not be consolidated out of existence without detailed study of the potential impact.

Similarly, there is nothing in the committee's record to justify vocational education consolidation. Such consolidation will be one of the issues we will consider when we undertake oversight activities on vocational education later this session. This is an area which is long overdue for congressional inquiry, since no indepth look has been given to vocational education since 1968. It is possible that we will find that some measure of consolidation is advisable, but we should not make major program changes until we have had a chance to examine the facts.

Programs of education for the handicapped and of vocational education could be severely damaged under the proposed amendment, since it allows the State to divert up to 30 percent of the funds for these programs into the purchase of books and equipment or increasing the staff of its State department of education. My colleagues are all well aware of the needs of their school districts for too-scarce handicapped and vocational education funds. To cut these funds even further, as the proposed amendment would authorize, would severely damage existing efforts to educate the handicapped and to provide education for the world of work.

The proposed substitute would create a new Special Projects Act—a title borrowed from the committee bill—with an authorization of $1.7 billion for fiscal year 1975, rising to $2 billion for fiscal year 1978. The funds under this act would be distributed according to school age population, with no factor reflecting the ability of the State to spend money for education. We have seen no tables reflecting how these funds would be distributed, although I imagine that large States would gain money at the expense of small States like my own.

Funds under the act could be used for a long list of purposes, including those in the committee's proposed third consolidation, and additional categorical programs such as dropout prevention, bilingual education, reading improvement, Indian education, and education of the handicapped. However, the amendment does not require that any funds be devoted to these purposes. A State would be free to spend these funds on anything it pleased, without regard to the merits of these national priority areas.

The programs included in the amendment's list represent areas that the Congress felt are worthy of national attention and deserving of Federal funds. They are areas where the Congress felt that insufficient attention was being devoted at the State and local level and problems affecting regions or the entire country which one State alone cannot cope with. To consolidate these programs into a single mass and turn the money over without any string attached, as the amendment proposes, would seriously jeopardize many existing successful programs.

For example, bilingual education is of significant importance to a number of States with large bilingual populations. The committee bill vastly expands and improves the existing program of bilingual education, to make it more responsive to those needs. Yet the proposed substitute would merge special funds for bilingual education with other program funds, and would distribute the money on the basis of general school population, not on the basis of where the bilingual children are located. These children, less politically powerful than others, could suffer great educational loss if the separate bilingual education program is not maintained.

The argument holds true with the other programs the amendment would repeal. The reading improvement program, title VII of the committee bill, was a response to appalling statistics concerning the percentage of our Nation's population who are functionally illiterate. The bilingual vocational training program recognizes that vocational education cannot be effective unless it is understood. The special education of the handicapped programs were each a specific response to a problem which was otherwise not being dealt with. The Emergency School Aid Act recognizes that desegregation and the elimination and prevention of racial isolation can be expensive for a school district to achieve, and that there is a Federal interest in assisting such a district in meeting these goals.

Each of these programs is in existence in response to a specific need. They must not be repealed.

In essence, the proposed substitute is designed to get the Federal Government out of the business of making any educational policy or of responding to any educational needs, even if they are too big for a single State to handle. This is recognized in the substitute, which provides that reductions in salaries and expenses for the education division shall be distributed among the States.

I, for one, feel that we in the Congress have the responsibility to retain the Federal interest in education, rather than abandoning it to others. As I have noted, some problems are too much for one State or one school district to deal with; we can do so from the Federal level, but only if we have programs to do so. The committee bill retains and strengthens those programs; the proposed substitute wipes them out.

This amendment represents a tremendous step backward in Federal policy of aid to education. I would strongly urge my colleagues to oppose it.

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. PELL. I yield.

Mr. DOMENICI. Do I understand that the manager of the bill is saying that in the hearings on this bill there was no suggestion on the part of national education leaders that we do away with substantial numbers of categories of grants and that there be a move in the direction of either pooling them or some aspect of revenue sharing, as being the desire of those educating our young people in this country?

Mr. PELL. There was a real desire to get away from red tape. For that reason, in the bill before us, over which we labored long and hard, we have three areas of consolidation. One is that the States could group together the various State formula grant programs. There is complete consolidation of new funds for this consolidated program. There is also a consolidation of discretionary project grant programs.

And there is a third consolidation. This we did in response to the desire to get away from redtape.

Mr. DOMENICI. I do not ask questions because I favor the specific substitute bill, but I would share with the manager of the bill these observations. I have traveled recently in my State and I think I can honestly say to the Senator that I have visited with every superintendent except one, and the unanimous complaint was that we have too many categorical grant programs—whether they were using the term revenue sharing loosely, or as it is now being developed, I do not know. But there was genuine praise for the concept and for the idea that the only way to rid redtape was to have fewer precise, specific programs rather than more, to have more flexibility at the local level rather than less. No one said he did not believe we needed policies, guidelines, and national goals, or that we should be able to take the $7 billion in this bill and turn it over to them with no objectives or audits.

But I can vividly remember one school board telling me that they had six different sets of books for eight programs and none of the bookkeeping was required to be the same. In fact, the Federal guidelines required that each of the six sets of books be kept differently, and they were audited not one time but six different times by six different auditors, none of whom knew that previous auditors within the auditing agency had been there.

I wish to ask the Senator from Rhode Island if we are making progress away from that in this bill or are we merely saying we are going to look at it in the next year. I would even accept the latter if that is what we intend to do. But it happens that some progress must be made in this direction. What we have done here in this bill is to move in this direction.

Mr. PELL. As I said earlier we have an administrative consolidation where various programs can be applied for in one unified application. They do not have to have all these different forms and bookkeeping procedures. In addition, we have a consolidation that says money over and above any funds for textbooks, library resources, State educational agencies, equipment, and qualifying teachers would be completely consolidated. Finally, we have what is a discretionary

fund, the Special Projects Act which has consolidated programs dealing with health, nutrition, consumers' education, and education development. All these are now discretionary.

We have not gone as far as the administration would like, but we took a long step in that direction.

Mr. DOMENICI. The Senator would agree, would he not, that of all the programs we have, the one which really most complements, and the one they are most reluctant to lose, is title 874 funding.

Mr. PELL. That is correct. That is within the administration bill, but that is correct.

Mr. DOMENICI. It is not true that is not really a categorical grant? It receives the dollars and uses them along with all other dollars, presumably to supplement shortages of funds created by a certain kind of student.

Mr. PELL. That is correct. The problem that worried us in committee is the fact that these programs were set up with Federal tax dollars. We have a responsibility to raise these funds, so therefore do we not have an obligation to see how they are spent, whether on nutrition, special reading help, consumer education, whatever it may be? We believe we have an obligation to make sure the money is spent that way. Otherwise, I think we would be derelict in our responsibility. But this is a basic difference in view that I know we both share.

Mr. DOMENICI. I thank the distinguished Senator.

Mr. BUCKLEY. Mr. President, I yield such time as the Senator from Nebraska cares to use.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. CURTIS. I thank my distinguished colleague.

Mr. President, I am delighted to join with the very distinguished Senator from New York (Mr. BUCKLEY) and with the distinguished Senator from Idaho (Mr. MCCLURE) in presenting this alternative program.

I am thoroughly convinced that the more control over education that can be vested in the local community, to be exercised by the parents and other leading citizens, civic-minded persons in a community, the more it will result in the best education. If the parents of the children are not in a position to make wise choices and make good judgments with respect to education, who is to make such choices and judgments? Who has a motivation for the very best of schools that is greater than the motivation of parents?

Mr. President, Federal aid to education started out in a smaller way than we have today. We have added this program, we have added that program, and today we find that the Senate of the United States is sitting as a board of education for the whole United States of America.

We are more than that. We are making decisions that school administrators ordinarily would be making. We are making decisions that committees on curriculum should be making. We are, in fact, to a large degree, running the schools from Washington.

The Congress of the United States is not in a position to do that. We are not qualified. Even those who serve on the committee and give much dedicated time to writing the educational bills I am sure are not able to acquaint themselves with local conditions, local needs, local desires of parents, or observe the progress of the programs that we inaugurated, other than just a little sampling here and there.

Mr. President, education should never be centralized in any country. In pre-World War II Germany, the central government had the final authority in matters of education. The Hitler government rewrote the pages of history. If there was a page in there they did not like, they tore it out and wrote something to fit the desires and objectives of a dictator government.

Mr. President, I submit that if that country had had local control of education, where the local people within a school district, the parents, the other dedicated civic leaders, would have had the final authority, if the autonomy had been vested in them to run the schools, there would not have been very much chance of a national leader arising and using the educational system for an unworthy purpose such as was done in Germany.

We will have better education in the United States if in our localities the parents, the teachers, the school administrators, the boards of education are free to make the necessary decisions.

They will be creative. They will be inventive. They will make the dollars go farther. And here and there some of them will come up with some unusual ideas for progress and advancement, and other people will learn about it and it will be applied in other communities.

As long as we move toward central control of education in Washington, we move in the direction of putting all our eggs in one basket. We are putting our trust in an unnamed, faceless bureaucracy that administers education, comes before the committees and tells us what is good in education and what is bad, and then that same bureaucracy goes out into our States. With one hand they offer money; with the other hand they take the authority away from the local people.

I do not think that is going to be changed this year, although I am going to support this amendment and will vote for it, but I think it must be changed, not to retard education, but to advance education.

Who on Earth can you think of, Mr. President, who is more interested in having a child receive a good education, in having a child have the right kind of teachers, in having a child instructed in the things he ought to be instructed in, than parents? Yet we not only take away authority from parents; we take it away from our State and all of our local officials.

Mr. President, I did not support general revenue sharing. I could not buy the idea of just sending checks out to the States and the subdivisions when we had to do it with borrowed money. I think it was a mistake.

I think we took away from the States and localities more with Government-created inflation than we ever gave them in revenue sharing. But I do believe in the principle of special revenue sharing—in other words, if we say to the States, "If you take over the job of running the schools, we will, from the Federal Treasury, give you the same amount of money that you would get if it was controlled from Washington." That is my idea of special revenue sharing. I think of all the places where it would have a direct application and would be workable and would be in the interest of the country, it is in the field of education.

Mr. President, one of the obstacles that stands in the way of such a reform which I am convinced would lead to better education is the vested interest of people in the specific Federal programs. If there are administrators, instructors, and others that are getting Federal help to run a program, not asked for by parents necessarily, but arranged for in Washington and sent down here, they hate to give it up.

They say, "Well, how do we know the legislature will set forth a plan that will enable us to keep on doing these things?" Or if the legislature acts in a way that is not disappointing to them, they say, "Well, how do we know that the local school authorities will let us carry it on in this way?"

Mr. President, why do we run the schools? For all the administrators, teachers, and employees? Or is it for the pupils? Why do we have schools? Is it a job-producing activity?

I do not want anything I have said to reflect upon a good teacher or a good administrator, or to impugn their motives. I do say that people who are sharing in this Federal program might have an objective view on the question, Should we decentralize the control of education and give it back to the parents? Why are they concerned? If the Government is operating a really good program, why can they not sell it to the parents?

Mr. President, I have great faith in the people of the United States. I have great faith in the local leadership in our communities. I have great confidence in the educational leadership in our various communities. When they decide they want something, they go out and get it.

Not so many years ago, many of the high schools in my State did not have a high school band. Not so many years ago they did not have a first-class athletic system. But the local people decided, "We are going to have a band." Now there are so many bands in the State that it is not possible to get them all in one parade. But it is a wonderful thing. I am delighted.

I cite this for the fact that our people are intelligent. They know their children. They want their children to have a good education. They know their children. When they decide they want to have a band for the participation of their youngsters, or for boosting the community and having general entertainment, they get it.

Many of them decided they ought to have a better athletic program or physical education program. They carried out their plan. So there is no limit to what they can do.

There is not a school district in the

land which, when it decides it wants to do something, cannot do it. They can improve reading, if they want to. If they want to improve mathematics, they can do it. If they want a band, they can get it. I am glad. We are downgrading the leadership, intelligence, genius, and the capacity of our home communities when we adopt the view that a type of program and how it should be operated must be structured in Washington.

According to a simple rule of mathematics, everybody is wrong once in a while. If there is central control of education, and it goes off on a mistaken course, the whole country is carried on the mistaken course. If there is local control of education, we can rest assured that the vast majority of the communities will not only be on the proper course; they will be on a higher, better course than we could ever think of here in Washington.

*I think that* perhaps the Postal Service operated very well in the first few years it was in existence. I do not want to comment on how it operates now. If our endeavors to handle the details of education follow the same pattern as the success of a big, sprawling, bureaucratic government to deliver the mail, heaven help the children of the United States. As for myself, I prefer to put my trust in the people, in the fine stalwart citizens and civic leaders and the concerned parents of the land as to the details of our educational approach.

Mr. President, in 1965, amid its Great Society passion, Congress passed a well-intentioned piece of legislation entitled, "The Elementary and Secondary Education Act." Now we find ourselves, in 1974, attempting to "improve" it; a position I predict we will find ourselves in numerous times in the future unless this Congress faces up to the fact that Federal money resulting in more Federal intervention has never been, is not now, nor ever will be the answer to any attempts at bettering the lives of all Americans.

I believe that the 1972 election was a clear signal to the Congress that the American people want less—not more—Federal interference in their lives. The present structure of the Elementary and Secondary Education Act does just the opposite and the substitute amendment for revenue sharing would correct this. The fundamental question that each Senator must ask himself when he votes on this amendment is, "Who is better qualified to determine the best possible education for our children? The Federal Government, or State and local agencies?"

A brief glance at most Federal programs gives clear evidence and provides the answer. State and local people should be making the decisions affecting education—not Washington bureaucrats.

Mr. President, if there is anything our Nation's educational system does not need today, it is more bureaucratic redtape and increased unnecessary Federal complications in obtaining funds. Just as the Supreme Court was out of step with the Nation when it decided where children would attend school, Congress is today still out of step with the Nation when it tries to decide what and how children are to learn. The adoption of this revenue sharing amendment would be a signal that the Congress is moving toward being back in stride with the American people.

Many of the programs funded by the Elementary and Secondary Education Act moneys are in the nature of social experimentation using children without parental knowledge or consent.

Mr. President, I strongly suggest Congress does not have any mandate from the American people to use their tax moneys in such an experimental way.

Mr. President, what would the substitute amendment do? Quite simply it would:

One. Give State authorities needed discretion to use funds so school districts can be better able to plan and prepare themselves to meet their particular educational needs.

Second. Offer greater flexibility in making educational programs responsive to the needs of students—not the wishes of Washington bureaucrats or the hopes of some social experimentors.

Third. It would make funding less cumbersome in implementation than the present maze of categorical grants.

Fourth. It would cut redtape and paperwork and the tremendous and unnecessary overhead needed to get and then to justify each district's money.

Fifth. It would insure equitable distribution of Federal funds.

Sixth. It allows educators to return to their primary responsibility and concentrate on educating rather than searching for Federal aid.

I want to know how many of the personnel of our schools use a great portion of their time in searching for Federal aid, applying for it, receiving instructions about it, keeping the books, and making reports.

As it is now, Mr. President, ESEA is a game of "grantsmanship in education." The substitute amendment would eliminate needless duplication and overlapping. It will reach the schools which need aid rather than those who are knowledgeable about the available forms of Federal aid and where to find it. It avoids the frequent delay and confusion now occurring because of the proliferation of grants. Local money will not be drawn for unneeded purposes only because the Federal Government considers them important. Advance funding will allow time for better planning and structuring of programs. Schools and personnel can be held more accountable for their actions. And, finally, some pressure on property and sales taxes could be relieved.

Mr. President, there are numerous other reasons to support this amendment and thereby provide assistance to school districts instead of condemning them to increasing Federal interference and control. I urge all my colleagues to support the Buckley-Curtis-McClure substitute and thereby support better quality education and better strengthen the American educational system.

Mr. President, I yield the floor.

Mr. PELL. Mr. President, I suggest the absence of a quorum, the time to be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, the Senator from Rhode Island (Mr. PELL) has analyzed the details of the 6 months of labor—indeed, preceded by more than 6 months before that—which has gone into the fashioning of this particular bill, which was reported unanimously by rollcall vote out of the Committee on Labor and Public Welfare.

Mr. President, the concept of the bill was to do the best by educational opportunity, without overlapping into the special revenue sharing field and simply consolidating everything and leaving it to the States.

There are three points that I would like to leave with the Senate in this regard, which are critical.

First, even the proponents of the substitute recognize what I have just said with respect to providing essentially in respect of authorizations for appropriations without direct reference to the things you are appropriating for, globally. In a situation like this, at first impression in terms of what amounts are required, it seems to me, is more risky than any Member who feels himself responsible for Federal aid in many States as a major point would wish to undertake.

Second, Mr. President, we have written consolidation into S. 1539, and we are going to try out the consolidation concept. Again, in such a sensitive matter as this, we should not throw the whole thing to the States in terms of distribution of money until we see how it can work. We have enough here so that we can see how it can work over a test period of years.

Finally, Mr. President, we have tried a remarkably good experiment in terms of initiative and taking experimental programs and letting them be tried out for 5 years, in order to see whether they ripen and mature.

The PRESIDING OFFICER. The Senator will suspend to receive a message from the President of the United States.

## MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had agreed to the concurrent resolution (S. Con. Res. 85) to proclaim October 14, 1974, a Day of National Observance for the 200th anniversary of the First Continental Congress, and for other purposes.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7824) to establish a Legal Services Corporation, and for other purposes.

## EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

Mr. JAVITS. And whether they deserve to be made permanent programs. Again I point out that the authors of this amendment, in one of the few changes they have made from simply the generic introduction of the administration's bill, have had to adopt a whole list of these categories in order to recognize the desirability of dealing with them on the basis which I have described; but, again, they have simply thrown them into the pot as something else to which to devote money—the very contrary of the highly specialized approach which we have made in order to give them their due as experimental programs, but without any all-encompassing responsibility as far as the total pot of money is concerned.

Finally, Mr. President, the 30 percent transfer proposition, which is put forward as an advantage to this bill, is, in respect to those who could suffer from the 30 percent transfer provisions, a disadvantage. Look, for example, at the handicapped, who could lose 30 percent, or vocational education, in which we have a burning interest, which could lose 30 percent.

For all those reasons, I hope the substitute will be rejected and the Senate will not simply throw onto the scrap heap the years of work which, in the educational aspects, resulted in the unanimous report of the Committee on Labor and Public Welfare.

Mr. McCLURE. Mr. President, will the Senator from New York yield?

Mr. BUCKLEY. I yield the Senator from Idaho such time as he may require.

Mr. McCLURE. Mr. President, I think it would be a mistake for us to let the record stand without some answers to some of the comments that have been made by the managers of the bill with respect to the possibility that some of the special programs could lose 30 percent of their money.

I think what is said by that comment is that those Senators have absolutely no faith at all in the wisdom or the judgment of the State legislatures or the local school boards, because, as a matter of fact, it can be said with equal truth that aid to the handicapped, to special education for the handicapped, or vocational education might well receive 30 percent more under this proposal than they do under the committee bill, and that therefore if you are in favor of vocational education or special education for the handicapped, you should vote for our substitute rather than the committee bill.

It can be argued with equal logic that if indeed you are opposed to the substitute, then you are as a matter of fact opposed to special education projects and you are opposed to vocational education and special education for the handicapped.

I think that either statement is equally false. I think it should be pointed out that the substitute simply gives the States and the local school boards the option to determine whether or not they want that money to go into those programs or into some other educational program of higher priority in their judgment—not in the judgment of those of us who sit here and not in the judgment of the bureaucrats downtown, but in the judgment of the people who know what the needs of their districts are, with the infinite variety of demands for educational services in all of the school districts in all of the 50 States.

It was suggested by the manager of the bill in his opening remarks that we should not adopt this substitute without giving the committee a chance to examine the facts.

How much chance do they need? How many years does it take? How many comments from how many educators are required before the committee has had a chance to examine the facts?

It seems to me they have had an adequate opportunity to examine facts. They have had years to examine facts. It is simply because they have had those years of examining facts and structuring rigid programs that educators across this land are asking us to make a change.

It does not have to be the way it is. It can be better. I think, just for instance, two or three examples of what can be done and what needs to be done under education can be brought by simply asking the opinions of the various people across this country.

What does the Governor of South Dakota say? He believes that revenue sharing would improve education for the children in their State.

What does the Governor of Nevada say? The same thing.

Why did I pick them? Because they happen to be of the other party, and I assume of a different philosophy from my own in regard to government generally. But, on this, we agree.

What does the Oregon Board of Education say? It believes that the present system is not working to bring the kind of education that the dollars should buy for the children of the State of Oregon, and it would like to see revenue sharing adopted.

These are just some examples. The examples could be multiplied with a great long list of people who have said that the present system can be improved.

In closing, Mr. President, I should like to comment only on the final sentence on the sheet of paper distributed to Senators' desks by the manager of the bill, "Funds could be used for any purpose in the discretion of the State."

I think that needs to be modified to say, ". . . for any of the educational purposes provided in this substitute."

I think that is an essential difference that should not be omitted from the RECORD at this point.

Mr. BUCKLEY. Mr. President, will the Senator from Idaho yield?

Mr. McCLURE. I yield.

Mr. BUCKLEY. That needs to be further modified, I think, by saying, "Within limits, there can be a variation of the application of funds because of the 30-percent limitation on the discretionary powers within the broad categories."

Mr. McCLURE. That is correct. There is also one further matter which needs to be stated for the RECORD. There is a provision in the substitute that provides no State shall lose money as a result of the passage of this bill. So when we talk about the possibility that some States who now are favored by a categorical aid program would lose money, that simply is not true. There is a floor, and that floor provides that they get as much money as they are now getting. They might not get as much money in a specific category as they otherwise would get.

Mr. BUCKLEY. I should like to point out that actually the States would be receiving more money, because the present bill as reported by the committee is talking about funds to support programs. A tremendous proportion of those funds are now absorbed in Washington. Now the entire amount would be distributed directly to the States.

Mr. McCLURE. Maybe it might be stated better, that the 50 States would benefit and the bureaucrats in the District of Columbia would be disadvantaged.

Mr. BUCKLEY. That is a correct statement.

Mr. McCLURE. Maybe that was inherent in what a great many people of this country applauded in the statements made by Governor Wallace in past years, that if he were elected, when he came to Washington he would throw all the bureaucrats into the Potomac, their attaché cases with them. The people cheered.

That is the kind of change we are asking to be made here. It is a change that I think is long overdue.

Mr. BUCKLEY. Mr. President, I yield myself such time as I may need, but I shall not be long.

I want to thank my colleague from Idaho and my colleague from Nebraska who are participating with me in bringing the need for educational change and real reform before the Senate.

To my mind, the most telling condemnation of the system that we have allowed to grow in the few years since the Federal Government first became involved in elementary and secondary education is the article in the New York Times to which I referred earlier this afternoon, an article written by Representative EDITH GREEN, who is recognized as one of the foremost authorities on education in Congress. Representative GREEN helped to pioneer Federal aid and she has come to the reluctant and sad conclusion, on the basis of her own expert observations of the impact and result of Federal programs, that they have been failures, that they have impeded rather than enhanced the cause of education.

I believe that we must take her testimony to heart. With all due respect to my friend from Rhode Island and my senior colleague from New York, I have heard nothing to rebut the growing evidence of the extent of the failure that has resulted from Federal intervention.

I believe that one simple fact states it all: When the States and localities had the entire responsibility for primary and secondary education in this country, we were achieving high levels of education in our young.

I have recited the figures showing a steady decline in literacy. We have witnessed the phenomenon today of people walking around with high school degrees who cannot functionally read.

If the Federal Government had some peculiar insight, some peculiar capacity to achieve educational ends that somehow is denied to citizens in New York

or citizens in Rhode Island, then where is the evidence that that is so?

I should like to reemphasize what the Senator from Idaho has stated, that what we are proposing is that funds be distributed directly to the States for use in specific categories of educational help and that encompass the programs we are consolidating. This does not allow people to go wandering off all across the educational landscape but recognizes something that both experience and common sense understand and recognize, namely, that local and State officials have competence, and that we do not mean to live in a cocoon on the banks of the Potomac, nor draw special insights from the air, or whatever it is we say in this place. We have living flesh and blood Americans who are more directly concerned and more directly knowledgeable about what is required to educate our children than the people financed by the programs in Washington, D.C.

I believe that this is a program whose time came some years ago, and it now is reasserted in the substitute amendment we are offering. It is the kind of approach the American people want. It is the kind of approach the American people voted for in November 1972. It is the kind of approach reflected in the polls and study after poll after study. It is the kind of approach reflected in the understanding that the American people have now achieved; namely, that the Federal Government is not capable of delivering vast and complicated services, so that what we must do is to reestablish our confidence in the discretion, sensitivity, and responsibility of local government.

I believe that if we will adopt this measure, we will have taken a long step forward towards achieving true reform in this country, towards achieving economy, and towards restoring good sense with regard to the education of our children.

Mr. President, I am willing to turn back the time for our side if the proponents of the bill are willing to do likewise.

Mr. PELL. I appreciate the willingness of the Senator from New York to yield back his time, but prior to doing so, I wish to say that I thought the junior Senator from Idaho was correct in that we should have used the words "educational purposes" in that last line. We thought that was clear. That is obviously what we meant.

So far as the question of why we arrived at this conclusion and who shared it with us is concerned, we have had a formidable schedule of hearings, eight volumes of which I hold in one hand here. But so far as the predominance of the testimony of witness at the hearings is concerned, the witnesses opposed, the basic bill the administration offered. A few said there were some exceptions and some portions of it that they liked, but in general the predominant testimony of the witnesses seemed to indicate they wanted some way to get rid of the red-tape, and as the Senator from Idaho mentioned earlier, some way to try to have some consolidation, but not to throw the baby out with the water.

It is for that reason we arrived at what we thought was a pretty good compromise, after a great many days of pretty hard work on the part of everyone on the committee.

I would thereby hope that my colleagues will support our measure.

Mr. President, I am prepared to yield back the remainder of my time at this point.

Mr. BUCKLEY. Mr. President, I yield back the remainder of my time.

I ask for the yeas and nays.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. McCLURE. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from New York. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SPARKMAN (when his name was called). On this vote I have a pair with the Senator from Utah (Mr. Moss). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." I therefore withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Missouri (Mr. EAGLETON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Utah (Mr. Moss), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

I further announce that, if present and voting, the Senator from Missouri (Mr. SYMINGTON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), the Senator from Hawaii (Mr. FONG), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I also announce that the Senator from Colorado (Mr. DOMINICK) is absent on official business.

I further announce that, if present and voting, the Senator from Colorado (Mr. DOMINICK) would vote "nay."

The result was announced—yeas 21, nays 64, as follows:

[No. 209 Leg.]

YEAS—21

| | | |
|---|---|---|
| Baker | Curtis | Long |
| Bartlett | Fannin | McClure |
| Brock | Goldwater | Roth |
| Buckley | Griffin | Scott, |
| Byrd, | Gurney | William L. |
| Harry F., Jr. | Hansen | Thurmond |
| Cook | Helms | Tower |
| Cotton | Hruska | |

NAYS—64

| | | |
|---|---|---|
| Abourezk | Hatfield | Nunn |
| Aiken | Hathaway | Pastore |
| Allen | Huddleston | Pearson |
| Bayh | Hughes | Pell |
| Beall | Humphrey | Percy |
| Bible | Jackson | Proxmire |
| Biden | Javits | Randolph |
| Brooke | Johnston | Ribicoff |
| Burdick | Kennedy | Schweiker |
| Byrd, Robert C. | Magnuson | Scott, Hugh |
| Cannon | Mansfield | Stafford |
| Case | Mathias | Stennis |
| Chiles | McClellan | Stevens |
| Clark | McGee | Stevenson |
| Cranston | McGovern | Taft |
| Dole | McIntyre | Talmadge |
| Domenici | Metcalf | Tunney |
| Eastland | Metzenbaum | Weicker |
| Ervin | Mondale | Williams |
| Hart | Montoya | Young |
| Hartke | Muskie | |
| Haskell | Nelson | |

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Sparkman, for

NOT VOTING—14

| | | |
|---|---|---|
| Bellmon | Eagleton | Inouye |
| Bennett | Fong | Moss |
| Bentsen | Fulbright | Packwood |
| Church | Gravel | Symington |
| Dominick | Hollings | |

So Mr. BUCKLEY's amendment was rejected.

The PRESIDING OFFICER (Mr. DOMENICI). The bill is open to further amendment.

Mr. CRANSTON. Mr. President——

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I yield to the Senator from South Dakota.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MESSAGE FROM THE PRESIDENT

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

## EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer (Mr. McCLURE) laid before the Senate a message from the President of the United States withdrawing the nomination of Col. Dana G. Meade, U.S. Army, for appointment to the position of Permanent Professor at the U.S. Military Academy, sent to the Senate on May 13, 1974, and nominating Col. Dana G. Mead, U.S. Army, for appointment to the position of Permanent Professor at the U.S. Military Academy, which nominating message was referred to the Committee on Armed Services.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, May 16, 1974, he presented to the President of the United States the enrolled bill (S. 3062), an act entitled "Disaster Relief Act Amendments of 1974."

EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I am directed by the distinguished majority leader to make the following unanimous consent request. It has been cleared with the distinguished assistant Republican leader and Mr. JAVITS, Mr. PELL, Mr. HART, Mr. KENNEDY, Mr. HUMPHREY, Mr. ERVIN, and other Senators.

Under the agreement that was entered into last week, the final vote on the education bill would occur before the close of business next Tuesday.

On the condition that the House bill would not be called up and offered as a substitute on Monday or at any other time—as was permitted in the previous agreement which allowed Mr. GRIFFIN to call up the House substitute on Monday—on condition that there would not be any more so-called busing amendments offered—and that was in accord with the previous agreement, which provided that they would be disposed of today—I ask unanimous consent that the following order be substituted for the previous agreement:

I ask unanimous consent that a final vote on passage of the education bill occur at no later than 6 p.m. on Monday next.

Mr. JAVITS. Mr. President, before the Chair rules, it is necessary also to add to that the fact that, assuming the education bill is passed at that hour or before, immediately thereafter the last paragraph of the previous unanimous-consent agreement would be operative; that is, that a vote occur immediately following on H.R. 69, with the text of the Senate bill substituted for the text of the House bill.

Mr. ROBERT C. BYRD. Yes, I include that in my proposed agreement.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN and several Senators reserved the right to object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. GRIFFIN. Mr. President, reserving the right to object, did I hear the majority whip say the vote would be at 6 o'clock or 6:30?

Mr. ROBERT C. BYRD. At no later than 6, and we can make it precisely 6 if the Senator prefers. As a matter of fact, I think I would have to do that to get the agreement.

Mr. GRIFFIN. Earlier the hour of 6:30 was mentioned, but I take it that now would not be the agreement.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, as far as I am concerned, I do not want my convenience to govern the Senate, but if it is not as early as 6, it will not do me any good, but if it is 6, it is all right. Would the Senator reserve the agreement so it would be at 6?

Mr. ROBERT C. BYRD. Yes, I do.

Mr. MATHIAS. Mr. President, reserving the right to object, under the previous order I had 2 hours reserved for an amendment which I proposed to offer, with the cosponsorship of other Members of the Senate, on the subject of handicapped children. I would like to insure that we would have ample time to debate it. Whether it would take the full 2 hours or not, I am not sure, but I wonder if the distinguished majority whip would be willing to modify the request so that that amendment might be in order at the beginning of the day on Monday and that it might be in order for me at that time to call up that amendment or any substitute therefor which I might propose?

Mr. ROBERT C. BYRD. I would add to my unanimous-consent request that immediately following the conclusion of routine morning business on Monday next the distinguished Senator from Maryland (Mr. MATHIAS) be recognized to call up his amendment.

Mr. JAVITS. Mr. President, reserving that question, I was going to raise another problem for all of us, and that is that with so many hours on Monday and 1 hour for debate on every amendment, and now 2 hours on the Mathias amendment, and the possibility of a half hour on amendments to amendments, again we run into the very serious matter of amendments being shut down.

As a matter of fact, I was going to ask unanimous consent on an amendment which had already been debated in connection with the McClellan amendment the other day that was going to be proposed on behalf of Senators KENNEDY, BROOKE, HART, myself, and other Senators, to have 1 hour, because it is an important matter to big cities. But this is a real problem for us, and I think it would be a good idea, if I may respectfully suggest to the leadership, to get some concept of what amendments can be offered tonight. I think this is an excellent time to try to do all we can and, since I understand the leadership might decide to go over until Monday, see what we have to look forward to on Monday before we latch it in, so we may best understand the total situation.

Mr. ROBERT C. BYRD. Mr. President, may I say, before we proceed further, the Senate is already coming in at 10 o'clock on Monday. That can be moved up to 9 o'clock, and I so request.

I would want to include in my unanimous-consent request, in accordance with promises that have been given, that no votes would occur on any amendment Monday until the hour of 3 o'clock, and at 3 o'clock, votes would occur on all amendments that had accumulated up to that time, and a final vote would occur at 6 p.m.

Mr. JAVITS. Mr. President, I would like to have added that 1 hour be allowed for the amendment which we would offer to part (c)(1), to follow the agreed-upon time on the Mathias amendment.

Mr. GRIFFIN. Mr. President, reserving the right to object, in view of the fact that we are now moving to be sure that particular Senators be recognized for their amendments and that that right is protected, Senator SCOTT of Virginia and Senator HELMS of North Carolina want to be protected on amendments. Senator SCOTT of Virginia wants to be sure he is going to be recognized and have 1 hour on his amendment. Senator HELMS is willing to agree to a limitation of 15 minutes on each of three amendments, provided he can be recognized. I would have to now ask that they be included in the unanimous consent request.

Mr. ROBERT C. BYRD. Very well. I might suggest that immediately following the disposition of the running of time by Mr. MATHIAS, the amendment referred to by the Senator from New York (Mr. JAVITS), inasmuch as that was brought up first, would be called up; and upon the disposition of that amendment, the amendment by Mr. SCOTT of Virginia be brought up with a time limitation of 1 hour thereon.

Mr. JAVITS. Mr. President, we will take a half-hour on that amendment on our side.

Mr. ROBERT C. BYRD. Very well. The hour will be equally divided. The other amendment on which there was to be a 30-minute limitation, by Mr. HELMS——

Mr. GRIFFIN. Mr. President, the Senator from North Carolina has three amendments. He will be willing to accept a limitation of 15 minutes on each.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, further, that there be a limitation of 15 minutes on each of the three Helms amendments.

Mr. JAVITS. Mr. President, may we have time in opposition to those amendments?

Mr. GRIFFIN. Mr. President, I propose that there be a half-hour limitation, 15 minutes on each side.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent further that there be 30 minutes on each of the Helms amendments, to be equally divided; and that sometime after 3:30 p.m. on Monday the Senator from Texas (Mr. BENTSEN) be recognized to call up an amendment on which there be a limitation of 20 minutes, the time to be equally divided.

Mr. JAVITS. Mr. President, can the Senator enlighten us—since many Senators are in the Chamber—as to how many amendments are contemplated?

Mr. ROBERT C. BYRD. Mr. President, before we get to that question, may I finish my request?

Mr. JAVITS. Yes. I was just going to ask whether we could agree on a time limitation or not.

Mr. ROBERT C. BYRD. Yes. However, let us proceed a bit further.

I think that in order to make the unanimous-consent agreement as workable, as possible, there ought to be a time for debate on the bill on Monday, to be under the control of the distinguished majority leader and the distinguished

minority leader, or their designees, of, say——

Mr. JAVITS. One hour.

Mr. ROBERT C. BYRD. Say, 2 hours, and in accordance with the usual form. This would allow the leaders or their designees to allot time from the time for amendments, debatable motions, and appeals, and the time for such amendments, the tabling motions, debatable motions, or appeal be equally divided and limited to 20 minutes.

Mr. JAVITS. Mr. President, may we find out from the Parliamentarian, through a totaling up of all of these hours, whether, if we come in at 9 o'clock on Monday and work until 4, we will use up the time or whether we will have time remaining, because of the 2 hours that must begin to run at 4 o'clock?

Mr. ROBERT C. BYRD. Mr. President, may I complete my request?

The PRESIDING OFFICER. Yes.

Mr. DOMENICI. Mr. President, before the Senator from West Virginia does so, I may possibly have an amendment on which I would need not more than 15 minutes.

Mr. MANSFIELD. Mr. President, if the Senator will yield, I wonder whether some of the amendments we are talking about considering and voting on on Monday could not be offered tonight. It is fairly early yet. It would be most helpful if Senators would call up and dispose of their amendments tonight and not be offering them on Monday. It would be a service, I think, to the institution.

Mr. ROBERT C. BYRD. Yes. I did not say anything about tomorrow because I wanted the majority leader to make the announcement concerning tomorrow. That might help Senators to agree that we should remain in session until later tonight.

Mr. ERVIN. Mr. President, reserving the right to object—

Mr. MANSFIELD. Mr. President, if the Senator will yield further, I would hope that the Senate would be prepared to stay in session late tonight to get as many of these amendments out of the way as possible. Then we could come in at 8 o'clock on Monday, or 9 o'clock at the latest—perhaps 8 o'clock on Monday. However, I am disturbed by the number of amendments that are piling up here, to be offered on Monday, when they could just as well be offered and disposed of this afternoon.

I do not want to come in tomorrow. However, I would like to get as many of the amendments out of the way as possible, so that the Senate can go over until Monday. But if we get too many amendments that are to be offered on Monday, we will have to come in tomorrow.

The PRESIDING OFFICER (Mr. COOK). The Chair wishes to inquire of the Senator from West Virginia relative to the amendment of the Senator from Virginia (Mr. WILLIAM L. SCOTT). Is that a total of 15 minutes, or is it 15 minutes to a side?

Mr. GRIFFIN. Mr. President, I would say 1 hour on the amendment of the Senator from Virginia (Mr. WILLIAM L. SCOTT), 30 minutes to a side; and on the three Helms amendments, a total of 30 minutes, 15 minutes to a side.

I must report that the Senator from Connecticut (Mr. WEICKER) has called in and wants 1½ hours on an amendment, or else we cannot have the agreement.

Mr. BROOKE. Mr. President, reserving the right to object, I intend to offer two amendments. One would delete the next-closest-school section from the bill. The other would delete the attorneys' fees section from the bill. Is it my understanding that the proposed unanimous-consent agreement would foreclose my right to offer those two amendments?

Mr. ROBERT C. BYRD. Mr. President, I am sorry, but I was distracted. I did not hear the able Senator.

Mr. BROOKE. Mr. President, I said that I intend to offer two amendments on Monday. One would delete the next-closest-school section of the bill. The other would delete the attorneys' fees section of the bill. Do I understand that the unanimous-consent agreement would foreclose my right to call up those two amendments?

Mr. ROBERT C. BYRD. Mr. President, this agreement would not foreclose the Senator's right to call up any amendment that was not considered to be a civil rights amendment, or a so-called civil rights amendment.

Mr. BROOKE. That would certainly be considered to be a civil rights amendment. That is the heart of the bill. I think it is very important. I certainly intend to offer the amendment. However, I would not enter into any unanimous-consent agreement that would foreclose my right to do so.

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

Mr. BROOKE. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, the present agreement relates to busing amendments, the time for which ended at 1 p.m. today. Of course, that time has passed. It is up to the Chair to decide. However, that is the present unanimous-consent agreement.

I would say—and it is my own opinion—that I believe that the counsel fees problem could be dealt with generically so that it would not be a busing amendment. However, I do not believe that there is any way to deal with the next-closest-school section of the bill generically, so that would not come under the agreement. However, I do not know how the Chair would rule on that section of the unanimous-consent agreement that busing amendments would end at 1 p.m. today.

Mr. ROBERT C. BYRD. Mr. President, may I say to the distinguished Senator that this agreement, if entered into, would not deprive a Senator of any right he now has under the present agreement—which will continue to operate, of course, if we cannot get a new agreement.

In other words, all so-called busing amendments under the present agreement were to be disposed of by 1 o'clock today.

Mr. GRIFFIN. Mr. President, if the Senator will yield for this observation, it should be clearly understood by the Senator from Massachusetts, however, that under the existing agreement, any further amendments to the busing section of the bill would not be in order. The whole purpose of the previous unanimous-consent agreement that we entered into was that we were going to dispose of that section by 1 o'clock today.

There was a reservation about which we had quite a discussion, under which I would have an opportunity on Monday, with a vote on Tuesday, to offer the House bill as a substitute amendment. I am voluntarily withdrawing that option. I think that we have had enough discussions and votes on the whole subject. I am willing to go on and leave the busing issue in the hope that no one else will raise it again.

Mr. BROOKE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BROOKE. Mr. President, does the unanimous-consent agreement under which we are now operating foreclose my right to offer an amendment to the bill itself?

I understood that it would pertain only to the so-called Gurney amendment to the bill, which was before the Senate earlier today.

Now we have the bill itself. I had the intention of offering amendments to the bill.

Not to the Gurney amendment, but to the bill. Those two amendments had to do with provisions regarding the next closest school and attorneys' fees, matters which are now included in the bill.

May I have a ruling from the Chair as to whether the unanimous-consent agreement we are operating under now forecloses my offering an amendment to the bill such as I have described?

The PRESIDING OFFICER (Mr. COOK). May I say to the Senator from Massachusetts, in reading from the original order propounded to the Senate and agreed upon, it was:

*Ordered further,* That all the so-called "busing" amendments be disposed of by the hour of 1:00 p.m. on Thursday, May 16, 1974, and then the Senate proceed to the consideration of the amendment to be offered by the Senator from Idaho (Mr. McClure), for himself and others, which amendment shall be disposed of before the close of business on that day.

So it would seem to me that all busing amendments to the bill or to any other amendments to be submitted to the bill would be precluded.

Mr. BROOKE. Any other amendment to the bill?

The PRESIDING OFFICER. That is correct, dealing with busing.

Mr. BROOKE. May I propound a further parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. BROOKE. Would an amendment addressed to the question of attorneys' fees be considered by the Chair to be a busing amendment?

Mr. JAVITS. Well, now, Mr. President, could I make a suggestion to the Senator? I really have been in the vitals of this agreement, and I would hope the Senator might phrase the question in terms of a generic amendment to the bill which would deal with counsel fees under any part of the bill, whatever it

may be, whether related to busing or not.

Mr. BROOKE. That was the intent that I had.

The PRESIDING OFFICER. May I say to the Senator from Massachusetts, if the terms of the amendment were broader than its interpretation on the singular issue of busing, then I think the amendment would be appropriated and the amendment could be brought up.

Mr. BROOKE. It was my understanding that I could not amend the Griffin amendment as substituted by the Scott-Mansfield amendment pertaining to attorneys' fees, but that I could amend the bill. At what time will I have the opportunity to offer an amendment to the bill? Can I do it tonight? I can do it at any time prior to this unanimous consent agreement, can I not?

Mr. ROBERT C. BYRD. May I respond to the Senator's question? The Senator, under the present agreement, could offer that amendment tonight on the disposition of the Curtis substitute. Under the present agreement, he could offer it on Monday any time there is a lag in the action on the Griffin substitute, because under the agreement, on Monday the Griffin substitute will be called up immediately after the conclusion of morning business, and amendments offered to it that day, but no votes taken thereon until the next day.

That would not preclude the Senator from offering his amendment on Monday, if there was a lag in the action.

Mr. BROOKE. I understand the Griffin amendment is not going to be called up on Monday.

Mr. ROBERT C. BYRD. Under the present agreement. If we get a new agreement, the Griffin amendment would not be called up.

Mr. BROOKE. Then I would be foreclosed?

Mr. ROBERT C. BYRD. No, the Senator would not be foreclosed if he offered an amendment dealing with attorneys' fees, in accordance with the ruling of the Chair, either today after the Curtis amendment is disposed of or on Monday.

Mr. BROOKE. If it is broad enough.

Mr. ROBERT C. BYRD. If it is broad enough.

Mr. BROOKE. I can call it up today or Monday?

Mr. ROBERT C. BYRD. Yes.

Mr. BROOKE. But I am foreclosed from calling up my amendment having to do with the next closest school section at any time?

Mr. ROBERT C. BYRD. The Senator would be foreclosed either under the present agreement or the new agreement from calling up that amendment.

Mr. GRIFFIN. Mr. President, the Senator should understand that that agreement was reached primarily at the insistence of the Senator from New York, who insisted that if we were going to have busing amendments, they be at a certain time when all Senators could be here.

Mr. BROOKE. If the Senator from Michigan did call up his amendment, which I understand now he will not call up on Monday, is it the ruling of the Chair that I could then offer an amendment to the Senator's amendment?

Mr. GRIFFIN. Yes, amendments to that substitute would be in order if it were before the Senate.

Mr. BROOKE. Even if it is a busing amendment?

Mr. GRIFFIN. Yes, I think that was understood. But no votes until Tuesday.

Mr. JAVITS. If the Senator will yield, if that amendment went down, the amendment of Senator BROOKE would go down with it.

Mr. GRIFFIN. That is right.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. McCLELLAN. Mr. President, reserving the right to object, what is the unanimous-consent request? I just walked in.

The PRESIDING OFFICER. Would the Senator from West Virginia restate his unanimous-consent request?

Mr. McCLELLAN. I am sorry. I have been in conference.

The PRESIDING OFFICER. The Senator has the right to make that inquiry. Would the Senator from West Virginia review his unanimous-consent request?

Mr. McCLELLAN. What is the request?

Mr. ROBERT C. BYRD. Under the request that was propounded, the final vote would occur on the passage of the education bill on Monday at 6 p.m.—rather than on Tuesday before the close of business. Various amendments would be called up later today.

The Senate could run well into the evening of today. As the distinguished majority leader has indicated, there would be no session tomorrow, provided we can work out this agreement, and on Monday the Senate would come in early, perhaps as early as 8 or 9 o'clock, and work throughout the day, with no votes occurring on any amendments until the hour of 3 p.m. on Monday. There would be a time limitation on debatable motions and appeals, with the understanding that no busing amendments could be called up either today or on Monday, and with the further understanding that the House substitute, which had previously been programed, would not be called up.

Mr. McCLELLAN. All I want, still reserving the right to object, if an amendment is offered dealing with the subject matter that was involved in the amendment by the distinguished Senator from Massachusetts that was proposed or to be proposed by him pertaining to part C funds in the bill, then I would want an hour for debate. I do not want to be shortchanged on time for debate or that particular item. Other than that, I would have no objection to the unanimous-consent request.

I might say that the distinguished Senator from New York has spoken to me about this, and I understand he will present to me the amendment which he would propose before its being offered, and at that time I would be willing to undertake to reach some agreement as to time.

Mr. JAVITS. Mr. President, if the Senator will yield, I am not going to propose it alone; it will be proposed by Mr. KENNEDY, Mr. BROOKE, myself, and others; but I had in mind an hour on that amendment. I might tell the Senator right now what it is: It has been redrafted, with two critically important changes, one limiting the amount any State may receive under it to 15 percent—which means, for the information of the Senate, that, if it had been in effect last year, instead of getting $25 million, New York would get $11 million, the same amount as California. The second change is that there would be separate funding, the same way as with the incentive amendment.

Mr. McCLELLAN. If I may ask, what will it do for these rural areas like my counties?

Mr. JAVITS. I am submitting for the record, and I intend to give to Senator McCLELLAN before anyone else saw it, a complete list, which shows that every State but Delaware would participate.

Mr. McCLELLAN. Mr. President, without a chance to see that amendment and evaluate it further, I would say I would want at least 1 hour's time on any such amendment, and if that was agreeable, reserving 1 hour of time on that—and I would have to do that Monday, because I am tied up in this conference tonight, and I cannot do both or all three things at once. I have something else in my hand here now.

Mr. JAVITS. Mr. President, if the Senator will yield, I think we have read his mind. It is Monday, and we have provided a half hour on the side, but I know I can——

Mr. McCLELLAN. An hour on the side.

Mr. JAVITS. I know I can permit myself to yield the Senator an additional half hour on the bill, and take only a half hour for the proponents of the amendment.

Mr. McCLELLAN. With that understanding, that I get 1 hour on that amendment, I am willing to withdraw my objection to the unanimous-consent request.

Mr. BAYH. Mr. President, reserving the right to object, I think you can argue unanimous-consent agreements plus or minus. I have the greatest appreciation for the job that our leaders try to do to move business through the Senate. But I must say that when we have a unanimous-consent agreement that a measure such as this is going to be decided on one day, and Senators make plans in accordance with that agreement, and then the agreement is changed, I do not think that is exactly fair to all of us. It puts us in a very difficult position.

For that reason, I object.

The PRESIDING OFFICER (Mr. BIDEN). Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, may I proceed just for 5 minutes. I recognize the problems created for individual Senators by agreements such as the one we entered into last week under which a final vote would occur on this bill Tuesday next. This situation recurs from time to time. When the Senate enters into an agreement on a very difficult bill,

things work along and we are sometimes able to reach a situation where we can later modify the agreement and save the time of the Senate and proceed on to other matters.

I put out on the hotline in the cloak room earlier this afternoon a notice to all Democratic Senators that if they had any objections to voting final passage at no later than a certain time on Monday, to let their objections be known. The same thing was done on the other side. We heard from Senator HUMPHREY. We heard from Senator ERVIN's office, and we heard from Senator KENNEDY, but from no other office. We were able to work out an agreement satisfactory to the three objections we received and, having alerted Senators in ample time, the leadership felt it should proceed.

Now, I know what the problems are with individual Senators. I have the same problems myself. But the leadership has the additional responsibility—and I say *this most* respectfully, and I am not arguing with the Senator as I recognize his problem—but the leadership has the additional responsibility of trying to move legislation along and where it can do so, to speed it up.

This agreement that we have offered here today would allow the Senate to complete action on the education bill on Monday rather than on Tuesday, and the Senate could then proceed on Tuesday to further consideration of the energy bill. That is the responsibility of the leadership. Any Senator has the right to object to the proposal. The Senator from Indiana is fully within his rights to object to that proposal. I would hope that he would not object to the proposal if I were to present it again so that the Senate could wind up its work on this bill on Monday rather than on Tuesday. Moreover, the Senate would not be in session tomorrow, which would allow Senators to work in their home States, or in their offices, and I would just plead with the Senator that he not object to the request.

Mr. BAYH. Mr. President, I have the greatest compassion for the distinguished Senator from West Virginia but somehow or other I did not get contacted on the hotline, but I did not expect to be necessarily.

May I propose an alternative unanimous-consent request——

Mr. ROBERT C. BYRD. Would the Senator propose it in the way of a suggestion?

Mr. BAYH. Yes. I would suggest that since all of us here are anxious to finish the business of the Senate and get this important piece of legislation passed, let us finish it tomorrow. I repeat, let us finish it tomorrow. If that is our goal, to move this bill, instead of to accommodate certain Senators, let us finish it tomorrow.

Mr. ROBERT C. BYRD. Mr. President, may I say this now, that the leadership tried that. It tried to get an agreement under which action on the bill would be completed tomorrow, but the leadership was unable to get such agreement. So we tried the next best, which was Monday.

Mr. GRIFFIN. Mr. President, I would add there were a number of objections on this side and perhaps there were on that side. There was plenty of agreement about tomorrow. Now apparently we have only one objection to the possibility of doing this on Monday, so far as I know.

The PRESIDING OFFICER. Does the Senator from West Virginia renew his unanimous-consent request

Mr. ROBERT C. BYRD. Mr. President, I am constrained to make the effort.

Mr. BAYH. I shall continue to object until I find out exactly what we are doing here.

Mr. ROBERT C. BYRD. Mr. President, let me restate the unanimous-consent request so that the distinguished Senator from Indiana (Mr. BAYH) will understand.

Mr. President, I ask unanimous consent, with the understanding there would be no session tomorrow, with the understanding that the House bill would not be offered as a substitute, and with the further condition that no additional busing amendments could be called up, that a final vote occur on the education bill at 6 p.m. on Monday next; that the Senate come in at the hour of 9 a.m. on Monday next, that no votes occur on any amendment, debatable motion or appeal, until the hour of 4 p.m.—rather than 3 p.m., as I earlier suggested—that there be a time limitation for debate on the bill on Monday next of 2 hours, to be equally divided between the distinguished majority leader and the distinguished minority leader or their designees; that immediately upon conclusion of routine morning business on Monday next, which would be no more than 10 minutes with statements therein limited to 5 minutes, the distinguished Senator from Maryland (Mr. MATHIAS) be recognized to call up his amendment on which there would be a 2-hour limitation; that immediately following the disposition of the time on the Mathias amendment, the other amendments which were to be offered, the identities of which were mentioned earlier, but which I cannot recall at this moment——

Mr. GRIFFIN. Mr. President, I should like to be sure that the Senator from Virginia (Mr. WILLIAM L. SCOTT) will have 1 hour, and the Senator from Connecticut (Mr. WEICKER) will have 1 hour. The Senator from North Carolina (Mr. HELMS) would use a shorter time——

Mr. ROBERT C. BYRD. Yes, the three amendments—30 minutes on each.

Mr. JAVITS. Mr. President, so far as our amendment is concerned, that will be an hour and a half—an hour to Senator MCCLELLAN and an hour to the proponent.

Mr. ROBERT C. BYRD. With the further understanding that at some point after 3:30 p.m. on Monday next, the Senator from Texas (Mr. BENTSEN) be recognized to call up an amendment on which there be a 20-minute limitation, to be equally divided; that the Senator from Florida (Mr. CHILES) be recognized at some point during the day to call up an amendment on which there is a 30-minute time limitation; with the further proviso that the House bill, at 6 p.m., after the Senate bill has been advanced to third reading, be called up and the text of the Senate language be substituted therefor automatically, and that the final vote occur on the House bill as amended by the Senate bill.

The PRESIDING OFFICER. Does the Senator include in his unanimous-consent request that rule XII be waived?

Mr. ROBERT C. BYRD. Yes, Mr. President, that paragraph 3 of rule XII be waived.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from West Virginia?

Mr. BROOKE. Mr. President, reserving the right to object—and I shall not object—I shall try to draft an amendment broad enough to apply, but I should like to have it voted on on Monday next in the event the Senate goes out of session tonight, or I do not get the opportunity to have a vote on it tonight, so that it might be accepted. Failing that, I should like to have at least 30 minutes, because a majority of Members of the Senate, I believe, would be in favor of the amendment, but I should like to be protected on Monday next in the event I do not get it in tonight.

Mr. ROBERT C. BYRD. Yes, with that further provision to be included in the unanimous-consent agreement.

The PRESIDING OFFICER. With 1 hour on the Brooke amendment, is that the request?

Mr. BROOKE. I do not believe I will need more than 30 minutes, 15 minutes to a side. That would be ample.

Mr. SPARKMAN. Mr. President——

Mr. BAYH. Mr. President, I object until I have a chance to see——

Mr. ROBERT C. BYRD. Would the Senator withhold his objection? I will not insist that——

Mr. BAYH. The Chair asked if there was objection, so——

Mr. ROBERT C. BYRD. I will not insist on the Chair's putting the question until the Senator from Indiana has had a chance to work this out.

Mr. SPARKMAN. Mr. President, reserving the right to object—first of all, if we are here tomorrow, why do we not work? I think——

Mr. ROBERT C. BYRD. I will work tomorrow.

Mr. SPARKMAN. That is a simple question which is just preliminary. It seems to me that many things could be gotten out of the way tomorrow. It also seems to me that we are piling up more work for Monday next than we can possibly hope to handle in any orderly fashion.

Furthermore, there is other business on the calendar that I would certainly like to see us working on. I have some bills there from the Committee on Foreign Relations which I would like to see taken care of. So I do not see why we do not stay here and work tomorrow.

In fact, I do not see why we cannot continue consideration of the education bill tomorrow. I am not trying to sidestep the unanimous-consent request in any way, but I believe that we should work tomorrow instead of putting amendments off until Monday next. Let us be here doing some work on them tomorrow and then take up other matters on the calendar and bring them up.

There is one bill, for instance, which I should like to mention, the International Development Agency—IDA. On

May 22 the World Bank organization will be in session, and I believe that all the other nations which are members of the International Development Agency will be there, with their pledges. That bill is on the calendar. It has been there. We should get action on it before the 22d. I hope very much that we do not delay working on tomorrow, that we do go on and work.

I realize some of the difficulties in getting a limitation of time and things of that kind. Nevertheless, those are barriers we will have to overcome. I certainly hope that we will work tomorrow and get as much of this out of the way as we can.

I know that some Senators go home on weekends, but many of us do not. I do not have the privilege of going home on weekends. I deplore the habit that has grown up here of working 4 days a week. I think we ought to work at least 5 days a week.

Mr. ROBERT C. BYRD. I think we ought to work 6½ days every week.

Mr. SPARKMAN. I am pleading with the leader to give us that kind of schedule.

Mr. ROBERT C. BYRD. The Senator knows very well that I have been trying hard to get an agreement worked out whereby the IDA bill can be brought to the floor. He knows the problem.

Mr. SPARKMAN. I know that is true.

Mr. ROBERT C. BYRD. He knows that if we come in tomorrow, we are not going to get that bill up tomorrow.

Mr. SPARKMAN. I am not saying that, but we can get some of the other stuff out.

Mr. ROBERT C. BYRD. The leadership is fully aware of everything that is on the calendar. If we come in tomorrow under the present agreement, I am quite sure that we will not get anything else on the calendar done, because we are going to be on the education bill. The Senator from Michigan or any other Senator can bring up the House bill and offer it as a substitute on Monday.

This is the best way the leadership has found to expedite the action on this bill, and the leadership will assure the distinguished Senator from Alabama that it will do everything it possibly can to get the IDA bill up before the 22d and disposed of.

As to Monday, I know all the questions that can appropriately be raised at this time—that it is going to be very difficult on Monday, if we are working under this new agreement, to dispose of all the amendments. We have seen that happen time and time again around here. But I am one Senator who feels that he has to be a little optimistic and count on a little luck. I think that if we get the agreement, things will work out.

Mr. SPARKMAN. I share the Senator's optimism all the time, and I admire his leadership. I know what he does on the floor of the Senate. But, as a general principle, I want to protest against our working 4 days a week and omitting Friday. That is what is proposed right now.

Mr. ROBERT C. BYRD. The leadership, I say again, has a responsibility, and where we can make progress on Friday, the leadership has a duty to come in on Fridays. Senators know that time and time again the leadership has brought us in here on Fridays when we did not accomplish much, and the leadership caught h-e-l-l for bringing Senators in on Friday.

If we can make progress on Friday, the leadership is going to come in on Friday. But this was one way we would accomplish just as much by not coming in on Friday and cut off Tuesday from the present agreement, and possibly be on IDA or the energy bill on Tuesday. When work can be accomplished, the leadership will come in on Fridays, and we can expect Friday sessions every week. My weekly whip notice has so stated for the past several weeks.

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

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. The suggested or the presently requested unanimous-consent agreement would not in any way revoke or rescind the present agreement that all busing amendments must be disposed of by 1 o'clock today, the sole exception being the right to bring up the House bill as a substitute on Monday. Is that correct?

Mr. ROBERT C. BYRD. The Senator is preeminently correct.

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

Mr. ROBERT C. BYRD. I yield.

Mr. AIKEN. I have been watching the clock and have come to the conclusion that while this jockeying for position has been going on, this body could have taken care of these two amendments.

[Laughter.]

Mr. ROBERT C. BYRD. Mr. President, may we have order in the galleries?

Mr. AIKEN. I understand that much of the confusion and that jockeying has been caused by the desire of some of our Members to spend more time in their home States. As a bit of encouragement to them, I would like to say that if this Congress, and this Senate in particular, does not settle down to business and attend to business, a good many of our Members may have a lot of time to spend in their home States after January 3, 1975.

[Laughter.]

Mr. ROBERT C. BYRD. The Senate has a good record and has been doing its work.

Mr. BAKER. Mr. President, reserving the right to object, I think that the time has arrived when we ought to face one fact, with all due deference to the rather complex arrangement we have now worked ourselves into. I do not think this train will pull, and I do not think we can have a final vote on Monday at 6 p.m., and handle all these amendments. I think we are fooling ourselves.

Mr. ROBERT C. BYRD. Mr. President, I have not yet seen a train that would not pull around here.

Mr. BAKER. I think we are about to. What I am about to say has to do with the remarks of the distinguished Senator from Alabama.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The request is withdrawn.

## RESOLUTION—EXPENSES OF INQUIRIES AND INVESTIGATIONS

Mr. McCLELLAN. Mr. President, I send to the desk a resolution and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER (Mr. BIDEN). The resolution will be stated.

The legislative clerk read as follows:

S. RES. 325

*Resolved,* That the Secretary of the Senate may utilize any fiscal year 1974 appropriation available for the purpose of paying expenses for May, 1974 from the appropriation "Expenses of Inquiries and Investigations, fiscal year 1974", any sum so utilized shall be restored from funds appropriated for said appropriation in the Second Supplemental Appropriation Act, 1974.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. McCLELLAN. Mr. President, this resolution will permit the Secretary of the Senate to utilize any fiscal year 1974 funds appropriated for the Senate to meet the May 1974 payroll and other obligations which are paid from the appropriation "Expenses of Inquiries and Investigations."

Since additional funds for this appropriation are included in the second supplemental appropriation for 1974, which is awaiting conference, action on this resolution is necessary if the staffs of the investigations subcommittees are to be paid on time. The current balance of this appropriation is insufficient to meet these obligations.

I would like to point out that the authority contained in this resolution is limited and mandates that any funds so utilized in meeting the payroll and other obligations for May 1974 shall be restored immediately upon enactment of the second supplemental bill.

For the information of the Senate, this is a stop-gap procedure that has been utilized in prior years when there has been a delay in a supplemental bill, and therefore this resolution does not establish a new precedent.

I ask unanimous consent to have printed in the RECORD a letter from Mr William A. Ridgely, the Financial Clerk of the Senate, addressed to me today, as chairman of the Committee on Appropriations.

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

U.S. SENATE,
OFFICE OF THE SECRETARY,
*Washington, D.C., May 15, 1974.*

Hon. JOHN L. McCLELLAN,
*Chairman, Committee on Appropriations, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I enclose herewith a proposed resolution and respectfully request that you introduce it in the Senate for immediate consideration.

This resolution would enable the Disbursing Office to temporarily utilize any of the fiscal year 1974 unobligated funds appropriated for the Senate to pay salaries and expenses for the month of May, 1974 that are payable from the appropriation "Expenses of Inquiries and Investigations".

Your Committee has included in the Second Supplemental Appropriation bill for fiscal year 1974 the total amount of $3,067,975

for this appropriation. This amount is comprised of $1,067,975 for increased pay costs and an additional $2,000,000 for an estimated deficiency over and above the increased pay costs.

The current balance of this appropriation is insufficient to meet the current month payroll of the staffs of the Senate investigating subcommittees and unless this authority is granted by the Senate, I will be unable to pay any salaries from this appropriation until the Second Supplemental bill is enacted.

For your information, this stop-gap procedure has been authorized in prior years by the Senate when there has been a delay in an appropriation bill. I am enclosing copies of the most recent resolutions that authorized the same utilization of Senate funds when the circumstances were similar. Therefore, this resolution will not establish a new precedent.

Additionally, this resolution is limited in that it mandates that any funds so utilized must be restored immediately upon enactment of the Second Supplemental bill for 1974.

Inasmuch as the next payday for Senate employees is May 20th, I consider this an urgent matter and therefore seek your indulgence.

Respectfully,

WILLIAM A. RIDGELY,
*Financial Clerk, U.S. Senate.*

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 325) was agreed to.

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## EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

AMENDMENT NO. 1336

Mr. McGOVERN. Mr. President, I call up my amendment No. 1336.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. McGOVERN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 125, after line 23, add the following:

POLICY WITH RESPECT TO ADVANCE FUNDING OF EDUCATION PROGRAMS

SEC. 4. The Congress declares it to be the policy of the United States to immediately and continually implement section 412 of the General Education Provisions Act, relating to advance funding for education programs, so as to afford responsible State, local and Federal officers adequate notice of available Federal financial assistance for education authorized under this and other acts of Congress.

On page 126, line 2, strike out "Sec. 4" and insert in lieu thereof "Sec. 5".

On page 130, line 11, strike out "Sec. 5" and insert in lieu thereof "Sec. 6."

On page 119, in the Table of Contents, after item "Sec. 3" add the following new item:

SEC. 4. POLICY WITH RESPECT TO FORWARD FUNDING OF EDUCATION PROGRAMS.

On page 120, in the Table of Contents, strike out items "Sec. 4" and "Sec. 5", and insert "Sec. 5" and "Sec. 6" respectively.

Mr. McGOVERN. Mr. President, this is a bipartisan effort on behalf of myself, Senator CASE, Senator HANSEN, Senator ABOUREZK, Senator BIDEN, Senator BROCK, Senator COOK, Senator GRAVEL, Senator HANSEN, Senator HASKELL, Senator KENNEDY, Senator MONTOYA, and Senator TUNNEY to provide school officials with the notice of Federal assistance they need in order to plan their school budgets properly.

I ask unanimous consent that the names of the Senator from Kansas (Mr. DOLE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New York (Mr. JAVITS), the Senator from Delaware (Mr. ROTH), the Senator from North Dakota (Mr. BURDICK), and the Senators from Maryland (Mr. BEALL and Mr. MATHIAS) be added as cosponsors of the amendment.

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

Mr. McGOVERN. Mr. President, this amendment would move up the appropriations process by 1 year so that our school administrators would know in ample time what funds are going to be available to meet teacher contracts and other school expenditures. It does not permit the obligation of funds a year in advance, but it does provide that it is the official policy of our government to provide appropriations a year in advance.

For example, the appropriations for schools for fiscal year 1976 would be passed in fiscal year 1975.

This amendment is in line with the practice that already has been followed with reference to higher education and for military appropriations. I think one of the most serious administrative problems our school districts have is not knowing what funds they are going to be able to work with until they get into the school year. They need that information no later than early spring when they are signing teacher contracts.

One of the principal problems school administrators face today is the delay in appropriating funds for education programs. Even if the administration acted quickly, the actual appropriations would not be made until late spring or early summer before the start of the new school year with notice of the individual school district entitlements some months later. For the school districts to plan the next school year properly and negotiate teacher contracts, they ought to know the amount of Federal funds they will receive the following year by early spring at the latest. So, even under the best of circumstances, the present fiscal year appropriations process does not meet school district administrative needs.

This problem has been compounded further in recent years by the dispute between the administration and the Congress regarding the proper level of funding for education programs. Fortunately, the Congress has consistently appropriated substantially higher sums than the administration requested. But this yearly duel on the amount of Federal aid to education has further delayed the commitment of funds to school districts. The President has twice vetoed education approproations, forcing the Congress to rely on continuing resolutions. And even then, the school districts have had difficulty in obtaining the funds the law entitles them to because of the administration's impoundment policy.

What this has meant is that the school administrator does not know what Federal funds to expect for the school year until 2 or 3 months after school has opened. Since an administrator cannot plan on dollars which may not come, this has meant less education for students and economic uncertainty for teachers.

During the last year of the Johnson administration, the Congress enacted section 412 of the General Education Provisions Act which would have avoided much of this chaos had it been followed.

This statute (20 U.S.C. 1223) authorizes appropriations for education programs administered by the Commissioner of Education in "the fiscal year preceding the fiscal year for which they are available for obligation." In other words, this statute would move the appropriations process ahead 1 year so that appropriations for fiscal year 1976 would be passed in fiscal year 1975 even though they would not be available for obligation until the following year. If this procedure were followed, school officials would know the amount of funds they would receive 1 year earlier than is presently the case. Further, this process would have no effect on the size of the Federal budget because the funds, although appropriated, would show up as "outlays" only for the year in which they were to be expended.

The statute also provides for a 2-year appropriation in the first year it is implemented in order to effectuate a transition to this method of appropriating educational funds.

The amendment we are offering today would establish as a policy of the U.S. Government that the forward funding authorization statute will be "immediately and continually implemented." This is consistent, not only with the action Congress took in 1968, but also with the recent adoption of an amendment I offered on the budget reform bill, S. 1541, which requires the President to submit budget requests pursuant to the forward funding statute. These two steps will, of course, have to be followed by the necessary appropriations.

The only argument which has been raised against forward funding is the technical point that the next Congress has the theoretical right to undo appropriations which we pass this year which would be expended next year. But the point is that existing law authorizes funds to be appropriated on that basis. Higher education has been forward funded since 1965. And military appropriations are routinely made on a multiyear basis.

Forward funding is a concept that everyone has endorsed. It has been studied for years. The Congress has authorized it. The last three Presidents have called for it, and educators have made a compelling case for it. So, I am hopeful that we can at last implement it.

Mr. President, I ask unanimous consent that certain articles recently published in the Education Daily on this subject be printed in the RECORD.

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

VARIOUS ARTICLES FROM EDUCATION DAILY

M'GOVERN GROUP TO OFFER "FORWARD FUNDING" AMENDMENT

With the administration offering forward funding of education programs in return for consolidation, Sen. George McGovern (D-S.D.) and a group of bipartisan cosponsors say they will offer an amendment to S. 1539 making it "a policy of the United States" to forward fund all programs administered by the U.S. Office of Education. This follows earlier action by McGovern who introduced a concurrent resolution (S. Con. Res. 74) in the Senate March 13, expressing the "sense of Congress" that a 1968 statute authorizing advance funding for educational programs "should be immediately and continually implemented."

McGovern is also the sponsor of an amendment added by the Senate to the Congressional Budget Act of 1974 (S. 1541), which passed the Senate March 22 and is now in joint conference, to require the President to include in his budget requests estimates for advanced funding of "programs authorized by law to be appropriated 1 year in advance of the year they are to be obligated, as for example certain educational programs administered by the Commissioner of Education." The Office of Management and Budget has expressed administration displeasure with the requirement and asked the conference committee to delete the provision from the budget reform bill.

OMB OPPOSES MAKING FORWARD FUNDING PERMANENT

Advance funding of education programs so that educators will know a year ahead of time how much Federal money they will receive is opposed by the Office of Management and Budget, an OMB spokesman confirmed Friday.

The administration has consistently stressed its intention to provide $2.875 billion advance funding of consolidated education programs this year, in the form of a supplemental 1974 budget request, once Congress enacts authorizing legislation. The supplemental would fund the programs for the 1974–75 school year, and the regular 1975 budget request would be for the 1975–76 school year.

OMB's position, however, is that advance funding expands the "uncontrollable" part of the Federal budget, which now runs to some 75 percent of the total. This would restrict not only the President's, but also Congress' ability to prepare a funding program, OMB believes, "Uncontrollable expenditures" in Federal budget usage are generally interpreted to mean such personal-benefit payments as Social Security.

OMB OPPOSES M'GOVERN AMENDMENT

The Office of Management and Budget has not expressed opposition to the President's advance funding proposal for consolidated programs this year, but the OMB viewpoint surfaced in connection with an amendment to the Congresional Budget Act (S. 1541—ED Apr. 18) sponsored by Sen. George McGovern (D-S.D.) and passed by the Senate. OMB told the joint conference committee now considering S. 1541 that it is opposed to the McGovern amendment, which would require the President to provide advance funding estimates as part of his annual budget request.

OMB spokesman declined comment on the apparent inconsistency in OMB's support of the current budget forward funding proposal and its opposition to future forward funding.

M'GOVERN SPOKESMAN SAYS UNCONTROLLABILITY IS NOT THE ISSUE

But a spokesman for Senator McGovern told *Education Daily* that the Office of Management and Budget is "dealing in non sequiturs." An appropriation is by definition not an "uncontrollable," the spokesman said, and OMB is in fact opposed to forward funding in general, not simply to "uncontrollability."

M'GOVERN LOOKS TO APPROPRIATIONS BILL

The McGovern amendment to the Budget Act and an earlier "sense of the Congress" resolution are intended to lay a foundation, the spokesman said, for a possible Senate amendment to the upcoming House appropriations bill to insure forward funding of education programs.

OMB FEARS "OPENING DOOR" TO FORWARD FUNDING EXPANSION

An Office of Management and Budget spokesman said Tuesday that while OMB favors forward funding of consolidated education programs as proposed by President Nixon in his 1975 budget message, it opposes a Senate-passed amendment to the Congressional Budget Act because OMB believes it would "open the door" to expansion of the forward funding concept in "many areas."

"The administration," said OMB Assistant Director for Budget Review Dale McOmber, "urges that the consolidated education grant program be funded in advance in order that schools may adequately plan their programs for the ensuing school year. OMB is opposed to the McGovern amendment because it would result in forward funding for many areas, undermining the basic purpose of the budget reform bill."

M'GOVERN AMENDMENT WOULD IMPLEMENT 1968 STATUTE

The McGovern amendment—cosponsored by Senators Biden, Brock, Case, Cook, Hansen, Kennedy, and Pastore—was added by the Senate to the Congressional Budget Act, passed by the House December 5 and by the Senate March 22 (H.R. 7130—S. 1541). That measure, intended to give Congress greater control of budget and fiscal policy, is now in joint conference.

The McGovern amendment reads: "(1) The President shall include in the Budget transmitted to the Congress . . . estimates for appropriations to be made during the fiscal year . . . which are by law authorized to be obligated in the immediately succeeding fiscal year . . ." This would include education programs, McGovern pointed out, since Sec. 412 (20 USC 1223) of the General Education Provisions Act—added by Congress in 1968—authorizes one-year forward funding of educational programs administered by the Commissioner of Education. His amendment would therefore have the effect, McGovern said, of implementing already existing legislation.

OMB SEES IMPLICATIONS

But the Office of Management and Budget points to language in the McGovern amendment which says that forward funding will apply to "any program for which such appropriations are *or may hereafter be,* authorized." (Emphasis added—ED.) This, OMB says, could extend forward funding beyond education programs, to legislation which has not yet been enacted. And that, OMB believes, would be contrary to the intent of the Congressional budget reform measure.

IN THE MEANTIME, HIGHER ED IS FORWARD FUNDED

Under the fiscal 1974 Federal budget, all student aid provisions of the higher education budget—which make up 90 percent of the total higher ed spending and 33 percent of the Office of Education's total budget—are forward funded.

In fact, forward funding of Federal student assistance programs is an old story in higher education, going back to 1965 in the case of Supplemental Educational Opportunity Grants, and to 1968 and later for College Work-Study, National Defense Student Loans, and the Basic Opportunity Grants.

BUT ELEMENTARY AND SECONDARY LAGS

In elementary and secondary Federal education programs, though, there has been only one attempt to implement the forward funding authorization in the General Education Provisions Act. That was in the 1969 appropriation, when the administration requested forward funding of Title I and the Congress appropriated 90 percent of the amount asked for. But the forward funding was allowed to lapse in the next year's budget and Title I reverted to an annual appropriation basis.

ADMINISTRATION FORWARD FUNDING HINGES ON "CONSOLIDATION"

This year, the picture is complicated by the fact that the administration has tied its offer of forward funding of certain elementary and secondary programs to Congressional enactment of "acceptable" program consolidations. In his budget message, President Nixon asked for consolidation of existing education programs into six categories, which were designated as disadvantaged, handicapped, innovation, support services, vocational education, and adult education.

HOUSE BILL SEEMS SATISFACTORY

Since that time, the House has passed H.R. 69, which amends and extends the Elementary and Secondary Education Act and provides some program consolidation. Although its consolidations differ somewhat from those asked by the President, the bill is spoken of with approval by the administration. Title I is viewed by HEW as an acceptable compensatory education "consolidation," and the adult education, support and innovation, and libraries and instructional resources titles are also apparently satisfactory. This leaves impact aid and handicapped and vocational education—for which the administration has not yet drafted consolidation legislation—outside the forward funding picture for this year.

AND NOW THE SENATE BILL

But if the administration is willing to forward fund the "acceptable" parts of H.R. 69, that is by no means the end of the story. The Senate has yet to act on its own education bill—S. 1539—in which consolidation is dependent on full funding of existing categorical programs. And when the Senate does pass a bill, there will be substantial problems about consolidation in the expected joint conference to iron out the differences between House and Senate versions.

Mr. McGOVERN. I have discussed this amendment with the Senator from Rhode Island (Mr. PELL), the manager of the bill, the Senator from New York (Mr. JAVITS), the ranking minority member on the other side of the aisle, both of whom approved what we are attempting to do with it. I hope the Senate will accept the amendment without opposition.

Mr. President, I ask unanimous consent that the name of the Senator from Delaware (Mr. ROTH) also be added as a cosponsor.

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

Mr. PELL. Mr. President, this amendment restates as a matter of policy what in my view is already a matter of law. It is a good idea and I recommend that Senators support it. I see the ranking minority member in the Chamber.

Mr. JAVITS. Mr. President, I would recommend it to the Senate, as well.

The PRESIDING OFFICER. Is all time yielded back?

Mr. McGOVERN. I yield back the remainder of my time.

Mr. PELL. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment was agreed to.

Several Senators addressed the Chair.

Mr. MONDALE. Mr. President, I call up my amendment No. 1329.

Mr. CRANSTON. Mr. President, I claim that I had the floor and I wish to call up an amendment.

Mr. PELL. Mr. President, who has the floor? I thought the Chair recognized the Senator from Minnesota.

Mr. CRANSTON. He gave it back because I had yielded to the Senator from South Dakota. I had not yielded the floor.

The PRESIDING OFFICER. The time is under the control of the manager of the bill, the Senator from Rhode Island. The Chair is informed that the Senator from California could not have yielded the floor under those circumstances.

Mr. PELL. I gave my assurances earlier to the Senator from Minnesota.

Mr. CRANSTON. I am glad to wait.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. McGOVERN. Mr. President, will the Senator yield to me momentarily?

Mr. MONDALE. I yield.

Mr. McGOVERN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McGOVERN. Mr. President, is it appropriate for me to move to reconsider the vote by which the amendment was just agreed to?

The PRESIDING OFFICER. Yes, it is.

Mr. McGOVERN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McGOVERN. Mr. President, I ask unanimous consent that the name of the Senator from North Dakota (Mr. BURDICK) and the Senators from Maryland (Mr. MATHIAS and Mr. BEALL) be added as cosponsors of the amendment.

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

The Senator from Minnesota is recognized.

AMENDMENT NO. 1329

Mr. MONDALE. Mr. President, I call up my amendment No. 1329.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MONDALE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

AMENDMENT TO TITLE IX OF THE HIGHER EDUCATION ACT OF 1965 RESPECTING TRAINING IN THE LEGAL PROFESSION

SEC. 527. (a) Part D of title IX of the Higher Education Act of 1965 is amended by adding at the end thereof the following new section:

"ASSISTANCE FOR TRAINING IN THE LEGAL PROFESSION

"SEC. 966. (a) The Commissioner is authorized to make grants to, or enter into contracts with, public and private agencies and organizations other than institutions of higher education for the purpose of assisting individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Commissioner, to undertake training for the legal profession.

"(b) Grants made, and contracts entered into, under subsection (a) may cover, in accordance with regulations of the Commissioner, all or part of the cost of—

"(1) selecting individuals from disadvantaged backgrounds for training for the legal profession,

"(2) facilitating the entry of such individuals into institutions of higher education for the purpose of pursuing such training,

"(3) providing counseling or other services designed to assist such individuals to complete successfully such training,

"(4) providing, for not more than three months prior to the entry of such individuals upon their courses of training for the legal profession, preliminary training for such individuals designed to assist them to complete successfully such training for the legal profession,

"(5) paying such stipends (including allowances for travel and for dependents) as the Commissioner may determine for such individuals for any such period of preliminary training or for any period of training for the legal profession during which such individuals maintain satisfactory academic proficiency, as determined by the Commissioner, and

"(6) paying for administrative activities of the agencies and organizations which receive such grants, or with which such contracts are entered into, to the extent such activities are for the purpose of furthering activities described in clauses (1) through (5).

"(c) The activities authorized under this section may be carried out without regard to the requirements and limitations set forth in sections 962 and 963 of this part.".

(b) Funds appropriated pursuant to part D of title IX of the Higher Education Act of 1965 by the Departments of Labor and Health, Education, and Welfare, and Related Agencies Appropriations Act for the fiscal year ending June 30, 1974 (Public Law 93-192) shall be available for activities authorized by the amendment made by subsection (a).

(c) The amendment made by subsection (a) shall be deemed to have been entered prior to July 1, 1974.

Mr. MONDALE. Mr. President, this amendment is supported by the administration and it is supported by the American Bar Association, as well as by the distinguished ranking minority member of the Committee on Labor and Public Welfare, Mr. JAVITS.

Mr. President, this is a minor amendment designed to continue Federal support for disadvantaged students studying law under the sponsorship of the Council on Legal Education Opportunities. This amendment simply would continue what is in effect now. It is necessary in order to continue what presently is being done under the 1972 amendments to the Higher Education Act.

I ask unanimous consent to have printed in the RECORD a letter from Mr. Chesterfield Smith, president of the American Bar Association, strongly supporting the measure, and also a letter from the Secretary of Health, Education, and Welfare, Mr. Caspar Weinberger, to the same effect.

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

AMERICAN BAR ASSOCIATION,
*Washington, D.C., April 29, 1974.*

Re proposed amendments to part D, title IX, Higher Education Act of 1965.

Hon. WALTER MONDALE,
*Old Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR MONDALE: Since enactment of the Education Amendments of 1972 (P.L. 92-318), the American Bar Association has been cooperating with representatives of the Department of Health, Education, and Welfare and the Office of Economic Opportunity in an effort to perfect Part D of Title IX which established a new program of Federal Fellowships to support the training of disadvantaged students for the legal profession. I was, therefore, delighted to learn that Secretary Weinberger had transmitted the above-referenced draft legislation to the Congress and urged its "prompt and favorable consideration." On behalf of the Association, I urge that you and other members of the Special Subcommittee on Education support the early enactment of this important legislation.

Enactment of the proposed bill will simply allow the Department to continue the federal support of a unique and innovative program for increasing the number of persons from social backgrounds not now adequately represented in the legal profession. The Council on Legal Education Opportunity (CLEO) established in 1968 under the sponsorship of the Association and other professional groups has been responsible for the admission of more than 1,300 such students to law school. These students, from educationally and economically disadvantaged backgrounds, though having ability and aptitude for law study would normally have not ever become lawyers without the support provided by CLEO.

As I understand it, a decision was made by Director Rumsfeld of OEO in 1970 to seek the transfer of federal support from OEO to HEW following the precedent established in the delegation of Headstart and Upward Bound to HEW by OEO, a decision agreed to by then Secretary Finch. As noted in Secretary Weinberger's transmittal letter, funds have already been appropriated for fiscal 1974, and the proposed legislation merely perfects the authority to allow the continuation of the CLEO program.

The Association looks forward to cooperating with you in the advancement of this most important and necessary legislation.

Sincerely,

CHESTERFIELD SMITH.

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MARCH 29, 1974.

Hon. GERALD R. FORD,
*President of the Senate,*
*Washington, D.C.*

DEAR MR. PRESIDENT: Enclosed for the consideration of the Congress is a draft bill "To amend the Higher Education Act of 1965 in order to provide authority to assist training of disadvantaged students for the legal profession."

This draft bill would amend part D of title IX of the Higher Education Act of 1965 in order to permit the Department of Health, Education, and Welfare to continue supporting the training of disadvantaged students for the legal profession as previously assisted through the Office of Economic Opportunity.

Part D currently requires that each student receive a minimum of $2,800 for each academic year of study. It also requires that at least $4,200 be paid to the institution for

each disadvantaged student who receives a stipend and studies there for a profession. Under the authority proposed by this draft bill, the Secretary would determine the stipend levels for law students from disadvantaged backgrounds. The bill would not provide for institutional allowances for this program, but would authorize the Secretary to make grants to or enter into contracts with public and nonprofit private agencies and organizations to assist the training of disadvantaged students for the legal profession. By so doing, it would permit HEW to operate the legal education opportunity program in the same manner as it has been run for OEO. Without these revisions, the number of disadvantaged students now studying with Federal assistance in the legal education opportunity program would be reduced from over 200 to 31.

The bill provides that funds already appropriated for fiscal year 1974 shall be available for the activities authorized by the proposed amendments to part D. Accordingly, we urge prompt and favorable consideration of this bill.

The Office of Management and Budget advises that enactment of this proposed legislation would be consistent with the objectives of the Administration.

Sincerely,

CASPAR W. WEINBERGER,
*Secretary.*

Mr. PELL. Mr. President, I have had an opportunity to study this amendment, which is a good amendment, and which fufills the purpose. The amendment is cosponsored by the ranking minority member of the committee. I recommend to my colleagues that it be accepted.

The PRESIDING OFFICER. Is all time yielded back?

Mr. MONDALE. I yield back the remainder of my time.

Mr. PELL. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 1330

Mr. MONDALE. Mr. President, I have one more amendment. I call up my amendment No. 1330.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MONDALE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

Insert at the appropriate place in the bill the following:

SEC. . Section 708(a) of the Emergency School Aid Act is hereby amended by the addition of the following subparagraph (3):

"(3) The Assistant Secretary is authorized to make grants to, and contracts with one or more private, nonprofit agencies, institutions, or organizations, for the conduct, in cooperation with one or more local education agencies, of special programs for the teaching of standard mathematics to children eligible for services under this Act through instruction in advanced mathematics by qualified instructors with bachelors degrees in mathematics, or the mathematical sciences from colleges or other institutions of higher education, or equivalent experience."

Mr. MONDALE. Mr. President, this is a minor amendment that would permit the Secretary to make grants for special programs for teaching of standard mathematics to children eligible for services under the Emergency School Aid Act.

Our amendment enables the Assistant Secretary to do as he or she pleases, but identifies this program as one of special importance and hopefulness; and it is one of those programs designed to help disadvantaged children which, in my opinion, deserve special attention and support.

The State of California is a State in which this program has been designed and developed. I understand the Senator from California (Mr. CRANSTON) would like to be a cosponsor of the amendment. I ask unanimous consent that his name be added as a cosponsor.

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

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

Mr. MONDALE. I am glad to yield.

Mr. TAFT. I thank the Sentor for yielding. I am a referee of this program in my State. It is a very desirable program. If I am not a cosponsor of the amendment, which I think I am, I ask that the Senator include me as a cosponsor.

Mr. MONDALE. I thank the Senator.

Mr. President, I ask unanimous consent that the name of the Senator from Ohio (Mr. TAFT) may be added as a cosponsor of the amendment.

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

Mr. TAFT. Mr. President, I am happy to be a sponsor of this amendment to give the Assistant Secretary of Education the authority to make grants and contracts for the purpose of teaching advanced mathematics to elementary schoolchildren. My staff has been able to witness first-hand a demonstration of the techniques used to teach algebra to fifth graders under a program of special elementary education for the disadvantaged called Project SEED. Project SEED is an 11-year-old project in which professional mathematicians teach advanced mathematics to elementary schoolchildren from poverty and minority backgrounds.

The project started with one man, Bill Johntz, in Berkeley, Calif., but is now an international project, and for the past 2 years has been operating very successfully in my State of Ohio.

The Ohio program began in Columbus in 1972, and in Cincinnati in 1973. Over 1,000 children in these school districts have received SEED instruction to date. Mathematicians and scientists from numerous research corporations and universities have been involved with the project. For example, in Columbus, scientists from the Bell Telephone Laboratories, the Battelle Research Institute, Ohio State University and Industrial Nucleonics have been involved. In Cincinnati, the General Electric Co. has sponsored a major demonstration of the project together with Ford, WCET, and the Jurgens Foundation.

General Electric has recently indicated that it will both contribute mathematical scientists and engineers to the project, and take the lead in providing financial contributions to run a much enlarged, long-term program. I have received a letter from Mr. Gerald Klein, manager, community and urban affairs for the General Electric Co., in Cincinnati, expressing his support for Project SEED, and ask unanimous consent that it be inserted in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. TAFT. Other major public demonstrations of Project SEED in Ohio have been sponsored by Columbus Model Cities Agency, and the Ohio House and Senate Education Committees.

Project SEED's results to date have been most gratifying. Last year, in Columbus, the students in SEED classes gained approximately 2 months' growth for each month of exposure in standardized arithmetic basic skills testing alone.

I am extremely hopeful about the opportunities which Project SEED can provide for disadvantaged children to succeed in a vital subject area such as mathematics. To borrow from Plato:

The direction in which education starts a man will determine his future.

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EXHIBIT 1

GENERAL ELECTRIC CO.,
*Cincinnati, Ohio, April 19, 1974.*

Senator ROBERT TAFT, Jr.
*U.S. Senate, Committee on Labor and Public Welfare, Washington, D.C.*

DEAR SENATOR TAFT: William Johntz of Project SEED has mailed me a copy of the letter sent by you and Senators Kennedy and Mondale to Charles B. Saunders, Jr., Acting Assistant Secretary for Education, on April 11.

On behalf of all my associates here at General Electric, many thanks for your support of SEED. This program—in which professional mathematicians teach college-level math to full-sized classes of elementary school children—seems to me to offer real hope for improving the quality of elementary school instruction across the board, and especially for opening the door for thousands of minority youngsters to prepare for well-paying technical careers.

As you may have heard, GE recently teamed up with Ford, WCET and Jergens Foundation to sponsor a SEED demonstration in Lincoln Heights Elementary School. Written comments by attending business, university and media representatives were most gratifying. For myself, I regard SEED as the finest program of its kind ever developed, and dollar-for-dollar the best possible buy in supplemental educational programs. Nothing would please me more than to see it adopted and adequately funded by the Cincinnati and Princeton school systems.

Again, our sincerest thanks to you for your interest and for your letter to Mr. Saunders.

Sincerely,

GERALD KLEIN,
*Manager, Community and Urban Affairs.*

Mr. PELL. Mr. President, I think the amendment is a good amendment. I recommend that it be accepted. It has been cleared with the minority. I recommend

acceptance of the amendment and I yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. MONDALE. I yield back the remainder of my time.

Mr. PELL. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MONDALE. I wish to engage in a colloquy with respect to section 403 of the bill, "Consolidation of Certain Federally Operated Education Programs." Subsection 2(b)(1)(A) of the bill deals with discretionary funds and directs the Commissioner of Education to "give priority to applications proposing projects meeting the requirements of the provisions of law repealed by paragraph (3) of subsection (c)."

Is it not the chairman's view that the committee intends OE funding in continuing support of the educational television programs, "Sesame Street" and "The Electric Co.," previously provided under the Cooperative Research Act, to be a priority project within the meaning of that subsection?

These programs of "The Children's Television Workshop" are both vital experimental educational tools.

"Sesame Street's" audience of 9 million children continues to be the largest of any educational program in TV's history. This audience includes a number of disadvantaged children who have consistently shown demonstrable gains in cognitive skills taught by the show, at a total cost of only about a penny per child per daily program.

The Electric Co. has also demonstrated through extensive evaluations that it can teach reading skills to large numbers of children—6 million as of last year, including nearly 3 million children in classroom settings. The cost of this series, too, is only a penny a day per viewer. Surely these dollars represent one of the best educational bargains our Federal education dollars buy.

Mr. PELL. The Senator is correct. These programs are among the most effective—if not the most effective *continuing* experiments funded by the Office of Education.

For fiscal year 1974, the Senate appropriated $5 million for OE funding of "Sesame Street" and "The Electric Co.," and by year's end they will have received a total of $4 million. I understand that for fiscal year 1975, they need $5.5 million.

Continued support of successful projects such as "Sesame Street" and "The Electric Co." is precisely the kind of priority we intend to be maintained. In future years they certainly should continue to receive the support they need from OE. It was to ensure continued attention to such priorities that the committee bill directs the Commissioner to provide a detailed plan each year of its proposed funding for oversight review by the committees.

I appreciate the Senator's contribution to clarifying the meaning of this provision. It will be an important piece of legislative history.

Mr. MONDALE. I thank the Chairman.

Mr. President, I would like to make one point to the distinguished manager of the bill. I have one final amendment that I will not bring up today dealing with the title I formula. I hope the unanimous consent agreement entered into will provide time that will be set aside to permit us to deal with that matter.

Mr. PELL. Is this the same amendment as the amendment on title C?

Mr. MONDALE. No; it does not have anything to do with C. The amendment has to do with B.

Mr. PELL. Why does not the Senator offer it now?

Mr. MONDALE. We are working on it now. I just wanted the floor manager to know I have an interest in an amendment to be offered.

I thank the distinguished floor manager.

Mr. ALLEN. Mr. President, I should like to ask a few questions of the distinguished Senator from Rhode Island. Would the effect of consolidating title V eliminate the provision for carrying out interstate programs similar to those presently carried out under section 505 of the present ESEA?

Mr. PELL. No. Those types of projects can be carried out under the Special Projects Act, and the Senator might wish to note on page 252, line 23 of the bill, that the first two purposes of the Special Projects Act are "to experiment with new educational and administrative methods, techniques, and practices" and "to meet special or unique educational needs or problems."

Mr. ALLEN. Would you expect that comparable amounts of money available for interstate projects, as provided in fiscal year 1974, could be included in the expenditure plan for special projects?

Mr. PELL. Yes. I would hope to see that the USOE, in the development of their plan, gives a high priority to this program of cooperation among States.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I thank the Chair for being able to recognize me finally.

I call up my amendment No. 1328, as modified. I have a modified version which I send to the desk.

The PRESIDING OFFICER. The clerk will state the modified version of the amendment.

The legislative clerk proceeded to read the amendment, as modified.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

Amendment No. 1328, as modified, is as follows:

On page 360, between lines 13 and 14, insert the following:

"STUDY AND PILOT PROJECTS REGARDING SCHOOL SAFETY

"SEC. 536. (a) The Commissioner shall carry out a continuing study during the period beginning upon the date of enactment of this Act and ending June 30, 1976, to determine—

"(1) the frequency, seriousness, and incidence of crime in elementary and secondary schools in the States;

"(2) the number and location of schools affected by crime;

"(2) Such interim report shall be followed by such succeeding interim reports to the Congress (not less often than every 180 days) on the progress of his activities under this section.

"(3) Not later than December 31, 1976, the Commissioner shall submit to the Congress a final report on his studies, surveys, research, and pilot project carried out under this section. Such final report shall include such recommendations as the Commissioner may deem appropriate to prevent crimes in elementary and secondary schools.

"(e) Funds available to the Commissioner under section 400 of the General Education Provisions Act shall be available to enable the Commissioner to carry out his functions under this section. In addition, not to exceed $375,000 is authorized to be appropriated, without fiscal year limitation, for grants and contracts under subsection (c).".

On page 123, in the Table of Contents, after item "Sec. 535." add the following: "Sec. 536. Study and pilot projects regarding school safety.".

Mr. CRANSTON. Mr. President, to explain what the modification does, it cuts in half the years and cuts in half the amount as stated in the printed amendment.

Mr. President, first let me thank the distinguished chairman of the Senate Education Subcommittee, Senator PELL, for his cooperation in this matter. I am proud to be a member of a subcommittee with such outstanding leadership as that offered by the Senator from Rhode Island. I thank him especially for his thoughtful consideration of the amendment I offer now, and the amendment I will call up shortly, and I am hopeful that he will find both acceptable.

I would also thank my distinguished colleagues on the minority side, Senators DOMINICK and JAVITS, along with their staffs and that of Senator PELL, for their sympathetic consideration of these amendments. I hope they will also find the two proposals worthy and acceptable ones.

I want to point out that amendment No. 1328 is drawn from a bill introduced by the distinguished Senator from Florida (Mr. GURNEY) in the first session of this Congress, which I had the pleasure of cosponsoring. Working together, Senator GURNEY and I were able to agree upon a modified approach to the issue that concerns us, which is embodied in this amendment. I pay tribute to Senator GURNEY's leadership on this issue.

Mr. President, amendment 1328 provides for "Study and Pilot Projects Regarding School Safety" and security.

It is a simple amendment, to do two things:

First, it authorizes the Secretary of Health, Education, and Welfare to undertake a comprehensive study, over the next 2 years, of incidents of vandalism and violence in elementary and secondary schools, and the probable causes for these incidents.

The Secretary would make periodic reports to the Congress on the progress of the study, and a final report by December 31, 1976.

Second, the amendment authorizes $375,000 to enable the Secretary to conduct limited pilot projects he finds neces-

sary or desirable to carry out the purpose of the study. For example, the Secretary might wish to convene a consortium of school and community leaders, and students, to advise him on aspects of the problem. Or, he might wish to explore new designs for school facilities that reduce the possibilities for malicious vandalism or for security devices such as intrusion alarm systems.

Mr. President, California's Superintendent of Public Instruction, Dr. Wilson Riles, has called school vandalism and violence "one of the major problems in public schools that has to be dealt with." I could not agree more. Crime in schools is going up at a rate as fast or faster than overall crime nationally.

Listen to these grim statistics from Los Angeles alone: Dollar losses in the 1971–72 school year added up to $885,000 for burglary; $210,000 for burglary-related damage; $580,000 for arson; $65,000 for "miscellaneous mischief;" $650,000 for glass breakage; and $60,000 for "mysterious disappearance" of equipment.

Mr. President, that adds up to $2,400,000 for 1 school year in one school district. Since 1966, Los Angeles has spent more than $7 million out of the school budget. In 1972–73, Los Angeles schools will spend $2,021,000 for security agents and $1 million more for intrusion alarm systems.

That adds up to over $10 million that was spent on crime control, and not on the education of children.

Other statistics and incidents are just as alarming.

Nationally, assaults on teachers are up over 7,000 percent since 1964.

In San Francisco, a 17-year-old boy was stabbed to death after he teased a classmate about losing a game of dominoes to a girl.

Los Angeles school officials confiscated guns from some 40 students in 1 recent month. A recent high school shooting in Los Angeles left five students wounded.

In New York 1,200 security aides were added to the school staff just before Thanksgiving, in an effort to curb robberies, fighting, and racial confrontation.

Mr. President, perhaps it is not surprising to find crime—simmering at the center of American urban life—boiling over into city schools, then into suburban schools, and into rural America. Authorities conversant with the complex issue of school crime seem to agree that crimes in schools are rooted in the community. In the words of Los Angeles School Superintendent William Johnston:

> The schoolground eventually becomes the battlefield where a resolution of conflict is attempted.

In my view, we must win the battle of crime in our schools if we do not want to perpetuate, generation after generation, a society that is both violent and fearful.

Our school personnel have been remarkably patient. They have asked little of us, except our understanding and our help. It is time we do all we can to restore our classrooms to places where teachers can teach and children can learn, free of hostilities, distrust, and fear.

It is clear that school crime is costing us plenty.

In dollars, reliable estimates place national losses from school vandalism at close to a half billion dollars annually.

In terms of public confidence in the schools, crime's cost to the national spirit cannot be calculated. Dollar statistics say nothing of the blighted prospects of millions of American children, exposed daily to physical and emotional harm.

We have done much in Federal aid to education, and we must do more. But as we ponder the rising incidence of public school crime, we might well wonder if any program has a chance of survival in the "hallways of fear" described by California's Superintendent of Public Instruction Wilson Riles.

Moneys may be used for administrative and planning support, for equipment, supplies, and structural alterations in school facilities. Use of funds for firearms, weapons, or chemicals is expressly forbidden, and the bill specifically calls for proper attention to constitutional rights and civil liberties issues in the formulation of school security plans.

Parental and community involvement is an extremely important feature of the bill. In the process of holding hearings on the measure, we should also consider how students might be involved effectively in the formulation of security plans.

Mr. President, I believe the seriousness of the school security issue is worthy of Federal attention as quickly as possible. Americans have long viewed education of their children as a national priority. The right to an education, in an atmosphere free from threat of violence, must be reinforced, and I am convinced that the amendment I offer with Senator GURNEY is a step in the right direction.

California, under Dr. Riles' leadership, is taking steps to combat the problem through task forces, citizen involvement in planning and discussion, and careful surveys of school and community attitudes and climates that can be associated with a rise in school unrest.

I believe these efforts should be encouraged, and that the Federal Government has a responsibility to help. Our amendment will aid in that effort by providing a cohesive, short-term study that can help our States compare not just problems, but solutions.

Mr. President, that completes what I have to say, and I hope very much the distinguished chairman of the subcommittee will accept the amendment, except to ask unanimous consent that a statement by the distinguished Senator from Florida be printed in the RECORD.

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

STATEMENT BY SENATOR GURNEY

I am pleased to join the distinguished Senator from California, Mr. Cranston, in offering this amendment.

Last year, I introduced S. 485, the Safe Schools Act, along with my colleague from California and other Members of the Senate.

The purpose of this bill is to provide assistance to school districts for carrying out locally approved school security plans—to reduce, in this way, crimes against students, faculty and employees of these schools.

In preparing this legislation, I became aware of the disturbing lack of reliable and current information on this problem.

With all of our vast and complex data retrieval systems—with the literally scientific status we have placed on research programs—it is inconceivable to me that we have so little information on school crime. In many cases, it is impossible to get any facts at all.

As I look through the various programs contained in S. 1539, it is apparent that we are making an effort to give special attention to those "problem" areas of education. In other words, we are trying to correct situations which hinder educational progress.

Now I believe that school crime is definitely one of these disruptive situations.

Crime and vandalism have caused senseless physical and material damage. There is no doubt about the other costs—to the education system and the community in general.

The amendment we propose will give us a healthy start toward correcting this situation. The amendment calls for a detailed study by HEW of the cause of school crime, its frequency, its costs, and means used to combat such activities.

Such a study will hopefully outline the extent of this problem and provide us with a better understanding as to how it can best be solved.

I hope this amendment can be accepted, particularly in view of the fact that the House bill contains similar language.

Mr. PELL. Mr. President, I have had an opportunity to study this amendment. It serves a good purpose. There is always this concern with unrest and violence in the Nation's schools. I think the study would go a long way in that direction.

To refresh my memory, it is for 2 years?

Mr. CRANSTON. Two years.

Mr. PELL. And the Senator modified it so it provides for $375,000?

Mr. CRANSTON. That is correct.

Mr. JAVITS. Mr. President, do I understand the figure is cut in half and it applies to the full study?

Mr. CRANSTON. Yes.

Mr. JAVITS. $375,000 for the full study?

Mr. CRANSTON. Yes.

Mr. JAVITS. I might say the administration opposes this amendment as it does not believe a Federal study of this character is necessary. I am reporting that to Senators so that anyone who might feel constrained to contest the amendment might do so on that basis.

For myself, I concur in the manager's wish to accept the amendment, because in my own experience and that of my own State this problem is a very serious one. Experience has taught me that when there is a serious problem, it takes some kind of high level study to zero in on it. This is an appropriate way to do it.

For myself, after having quoted that the administration does not favor it, I hope the Senate will approve the amendment.

Mr. PELL. Mr. President, I suggest that we yield back the remainder of our time.

Mr. CRANSTON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment of the Senator from California [putting the question].

Amendments No. 1328, as modified, were agreed to.

Mr. CRANSTON. Mr. President, I call

up my amendment No. 1338, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendment. Does the Senator have a copy?

Mr. CRANSTON. I have a printed copy which I send to the desk.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk proceeded to read the amendment.

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Amendment No. 1338 is as follows:

On page 333, between lines 3 and 4, insert the following:

"(2) The first sentence of paragraph (2) of section 420(a) of such Act is amended by inserting before the period a comma and the following: 'or equals at least the minimum number of such persons necessary to establish eligibility to entitlement under paragraph (1) during the preceding academic year, whichever is lower'."

On page 333, line 4, strike out "(2)" and insert in lieu thereof "(3)".

On page 333, line 20, strike out "(3)" and insert in lieu thereof "(4)".

Mr. CRANSTON. Mr. President, I again thank the distinguished chairman of the subcommittee and the ranking Republican member (Mr. JAVITS) for their cooperation.

I want to call attention to the fact that this amendment is cosponsored by Senators STAFFORD and MATHIAS.

Mr. President, I call up my amendment No. 1338, submitted for printing yesterday, for myself, my colleague on the Labor and Public Welfare Committee (Mr. STAFFORD), and the Senator from Maryland (Mr. MATHIAS), to the pending measure, 1539, the proposed Elementary and Secondary Education Amendments of 1974. I would like to take this opportunity to extend my thanks to the distinguished chairman of the Subcommittee on Education (Mr. PELL) and the ranking minority member of the committe (Mr. JAVITS) for their able and dedicated leadership on this most complex and far-reaching measure.

Mr. President, the amendment I am submitting would add a new subsection to section 524 of the reported bill, which section I authored in committee with, as to various parts, Senators STAFFORD, JAVITS, and RANDOLPH, to make certain improvements in the veterans cost-of-instruction program—VCI.

Mr. President, the VCI program—a provision I authored in the Higher Education Amendments of 1972—Public Law 92-318—was designed to provide incentives and supporting funds for colleges and universities to recruit actively returning veterans and to establish the kinds of special programs and services necessary to assist many veterans in readjusting to an academic setting. Although some 1,000 VCI programs have been successfully implemented at many institutions of higher education across the country, the limited funds which the Office of Education has made available, and certain provisions of the law have made it particularly difficult for many colleges to establish programs which meet all the requirements of the law.

Consequently, during committee consideration of S. 1539, I joined with Senators RANDOLPH, JAVITS, and STAFFORD in offering various amendments to the VCI provision. Section 524 of S. 1539, as reported, amends the VCI program provision—section 420 of the Higher Education Act of 1965—in two basic respects: First, the amendment in the reported bill makes the first-year eligibility requirement slightly less restrictive by providing that in order to be eligible for VCI funds, a school must either have a 10-percent increase in its GI bill trainee enrollment—which is the present sole eligibility criterion in terms of veteran enrollment—or have at least 10 percent of its undergraduate student body composed of GI bill trainees—a new alternative criterion.

Second, the amendment in the reported bill would provide for a more equitable funding procedure for eligible schools to increase the amount many smaller qualifying institutions have been receiving, by limiting to $135,000 the maximum amount of payments in any fiscal year to any single institution. Funds which become available as a result of this provision would then be reapportioned to schools which would otherwise receive a payment of less than $9,000—the estimated minimum amount needed to open a full-time veterans affairs office on a campus. The reported amendment further establishes a minimum enrollment eligibility of 25 veterans in order to avoid the funding of VCI entitlements which are too small to provide effective services to campus veterans. Finally, the amendment, as reported, provides that not less than 75 percent of the amount of payments received by any institution shall be applied to setting up the special veterans offices, programs, and services required by the law. Current law requires that only 50 percent of the VCI award be applied to setting up these veteran's programs.

Mr. President, I ask unanimous consent that the appropriate pages from the committee report, pages 97-99—No. 93-763—be printed in the RECORD at this point:

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

SECTION 524. VETERANS COST OF INSTRUCTION PAYMENT AMENDMENTS

Section 524 of the Committee bill proposes a series of amendments to section 420 of the Higher Education Act of 1965, as amended—the Veterans-Cost-of-Instruction (VCI) Program provision. This program was designed to provide incentives and supporting funds for colleges and universities to recruit actively the returning veterans and to establish the kinds of special programs and services necessary to assist many veterans in readjusting to an academic setting. Paragraph (1) of subsection (a) of section 420 would be amended by adding an alternative prerequisite to institutional eligibility based on numbers of GI Bill enrollees. This amendment has already been adopted by the Senate as section 11 of S. 896, the Education for the Handicapped Amendments of 1973.

The law presently requires that a school, to be eligible for a VCI grant, must have increased the number of its GI Bill trainees (including veterans receiving vocational rehabilitation under chapter 31 of title 38, United States Code, and those receiving educational assistance under chapter 34 of that title) by 10 percent over the previous academic year. Under the amendment, a school could also become eligible if at least 10 percent of its current undergraduate student body is composed of such GI Bill trainees.

The new 10-percent requirement in the amendment would still impose a substantial requirement on an individual institution since the national average GI Bill trainee enrollment for universities, colleges, and community colleges is 8.7 percent. Preliminary figures indicate that this new clause will alleviate the inadvertent inequity of the present 10-percent-GI-Bill-trainee-increase requirement for a number of schools which have already made impressive achievements in enrolling returning veterans.

It should be noted that mere numbers of GI Bill trainees would still not be enough to qualify for a VCI grant; under the law, a school must also establish and carry out significant special veterans programs, including a veterans affairs office, a veterans tutorial program, a veterans PREP or college prepatory program, and a veterans work/study outreach program. These requirements would not be affected by the amendment.

A sample of schools in areas with about 25 percent of the Nation's population shows that of 1,296 schools surveyed, only 299, or 23 per cent, increased their GI Bill trainee enrollment in March 1973 by 10 percent over March 1972; 997 schools, or 76 percent, did not meet the 10-percent requirement, although of this 997, 134, or 13.4 percent, did show some increase in GI Bill trainee enrollment.

Section 420(d) would be amended by providing a more equitable funding procedure for *all* eligible schools. The law presently requires the Commissioner to pay to each institution of higher education which has had an application approved under subsection (c) of section 420, the amount to which it is entitled under this section. Any institution meeting the requirement of the law is entitled to payments of up to $450 for each of certain categories of veterans enrolled in an undergraduate program on a full-time basis or who have, in prior academic years, been enrolled in certain special veterans education programs under the GI Bill.

Although VCI programs have been successfully implemented at many institutions of higher education across the country, the limited funds which the Office of Education has made available and certain provisions of the law have made it particularly difficult for many smaller colleges to establish programs which meet all the requirements of the law. The funding procedure established by this amendment, which adds a second sentence in subsection (d), would limit to $135,000 the maximum amount of payments in any fiscal year to any institution, or any branch of such institution located in a community different from that in which its parent institution is located. Reports received from schools which received VCI funding for this year led to the conclusion that even large schools with large numbers of veterans would be able to establish, and had, in fact, successfully operated, VCI programs utilizing about $100,000 of their VCI grants. Only 14 schools across the country received initial grants for academic year 1973-1974 of more than $135,000.

Section 420(d) would be further amended by adding a new third sentence which would provide that, in making payments under section 420 in any fiscal year, the Commissioner is required to apportion the funds which become available as a result of the new $135,000 institutional payment limitation in such a manner as will result, first, in the receipt by each eligible institution of a total payment of at least $9,000 (or the amount of its entitlement for that fiscal year, whichever is less) and, then, additional amounts distributed to all eligible institutions up to the $135,000 maximum.

Thus, funds which become available as a result of the $135,000 maximum provision will be first reapportioned to schools which would otherwise receive a payment of less than $9,000. A payment of $9,000 is an amount which would allow $7,500 for a full-time veterans office coordinator and $1,500 for outreach and related expenses. In the event that funds are still available from the second tier of funds after all eligible schools are brought up to a level of funding of $9,000, the remaining monies would be distributed among all eligible schools up to the $135,000 maximum.

The amendment amends subsection (e) by providing that not less than 75 percent of the amount of payments received by any institution shall be applied to setting up the special veterans offices, programs, and services required by the law. Current law requires that only 50 percent of the VCI award be applied to setting up these veteran's programs. This new provision, together with the $135,000 maximum award limit also established by the amendment, would require a VCI school receiving the $135,000 maximum grant to expend about $100,000 on setting up the Office of Veterans Affairs and carrying out the required special veterans programs. Any school so desiring, could also make its non-earmarked 25 percent of the award available for use by the veterans' program.

Mr. CRANSTON. Mr. President, at the time this amendment adding section 524 to the bill was presented to the committee, the Office of Education had still not printed and sent out new applications for academic year 1974–75 VCI programs. Consequently, the particular problem to which the amendment we are offering today addresses itself was not brought home to schools seeking to demonstrate their second-year entitlement.

A school which has already been funded for this school year under the VCI provision, is required by existing law—for eligibility in a succeeding year—to enroll at least the same number of GI bill trainees who were in attendance when the school originally qualified for VCI funds in the first year. As a result of this maintenance-of-effort requirement, however, schools which increased their enrollment of veterans by more than 10 percent in the first year are actually penalized in the following year for having recruited more veterans. These schools must maintain the higher level of veteran enrollment. A number of schools, where substantial efforts were made to recruit veterans in the first year, would lose their eligibility for continued funding—regardless of the success of their program and even though they continue to maintain the 10-percent increase minimum requirement—as a result of this quirk of current law.

Mr. President, our amendment proposes to correct this inequitable situation, and the unintentional hardship being imposed upon many schools that are seeking to qualify for a second-year entitlement payment, by requiring such schools to maintain only the minimum number of veterans which would have been necessary to establish their original first-year entitlement—either enrollment of 10 percent more veteran students than in the year before, or, under the new alternative criterion in the reported bill, enrollment of a sufficient number of student veterans to make up 10 percent of a school's student body.

Mr. President, let me illustrate the effect of this amendment. Let us say, for example, that a school has a student body of 10,000. Let us further hypothesize that on the original base-year, counting date of April 16, 1972—under OE's VCI regulations—this school had 500 veteran students enrolled. In order to qualify for a VCI entitlement payment in academic year 1973–74, under the present 10-percent increase requirement in section 420, this school would have had to increase their GI bill trainee enrollment to at least 550—a 10-percent increase.

Now let us assume that this school, in fact, increases its enrollment to 600 in school year 1973–74, rather than the required 550, a 20-percent increase in veteran enrollment. Under the proposed amendment, this school would only have to have 550 GI bill trainees enrolled in 1974–75, rather than the 600 required by the maintenance-of-effort requirement in existing law, in order to qualify for its second-year entitlement.

Mr. President, let me further illustrate the effect of this amendment under the new first-year alternative entitlement criterion added in the reported bill—enrollment of a sufficient number of student veterans to make up 10 percent of a school's student body. Let us say, for example, another school has an undergraduate student body of 10,000 students. This particular school did not increase its GI bill trainee enrollment by 10 percent, in academic year 1973–74, but the school did have 1,100 student veterans, or 100 more than the 1,000 required to make up 10 percent of its total undergraduate student body. Under the alternative entitlement criterion added in the committee bill, this school would then qualify for a first-year VCI payment. Next year, this school—with a continuation of a 10,000-person student body—would remain eligible for a VCI entitlement if it maintains a veteran student enrollment of at least 1,100 under the present maintenance-of-effort provision; whereas, under our amendment, it would be entitled to a second-year VCI payment if it had 1,000 student veterans.

Mr. President, as with the rest of section 524, this amendment would be effective only with respect to VCI payments made on or after October 1, 1973, and thus would not affect those VCI payments already made last June.

Mr. President, there are a number of other matters pertaining to the VCI program that I would like to discuss at this time.

NEW VCI REGULATIONS FINALLY ISSUED

Mr. President, as was the case with the regulations issued on April 16, 1973 (38 Fed Reg. No. 72, p. 9472, 45 CFR pt. 189), the regulations released on May 3 (39 Fed. Reg. No. 87, p. 15481, 45 CFR pt. 189) despite the lengthy delay, correct a number of deficiencies in the original regulations issued last year. I am particularly pleased that a number of changes I suggested in my May 24, 1973, letter to Commissioner Ottina regarding last year's regulations, were finally incorporated in the May 3, 1974, regulations. Mr. President, I ask unanimous consent that my May 24 letter of last year be set forth in the RECORD at this point.

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

COMMITTEE ON
LABOR AND PUBLIC WELFARE,
*Washington, D.C., May 24, 1973.*

Dr. JOHN OTTINA,
*Acting Commissioner of Education, Office of Education, Washington, D.C.*

DEAR DR. OTTINA: I was delighted to learn that the $25 million which were appropriated in P.L. 92–607 last October for the Veterans Cost of Instruction (VCI) program, which I authored last year in the Education Amendments of 1972, were finally released on May 21. I am most disturbed, however, by matters related to this program that have just come to my attention.

It is my understanding that application procedures for the program are being seriously hampered as a result of the direct mailing of application materials to the Presidents of colleges and universities, rather than the Financial Aids Offices. These application materials could easily be overlooked, or at least held up, in the President's office. In fact, we have information that many potentially eligible schools are still totally unaware of the VCI program. As I indicated in my floor statement upon introduction of this amendment (S. 2740 on February 28, 1972), many colleges and universities have been slow in establishing special veterans' programs in the past because they were hindered by a lack of publicity about new programs. I believe such problems with the VCI program could be ameliorated by mailing all application materials directly to the Financial Aids Offices. In view of the proximity of the June 1st deadline for application, I urge you immediately to direct a new mailing of application materials to the Financial Aids Offices, and to extend the June 1st deadline—set forth in Acting Deputy Commissioner Muirhead's April 17th letter to college President's—by at least 10 days.

I recognize that the funds must be obligated by June 30, and that processing the applications in a 20-day period is a difficult task. Nevertheless, I believe that the far too widespread lack of understanding about the program and the recency of the decision to release the funds argues strongly for a new application mailing, and a modest time delay, and justifies any administrative inconveniences these steps might cause.

There are also several other matters regarding the failure of the April 16, 1973, Regulations (38 Fed. Reg. No. 72, page 9472, 45 C.F.R. Part 189) to carry out the law or clear Congressional intent in three major respects. Before discussing these points, I do wish to state very strongly that I believe the Regulations are generally excellent, and I am particularly gratified with the substance of the "Required Services and Uses of Funds" set forth in Subpart B, especially the O.E. adequacy assessment criteria and reporting requirements. These seem to me right in line with the basic purpose of the Congress (there is one point of clarification I suggest under item d. below).

I also wish to apologize for my delay in getting these comments to you after the 30-day comment period, but I am sure you will want to consider them carefully.

a. *Veterans eligible for $150 bonus payment.* Section 189.3(a)(2) defines educationally disadvantaged veteran students (subchapter V or subchapter VI of chapter 34 of title 38) who carry a $150 bonus, as those in attendance on April 16, 1973 "who have, *while attending such institution during the academic year in which such date occurred,* received educational assistance under . . . "those subchapters" (Emphasis added). The same language is set forth in your May 7, 1973, Administrative Bulletin No.

2, under *"Clarification of Category 2 Veterans (Item 11, Part I of the Application)"*, which states the following:

"'Category 2' veterans (i.e., 'educationally disadvantaged') are those who are enrolled on a half-time or greater basis and who are receiving or have received *at some time during the current (1972–1973) academic year* educational assistance under one of the following three G.I. Bill programs authorized by Subchapters V and VI of title 38, United States Code . . ." (Italics added.)

I strongly object to the underlined language as inconsistent with the clear language of the law.

As I will attempt to demonstrate, the language of section 420(b)(1)(B) clearly requires that the bonus be paid on behalf of each veteran who has, *at any time*, received G.I. Bill assistance under subchapter V or VI. Subsection (b)(1)(B) of section 420 states:

"The amount of any payment to which any institution is entitled under this section for any fiscal year shall be—

* * * * *

in addition, $150, except in the case of persons on behalf of whom the institution has received a payment in excess of $150 under section 419, for each person *who has been the recipient of educational assistance under subchapter V or subchapter VI of chapter 34 of such title 38*, and who is in attendance at such institution as an undergraduate student during such year." (Italics added.)

This clause makes no reference to the receipt of such subchapter assistance in a particular academic year. The language is written entirely in the past tense in contrast to the present tense used in clause (A) to spell out the basic $300 per "veteran receiving" chapter 31 or 34 assistance. Furthermore, note the comma after "title 38" in clause (B) which totally separates the concluding language ". . . during such year" from the language defining which veterans shall be counted. In short, I find absolutely no basis in the law for the interpretation you have taken and the requirement you have imposed in the regulations. Moreover, as I shall discuss at the end of the letter, this added requirement is itself in violation of section 421 (c)(2)(A) of the General Education Provisions Act, as amended by section 302(a) of P.L. 92–318, which I also authored.

In addition to not comporting with the plain language of the law, your additional language violates the expressed Congressional intent. The section-by-section analysis of the amendment, adopted by the Senate on February 28, as set forth at S 2741, explains clause (B)—which was not changed in conference—by reducing it into two separate and distinct conditions of eligibility for the bonus. It states:

"each institution shall be paid $150 for each person who—

"(1) is in attendance at such institutions as an undergraduate student; and

"(2) has been the recipient of educational assistance under subchapter V or VI of chapter 34 of such title 38."

And in the Explanatory Statement of the Committee on Conference, it is stated on page 228 of the Conference Report (No. 92–798): "(2) in addition, $150 for each veteran who has participated in one of the special remedial veterans programs." Again, there is no indication of a specified period of time in which the veteran participation in such a remedial program was required to have occurred.

One of the principal purposes of the VCI Program is to encourage schools to recruit and enroll those educationally disadvantaged students who have participated in PREP or other remedial programs under the G.I. Bill *at any time*, rather than just those students who were enrolled during the current academic year. This philosophy pervades my February 28 floor statement. The intention was to provide a two-pronged incentive to schools with respect to educationally disadvantaged veterans: (1) to recruit and enroll them in pre-college or PREP programs under subchapters V or VI, for which a school would receive $300 per such veteran—and I note with great pleasure how carefully your regulations in the last two parentheticals in section 189.2(b) follow the Congressional intent expressed in the last two sentences of the Explanatory Statement (p. 228) so as to count these veterans for that purpose; and (2) to recruit and enroll in college curricula courses veterans who had received such remedial or preparatory courses and were eligible for admission. In other words, our plan was to try to make maximum use of the successes of PREP and section 1691 college preparatory programs by seeing to it that the veterans so trained had opportunities to pursue a higher education using the preparation they had received.

(I would note that I would not insist on this same analysis with respect to tutorial assistance student recipients under section 1692 of title 38, although the law makes no (and probably does not allow any) such distinction since section 1692 is included within subchapter V of chapter 34. I would not object to paying the bonus on behalf of such a tutorial assistance recipient veteran (who had *not* otherwise participated in a subchapter V or VI program) only if he had received such assistance in the academic year in question. I would be delighted to confer with you and your legislative people to change the law or otherwise clarify it with respect to bonus payments to schools on behalf of tutorial assistance recipients.)

Thus, I think the law and Congressional intent are unmistakeably clear that if a veteran student has, at *any time*, been a participant in a subchapter V or VI preparatory program, the school is to be eligible for the $150 bonus under section 420(b)(1)(B). I urge you to alter the regulations immediately in this respect.

b. *Payment of the full $300 or $450 entitlement per eligible veteran.* Section 420 is clearly written as an entitlement. See the use of "shall be entitled" in subsections (a)(1), (a)(2), and (b)(1), and the use of "entitled" in subsections (a)(2) (twice), (c)(1), and (d). Moreover, and I think this is absolutely conclusive, section 420 contains no pro rata reduction provision of the type contained in section 419(b)(2)(B)(ii) for the comparable "Payments to Institutions of Higher Education" program provisions. Thus, I take strong exception to any O.E. implication of pro rata reductions, such as is contained in regulation section 189.3(b) ("subject to the availability of funds") and in point 2 of Administrative Bulletin No. 2 ("On the basis of the limited appropriation likely to be available . . ." and "If first payments are substantially less . . .").

I think a law suit will clearly lie to compel full payment in installments over the academic year 1973–74, as I discuss in item c. below.

c. *Periodic progress payments.* I have been unable to find any reference in the regulations to the requirement in the second sentence of subsection (d) of section 420 which provides:

"Payments under this subsection shall be made in not less than three installments during each academic year and shall be based on the actual number of persons on behalf of whom such payments are made in attendance at the institution at the time of the payment."

Not only is this language explicit and mandatory in nature, but section 421(c)(2)(B) of the General Education Provisions Act clearly prohibits the distribution of funds appropriated to carry out any applicable program "in any manner or by any method different from that specified in the law authorizing the appropriation."

It seems clear to me that what you must do to follow the law with respect to this point and the entitlement aspect discussed under item b. above, is to pro-rate the *first* payment to each school on the basis of entitlements out of the $25 million appropriation now available and submit to Congress a request either for a Supplemental FY 1973 or for an FY 1974 appropriation necessary to make the remaining two (or more) progress payments, as required by section 420(d), during academic 1973–74. In any event, I will seek such appropriations and ask that you immediately provide me with the information necessary once the first payments have gone forth.

d. *Clarifying language with respect to the $150 bonus and the use of Federal work/study funds to carry out outreach activities.* I suggest two minor clarifications in the regulations. First, in section 189.3(b)(2), strike out "For" and insert in lieu thereof "In addition to the payment under paragraph (a)(1) of this section, for". I trust there is no thought that the $150 is anything other than a bonus or add-on payment and not the full payment on behalf of qualifying educationally disadvantaged students. The law and all the legislative history is totally explicit on this, yet the regulations do not make this explicit.

Second, in section 189.13(b), insert after "programs" at the end of that clause the following: "(particular attention is directed to the new veteran-student services program established in the G.I. Bill by Public Law 92–540 in section 1685 of title 38; consult your VA Regional Office for details)". I think it is very important that schools be made aware of the existence of this new VA work/study entitlement program for which $4 million will be available in FY 1974 ($500,000 has been allocated from the FY 1973 VA readjustment benefits account), and I have urged the VA to target this money more extensively on G.I. Bill trainees carrying out outreach activities at schools and VA regional offices in organized programs.

Finally, I wish to point out that section 421(c)(2)(A) and (B) of the General Education Provisions Act, as added by section 302(a) of the Education Amendments of 1972 (P.L. 92–318), which I authored, provide:

"(2)(A) No requirement or condition imposed by a law authorized appropriations for carrying out any applicable program, or controlling the administration thereof, shall be waived or modified, unless such a waiver or modification is expressly authorized by such law or by a provision of this title or by a law expressly limiting the applicability of this paragraph.

"(B) There shall be no limitation on the use of funds appropriated to carry out any applicable program other than limitations imposed by the law authorizing the appropriation or a law controlling the administration of such program; nor shall any funds appropriated to carry out an applicable program be allotted, apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified in the law authorizing the appropriation."

As I have indicated in part above, these provisions require that no requirements or condition imposed by law may be waived or modified, no limitation may be imposed on the use of funds appropriated, and no distribution of funds may be made in a manner or method different from that specified in the authorizing law, except as expressly authorized by law. This provision was written to deal specifically with numerous prior situations in which the Congress found that the provisions of laws it enacted were either not being carried out or were being nullified by additional administrative requirements not expressly authorized by law. Although I do not believe that the situations I have covered above in items a., b., and c. would turn out any differently without these

section 421(c) provisions—because I think the command of the law in section 420 is very clear on these points—, these provisions of section 421(c) do, to say the least, strongly bolster my contentions.

I would appreciate your immediate attention to the points I have covered in this letter and look forward to your reply and to appropriate corrective actions vis-a-vis the VCI regulations.

Sincerely,

ALAN CRANSTON.

Mr. CRANSTON. Mr. President, specifically, I am delighted to note that section 189.3 (a)(2), referring to the calculation of cost-of-instruction payments, states—

The number of undergraduate veteran students in attendance on the applicable dates specified in paragraph(b) of this section who have *ever* received educational assistance under subchapter V, or subchapter VI of chapter 34 of title 38, United States Code. . . .

Previously, Mr. President, the Office of Education had taken the position that any such assistance had to have been received in the previous academic year. I strongly objected to this interpretation as clearly not comporting with the plain language of the law, as well as violating expressed congressional intent. In his June 18, 1973, response to my May 24, 1973, letter, Commissioner Ottina differed from my interpretation. Although I would have hoped the Commissioner could have seen the light in less than 1 year, I am grateful the issue is now resolved.

Mr. President, the Office of Education has also belatedly decided to comply with the periodic-progress-payment requirement of the law which Office of Education had previously chosen to ignore. Section 420(d) requires that payments shall be made in not less than three installments during each academic year and shall be based in the actual number of persons on behalf of whom such payments are made in attendance at the institution at the time of the payment. Whereas last year's regulations evaded this statutory requirement, section 189.3 (c) of the new regulations does carry out this requirement of law.

I regret, however, that the Office of Education continues to fail to comply with a number of other specific mandates of the law.

Mr. President, I continue to be most concerned about the Office of Education's inclusion in the new regulations of language implying pro rata reductions of entitlement, as is contained once again in regulation section 189.3(b), "Subject to the Availability of Funds." Section 420 of Public Law 92–318 is clearly written as an entitlement, as is substantiated by the use of "shall be entitled" in subsections (a)(1), (a)(2), and (b)(1), and the use of "entitled" in subsections (a)(2)—twice—(c)(1), and (d). Moreover, and I think this is absolutely conclusive, section 420 contains no pro rata reduction provision of the type contained in section 419(b)(2)(B)(ii) for the comparable payments to institutions of higher education program provisions.

I also remain concerned with the Office of Education's failure to include clarifying language with respect to the use of Federal work-study funds to carry out outreach activities. Last year, I suggested that section 189.13(b) would be substantially improved if the following language was included after "programs": "Particular attention is directed to the new veteran-student services program established in the GI bill by Public Law 92–540 in section 1685 of title 38; consult your VA regional office for details." Once again I would stress the importance of schools being made aware of the existence of this VA work-study entitlement program. This is particularly so, since the VA issued special instructions concerning the use of VA work-study slots in VCI offices, in order to clear up earlier confusion I had called to the VA's attention about the availability of the program.

Mr. President, finally, I am unclear about the reason for the Office of Education's decision to require VCI offices to be staffed by at least one person who is employed by an institution on a full-time basis and whose sole institutional responsibility is that of coordinating the activities of the office—section 189.11(a)(1). Although the law in section 420(c)(1)(B)(i) requires a "full-time office of veterans' affairs," there is no language specifying the requirement as shown in the amended regulations. And while I appreciate what I assume to be the Office of Education's concern for the integrity of the program, I believe such a requirement may be unnecessarily restrictive, especially for smaller schools receiving limited funding. I believe that having two part-time people sharing the full-time staffing of the office, along with work-study outreach veteran students, especially under section 1685 of title 38, for example, is a perfectly viable alternative for a small school unable to afford the salary of one full-time coordinator.

Mr. President, I am transmitting the concerns I have spelled out above to the Office of Education, and I look forward to receiving further clarification, and hopefully achieving a resolution of the issues I have raised in the very near future.

HEW'S REFUSAL TO SPEND MONEY FOR VCI PROGRAM

Mr. President, there is one other aspect of the VCI program which continues to be most troublesome. That is the Commissioner's refusal to pay to eligible institutions their remaining two installments on their VCI entitlements for this school year 1973–74, using the $25 million appropriated already in this fiscal year for the VCI program.

The Appropriations Committee, in its May 3, 1974, report on the Second Supplemental Appropriations Act, fiscal year 1974, H.R. 14013, stated—

That it "strongly disapproves of HEW's refusal to spend" this money appropriated for school year 1973–14 VCI payments, and "expects [the] . . . funds will be obligated without further delay.

The Labor, Health, Education, and Welfare, and related agencies fiscal year 1974 Appropriations Act, Public Law 93–192, enacted on December 18, 1973, appropriated $25 million for the VCI program. Under that act's anti-impoundment language—that not more than 5 percent of the amount specified in any appropriation provision contained in the act or any activity, program, or project within such appropriation may be withheld from obligation and expenditure for the fiscal year ending June 30, 1974—a minimum of $23.7 million must be obligated for the VCI program during this fiscal year.

Using the Office of Education's theory that the fiscal year 1973 funds, which were finally made available in June 1973, were for use in academic year 1973–74, the law in section 420(d) clearly requires two additional installment payments in this academic year. Thus, the Appropriations Committee has directed that the $23.7 million appropriated and required to be obligated in this fiscal year be "obligated without further delay" in order to make the required two remaining installment payments for this academic year.

POTENTIAL FOR STRONGER, MORE CREATIVE VCI PROGRAMS AS A RESULT OF VA'S NEW PLANS TO CLEAN UP THE LATE CHECK PROBLEM

Mr. President, VCI programs achieved a high level of success this first year of operation despite the fact that in many cases VCI coordinators were unable to plan and develop special programs because their time was—to a great extent—consumed with the task of assisting veterans with VA-related problems, especially late arrival of GI Bill checks. VCI coordinators were, in many cases, simply acting as a liaison between the veteran and the VA in the veteran's frustrating battle to receive VA educational benefits.

The Veterans' Administration has recently briefed congressional staff on its plans to implement a program to improve service relationships with veterans, their dependents, and veterans' service organizations. This program, which the VA says would be directed to the Vietnam era veteran and his or her education, would involve placing VA counselors on college and university campuses to identify and resolve VA educational assistance allowance problems.

In my home State of California, Mr. President, where there are approximately 350,000 Vietnam era veterans, and more than 166,000 are currently going to school under the GI bill, the VA plans to have 268 full and part-time of these new special representatives on the job by August 1.

Mr. President, considering the VA's past record of reluctance or inability to implement the GI bill educational assistance program in an imaginative and timely fashion, particularly in California, I am encouraged—although most cautiously encouraged—by this recent initiative to help Vietnam era veterans. Although it comes far too late, I hope it is not far too little. For too long, too many veterans have been forced to suffer unnecessary hardships because of checks being delayed, misdirected, or never sent out in the first place.

For the sake of the veterans going to school on the GI bill, I hope this program works. And, for the sake of the VCI coordinators, who have been shackled by routine VA paperwork, I hope the VA can

succeed and relieve them of those responsibilities.

I intend to monitor closely the results of this program by surveying the 222 colleges where veterans are enrolled in California.

Mr. President, I do have a number of specific concerns regarding the VA's general plans for the Vet Rep program, which I would like to comment upon at this time.

Although I am aware of the VA's stated intention to have Vet Reps work in close cooperation with eixsting VCI programs, I, nevertheless, have heard numerous reports, from VCI coordinators in California and elsewhere, expressing grave reservations and fears that their programs are about to be taken over by the VA.

Mr. President, the VA representative, who briefed congressional staff on May 3 regarding the new program, stated specifically his understanding that the two programs would be complementary, and that there clearly would remain a significant need for VCI programs working in coordination with veterans representatives. I urge the VA to make their intentions especially clear to VCI coordinators and other campus veterans representatives. It is my hope that VCI coordinators and Vet Reps will be able to develop mutually supportive efforts and programs in order to provide student veterans with the best available services.

In order to achieve this end, I would like to suggest that it might be extremely important to the future success of the Vet Rep program for the VA to meet with VCI and other campus representatives regarding existing plans for implementing this program. I suspect that simple lack of information, and a justifiable concern about having no opportunity for input into a program which will have a direct effect on existing VCI programs is contributing greatly to the fears and hostility among VCI coordinators to the VA's plans.

Specifically, Mr. President, there is a great deal of concern about the logistics of where Vet Reps will be housed on the school campus, who they will report to, whether or not they will be permitted access to student files, and what their responsibilities will be beyond coordinating the VA's educational benefits program. VA regional directors, themselves, apparently are unclear about many aspects of the program, and do not even know whether or not they will have any discretion as to the use of Vet Reps in their regions.

It is also my understanding that the VA plans to hire primarily Vietnam era veterans to fill these Vet Rep positions. Two particular problems have been brought to my attention with regard to what would appear to be a commendable hiring plan. In the first place, many veterans are concerned that young Vietnam era veterans, having no advanced degree or special training, will not meet the requirements of these positions. Rumors that Vet Reps will fill only GS–9 positions, and the knowledge that a veteran without an advanced degree cannot hold a position above a GS–7, are clearly contributing to early disillusionment with the VA's intentions.

Further difficulties are being encountered by veterans wishing to take the civil service examination, a requirement for Federal employment. In California, for example, the next civil service exam is scheduled for May 25. Training for Veterans representatives, however, is already scheduled to begin at UCLA on July 9. It is unlikely that results of the exam will be available by that time, thereby excluding many more Vietnam era veterans from qualifying for these positions.

Mr. President, I hope that careful consideration will be given to these problems and concerns as the VA begins to develop and implement the Vet Rep program. I believe the VA will avert many future problems by listening to the ideas and suggestions made by those persons who have been operating the campus veterans programs this past year—the VCI coordinators.

I believe this amendment has been cleared with the minority side and with the distinguished floor manager of the bill, and I hope they will accept the amendment.

Mr. PELL. Mr. President, I think this amendment helps correct an injustice or an inequity to veterans. It is a good amendment, one that I personally have no objection to and would recommend that we accept, depending on the views of the ranking minority member of the committee.

Mr. JAVITS. Mr. President, this amendment, like the last one, is opposed by the administration. I would like to read to the Senate the reasons for that opposition:

The Administration opposes this amendment. It is inconsistent with the Administration's basic postsecondary education policy of shifting financial support from institutional aid to direct student assistance, thus allowing the student flexibility and choice as to the institution he attends.

In addition, the effect of the amendment would be to remove the requirement that institutions increase the number of veterans in attendance in order to be eligible for veterans' cost-of-instruction payments.

For myself, and speaking solely for myself, I do not oppose the amendment. I give this notice of the administration's opposition so that any Senator may, if he chooses, oppose it.

I believe in this particular case, dealing with institutions which represent parts of the VCI program, so-called, that the amendment does straighten out an inequity based upon practical experience with the operation of the law as it exists today.

Therefore I would hope, speaking as one Senator, that the Senate might accept this amendment.

The PRESIDING OFFICER. Is all time on the amendment yielded back?

Mr. CRANSTON. Mr. President, I concur wholly in the analysis of the Senator from New York, and I do not concur in the analysis of the administration.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. PELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendments of the Senator from California.

The amendments were agreed to.

Mr. DOLE. Mr. President, I call up my amendment No. 1337.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. DOLE. Mr. President, I send to the desk a modification of my amendment.

The PRESIDING OFFICER. The modification will be stated.

The legislative clerk read as follows:

On page 388, line 9, at the end of title VIII of the bill, insert the following new section: "Notwithstanding any other law or provision of law, no court or officer of the United States shall enter, as a remedy for a denial of equal educational opportunity or a denial of equal protection of the laws, any order for enforcement of a plan of desegregation or modification of a court-approved plan, until such time as the local educational agency to be affected by such order has been provided notice of the details of the violation and given a reasonable time, to be determined by the Secretary, to develop and implement a voluntary remedial plan. Such time shall permit the local educational agency sufficient opportunity for community participation in the development of a remedial plan.

Mr. DOLE. Mr. President, the purpose of the amendment, as modified, is to assure that local educational agencies whose school arrangements are found to violate equal opportunity, or equal protection provisions of the law, are given a reasonable opportunity to formulate and implement a corrective plan before an administrative or judicial plan is forced upon them by an agency of the Federal Government. The amendment is based upon the premise that a local community, which is in violation of the law, can best develop an alternative plan which not only brings the district into compliance with the law, but also takes into consideration the transportation, safety, and educational needs of the students and their families.

However, in order for a local educational agency to accomplish this difficult task, it must be given sufficient time to plan and implement a program tailored to the specific needs and circumstances of the local community. Unfortunately, adequate time is not always granted.

I make specific reference to Topeka, Kans., where the school officials were given less than 2 months to develop a plan which would comply with HEW directives. As a matter of fact, it worked out to be only about 48 days, and that hastily-devised plan has now been found to be unacceptable.

The school board made a sincere effort to comply with the Federal guidelines, and did come up with a plan. However, in so doing, they did not have time to consider the transportation problems the plan would create for parents; the safety hazards it would create for children; the classroom problems it would create for teachers; or the general impact it would have on the availability of learning opportunities for the student. The plan, assured merely that a racial balance would be established in Topeka schools, and nothing more. But Topeka residents, regardless of their ethnic background, are concerned with education, as well as social integration, and they overwhelm-

ingly disapproved the redistricting plan. Now HEW threatens administrative action or, in the alternative, possible Justice Department suit to force upon all Topekans a school plan which is against their wishes and the students and community's best interests.

I feel that this represents unnecessary and untimely use of Federal force, and am therefore offering this amendment to insure that, in cases such as these, the Federal Government will allow adequate time for a local community to develop a solution which will take into consideration the needs of everyone.

I believe in community schools, just as I believe in integrated schools. And I feel I can safely say that the vast majority of Topekans are in favor of, and will work for, a balanced school system in their community. But a balancing of student ratios is only the first step in removing racial isolationism from our schools. A truly integrated school system is dependent upon the proper attitude of the people within that system and the appropriate action and reaction by its principal, student, and parent components. A truly integrated school system is one which fosters an environment permitting the education process to take place, and this requires community involvement with the schools.

To insure that any new Topeka school plan will have the necessary community involvement, the school board must go for suggestions to those affected by the plan. They must view all aspects of the education process—including parent-teacher relationships, transportation problems, and everyday social and environmental aspects of the students. From this information they can develop a school plan which will meet Federal guidelines, but which will also serve the community's interest in their children and their children's education.

To develop such a plan, time is required. That time in this case, however, has not been made available. On January 14, 1974, HEW notified the school district that they were not in compliance. The district requested more information from HEW on their findings, and received on March 12, 1974, a letter outlining in greater detail the reasons for the finding of noncompliance.

At that time the school district was given until May 1—which was less than 60 days—to develop a remedial plan. Such a plan was promulgated, but obviously it was not one which would take into consideration all the aspects of the education process. The plan was overwhelmingly disapproved, and the board, in a resolution which was adopted on May 7, and which I ask to be included in the RECORD at this time, voted for more time to "solicit the support, concern, and advice of all Topekans—to join together to improve and expand the equal educational opportunity of all students in the school district." This amendment seeks to guarantee that they have that time.

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

RESOLUTION ADOPTED BY THE BOARD OF EDUCATION U.S.D. No. 501

The Board of Education of United School District No. 501 met in Regular Session on Tuesday, May 7, 1974 at 7:30 p.m. at Quinton Heights Elementary School with the following present:

Board Members: Mr. Harry W. Craig, Jr., Vice-President; Mr. T. C. Anderson, Mr. Fred W. Rausch, Jr., Mr. Robert R. Schendel, Mr. Wayne T. Stratton, Dr. Gordon A. Summers.

Officers of the Board: Mr. W. W. Warner, Clerk; Mr. John H. Kelly, Treasurer.

Whereas, the Department of Health, Education and Welfare did, on the 14th day of January, 1974, advise this Board of Education of U.S.D. No. 501, that the system was not in compliance with the Civil Rights Act of 1964, in that certain grade schools had a disproportionate number of minority children and certain junior high schools attended by minority children were inadequate in facilities in comparison with those attended by white children, and

Whereas, U.S.D. No. 501 has, since 1954, been operated upon a neighborhood school concept, the method of education favored by the overwhelming majority of all residents of the City of Topeka, and

Whereas, the Board of Education, while denying that the Topeka Public Schools have not been in compliance with the Civil Rights Act of 1964, agreed that it would work towards a plan attempting to achieve a more perfect unitary school system, and

Whereas, the staff of the School District in response to the Board's request, has prepared and submitted to the Board at its meeting of April 30, 1974, a tentative plan which envisions the changing of the attendance areas of 22 schools and closing 7 schools, and

Whereas, since receipt of the tentative plan on April 30, 1974, the Board has considered the effect the plan will have upon the quality of education in the District and the Board believes and so finds that there is no way to meet the guidelines expressed by officials of the Department of Health, Education and Welfare as minimally necessary, without there being a concomitant inconvenience and hardship upon thousands of Topeka children and their families with the result that the quality of education is lowered.

Now therefore, be it resolved by the Board of Education, U.S.D. No. 501:

1. That the Department of Health, Education and Welfare be advised that the Board has found that the adoption of a possible plan as submitted to the Board on April 30, 1974, would not be in the best interest of the students of the School District for the reasons heretofore stated.

2. That the District determine if inequality of educational opportunities exist, and if so, take the remedial steps necessary to rectify the same, retaining the neighborhood school concept wherever possible.

3. That the Board solicit the support, concern and advice of all Topekans to join together to improve and expand the equal educational opportunity of all students in the School District.

Mr. DOLE. A recent WIBW-TV poll taken in Topeka relates some important points regarding the school integration question in Topeka, and I ask that a copy of that poll also be included in the RECORD.

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

WIBW POLL

Date: May 6, 1974.
Subject: School redistricting.
Survey area: Metro Topeka.
No. of interviews: 200.

WIBW News commissioned the Central Research Corporation to conduct a special telephone poll concerning the proposed school redistricting plan. Two hundred interviews were completed with parents of children attending U.S.D. 501 schools (Topeka Public Schools). Here are the questions and results as broadcast on WIBW newscasts on May 6:

| | Percent |
|---|---|
| 1. Do you presently have children attending a Topeka district 501 school? (Interviews were conducted only with individuals responding to this question). | |
| (a) Yes* | 100 |
| 2. From what you know, do you feel that Topeka presently has a serious discrimination problem in the public educational system? | |
| (a) Yes | *29(42) |
| (b) No | 63(49) |
| (c) No opinion | 8(9) |
| 3. Would you personally object to busing school children to more distant city schools in order to solve problems of racial imbalance? | |
| (a) Yes | 75(69) |
| (b) No | 23(31) |
| (c) No opinion | 2 |
| 4. Do you feel it is important to have nearby neighborhood primary schools in all areas of the city? | |
| (a) Yes | 93(80) |
| (b) No | 6(16) |
| (c) No opinion | 1(4) |
| 5. Do you feel that the community (through teachers or parent groups) should participate with the school board in the formulation of any plans to rework school attendance boundaries and/or close older school buildings? | |
| (a) Yes | 87(91) |
| (b) No | 10 (7) |
| (c) No opinion | 3 (2) |
| 6. Would your own children attend a different school next year if the redistricting plan proposed Tuesday is implemented? | |
| (a) Yes | 23 |
| (b) No | 70 |
| (c) No opinion | 7 |
| 7. From what you know of it . . . do you generally approve or disapprove of the redistricting plan proposed Tuesday by the school board? | |
| (a) Approve | 19 (7) |
| (b) Disapprove | 66(89) |
| (c) No opinion | 15 (4) |

*The percentages given in parentheses reflect the opinions of the 45 individuals whose children would attend a different school under the proposed plan. Although a base of 45 is very small, we thought the comparison between opinions of those whose children would be affected and the total interviewees interesting.

Mr. DOLE. As one can see from the poll, there are some basic points of strong agreement within the Topeka community. First of all, there is 93 percent support for the premise that it is important to have neighborhood primary schools in all areas of the city. The ironic fact about the HEW-directed plan, rejected by the community, was that while it met student ratio guidelines on a strictly mathematical basis, it placed the greatest hardship on minority students and families in terms of proximity to the school they would be attending. It was minority students, and their parents, whose schools would be closed down under the plan, and who would be required to accept a situation in which distance would make after school activities for the students, and after school conferences between parents and teachers, much less convenient. This illustrates clearly that more than just a racial balance must be sought if we are to improve the educational opportunities for all the schoolchildren in Topeka—and other cities in similar predicaments. For some of the strongest opposition to the HEW plan came from the predominantly minority-populated sectors of East Topeka.

Second, the poll illustrates 87 percent support for the premise that the community—through teachers and parent groups—should participate with the school board in the formulation of any plan to rework school attendance boundaries and/or close older school buildings. This, I feel, is the key to the development of any acceptable program, and I

am hopeful my amendment will be passed so that the community has this opportunity to participate in the development of any new plan which is to be adopted.

Third, the poll indicates strong dissatisfaction with the tentative plan which was submitted by the school board. This illustrates that the community expects, and I feel deserves, a plan which takes into consideration factors other than mere student members and student ratios.

Finally, I would like to point out the strong opposition reflected in the poll to a plan which would involve the busing of schoolchildren to more distant city schools in order to solve problems of racial imbalance. This statistic reflects the general attitude of Topekans and Kansans in general: that the real issue in quality education for all students is an integrated program, and not the establishment of magical student ratios.

Mr. President, since the 1954 Brown against Topeka Board of Education case, Topekans and the Nation have been acutely aware of the school integration issue. Major progress has been made in these areas, and communities are taking the lead in assuring that a quality integrated educational program is available for their children. The amendment I am proposing merely provides that where this community initiative exists, it will have time to operate and develop a school plan which takes into consideration the comprehensive needs of the entire school system. Passage of this amendment will insure that on the 20th anniversary of the Brown case, we have moved beyond the concept of integrated schools to the concept of integrated community schools—where community involvement is given a chance to make quality education available to all students.

Mr. President, let me summarize my remarks by saying that I have discussed this amendment with the distinguished Senator from New York (Mr. JAVITS)—the senior minority member of the committee—and with the committee chairman—the distinguished Senator from Rhode Island (Mr. PELL).

Our objective is not to in any way thwart desegregation directions. And our objective is not to prevent an integrated, balanced school system in Topeka, Kans. Rather it is to provide a reasonable period of time for a community to draft its own plan of compliance which will be mutually acceptable to all its citizens, as well as to the Federal Government.

I want to point out again that the same 49 days provided in this case simply is not enough time in which to institute a balanced plan.

I think that the one real objective of the plan failed in that it placed a great hardship on the minority students in terms of proximity to the schools which they would be attending. It also placed a severe hardship on the minority students with respect to the possibility of participation in any after-school activities.

For it was the minority students whose schools would be closed down under the plan. And it would be they who, because of the distance involved, would have their after-school conferences with parents and teachers made much less convenient.

So I say again that time is the only motivation for, and the only issue for consideration in, this amendment. And we just do not believe that 49, or 60, or even 90 days is a reasonable time in which to work out an adequate plan. Perhaps as much as 6 months time would be fair for a community the size of Topeka, with the substantial number of students involved, but that is for the Secretary of HEW to decide.

I would only hope that with the adoption of this amendment, and with the statements made by the junior Senator from Kansas, he will be given a signal that the time allotted thus far in those situations has not been reasonable to allow for community participation in the development of a remedial plan.

Mr. JAVITS. Mr. President, I have discussed this matter with the Senator from Kansas. I do not, however, wish to associate myself with the time parameters or the reasons relating to Topeka which he has given for this amendment. Nor do I wish to agree with what he says about the amendment. I do not wish to waive my right to make points of order against any other amendment, on the ground that it may very well be out of order and considered as a so-called busing amendment.

So I shall not raise a point of order with respect to this amendment. However, I do feel that on an orderly basis we are not violating the spirit of the unanimous-consent agreement which is now in effect by accepting what seems to be a desire to give the community a reasonable opportunity to develop a reasonable plan.

That does not mean that it has to be accepted. It does not mean that assistance must be given by way of HEW, the Department of Justice, or individuals.

It simply means that we will have an opportunity to develop such a plan.

It is only on that basis that I would make no objection to the amendment, but I do believe, on rereading it—and the changes made were made at my request by Senator DOLE, so I wish immediately to assure him that I understand it—I would hope very much that on page 1, line 10, he would strike the words "and implement", so that it would read "to develop a voluntary remedial plan."

I think if we include the words "and implement," that might take years. I did not notice when he submitted it that those words differ from the words on page 2 which say "the development of a remedial plan."

With that change, and noting that the administration supports the amendment, I have no objection to the adoption of the amendment.

Mr. DOLE. Mr. President, I ask that my amendment be modified by striking the words "and implement" on line 10, page 1.

The PRESIDING OFFICER. The amendment is so modified.

Mr. Dole's amendment (No. 1337, as modified) is as follows:

On page 388, line 9, at the end of title VIII of the bill, insert the following new section: "Notwithstanding any other law or provision of law, no court or officer of the United States shall enter, as a remedy for a denial of equal educational opportunity or a denial of equal protection of the laws, any order for enforcement of a plan of desegregation or modification of a court-approved plan, until such time as the local educational agency to be affected by such order has been provided notice of the details of the violation and given a reasonable time, to be determined by the secretary, to develop a voluntary remedial plan. Such time shall permit the local educational agency sufficient opportunity for community participation in the development of a remedial plan.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. Is all remaining time yielded back?

Mr. PELL. I yield back the remainder of my time.

Mr. DOLE. Mr. President, I simply want to thank the distinguished Senator from New York and the distinguished Senator from Rhode Island. I can understand the reason for the further modification and agree that it is certainly appropriate. As the Senator from New York has indicated, we are not trying to preclude the proper exercise of authority by HEW, but I do believe that these communities should have a chance to develop a plan—and this amendment will provide them that opportunity.

The PRESIDING OFFICER (Mr. BIDEN). The question is on agreeing to the amendment (No. 1337, as modified) of the Senator from Kansas (Mr. DOLE).

The amendment was agreed to.

AMENDMENT NO. 1262

Mr. JAVITS. Mr. President, I call up my amendment No. 1262, and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 127, between lines 16 and 17, add the following:

"(I) Ways of developing and implementing expanded educational opportunities for adults at the basic and secondary education equivalency levels.".

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

This amendment relates to that part of the bill which calls for a White House Conference on Education in 1977.

In view of the tremendous changes which are occurring in our educational system, it was our feeling in the committee that this conference should be convened. All that I do in my amendment is add to the matters for consideration of that White House conference this additional item respecting educational opportunities for adults—that is, adult education—which has been a particular care of mine.

Now, Mr. President, as to the attitude of the administration on this amendment: The administration opposes all of that section of our bill which deals with the White House Conference on Education. Therefore, I must assume, I state to the Senate, that it would oppose this amendment. It has not zeroed on this one particularly, but if it opposes the whole section, it would certainly oppose this amendment.

Nonetheless, Mr. President, I think so long as the section remains in—and I hope very much it will remain in—that this expansion of the terms of that conference to include adult education is highly warranted.

Mr. PELL. Mr. President, the amend-

ment proposed by the senior Senator from New York would stress the need for adult education at the proposed White House Conference on Education. This is a lack that should have been included in any case. I think it is a good amendment, and I am glad to join with him in supporting it.

I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment (No. 1262) of the Senator from New York.

The amendment was agreed to.

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

Mr. JAVITS. Without the time being charged to either side.

Mr. PELL. Mr. President, I withdraw my request.

Mr. TOWER. Mr. President, will the Senator from New York yield me some time on the bill?

Mr. JAVITS. I yield the Senator from Texas 5 minutes on the bill.

Mr. TOWER. Mr. President, I want to discuss two provisions in S. 1539 which are of great interest to me and a number of my constituents.

Section 531(j) of S. 1539 is essentially S. 3156 which I introduced along with Senator DOMINICK on March 12, 1974. This would establish a bilingual vocational training program. I envision this program as an extension to title VII of the Elementary and Secondary Education Act which provides funds to local education agencies for programs to benefit children with limited English-speaking ability. This program has been a major success and needs to be expanded both in terms of its scope and appropriations. It appears that the final version of this education bill will make these important changes.

The Bilingual Vocational Training Act will primarily benefit those individuals with limited English-speaking ability who are not in school and who wish to obtain additional skills. The objective is to remove barriers to limited English-speaking citizens as they strive to obtain better jobs in the private sector.

Mr. President, I explained the reasons for my proposal when I introduced S. 3156. I ask unanimous consent that the remarks I gave at that time be printed in the RECORD.

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

Mr. TOWER. Mr. President, I am today introducing a bill entitled the Bilingual Vocational Training Act of 1974. The distinguished Senator from Colorado (Mr. Dominick) has joined me in authoring this bill and presenting it to the Senate for its consideration. The bill represents a modification of S. 414, the Bilingual Job Training Act which we introduced last year with the cosponsorship of 18 other Senators. Since that time we have continued our efforts to promote Federal support to increase opportunities for Spanish-speaking peoples. Through these efforts we have determined that the Vocational Education Act offers a tremendous resource to achieve our goal of equal educational and employment opportunities for all of our citizens.

This is not to say that either Senator Dominick or myself are dissatisfied with the provisions relating to bilingual job training in the Concentrated Employment and Training Act that was recently enacted into law. That piece of legislation represented a progressive step forward in the field of manpower training. The bill contains a number of important provisions that will promote the goal of employment opportunities for Americans with limited English-speaking ability. I supported the legislation and am confident its implementation will result in more employment opportunities for bilingual citizens.

Nevertheless, vocational education represents another means at approaching the problem. While the Bilingual Education Act has proved to be successful in those areas where it has been funded it has not come close to eliminating the educational problems faced by Spanish-speaking Americans in a predominantly Anglo society. Education is the key to advancement in our society and if equal educational opportunity is to be a national goal, we cannot tolerate the high drop out rate that exists among our Spanish-speaking community and which is directly related to the fact that their average family median income is nearly $3,000 below that of the general population as a whole.

The legislation offered today is intended to build a bold new partnership between vocational education and bilingual education. It is primarily focused upon the disadvantaged bilingual person who, for variety of reasons, finds himself outside the confines of the traditional educational establishment. The bill provides for three primary types of funding: bilingual vocational training programs to be targeted at persons who are not currently enrolled in an elementary or secondary school and who may or may not have already entered the labor market but who desire additional vocational training; instructor vocational training programs which are desperately needed to fill the current void in this kind of educational endeavor; and instructional material programs which, as is in the case of instructional personnel, is currently in great need of development to meet the unique needs of bilingual persons in the United States.

Mr. President, as in the case of my previous proposal, there will no doubt be some questions raised about my proposing a federally directed categorical program. However, due to the enormous problems facing the bilingual community in achieving a position of equality of opportunity, some kind of Federal direction is needed to get the kind of program I am proposing off the ground.

Furthermore, Mr. President, I am confident that State and local communities and community based organizations will play the major role in the vocational job training program. A number of State vocational education agencies have already brought to my attention their interest in this kind of program. Naturally, such community based organizations as Operation SER, Jobs for Progress, will provide the needed expertise that would be required. It must be kept in mind that the purpose of this legislation is to provide equal opportunity for bilingual persons while allowing them and their communities the opportunity to thrive within their own cultural background and heritage. The Spanish-speaking American's culture is a rich one, and without its recognition this kind of program could not be successful.

Mr. President, this bill will soon be offered in the Senate Labor and Public Welfare Committee as an amendment to S. 1539, the Education Amendments of 1974. I am confident that the committee, which has worked tirelessly in developing a reform of our Federal education efforts last year and this year in conjunction with S. 1539, will approve the proposal.

Senator Dominick, a distinguished member of that committee, has done a great deal to advance this legislation in the committee. He was particularly helpful in developing the proper formula so that the necessary coordination between the Secretary of Labor, responsible for the Concentrated Employment and Training Act, and the Commissioner of Education is achieved.

I urge my colleagues to give this most important proposal their utmost consideration.

Mr. TOWER. Again, I would like to express my appreciation to the members of the Senate Labor and Public Welfare Committee for accepting this Tower-Dominick proposal. I would like to express particular thanks to Senator PELL, the chairman of the Education Subcommittee, Senator JAVITS, the ranking Republican, and Senator CRANSTON who was of great assistance during the committee's deliberations in having the amendment accepted.

The second topic I would like to discuss is section 522 of S. 1539. This section amends section 302(a)(2) of the Higher Education Act, allowing the Commissioner of Education to waive 3 years of the 5-year eligibility requirement for developing institutions "located in or near communities with large numbers of Spanish-speaking people if the Commissioner determines such action will increase higher education for spanish-speaking people."

Funds under this developing institutions section are intended to support 4-year and junior colleges in their struggle for survival. In order to obtain funds, an institution must be in operation for 5 years.

Mr. President, the Spanish-speaking community has expressed concern with regard to what they consider are inequities in the title III program. This concern has also been expressed by the title III Developing Institutions Advisory Council during its meeting on October 1 and October 2 of last year. That Council recommended legislation to make the funding more equitable by expanding the waiver provision for Indians to apply also to schools serving the Spanish-speaking community.

On March 12, 1974, I introduced along with Senator DOMINICK, S. 3157 which would have reduced the operational requirement for all schools to 3 years and to provide the same waiver for Spanish-speaking as applies to American Indians. The change now in S. 1539 represents a modification of my proposal and one introduced by the distinguished Senator from New Mexico (Mr. MONTOYA), and while I naturally prefer my language, I am satisfied with what the committee has done.

However, Mr. President, if I may have the attention of my good friends the Senator from New York and the Senator from Rhode Island, I would like the distinguished managers of the bill to address themselves to the entire question of funding for developing institutions. I fear that whatever legislative changes are made, the funding inequities will not be cured unless the attitude of the administrators in the Office of Education changes.

Quite frankly, the Office of Education considers the developing institutions program a "black program." It is natural that the majority of funds go to assist predominantly black schools. At the same time, many new 4-year and junior colleges, such as El Paso Community College in Texas, have become operational and predominantly serve the

Spanish-speaking community. Yet, since the program's inception only 4.1 percent of the funds have benefitted these schools. Taking nothing away from the black colleges, such statistics portend inequitable administration at the office of education.

Not only would I hope that the managers will express their strong intention to fight for the Bilingual Vocational Training Act and the developing institutions amendment in conference, but I urge them to join with me in stating that the amendment in the bill that I have just referred to represents a message from the Congress to the Office of Education that an equitable share of these funds should be granted to institutions serving Spanish-speaking students.

Mr. PELL. Mr. President, my understanding is that the Office of Education should fund these developing institutions and consider Spanish-speaking youngsters as among those who are minority students; and I hope that this omission on their part would be rectified.

Mr. TOWER. I thank my friend from Rhode Island. I would appreciate a comment from my distinguished friend from New York, who I know has a large Spanish-speaking constituency of his own.

Mr. JAVITS. Exactly. I think the Senator has put his finger on the main point when he said "fair share." There is always a big panic about the fact that somebody is going to be deprived as against somebody else.

It is a fact that the overwhelming number of minority-oriented colleges are so-called predominantly black colleges, which is something we understand to be the situation. So I would agree with the Senator that certainly the fair share basis should be observed.

I am sure the Senator will himself agree there should be no discrimination as to educational standards. In other words, the normal insistence by educational authorities on educational standards should be maintained but within the parameters of the legitimate demands of higher education, and certainly a fair share of it should flow to those institutions.

Mr. TOWER. I thank my friend from New York very much for his comments. I would note that perhaps it is not desirable to have ethnic-oriented colleges, but in fact where we have community colleges in this country predominant in the Spanish-speaking areas, it is inevitable that this would be the case because that is what the colleges with that kind of constituency are designed to do. I appreciate the comments of the Senator from New York.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum without the time being charged to either side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ELEMENTARY AND SECONDARY SCHOOL EDUCATION IN THE ARTS

Mr. PELL. Mr. President, on page 282 of the bill, S. 1539, one finds section 410 entitled "Elementary and Secondary School Education in the Arts." There is, however, no explanation of that section in the body of the report. I wish to explain to the Senate what section 410 is intended to accomplish.

Last year an innovative program was established at the John F. Kennedy Center for the Performing Arts in conjunction with the Office of Education which used a small amount of seed money to generate interest and support of art education in our schools. All too often the arts have been treated as a frill—something outside the necessary curricula of elementary and secondary education. Section 410 would, I believe, assist both educators and artists in changing this concept. It would give a solid legislative base for a meaningful program.

TITLE VII: NATIONAL READING IMPROVEMENT PROGRAM

Mr. BUCKLEY. Mr. President, reading instruction is generally recognized as the single most important discipline on which to concentrate in the primary grades because when students fail to learn to read or they do not read as well as they should, all other learning is severely blocked.

Also, since the failure during the past 4 years has been so massive, as reflected in the Louis Harris survey in 1970 indicating that nearly 20 million Americans over 16 are functionally illiterate, remedial reading instruction is required for students from age 10 and above so that they can get fullest possible benefit from their remaining time spent in school.

Evidence of the apparent inability of our schools and teachers to teach reading is particularly easy to find in urban areas. Minority and disadvantaged young people are simply not learning to read well enough to compete later in life. Recognizing this, former U.S. Commissioner of Education James Allen initiated the "Right to Read Program" back in 1969. At that time Commissioner Allen articulated as his goal the desire to see to it that every student in this country would be able to read well enough to survive and work by 1980.

Five years have already passed, and we have not yet even seen a model on which we might pattern a massive effort to solve this problem, so that one is forced to conclude that this program represents just one more example of governmental buck passing and public relations activities.

In 1969, Prof. Jean Schall of Harvard University published her massive 5-year Carnegie Foundation-sponsored study of reading instruction called Learning To Read: The Great Debate. Careful evaluation of the research in reading instruction up to that time led her to believe superior results were usually achieved through the so-called method of reading instruction as opposed to the traditional "look-say" method. She also recommended a strong dose of the traditional folk tales, fairy tales, fables, and simply good literature for children as early as possible.

Thus, in contrast to previous analysts' statements, including those working within the Office of Education, Professor Schall is telling us that methods of teaching reading are important, and that phonetics should play an important roll in all learning-to-read programs.

Accountability is a word much bandied about in education these days. When Dr. Leon Lessinger introduced the term a few years ago it made a lot of sense to laymen, the taxpayer, and the businessman because these people suddenly realized that until now educators had not been held accountable by an external agency. The taxpayers and parents of children in public schools suddenly became very interested in accountability as a way to get greater benefits from their educational tax dollars.

However, since 1969, accountability has remained little more than a mere word and a good idea. Educational expenses have doubled in the past 10 years and every year the quality of the end product of education seems to be deteriorating. This steady deterioration is illustrated by the fact that the College Entrance Examination Board recently announced that the median test results of the college boards has dropped steadily during the past decade.

Thus, although the Federal Government has invested more than $400 million in reading and reading-related research, we have not seen any measurably impressive results. Although there has been a great deal of educational research comparing various reading methods, techniques, and materials over a short period of time; although a large amount of time, energy, and money continues to be spent developing new methods, techniques, and materials; perhaps an obvious alternative has been overlooked: Among the dozens of commercially available reading programs, is it not possible—even probable—that some are better than others? Would it not be far more economical for the Federal Government to act to stimulate competition among advocates of differing approaches to the problem to see which are effective and which are not effective?

Under S. 1539, title VII, the national reading improvement program, the Congress is being asked to authorize more than $135,000,000 for fiscal year 1975 increasing to more than $150,000,000 by fiscal year 1978 to create a national reading program. There is no question that Americans have become increasingly concerned of late with the apparent retrogression being experienced by students in succeeding years in their ability to read. I have already cited some alarming trends which should cause all of us serious concern. However, it appears that we are moving once again to a massive Federal program when there may well be enough technology in the marketplace to accomplish what is desired: Better reading instruction programs.

Before we commit ourselves to almost $500,000,000 over the next 4 years might we consider how this could be done in

such a way to get the job done more effectively, at a lower cost?

Mr. President, many private organizations have developed new reading instruction techniques and new programs which are available today. In fact there are several dozen reading programs which are presently marketed although many have not become well known in the education industry. The National Government should, if anything, be performing the function of catalyst by establishing a framework within which present reading technologies can be tested. It may be, Mr. President, that there is no need for even newer programs and techniques. However if the National Government is going to commit itself to a multimillion-dollar reading program then it makes sense that we should look to what is available before it does anything else.

The National Government can best serve as a catalyst by developing a series of controlled tests, administered perhaps on a regional basis, to compare available basal reading and remedial programs. Acceptable accountability standards must be part of any sound testing program. We may find that very acceptable systems have already been developed. If that is so, the Government might save hundreds of millions of dollars on research and development which is unneeded. Mr. President, I would suggest that these points be considered before we authorize the national government to spend another half billion reinventing the wheel.

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 187, between lines 9 and 10, insert the following new section:

OPEN MEETINGS OF EDUCATIONAL AGENCIES

SEC. 110. Title VIII of the Elementary and Secondary Education Act of 1965 is amended by adding at the end thereof the following new section:

OPEN MEETINGS OF EDUCATIONAL AGENCIES

"SEC. 812. No application for assistance under this act may be considered unless the local educational agency making such application certifies to the Commissioner that members of the public have been afforded the opportunity upon reasonable notice to testify or otherwise comment regarding the subject matter of the application. The Commissioner is authorized and directed to establish such regulations as necessary to implement this section.

On page 187, line 11, strike out "SEC. 110." and insert in lieu thereof "SEC. 111".

On page 120, in the table of contents, redesignate item "SEC. 110." as item "SEC. 111" and insert immediately after "SEC. 109" the following:

"SEC. 110. Open meetings of educational agencies."

Mr. BIDEN. Mr. President, I have sent an amendment to the desk which has as its basic thrust to open up consideration of various Federal programs which affect the high schools and the primary schools of this country. The amendment I have proposed will simply provide that the meetings in the local school districts which grant applications for Federal funds must be open to the public.

Further, the amendment requires that there be public notice of the holding of such meetings.

The whole thrust of the amendment—I will not take any more time to explain it—is to provide parents, the community, and the school district, with the fullest opportunity to obtain some knowledge and understanding of the various Federal programs funded to the school districts so as to give them the opportunity to comment on the programs.

My understanding is that both the majority and minority managers of the bill have no substantive objection to this amendment.

Mr. PELL. Mr. President, there are no substantive objections to this amendment. I think it is a good idea. It will enable parents, the communities, and the school districts, to take an active part at these meetings.

Mr. JAVITS. Mr. President, we have joined the distinguished Senator from Delaware (Mr. BIDEN) in working out the language with the administration. So we have no objection to his amendment.

Mr. BIDEN. Mr. President, I yield back the remainder of my time.

Mr. PELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Delaware (Mr. BIDEN).

The amendment was agreed to.

Mr. JAVITS. Mr. President, I ask unanimous consent to suggest the absence of a quorum with the time to be charged to neither side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. BROOKE. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill add the following new title:

TITLE —PROVISION WITH RESPECT TO CERTAIN FEES LIMITATION ON ATTORNEY'S FEES

SEC. . Notwithstanding any other provision of this Act, the prevailing party in any civil action brought under this Act may not be allowed attorney's fees as part of the costs of any such action.

Mr. BROOKE. Mr. President, this is a very simple amendment to correct an inequity now present in the bill. It applies not to one section but to all sections of the bill. It is broad in scope, and I think it speaks for itself. It just says that, notwithstanding any other provision of this act, the prevailing party in any civil action brought under this act may not be allowed attorneys' fees as part of the costs of any such action.

This amendment would enable a person to seek relief under this act without having to worry about the possibility of paying attorneys' fees to the opposing party if such party prevails. Thus this amendment removes any possible chilling effect on the right of an individual to bring an action under this act.

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

Mr. BROOKE. I yield.

Mr. JAVITS. Mr. President, I believe that this amendment is absolutely essential. I cannot help feel that its inclusion in the Scott-Mansfield substitute was inadvertent—that is, the inclusion of that provision. It is nowhere else in the bill.

It is really a form of punishment for anybody who has the temerity to bring a suit, and obviously it is dangerous to poor people. It is not a punishment for a municipality or a city or some organized group. It is a danger, however, for a poor person.

So I hope very much that, in basic fairness, the Senate will agree with this amendment. It certainly makes a necessary correction. I really do not think the most ardent supporter of the Gurney amendment could want anything else.

Mr. GRIFFIN. Mr. President, will the Senator yield to me?

Mr. BROOKE. I yield.

Mr. GRIFFIN. Mr. President, I want to indicate that I believe the amendment can be accepted. I must admit that I find that the provision with regard to attorney fees reached further than I had realized. I believe the amendment of the Senator from Massachusetts will correct what appears to me to have been an inequity.

Mr. PELL. Mr. President, I share the view of my colleagues that this amendment is a fair and just one. We hope it will be accepted.

Mr. BROOKE. Mr. President, I thank the distinguished Senator from New York, the distinguished Senator from Michigan, and the distinguished Senator from Rhode Island. It pleases me that the Senator from Michigan, who is the opponent of the measure, because it really is the Griffin amendment substituted by the Scott-Mansfield amendment, does want to clear up this inequity. I am very grateful that he will accept it.

I yield back the remainder of my time.

Mr. PELL. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be charged to neither side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

## NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT OF 1975

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 13999.

The PRESIDING OFFICER (Mr. HART) laid before the Senate H.R. 13999, an act to authorize appropriations for activities of the National Science Foundation, and for other purposes, which was read twice by its title.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the bill.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I move that all after the enacting clause of H.R. 13999 be stricken and that there be substituted therefor the text of S. 3344, as reported by the Committee on Labor and Public Welfare with an amendment in the nature of a substitute.

The motion was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that S. 3344 be indefinitely postponed.

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

## QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time to be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

## TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business.

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

## REPORT ON IMPLEMENTING PROVISIONS OF DEFENSE APPROPRIATION ACT, 1974—MESSAGE FROM THE PRESIDENT

The VICE PRESIDENT laid before the Senate a message from the President of the United States, which was referred to the Committee on Appropriations. The message is as follows:

*To the Congress of the United States:*

In accordance with Section 812(d) of the Department of Defense Appropriation Authorization Act, 1974 (Public Law 93–155), I am pleased to submit the following report to the Congress on the progress made since my last report on February 20, 1974 in implementing the provisions of Section 812 of the Act cited above.

On April 25, representatives of the United States and the Federal Republic of Germany signed a new offset agreement covering fiscal years 1974 and 1975. The offset to be provided during this two year period is larger in dollar terms and provides more substantial economic benefits to us than any previous offset agreement. At an exchange rate of $1=DM 2.669, the dollar value of the agreement is approximately $2.22 billion over the two year period.

The composition of the agreement is generally similar to that of previous offset agreements, but there are a number of features that significantly increase its value to the United States, including substantial budgetary relief. As before, German military procurement in the United States represents the largest single element. In the present agreement it amounts to $1.03 billion (at $1.00=DM 2.669). Other attractive features include German willingness to continue funding the rehabilitation of facilities used by American troops in the Federal Republic; to take over the payment of certain real estate taxes and airport charges in connection with US military activities in Germany; to purchase from the US Atomic Energy Commission enriched uranium, including enrichment services; and—for the first time in the framework of an offset agreement—to finance US-German cooperation in science and technology.

As in the case of previous offset agreements, the new agreement makes provision for German purchases of special U.S. Government securities on concessionary terms. The significant interest savings resulting from an $843 million loan over seven years at 2½ percent, together with the above-mentioned German contributions to our troop stationing costs such as troop facilities rehabilitation and absorption of taxes and airport fees, substantially cover the additional costs we bear by deploying our forces in the Federal Republic rather than in the United States.

Benefits contained in the agreement constitute the major element in the effort to meet the requirements of Section 812. The agreement is the product of many months of difficult negotiations, involving not only the negotiators appointed by our two governments, but also personal exchanges at the highest levels of the two governments.

In my last report to the Congress, I stated that U.S. expenditures entering the balance of payments as a result of the deployment of forces in NATO Europe in fulfillment of treaty commitments and obligations in FY 1974 are estimated to be approximately $2.1 billion. That estimate still holds.

I anticipate that the bilateral offset agreement with the Federal Republic of Germany, together with arrangements involving other Allies, will meet the requirements of Section 812. This will permit us to maintain our forces in NATO Europe at present levels. In this connection, I would like to point out that the NATO study on allied procurement plans, which I referred to in my last report to the Congress, indicates that allied military procurement from the U.S. in FY 1974 will be significant despite the fact that many of our Allies have suffered a worsening in their trade balance and face the possibility of even greater deterioration. I will provide the Congress with further information on satisfying the requirements of Section 812 in my August report.

RICHARD NIXON.

THE WHITE HOUSE, *May 16, 1974.*

## COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF SECRETARY OF DEFENSE

A letter from the Deputy Secretary of Defense, reporting, pursuant to law, on disbursements made against the appropriation Contingencies, Defense, for current and prior years' obligations through March 31, 1974. Referred to the Committee on Appropriations.

APPROVAL OF LOAN FOR CONSTRUCTION OF CERTAIN TRANSPORTATION FACILITIES

A letter from the Administrator, Rural Electrification Administration, Department of Agriculture, reporting, pursuant to law, on the approval of a loan to Square Butte Electric Cooperative of Grand Forks, N. Dak., to finance the land, land rights and clearing required for the construction of certain transmission facilities (with accompanying papers). Referred to the Committee on Appropriations.

REPORT ON CERTAIN PROJECTS PROPOSED FOR THE ARMY RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on seven projects proposed to be undertaken for the Army Reserve (with accompanying papers). Referred to the Committee on Armed Services.

FACILITIES PROJECT PROPOSED FOR THE ARMY RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on a facilities project proposed to be undertaken for the Army Reserve, at Brockton, Mass., and of the cancellation of certain projects (with accompanying papers). Referred to the Committee on Armed Services.

PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE ARMY NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on eight projects proposed to be undertaken for the Army National Guard (with accompanying papers). Referred to the Committee on Armed Services.

REPORT ON FEDERAL CONTRIBUTIONS PROGRAM EQUIPMENT AND FACILITIES

A letter from the Director, Defense Civil Preparedness Agency, transmitting, pursuant to law, a report on Federal Contributions Program Equipment and Facilities, for the quarter ended March 31, 1972 (with an accompanying report). Referred to the Committee on Armed Services.

REPORT ON STRATEGIC AND CRITICAL MATERIALS STOCKPILING PROGRAM

A letter from the Acting Administrator, General Services Administration, transmit-

ting, pursuant to law, a report on the strategic and critical materials stockpiling program, for the 6-months period ended December 31, 1973 (with an accompanying report). Referred to the Committee on Armed Services.

REPORT ON ACTIVITIES OF THE U.S. TRAVEL SERVICE

A letter from the Secretary of Commerce, transmitting, pursuant to law, a report of the U.S. Travel Service, for calendar year 1973 (with an accompanying report). Referred to the Committee on Commerce.

PROPOSED LEGISLATION FROM SECRETARY OF COMMERCE

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to amend section 905(c) of the Merchant Marine Act, 1936 (with accompanying papers). Referred to the Committee on Commerce.

REPORT OF DISTRICT OF COLUMBIA BAIL AGENCY

A letter from the Director, District of Columbia Bail Agency, Washington, D.C., transmitting, pursuant to law, a report of that Agency, for the calendar year 1973 (with an accompanying report). Referred to the Committee on the District of Columbia.

PROPOSED LEGISLATION FROM CIVIL SERVICE COMMISSION

A letter from the Chairman, U.S. Civil Service Commission, transmitting a draft of proposed legislation to amend the Social Security Act to change the effective date of section 1862(c) to coincide with the effective date of a national health insurance law (with accompanying papers). Referred to the Committee on Finance.

PROPOSED LEGISLATION FROM THE RENEGOTIATION BOARD

A letter from the Chairman, the Renegotiation Board, transmitting a draft of proposed legislation to extend and amend the Renegotiation Act of 1951 (with an accompanying paper). Referred to the Committee on Finance.

REPORT ON INVENTORY OF NONPURCHASED FOREIGN CURRENCIES

A letter from the Fiscal Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, a report on inventory of nonpurchased foreign currencies, as of December 31, 1973 (with an accompanying report). Referred to the Committee on Foreign Relations.

INTERNATIONAL AGREEMENTS ENTERED INTO BY THE UNITED STATES

A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting certain documents relating to international agreements, other than treaties, entered into by the United States (with accompanying papers). Referred to the Committee on Foreign Relations.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Federally Supported Attempts To Solve State and Local Court Problems: More Needs To Be Done," Law Enforcement Assistance Administration, Department of Justice, dated May 8, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "More Competition Needed in the Federal Procurement of Automatic Data Processing Equipment," General Services Administration, dated May 7, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Need for Increased Use of Value Engineering, a Proven Cost Saving Technique, in Federal Construction," multiagency, dated May 6, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Interim Report on the Commodiy Exchange Authority and on Commodity Futures Trading," Department of Agriculture, dated May 3, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

PROPOSED CONCESSION CONTRACT WITHIN THE NATIONAL PARK SYSTEM

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed concession contract under which Park Reservation System will be authorized to establish, maintain, and operate a computerized campsite reservation system for designated areas within the National Park System for designated areas within the National Park System (with accompanying papers). Referred to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT FOR A RESEARCH PROJECT

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with W. A. Wahler & Associates, Palo Alto, Calif., for a research project entitled "Study of High Modulus Backfill Systems" (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT FOR A RESEARCH PROJECT

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with Cities Service Oil Co., Tulsa, Okla., for a research project entitled "Improved Oil Recovery by Micellar-Polymer Flooding" (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

AUDIT REPORT OF FUTURE FARMERS OF AMERICA

A letter from the president, board of trustees, Future Farmers of America Foundation, Inc., transmitting, pursuant to law, a report of the audit of the accounts of that foundation, for fiscal year ended December 31, 1973 (with an accompanying report). Referred to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports on temporary admission into the United States of certain aliens (with accompanying papers). Referred to the Committee on the Judiciary.

REPORT ON CERTAIN DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders relating to certain defector aliens (with accompanying papers). Referred to the Committee on the Judiciary.

REPORT ON U.S. COMMISSION ON CIVIL RIGHTS

A letter from the Chairman, U.S. Commission on Civil Rights, transmitting, pursuant to law, a report entitled "Counting the Forgotten, the 1970 Census Count of Persons of Spanish-Speaking Background in the United States" (with an accompanying report). Referred to the Committee on the Judiciary.

REPORT OF FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Office of Legislative Service, transmitting, for the information of the Senate, a prepublication copy of the annual report of the Food and Drug Administration, for the fiscal year ended June 30, 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

REPORT OF DRUG ABUSE COUNCIL

A letter from the Chairman of the Board, Drug Abuse Council, transmitting, pursuant to law, a report of that Council, for the year 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

REPORT OF FEDERAL ACTIVITIES UNDER THE VOCATIONAL REHABILITATION ACT

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the final annual report of Federal activities under the Vocational Rehabilitation Act, for July 1, 1972 through June 30, 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION FROM DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Secretary of Health, Education, and Welfare transmitting a draft of proposed legislation to provide assistance to local educational agencies which are in the process of eliminating discrimination or minority group isolation among students or faculty in elementary and secondary schools, and for other purposes (with accompanying papers). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION FROM CIVIL SERVICE COMMISSION

A letter from the Chairman, U.S. Civil Service Commission, transmitting a draft of proposed legislation to amend chapter 83 of title 5, United States Code, to establish time limitations in applying for civil service retirement benefits, and for other purposes (with an accompanying paper). Referred to the Committee on Post Office and Civil Service.

PROSPECTUSES PROPOSING ACQUISITION OF SPACE BY GENERAL SERVICES ADMINISTRATION

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, a prospectus proposing the acquisition of space in an office building to be constructed in Jackson, Miss. (with accompanying papers). Referred to the Committee on Public Works.

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, prospectuses proposing entering into leases for space presently occupied at certain locations (with accompanying papers). Referred to the Committee on Public Works.

REPORT OF BUILDING PROJECT SURVEY FOR SITKA, ALASKA

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, a report of Building Project Survey for Sitka, Alaska (with accompanying papers). Referred to the Committee on Public Works.

AMENDMENTS TO PROSPECTUSES FOR PUBLIC BUILDING PROJECTS

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, amendments to the approved prospectuses for public building projects at Lukeville, Ariz., and Laredo, Tex. (with accompanying papers). Referred to the Committee on Public Works.

REPORT ENTITLED "THE ECONOMICS OF CLEAN WATER—1973"

A letter from the Administrator, U.S. Environmental Protection Agency, transmitting, pursuant to law, a report entitled "The Economics of Clean Water—1973" (with an accompanying report). Referred to the Committee on Public Works.

PROPOSED LEGISLATION FROM ATOMIC ENERGY COMMISSION

A letter from the Acting Chairman, U.S. Atomic Energy Commission, transmitting a draft of proposed legislation to amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, and for other purposes (with accompanying

papers). Referred to the Joint Committee on Atomic Energy.

## PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A letter, in the nature of a petition, from the University of Michigan Medical Center, University Hospital, Ann Arbor, Mich., relating to radiopharmaceuticals for diagnosis and treatment. Referred to the Joint Committee on Atomic Energy.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary, with an amendment:

S. 2543. A bill to amend section 552 of title 5, United States Code, commonly known as the Freedom of Information Act (Rept. No. 93-854).

### FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. KENNEDY. Mr. President, I am pleased to file today on behalf of the Senate Judiciary Committee a unanimous report recommending passage of S. 2543, as amended. The bill contains a series of amendments to the Freedom of Information Act, which are intended to facilitate greater and more expeditious public access to Government information and to strengthen the public's remedy against agencies and officials who violate the act.

Last year the Subcommittee on Administrative Practice and Procedure, in conjunction with two other subcommittees, held 11 days of hearings on freedom of information and Government secrecy. Following those hearings I introduced S. 2543, which contained a number of proposed changes to the FOIA designed to meet the problems with agency administration of the act that were brought out in our hearings. In February the subcommittee reported out my bill. I was pleased to have been able to work with the ranking minority member of the full committee, Senator HRUSKA, to develop a bill which was supported by every member of the committee when ordered reported last week. I want to commend the Senator from Nebraska and his able staff for their efforts in developing the committee bill which is being filed today.

When I introduced S. 2543 I observed that "If the people of a democratic nation do not know what decisions their government is making, do not know the basis on which those decisions are being made, then their rights as a free people may gradually slip away, silently stolen when decisions which affect their lives are made under the cover of secrecy."

Former Chief Justice Earl Warren later last year made an impassioned plea for compelling "our public officials to keep the avenues of information open so the public can know and evaluate the character of their work from day to day." "If we are to learn from the debacle we are in," said the Chief Justice, "we should first strike at secrecy in Government wherever it exists, because it is the incubator for corruption."

Mr. President, S. 2543 reflects a strong commitment to promoting an open and responsive Government for all Americans. It is designed to provide the people with a stronger mechanism for keeping informed about what decisions their Government is making and to require that public officials keep the avenues of information open to the public.

During our hearings last year witnesses outside the executive branch pointed out three major problems frequently encountered in obtaining information from the Government under the Freedom of Information Act. First, they complained of consistent, unreasonable delays on the part of Government agencies in responding to requests for information. Too often these delays are brought about because agency officials do not want to disclose embarrassing information, even though that information may clearly be required to be disclosed under the FOIA.

Second, they expressed concern over the inability of Federal courts—after the Supreme Court's decision in EPA against Mink—to review agency decisions to classify documents in the interest of national defense and foreign policy. Justice Potter Stewart, in a concurring opinion in the Mink case, had stated that Congress built "into the Freedom of Information Act an exemption that provides no means to question an executive decision to stamp a document 'secret', however cynical, myopic, or even corrupt that decision might have been." We were thus urged to build into the act a process that would allow judicial review of classification decisions.

Third, they urged that Government officials be made more sensitive to the mandates of and more accountable under the FOIA. Officials handling FOIA requests have had little to lose by delaying responses or withholding records without justification. Few members of the public have the resources to go to court. News stories go stale with time, so the press loses its incentive after unreasonable initial delays. And possible embarrassment to the agency or its constituency is always more likely to be avoided by withholding than by disclosure. Thus, there exists little incentive for an agency or official to follow strictly the letter or the spirit of the FOIA.

I am pleased, Mr. President, that S. 2543 as amended addresses each of these important issues. One provision set definite time limits for agencies to respond to an appeal of an initial denial. In very limited and extraordinary classes of cases, agencies may certify—with approval of the Attorney General and publication in the Federal Register—that 30 days are necessary for handling initial requests because of the large numbers of records and wide geographic distribution involved. And in unusual circumstances, narrowly defined by the bill, the agency may add 10 days to its response time for either the initial or the appeal period. This should give agencies sufficient time to handle FOIA requests, while not allowing them to be dilatory in their practices. Each year they will have to report to Congress on the time it takes to handle requests and appeals, so that there will be a regular monitoring of agency compliance with the time requirements of the Act.

Where agencies want to withhold documents under a statute or Executive order as being classified in the interest of national defense or foreign policy S. 2543 as amended provides that courts may examine the documents themselves in camera and must determine whether in fact the documents were properly classified. The bill sets out procedures to protect particularly sensitive information, and it provides that courts should utilize an in-camera examination only if they cannot resolve the matter on the basis of arguments and affidavits. But it firmly establishes the principle of judicial review of—and accountability outside the executive branch for—agency decisions to classify material.

Three provisions of the bill are directed at the problem of accountability and responsibility in the agencies for adherence to the requirements of the Freedom of Information Act. To begin with, the names and positions of persons responsible for agency denials of information must be conveyed to the requester at each stage, and cumulated and reported to the Congress annually. The objective of this provision is not merely to single out publicly officials who work on FOIA requests, but to let them know that they must bear actual responsibility for denials that go out over their signatures.

Another provision of the bill allows the imposition of attorneys' fees and court costs against the agency in many cases where the requester substantially prevails in litigation. The intention here is not to encourage unnecessary litigation, but to let the agencies know that these fees and costs will no longer be an effective barrier to judicial enforcement of the FOIA for a large number of persons requesting information. Stricter adherence to the Act by these agencies should ensue.

Finally, a new provision added to the FOIA puts teeth into its requirements; it allows courts to impose disciplinary sanctions against Federal officials who violate the act. An innovation in administrative procedure, this Government accountability section provides that if a court finds Government records to have been withheld without a reasonable basis in law, the court shall order disciplinary action—up to a 60-day suspension—against the responsible Government official. The inclusion of this sanction for violation of the act clearly indicates a congressional commitment to openness, not secrecy, on the part of every officer and employee of the Federal Government.

Mr. President, democracy is indeed a fragile commodity. In a government of, by, and for the people, the people must have a right to obtain information from their government. And the people must have available, as well, a mechanism for securing that information. The Freedom of Information Act embodies that right and that mechanism. Both are strengthened by the bill being reported today.

Mr. HRUSKA. Mr. President, the hallmark of a democracy is an informed citizenry. It is elementary that the people cannot govern themselves if they cannot know the actions of their government. It is for this reason that we must remain committed to the goal of implementing the public's right to know to the greatest extent consistent with good government.

To this end, Congress passed the Freedom of Information Act in 1966. That

act imposed on the executive branch an affirmative obligation to provide access to official information that previously had been long shielded from public view. Under that act, an agency must comply with a citizen's request for information unless it can show that competing interests, such as the right to privacy or the national defense, require the information to remain confidential.

While the Freedom of Information Act has, by and large, worked successfully, experience with the administration of the act indicates that some changes are necessary. In considering this legislation, the Judiciary Committee found that the primary obstacles to the act's effective implementation have been procedural rather than substantive. S. 2543 is designed to remove these obstacles. Its basic purpose is to facilitate more free and expeditious public access to the information the act obligates the Government agencies to disclose.

Senator KENNEDY has already outlined the provisions of the bill. The basic features of the bill I consider worth emphasizing are the following:

First, the bill requires agencies to publish indexes of its records available to the public so that the citizen can know what information is held by the agency;

Second, it prohibits excessive charges for the information requested;

Third, it expedites public access to Government information by requiring Government agencies to respond to requests for information within specified time periods;

Fourth, the bill insures responsible responses to requests by holding accountable those officials who withhold information without a reasonable basis;

Finally, S. 2543 insures the integrity of the classification of a classified document by allowing the courts to review the document in camera.

Mr. President, it is my view that this bill, as amended, will secure the right of the individual to gain access to all the official information that good government and the rights of the individual will permit.

Since the close of the hearings held on the Freedom of Information Act, Senator KENNEDY and his fine staff have worked with me and my staff to draft a bill that, in the words of the Senate Judiciary Committee in considering the Freedom of Information Act in 1966, provides "a workable formula which encompasses, balances and protects all interests, yet places emphasis on the fullest responsible disclosure." I believe that S. 2543 does just that. It has my unvarying support.

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

S. 3511. An original bill to increase the availability of urgently needed mortgage credit for the financing of housing and other purpose (Rept. No. 93-853).

Mr. SPARKMAN. Mr. President, I am reporting to the Senate today a bill cited as "The Emergency Housing Finance Act of 1974." This bill would broaden existing law with respect to the use of mortgage credit for the financing of housing and would increase authorizations for the continuation of existing housing assistance and community development programs for fiscal year 1975. The bill is to provide temporary authority to update existing programs until the provisions of the Senate-passed omnibus bill, S. 3066, the Housing and Community Development Act of 1974, can be implemented.

The Senate passed the omnibus bill on March 11 and is waiting for the House of Representatives to mark up a companion version to complete congressional action on the measure. I am hopeful that the two Houses can agree in conference soon on a final version and have it signed into law by the President before the end of this fiscal year. If this is done, we would not need to pass the interim bill.

The dilemma we are facing is how to assure that needed legislation is passed to continue existing programs in case the omnibus bill establishing new programs is not passed by July 1, 1974, without prejudicing passage of the omnibus bill now wending its way through the House of Representatives. Our committee and the Senate worked hard and long on developing and passing S. 3066, which is one of the most comprehensive and effective housing bills ever before the Congress, and it is extremely important that nothing be done to jeopardize its final passage.

Mr. President, I have kept in touch with the House leaders on the omnibus legislation and have been assured that a bill, somewhat reduced from the Senate version, will be forthcoming within the next few weeks. With this assurance, I believe it is best to hold up Senate passage of the interim bill for a short while until a clearer picture emerges on the House action and the final approval by the Congress and the President of the omnibus legislation. If such approval is assured, no action is needed on the interim bill. If, however, we see no hope for an omnibus bill, we would move the interim bill for prompt consideration by the House and the President.

Mr. President, I should like to say a word or two about the President's message on housing which came to the Senate on Friday, May 10. The President's message was in two parts—one on immediate action and the other on pending legislative proposals. On the latter, he urged passage of housing provisions almost all of which are contained in the omnibus bill, S. 3066, already passed by the Senate.

The second and most significant part of his message authorizes immediate action to be taken by the Treasury, the Government National Mortgage Association, and the Federal Home Loan Bank System to increase financial support for the mortgage market. For the most part, the President implemented some obscure legislative authority already on the books. The results of such implementation may be helpful but the beneficiaries are unlikely to be the families most in need of assistance, and we will have to wait and see whether this action is enough to make any difference in the depressed state of home construction at this time.

With respect to GNMA, the President would continue the tandem plan authority given to GNMA last January to purchase mortgages at a below market interest rate. At that time, the President announced that GNMA would purchase 200,000 mortgages at a 7¾ percent interest rate but now, 5 months later, only about one-fourth of such mortgages has been purchased. On Friday, the President announced that he is authorizing GNMA to purchase 100,000 mortgages at an 8-percent interest rate. I do not understand why the January program is moving so slowly. One reason given is the terribly low production of the FHA offices based on what I hear is the frightfully low morale of local FHA staffs. If the lag in the earlier program is any criterion for the new program, I wonder how significant an impact we can expect from the new proposal at an even higher interest rate. Furthermore, I wonder how helpful such a program will be to the low- and moderate-income families where the greatest need exists. The statutory ceiling for GNMA mortgages is $33,000. The President announced a$3.3 billion program so he must expect practically all of the mortgages will be at the ceiling level. A $33,000 mortgage supports a $35,000 or even higher priced house so the question is how many moderate-income families can afford a $35,000 house at an interest rate of 8 percent

I would have the same comment with reference to the President's $4 billion mortgage program financed through the Federal Home Loan Bank System. The ceiling on these mortgages is $45,000 which could finance homes priced well above $50,000. A program at such prices will be of little help to the moderate-income American family.

The third program is even more questionable because Treasury funds would be committed to help support a $3 billion program of 8¾ percent mortgages with ceilings of $35,000 through the Federal Home Loan Mortgage Corporation. A 30-year, $35,000 mortgage with an 8¾ percent interest rate would require a monthly amortization payment of $275. Adding the typical taxes, insurance and utilities would call for a total monthly outlay of about $375. To afford such a payment would require incomes of around $20,000 or more, or somewhere in the upper 15 percent of the income scale for American families.

My concern is that the middle-income American family is not being helped by this program. Federal subsidies amounting to millions of taxpayer dollars will be used to benefit families at income levels well above the average, and nothing is being done for families at the middle or lower income levels. In fact, I wonder how much of this money might go to finance second homes for upper income families.

The President has frozen funds for programs of benefit to the lower-income families since January, 1973. One of the reasons given for the freeze was the excessive cost to the Treasury. If the President wanted to be helpful and spur construction and provide housing where it is needed most, all he would have had to do was to release the FHA section 235 or 236 funds already appropriated by the Congress. I suppose in today's political environment, it is too much to expect the President to take this route. Perhaps once new legislation is passed which will reaffirm Congressional intent that the Government's first priority should be to assist the needy low- and moderate-income family, we shall see a more bal-

anced program coming forth from the Administration. In the meantime, I suppose we have no choice but to go along with the President's plan. It will help out some, but it is obvious that, until we get the omnibus bill passed and implemented, anything we do now is only a stop-gap measure.

Mr. President, another area of concern where some of the worst housing exists is in the rural areas. The rural housing program, first approved as part of the Housing Act of 1949, is one of the best Federal programs of benefit to low- and moderate-income families. In January of 1973 it was caught up in the President's freeze of subsidy funds. Later in the year, the Courts forced the reinstatement of the program. The administration, however, only partially reinstated it and I ask unanimous consent to place in the RECORD at the conclusion of my remarks a letter to the President about this program.

Mr. President, it is obvious from my remarks that the Federal Government's housing programs are in a shambles at this time. I did not comment on it, but the public housing program is suffering the same way as the others with administration actions far out of line with the intent of the law as passed by Congress. The administration took upon itself the right to freeze funds duly appropriated by Congress and came forth with a scattering of questionable efforts to substitute its own ideas without clearing with Congress. Congress has been somewhat at fault in not acting more promptly in enacting new legislation in response to the administration's action undercutting the existing programs. It points to the urgency for the passage as early as possible of the omnibus bill passed in the Senate on March 11. I hope that we shall have final approval by the Congress of 1974 housing and community development legislation which can be sent to the President for his signature.

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

MAY 7, 1974.

THE PRESIDENT,
*The White House,*
*Washington, D.C.*

DEAR MR. PRESIDENT: I read with great interest your recent speech announcing that you will very shortly recommend new Federal programs to stimulate the ailing housing industry.

I am writing, out of concern for the ill-housed families in our rural areas, to urge you to take immediate steps to get our rural housing programs moving again, as part of any new Federal housing effort. It would take very little to get these programs back on the track. It could be done simply by shifting funds you have already authorized for Farmers Home Programs.

My concern for rural housing programs has been sharpened by recent reports I have received from the Congressional Research Service and from the Housing Assistance Council. These reports on the activities of the Farmers Home Programs during 1973–74 indicate that, despite the Federal Court ruling of July, 1973 these programs have not been restored, following their suspension, to the levels authorized by the Congress.

The statistics indicate that the slowdown in rural housing activity is a direct result of the new Farmers Home Administration policy emphasizing rehabilitation and repair of existing housing over the construction of new housing. They show that FHA has allocated its money where it cannot be used, since there are not either the houses or the industry to support a large-scale rehabilitation program in our rural areas at this time. This is exactly what housing experts predicted when the policy was first announced some months ago.

Our U.S. rural housing programs are lagging badly this year, and the situation is even worse in my own State of Alabama. Initial loans under the Section 502 farm housing program are down by almost 40% in the U.S. and by 66% in Alabama, compared with the same period last year. This drastic decline, has, moreover, hurt hardest those least able to afford it. Only 22,000 interest credit loans have been made this year to low income families in the U.S., compared to the 48,000 made during the same months last year. The cutback in aid to low income families in my own state has meant that 1,500 fewer low income families have received loan commitments this year. While Farmers Home has allocated the bulk of its funds for the repair and rehabilitation of existing houses, these programs have not gotten off the ground. The figures show for example, that only about $1 out of every $5 allocated for low income loans on existing houses has been used. It appears that projections for existing and rehabilitated units in the rural program are unrealistic.

The cutback in our rural housing programs this year is a tragedy for our rural population. It has cost jobs and homebuilding activity at a time when these are badly needed.

I urge you Mr. President to act immediately to restore rural housing programs by authorizing that unused funds earmarked by the Farmers Home Administration for other purposes may be used for new residential construction activity under the Section 502 Program.

With kindest regards, I am

Sincerely,

JOHN SPARKMAN.

By Mr. METCALF, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 6541. An act to authorize the Secretary of the Interior to convey certain mineral interests of the United States to the owner or owners of record of certain lands in the State of South Carolina (Rept. No. 93–855);

H.R. 6542. An act to authorize the Secretary of the Interior to convey certain mineral interests of the United States to the owner or owners of record of certain lands in the State of South Carolina (Rept. No. 93–856);

H.R. 7087. An act to authorize the Secretary of the Interior to sell reserved mineral interests of the United States in certain land in Missouri to Grace F. Sisler, the record owner of the surface thereof (Rept. No. 93–857); and

H.R. 10284. An act to authorize the Secretary of the Interior to sell certain rights in the State of Florida (Rept. No. 93–858).

## CORRECTION OF LANGUAGE OF REPORT—NO. 93–763

Mr. PERCY. Mr. President, there is one matter of importance that the committee agreed upon to include in its report. Difficulties in agreeing to specific language for the report, however, produced delays that made it impossible to be included in the draft report we sent to the printer. This language concerns the Ethnic Heritage Act and was developed by Senator MONDALE who has a special interest in the ethnic heritage and history of the Iron Range of Minnesota. It was agreed to by the committee but since it inadvertently missed the deadline for filing, I ask unanimous consent that it be inserted in the RECORD at this point in my remarks, considered as part of the report and included in any reprints of the report No. 93–763 of the Education Amendments of 1974.

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

The Committee is aware that funding under the Ethnic Heritage Act will begin shortly. We are also aware that the Office of Education has received a large number of excellent proposals for the limited amount of funds that will be available.

We are hopeful, nevertheless, that some part of the funding might be made available for work on the ethnic history and culture of the upper mid-West, particularly relating to the Iron Range area of Minnesota.

## EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. MAGNUSON, from the Committee on Commerce:

Stephen A. Nye, of California, to be a Federal Trade Commissioner.

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

## EXECUTIVE REPORTS OF A COMMITTEE

Mr. STENNIS. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations of four lieutenant generals in the Army to be placed on the retired list in that grade—Collins, Knowles, Seneff and Walker—and 50 temporary appointments in the Army to the grade of brigadier general—Tuberty through Otis; and, in the Navy, Vice Adm. Harold E. Shear, USN, to the grade of admiral and Vice Adm. Jerome H. King, Jr., USN, for appointment to the grade of vice admiral, when retired. I ask that these names be placed on the Executive Calendar.

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

Mr. STENNIS. Mr. President, in addition, there are 839 cadets for appointment in the Army in the grade of 2d lieutenant; in the Navy, 173 for permanent and temporary promotion in the grade of captain and below and in the Air Force, 42 Air National Guard officers for promotion in the Reserve of the Air Force to the grade of lieutenant colonel and 65 in the Air Force for appointment and reappointment in the grade of colonel and below. Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be placed on the Secretary's Desk for the information of any Senator.

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

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, or reported read the first time and, by unanimous con-

sent, the second time, and referred or placed on the calendar, as indicated:

By Mr. COOK:

S. 3501. A bill to provide assistance to encourage States to establish consumer claims courts and to provide for resolution by U.S. magistrate of certain consumer claims. Referred to the Committee on the Judiciary.

By Mr. MONTOYA:

S. 3502. A bill to amend the Atomic Energy Act of 1954, as amended, and for other purposes. Referred to the Joint Committee on Atomic Energy.

By Mr. PERCY (for himself, Mr. Moss, and Mr. CLARK):

S. 3503. A bill to amend title XIX of the Social Security Act to impose certain requirements relating to the discharge or transfer of medicaid patients from skilled nursing or intermediate care facilities, and for other purposes. Referred to the Committee on Finance.

By Mr. PERCY (for himself and Mr. Moss):

S. 3504. A bill to amend the Social Security Act to provide for the furnishing of rehabilitative services to inpatients of long-term care facilities. Referred to the Committee on Finance.

S. 3505. A bill to amend section 232 of the National Housing Act to provide insurance for loans to finance improvements to long-term care facilities required to correct deficiencies identified in State surveys and Federal certification procedures. Referred to the Committee on Banking, Housing, and Urban Affairs.

S. 3506. A bill to amend the Older Americans Act of 1965 to provide strengthened programs relating to long-term care facilities, and for other purposes. Referred to the Committee on Labor and Public Welfare.

S. 3507. A bill to amend the Social Security Act so as to make permanent certain temporary provisions relating to inspections of long-term care institutions, to provide for the publication of certain information regarding such institutions, and requiring that such institutions provide certain training for their nonprofessional employees as a condition of participation in the medicare and medicaid programs. Referred to the Committee on Finance.

By Mr. PERCY:

S. 3508. A bill to amend title XVIII of the Social Security Act to provide for the establishment of a Nursing Home Affairs Advisory Council. Referred to the Committee on Finance.

By Mr. McGEE:

S. 3509. A bill for the relief of Willard H. Allen, Jr. and Nicole J. Allen. Referred to the Committee on the Judiciary.

By Mr. CLARK:

S. 3510. A bill for the relief of Pham Van Kiet. Referred to the Committee on the Judiciary.

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

S. 3511. An original bill to increase the availability of urgently needed mortgage credit for the financing of housing and other purposes. Placed on the calendar.

By Mr. MONDALE:

S. 3512. A bill to amend the Federal Unemployment Tax Act so as to require States to extend to not more than 39 weeks the period for which an individual may receive regular unemployment compensation, to provide for Federal financing of one-half of the costs attributable to the extension of benefits so required, to provide minimum standards with respect to eligibility for such compensation, and to limit the use of waiting periods for the receipt of such compensation; and otherwise to extend and improve the Federal-State unemployment insurance system. Referred to the Committee on Finance.

## THE STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COOK:

S. 3501. A bill to provide assistance to encourage States to establish consumer claims courts and to provide for resolution by U.S. magistrates of certain consumer claims. Referred to the Committee on the Judiciary.

SMALL CLAIMS LEGISLATION

Mr. COOK. Mr. President, today I am introducing a bill to provide assistance to the States to encourage them to establish small claims courts. The aim of these courts is to make it easier, as well as less expensive, for the average consumer to have his day in court when he encounters difficulty in settling a dispute with a merchant.

This bill would give the Attorney General the power to approve State systems for small claims courts, and, upon such approval, to make grants which could total 50 percent of the costs which a State would incur in the operation of such a system.

The merits of small claims courts have been discussed a great deal already, and the need for them is becoming recognized more and more every day. Several States have already established very successful systems, most notably New York and California.

My bill does not stop with establishing guidelines and criteria for State claims courts. I am also proposing machinery to establish a Federal forum for small claims. This Federal small claims court will have jurisdiction over the cases involving diversity of citizenship between the consumer and the merchant. Since it is easy for people to travel to bordering States to make purchases, I feel that a forum for disputes which would arise from transactions of this kind is necessary.

Such a forum can be established by increasing the existing powers of the Federal magistrates.

As you know, there is now before us a bill which attempts to establish a program of Federal aid to the States. While the intent of this bill is good, I feel that it falls short of the purpose it is trying to achieve. Therefore, today I am introducing this bill, which presents a more complete program of aid to the consumer by including provisions for a Federal system of small claims courts.

I think that the diversity question, as well as this entire bill, is very important, and that it merits the careful attention which I know my colleagues will give it.

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By Mr. MONTOYA:

S. 3502. A bill to amend the Atomic Energy Act of 1954, as amended, and for other purposes. Referred to the Joint Committee on Atomic Energy.

Mr. MONTOYA. Mr. President the bill I am introducing today is an alternative to legislation proposed by the Atomic Energy Commission which I introduced by request as S. 3253. Chairman MELVIN PRICE of the Joint Committee on Atomic Energy introduced the legislation in the House as H.R. 13896. The Commission proposed to delete the requirement in section 54 of the Atomic Energy Act that Congress authorize amounts of special nuclear material to be distributed to groups of nations, such as Euratom and the International Atomic Energy Agency, or IAEA.

On April 30, 1974, I chaired hearings before the Subcommittee on Agreements for Cooperation of the Joint Committee on Atomic Energy to consider these bills. The AEC testified that action on this matter is required before June 30, 1974, to permit the supply of special nuclear material in time to meet the needs of certain foreign power reactors. The Commission proposed the legislation in order to permit consummation of arrangements through IAEA to fuel reactors sold by U.S. manufacturers to Mexico and Yugoslavia. The current statutory ceiling for IAEA—5,070 Kg of $U^{235}$—must be eliminated or increased to at least 42,000 Kg for these reactors.

Ceilings on the amounts to be distributed to groups of nations are established by law, whereas ceilings on distributions to individual nations under bilateral agreements for cooperation are established in those bilateral agreements, which are subject to a 30-day review by the JCAE. AEC did not propose to establish ceilings in the IAEA or Eurotom agreements, or any other formal limitations in place of the statutory ceilings, but rather to keep the JCAE fully and currently informed of proposed distributions, as the only means of congressional control over such actions.

The subcommittee determined that a relaxation of the requirement for an act of Congress to increase the ceilings was in order, but the Congress must retain some control over the distribution of our remaining margin of uranium enrichment capacity. This bill provides for an alternative means of resolving this problem without abandoning significant congressional control over these distributions. The statutory ceiling would be raised sufficiently to permit fueling for the Mexican and Yugoslavian reactors with enough margin to allow fueling of a few more reactors in the near future. A ceiling of 75,000 Kg is suggested.

The bill also provides that further increases in ceilings could be made by the Commission provided that any proproposed new ceiling is established in writing and lies before the Joint Committee for 30 days, unless the committee by resolution waives the condition of the waiting period or any portion of the period. This provides a formal means of congressional review which parallels the 30-day approval for changes in bilateral agreements for cooperation.

I hope that this bill will be given speedy consideration by the full committee and the Congress. I believe that it provides the necessary relief *from* the present restrictions without undermining congressional oversight of a potentially critical energy resource.

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By Mr. PERCY:

S. 3503. A bill to amend title XIX of the Social Security Act to impose certain requirements relating to the dis-

charge or transfer of medicaid patients from skilled nursing or intermediate care facilities, and for other purposes; and

S. 3504. A bill to amend the Social Security Act to provide for the furnishing of rehabilitative services to inpatients of long-term care facilities. Referred to the Committee on Finance.

S. 3505. A bill to amend section 232 of the National Housing Act to provide insurance for loans to finance improvements to long-term care facilities required to correct deficiencies identified in State surveys and Federal certification procedures. Referred to the Committee on Banking, Housing and Urban Affairs.

S. 3506. A bill to amend the Older Americans Act of 1965 to provide strengthened programs relating to long-term care facilities, and for other purposes. Referred to the Committee on Labor and Public Welfare.

S. 3507. A bill to amend the Social Security Act so as to make permanent certain temporary provisions relating to inspections of long-term care institutions, to provide for the publication of certain information regarding such institutions, and requiring that such institutions provide certain training for their nonprofessional employees as a condition of participation in the medicare and medicaid programs; and

S. 3508. A bill to amend title XVIII of the Social Security Act to provide for the establishment of a Nursing Home Affairs Advisory Council. Referred to the Committee on Finance.

Mr. PERCY. Yesterday, I had the honor of addressing the Governor's Conference of Aging in Des Moines, Iowa. In my address I announced my intention to introduce six bills designed to implement a program to provide the elderly with alternatives to nursing homes as well as to assure them of quality if nursing home admission becomes necessary. I am introducing those bills today.

My approach to developing alternatives to institutionalization is simple and direct. I believe the State and area agencies on aging authorized by last year's amendments to the Older Americans Act must become the focal point for this effort. I am introducing a bill which I call the Older American Act Amendments of 1974 which directs the area agencies on aging to give priority to developing and expanding home health services.

My bill also directs the Commissioner of the Administration on Aging to give special consideration to funding projects which demonstrate the effectiveness of geriatric day care centers as an alternative to institutionalization. I shall return in a moment to other provisions of this bill which strengthen the role of State and area agencies on aging in improving the quality of care in long-term care facilities.

My program for continuing our efforts to improve the quality of care in nursing homes has five parts. These parts are embodied in the bills I am introducing.

First, we must amend those provisions of existing law which were intended to benefit the long-term care patient but which in practice seem to work to his detriment. I have in mind here provisions of H.R. 1 dealing with the so-called "level of care" problem.

Certainly no patient should be receiving care at the taxpayer's expense which he does not need. We know that this sometimes happens. But at the same time there may be reasons beyond the strictly medical ones why some patients need a higher level of care than might at first glance seem necessary. Moreover, involuntary transfer and discharge can have a devastating effect on the physical and mental health of even those persons for whom these moves are thoroughly justified.

To remedy this problem I am proposing that no patient be transferred or discharged from a facility without a medical determination that his needs cannot be met in that facility. In addition, States will be required to notify a patient at least 14 days in advance of a pending transfer or discharge and to properly prepare him or her for the move. The patient or his representative may request a hearing on the impending move.

This bill also directs the Secretary to conduct continuing investigative and oversight activities with respect to State administration of the medicaid program. The Secretary is directed to hold hearings at which States will account for their administration.

Finally, my bill goes to the heart of the problem: the overly restrictive definition of skilled nursing care. The Secretary is directed to refine the definition to include recognition of factors other than strictly medical ones in determining the need for such care.

The second part of my strategy to improve the quality of care in long-term care facilities involves building on and expanding the truly innovative changes embodied in H.R. 1.

I am proposing that we extend indefinitely the provisions for Federal assumption of 100 percent of the costs of State surveys and inspections.

I am proposing that we require preservice and inservice training for all nonprofessional nursing home personnel.

I am proposing that we move beyond the requirement that inspection reports be available to the public by directing the Secretary to prepare and disseminate an intelligible summary or digest of these reports and that he develop a rating system for facilities based on the data found in the reports.

Third, we can improve the quality of care by vigorously enforcing all existing requirements. Enforcement has sometimes been absent in the past because of the fear that to enforce high standards meant closing homes and tossing elderly people out on the street.

To deal with this problem I am proposing a program of insured loans to nursing homes to help them correct deficiencies identified in surveys and inspections. Rather than closing homes or ignoring violations we must help homes correct deficiencies and achieve full compliance with standards.

Fourth, long-term care facilities must be provided with an incentive to maintain residences at their highest level of functioning and not to contribute to their decline through inadequate or nonexistent care. To provide this incentive I am introducing a bill to require the provision of rehabilitative services to all residents of long-term care facilities who may benefit from them and to provide 100 percent Federal reimbursement for the cost of these services.

Finally and perhaps most importantly we must make nursing homes more accessible to the communities they serve and thereby more accountable to these communities.

I think this can be accomplished in a number of ways. For example, States are likely to upgrade their surveillance of nursing homes if they are reimbursed for the cost and if they know that the Secretary of Health, Education, and Welfare may call them to a public hearing to account for their own performance. In addition, the publication of a booklet based on State surveys and inspection reports obviously make these facilities more open and accessible.

Beyond these measures I am proposing that the State agencies on aging be required to establish a nursing home ombudsman and that area agencies be directed to develop programs which will bring volunteers, especially youthful ones, into area nursing homes. Both of these activities have demonstrated their usefulness in improving the quality of care by making the institution more open and more accountable to the public.

Mr. President, the bills I am introducing today do not involve vast new public expenditures. Many provisions can be implemented without any increase in appropriations for a particular program or function. Others continue programs due to expire or now funded as demonstration programs.

The entire cost is difficult to estimate, however. This is true because no one really knows, on the basis of currently available information, how many patients may be able to benefit from rehabilitative services and how much these services will cost. But even if the cost were to exceed $100 million, as I estimate it might, this is a small amount in comparison to the $1 billion it would have taken to develop the SST. And the return on our investment is likely to be so great in terms of the quality of life for the elderly.

Mr. President, I ask unanimous consent that a detailed outline of the legislation I am introducing be printed in the RECORD together with the full text of the bills.

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

S. 3503

A bill to amend title XIX of the Social Security Act to impose certain requirements relating to the discharge or transfer of medicaid patients from skilled nursing or intermediate care facilities, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"STANDARDS FOR DETERMINING NEED FOR CONTINUED SKILLED NURSING SERVICES OR INTERMEDIATE CARE SERVICES

"SEC. 1911. (a) In addition to other requirements imposed by law as a condition of approval of a State plan under this title, there is hereby imposed (and each State plan approved under this title shall be deemed to contain) the requirement that—

"(1) in determining, for purposes of the administration of the State plan, the need for continued care in a particular skilled nursing facility or intermediate care facility (which provides services for which payment may be made under the State plan) of an individual who—

"(A) is entitled to medical assistance under the State plan, and

"(B) has, for a period of one hundred and twenty days or more, been an inpatient of such facility,

consultation with other appropriate professional personnel, such discharge or transfer would be in the best interest of such individual's physical and mental health, and

"(2) in making such judgment and such determination proper consideration shall be given, not only to the mental and physical condition of such individual, but also to the capability of the facility to meet his particular needs, and to the impact which discharge or transfer from the particular facility would, as a practical matter, have on his general well-being in light of his age, length of stay in the facility, family situation, mental attitude, and other relevant factors, and

"(3) whenever, in the administration of the State plan, it is determined that an individual, who meets the criteria specified in subparagraphs (A) and (B) of paragraph (1), should be discharged or transferred from such particular facility (because the care provided in such facility is in excess of the needs of such individual)—

"(A) notice shall (not less than fourteen days prior to the proposed discharge or transfer) be sent to such individual (and in appropriate cases to his legal representative or interested family members)—

"(i) indicating the date of the proposed discharge or transfer, and advising that such individual may (at any time prior to the date of the proposed discharge or transfer) demand a hearing by the State agency on the matter of such discharge or transfer,

"(ii) identifying and describing (in case of a determination that such individual should be transferred from such facility) the institution to which it is proposed that such individual be transferred, and

"(B) such discharge or transfer shall not become effective prior to the date specified in the notice (sent in accordance with subparagraph (a)(i)), or, if later, the date of a final determination on the matter made on the basis of evidence adduced at a hearing held pursuant to a demand made pursuant to such notice, and

"(4) the State agency shall take appropriate affirmative action to assure that any individual discharged or transferred from a facility shall have the benefit of a planned program of information and counselling concerning such discharge or transfer designed to assist him in adjusting to the change in his care and surroundings and to minimize the personal stress which may accompany such change.

For purposes of paragraph (3), a determination (made in the administration of the State plan) that payment should no longer be made to a facility in which an individual (referred to in such paragraph) is an inpatient shall be deemed to be a determination, made in the administration of the State plan, that such individual should be discharged or transferred from such facility.".

(b) Section 1904 of the Social Security Act is amended to read as follows:

"SEC. 1904. (a) The Secretary shall conduct, on a continuing basis in all States with plans approved under this title, investigative and oversight activities designed to determine whether there exists any basis to support a finding—

"(1) that the plan has been so changed that it no longer complies with the provisions of section 1902 and section 1911; or

"(2) that in the administration of the plan there is a failure to comply substantially with any such provision; and,

when such activities result in observations indicating that there does exist a reasonable basis for such a finding, he shall forthwith call upon the State agency to appear at a public hearing, scheduled so as to allow reasonable notice to the State agency, to give an accounting of its administration of the plan with respect to those matters in which the Secretary has found indications of noncompliance.

"(b) Where such a hearing results in a finding by the Secretary of failure to comply with any of the provisions of section 1902 and section 1911, the Secretary shall require compliance and may, to effect such compliance, notify the State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such noncompliance), until the Secretary is satisfied that there will no longer be any such failure to comply.".

(c) Section 1905(f) of the Social Security Act is amended by adding at the end thereof the following new sentences: "An individual shall also be deemed to be in need of skilled nursing facility services if such individual is determined (in accordance with regulations of the Secretary promulgated pursuant to the following sentence) to need care in such a facility on a daily basis notwithstanding the criteria set forth in the preceding sentence. The Secretary shall (not later than six months after the date of enactment of this sentence) promulgate regulations establishing criteria under which individuals (not meeting the criteria imposed by the first sentence of this subsection) newly applying for admission to a skilled nursing facility shall be determined to be in need of care in such a facility on a daily basis; such regulations shall accord proper recognition to the interaction of personal, health, and social considerations which cause such care to be needed in particular instances.".

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S. 3504

A bill to amend the Social Security Act to provide for the furnishing of rehabilitative services to inpatients of long-term care facilities

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) part A of title XI of the Social Security Act is amended by adding after section 1123 thereof the following new section:

"REHABILITATIVE SERVICES FOR PATIENTS IN LONG-TERM CARE FACILITIES

"SEC. 1124. (a) The Secretary shall make grants to long-term care facilities to defray 100 per centum of the reasonable cost incurred by such facilities in establishing and carrying out a rehabilitative services program (as defined in subsection (b)) for the inpatients thereof.

"(b) The term 'rehabilitative services program' means a program which includes—

"(1) examination of each inpatient of the facility to determine if such inpatient may benefit from therapy,

"(2) with respect to each inpatient who (on the basis of such examination) is determined to be in need of therapy, preparation of plans which specify the type of therapy to be provided, the frequency with which it will be administered, and the measurable goals sought to be achieved as a result thereof, and

"(3) utilization of qualified therapists (who are certified as such under State or local laws) to provide or supervise the provision of all therapy services furnished under the program.

"(c) Grants under this section shall be made in such amounts, and subject to such conditions as the Secretary may deem appropriate to carry out the purposes of this section and to protect the public interest; and amounts payable under such grants shall be made in advance or by way of reimbursement, and in such installments as the Secretary may determine.

"(d) As used in this section, the term 'long-term care facility' includes a skilled nursing facility (as that term is employed in titles XVIII and XIX and an intermediate care facility (as that term is employed in title XIX).

"(e) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"(f) Notwithstanding any provision of title XVIII or XIX, Federal funds available for the carrying out of either of such titles shall not be available for the provision, after June 30, 1975, of long-term care in any long-term care facility which does not have in effect a rehabilitative services program.".

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S. 3505

A bill to amend section 232 of the National Housing Act to provide insurance for loans to finance improvements to long-term care facilities required to correct deficiencies identified in State surveys and Federal certification of procedures

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 232 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(j)(1) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, is authorized upon such terms and conditions as he may prescribe, to make commitments to insure and to insure loans made by financial institutions to long-term care institutions approved by the Secretary of Health, Education, and Welfare, to make improvements in the physical structures of such facilities required to correct deficiencies identified in State surveys and certification procedures carried out in connection with the administration of any Federal program or of any State program in which there is Federal financial participation. The Secretary of Health, Education, and Welfare will approve for loans those facilities which show reasonable promise of meeting Federal standards and requirements in a reasonable length of time without endangering the health or safety of the residents in the interim.

"(2) To be eligible for insurance under this subsection, a loan shall—

"(A) not exceed the Secretary's estimate of the reasonable cost of the improvements to be made;

"(B) bear interest at not to exceed a rate prescribed by the Secretary;

"(C) have a maturity satisfactory to the Secretary, but not to exceed —— years from the beginning of amortization of the loan or three-quarters of the remaining economic life of the structure in which the improvements are to be made, whichever is the lesser; and

"(D) comply with such other terms, conditions, and restrictions as the Secretary may prescribe.

"(3) The provisions of paragraphs (5), (6), (7), (9), and (10) of section 220(h) shall be applicable to loans insured under this subsection, except that all references to 'home

improvement loans' shall be construed to refer to loans under this subsection.

"(4) The provisions of subsections (c), (d), and (h) of section 2 shall apply to loans insured under this subsection, and for the purposes of this subsection references in such subsections to 'this section' or 'this title' shall be construed to refer to this subsection.".

S. 3506

A bill to amend the Older Americans Act of 1965 to provide strengthened programs relating to long-term care facilities, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Older Americans Amendments of 1974."

SEC. 2. Section 304(c)(2) of the Older Americans Act of 1965 is amended by—

(1) striking the semicolon at the end of the section and inserting in lieu thereof a comma; and

(2) adding the following: "with special emphasis on the establishment or expansion of home health services.".

SEC. 3. Section 304(c) of the Older Americans Act of 1965 is amended by redesignating clauses (3) and (4), and all references thereto, as clauses (4) and (5), respectively, and by inserting immediately after clause (2) the following new clause:

"(3) provide for the establishment and maintenance within the service area covered by the plan of a program designed to strengthen access by the community to long-term care facilities, including accountability to the community for the services provided by such facilities, and a program of voluntary visiting services to such facilities;".

SEC. 4. Section 305(a) of the Older Americans Act of 1965 is amended by—

(1) striking out the word "and" at the end of clause (8) of such section;

(2) striking out the period at the end of clause (9) of such section and inserting in lieu thereof a semicolon and the word "and"; and

(3) adding at the end thereof the following new paragraph:

"(10) provides that the State agency will establish and maintain an ombudsman office which will receive and investigate complaints from residents and patients, and the relatives and friends of residents and patients, in long-term care facilities.".

SEC. 5. Section 308(a)(4) of the Older Americans Act of 1965 is amended by inserting immediately after "shopping services" a comma and the following: "geriatric day care center services".

S. 3507

A bill to amend the Social Security Act so as to make permanent certain temporary provisions relating to inspections of long-term care institutions, to provide for the publication of certain information regarding such institutions, and requiring that such institutions provide certain training for their non-professional employees as a condition of participation in the medicare and medicaid programs

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 249B of the Social Security Amendments of 1972 (Public Law 92-603) is amended by striking out "and ending June 30, 1974,".

(b) Section 1106 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f)(1) The Secretary shall publish, and make available to interested members of the public, information and data of public interest with respect to institutions which are skilled nursing facilities (providing services for which payment may be made under title XVIII or under a State plan approved under title XIX) or intermediate care facilities (providing services for which payment may be made under a State plan approved under title XIX). Such information and data shall be published in a convenient and readable form and shall contain a summary of survey reports on each such institution, and shall include data with respect to ownership of the institution and charges imposed for services in such institution. The matter required to be published under this subsection shall be published periodically and in separate documents so that each document pertains only to institutions in a particular area and the information and data contained therein is of current interest to individuals residing in the area.

"(2) The Secretary shall develop a simple and convenient system for rating such institutions on the basis of survey reports made to him, and, in any document published pursuant to paragraph (1) for any area there shall be included the rating of each such institution in such area, together with an explanation of the criteria employed for determining the rating of such institutions.".

(c)(1) Section 1861(j) of the Social Security Act is amended—

(A) by striking out "and" at the end of clause (14) thereof,

(B) by striking out the period at the end of clause (15) thereof and inserting in lieu of such period "; and ", and

(C) by adding after clause (15) thereof the following new clause:

"(16) provides (in accordance with standards which the Secretary shall establish) periodic in-service training for all nonprofessional employees of the institution, and preservice training for all new nonprofessional employees of such institution.".

(2) Section 1903 of such Act is amended by adding at the end thereof the following new subsection:

"(l) Notwithstanding the preceding provisions of this section, no payment shall be made to a State with respect to expenditures incurred by it for services provided by any institution, which is a skilled nursing facility or an intermediate care facility, if such facility does not provide (in accordance with standards which the Secretary shall prescribe) periodic in-service training for all nonprofessional employees of the institution and preservice training for all new nonprofessional employees of such institution.".

(3) The amendments made by this subsection shall take effect on the first day of the first calendar month which commences more than ninety days after the date of enactment of this Act.

S. 3508

A bill to amend title XVIII of the Social Security Act to provide for the establishment of a Nursing Home Affairs Advisory Council

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title XVIII of the Social Security Act is amended by inserting after section 1867 the following new section:

"NURSING HOME AFFAIRS ADVISORY COUNCIL

"SEC. 1868. (a) There is hereby created a Nursing Home Affairs Advisory Council (hereinafter in this section referred to as the 'Council') which shall consist of 11 persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive services. The Secretary shall from time to time appoint one of the members to serve as Chairman. At least 6 members of the Council shall be individuals who are representatives of the public and who are eligible for medical assistance under a State plan approved under title XIX, and at least one of whom is a resident in a long-term care facility. The remaining members of the Council shall include outstanding representatives of professional groups whose members perform services in long-term facilities. Each member of the Council shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member shall not be eligible to serve continuously for more than two terms. Members of the Council, while attending meetings or conferences thereof or otherwise serving on business of the Council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Council shall meet as the Secretary deems necessary, but not less than often than annually.

"(b) It shall be the function of the Council to provide advice and recommendations for the consideration of the Secretary on ways to improve the quality of care provided by skilled nursing facilites, intermediate care facilities, or other long-term care facilities, which provide services for which payment may be made under this title or under State plans approved under title XIX."

SENATOR PERCY'S LEGISLATIVE PROPOSALS TO IMPROVE LONG TERM CARE FOR THE ELDERLY

1. A bill to amend the Social Security Act to impose certain restrictions on the discharge or transfer of patients or residents of long-term care facilities.

a. Requires that no patient be transferred or discharged from a facility without a medical determination that his needs cannot be met in that facility.

b. Requires that steps be taken to assure that the patient or resident is properly prepared for discharge or transfer and will receive appropriate care in the future.

c. Requires that a patient or resident be informed of his pending discharge or transfer at least 14 days in advance and that he be given the right to a hearing on the transfer or discharge.

d. Directs the Secretary to exercise powers of investigation and oversight regarding the execution of state plans.

e. Directs the Secretary to refine the definition of skilled nursing care to include recognition of factors other than strictly medical ones in determining the need for such care.

2. A bill to require rehabilitative services in long-term care institutions.

a. Requires facilities to develop and execute rehabilitative programs for every resident who may benefit from them.

b. Authorizes 100 percent Federal reimbursement of the cost of rehabilitative services in long-term care facilities.

3. A bill to authorize government-insured loans to upgrade or correct marginal deficiencies in long-term care facilities.

a. Authorizes the Secretary of Health, Education and Welfare to certify eligible facilities to the Secretary of Housing and Urban Development.

b. Defines eligible facilities to be ones in which improvements in physical structure are required to correct deficiencies identified in state surveys and certification procedures.

c. Directs the Secretary of Health, Education and Welfare to certify only those facilities which can meet Federal standards in a reasonable length of time and without any danger to residents in the interim.

d. Authorizes the Secretary of Housing and Urban Development to insure low-inter-

est, long-term loans issued by private lending institutions to facilities meeting these requirements.

4. A bill to amend the Older Americans Act to strengthen provisions dealing with various modes of long-term care

a. Requires state plans to provide for establishing and maintaining a nursing home ombudsman program.

b. Requires area plans to provide for establishing and maintaining voluntary visiting services in long-term care facilities as a means of insuring community access and accountability.

c. Authorizes the Commissioner of Aging to approve projects designed to test or demonstrate the effectiveness of geriatric day-care centers as an alternative to institutionalization for the elderly.

d. Requires area plans to provide for developing or expanding home health services in those areas in which they are now lacking.

5. A bill to refine and extend certain features of H.R. 1 (P.L. 92-603) with respect to long-term care facilities

a. Extends indefinitely 100 percent Federal reimbursement for the cost of state surveys and inspections of nursing homes.

b. Directs the Secretary of Health, Education and Welfare to publish a convenient and readable summary of reports of surveys of institutions, including data on current ownership and charges.

c. Directs the Secretary to develop a rating system for long-term care institutions as an aid to the consumer.

d. Requires that all new non-professional employees of long-term care institutions receive pre-service training and that all present and future non-professional employees receive periodic in-service training.

6. A bill to create a permanent Nursing Home Affairs Advisory Council

a. Creates an 11-member Council to advise the Secretary of Health, Education and Welfare on ways to improve the quality of care of residents of long-term care facilities.

b. Requires that a majority of the members shall be eligible for Medicare or Medicaid benefits and that at least one person be a resident of a long-term care facility.

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By Mr. MONDALE:

S. 3512. A bill to amend the Federal Unemployment Tax Act so as to require States to extend to not more than 39 weeks the period for which an individual may receive regular unemployment compensation, to provide for Federal financing of one-half of the costs attributable to the extension of benefits so required, to provide minimum standards with respect to eligibility for such compensation, and to limit the use of waiting periods for the receipt of such compensation; and otherwise to extend and improve the Federal-State unemployment insurance system. Referred to the Committee on Finance.

Mr. MONDALE. Mr. President, I am today introducing legislation which provides for basic and comprehensive reform of the Federal-State unemployment insurance system. This legislation is cosponsored by the distinguished Senator from Michigan (Mr. HART). Specifically, this legislation makes six changes in present law.

First, the bill embodies a uniform, Federal standard providing for a maximum duration of unemployment compensation benefits of 39 weeks. The additional 13 weeks—weeks 27-39—which will be added to the 26 weeks now provided by most States, are financed through Federal-State cost sharing. The "trigger" for extended benefits is eliminated for weeks 27-39.

Second, the bill would enact Federal standards for eligibility for unemployment insurance benefits. A State may not require an employee to have in his base period for eligibility more than 20 weeks work for 39 weeks of unemployment insurance benefits.

Third, the bill embodies Federal standards for amounts of compensation. The weekly benefit amount of any eligible individual for a week of total unemployment must be an amount equal to a 66⅔ percent of such individual's average weekly wage or an amount equal to the maximum weekly benefit payable under State law, whichever is lesser. The State maximum weekly benefit amount must be no less than 100 percent of the statewide average weekly wage.

Fourth, the bill extends coverage to new categories of workers. Coverage is extended to agricultural workers, domestics, and State and local government employees.

Fifth, the waiting period, a noncompensable period of unemployment in which the worker must have been otherwise eligible for benefits, may be no longer than 1 week. If an eligible individual has received compensation for 3 or more weeks in his benefit year, compensation will be retroactively paid to such individual for the waiting period.

Sixth, the bill establishes a Special Advisory Commission on Unemployment Compensation.

Unemployment insurance is a Federal-State system, designed to provide temporary wage-loss compensation to workers as protection against the economic hazards of unemployment. Funds accumulated from taxes on wages during periods of employment permit payments of benefits to covered workers during periods of unemployment. At the same time as the unemployed worker is assisted financially while he is looking for work, the benefit payments help maintain purchasing power throughout the economy and cushion the shock of unemployment on the economy. In addition to helping the worker, the program is designed to help the entire economy by maintaining spendable income. By maintaining purchasing power, it acts as a stabilizing force in the economy, helping to prevent an economic downturn from gathering momentum and forcing further declines in consumer purchasing power. The benefits are countercyclical in effect and help to prevent unemployment from spreading and lasting a longer period.

As President Nixon noted in his address to Congress on April 12, 1973:

> A properly designed system of unemployment insurance should serve the dual purpose—of both helping to tide individual workers financially over the periods when they are without a job, and of stabilizing the economy as a whole by helping to make up for wage losses which would otherwise cut consumer purchasing power and accelerate business downturns.

Unfortunately, our present system, under which benefits were first payable in 1939, does not meet the criteria for an adequate design. The system has not kept pace with the dynamics of our economy and the growth in wage level. Too many people are still excluded from coverage. Of those who are covered, too many exhaust their right to benefits before they are able to find employment. Even when they are receiving benefits, too many workers receive benefit amounts which are inadequate when compared with rising wages.

Our unemployment compensation system came into effect as a result of congressional action in 1935. Just as Congress had a responsibility to develop a program and see that it was enacted into law, so too it has a responsibility for seeing that the program is modified to insure that its basic objectives continue to be met.

Considerable attention has recently been focused on the unemployment insurance system because of massive job losses due to the energy crisis. The Secretary of Labor recently estimated that more than one-half million jobs have been lost, directly or indirectly, as a result of energy shortages. This energy-crisis unemployment has lead to congressional efforts to provide for emergency unemployment benefits for workers who have lost their jobs as a result of this crisis. Also, general unemployment levels have already reached 5.2 percent this year, and, despite slight decreases in the overall level in the past 2 months, estimates of overall unemployment as high as 6 percent are still being made.

While I continue to support congressional efforts to deal with crisis unemployment, I believe that now is the time to take a long, hard look at the overall unemployment compensation system in this country. Comprehensive reform has long been needed, and now is the time to act.

DURATION

Maximum weeks of benefits vary from State to State. Most frequently, the maximum duration is 26 weeks. Only eight of the States entitle all claimants to the maximum; the rest vary the maximum duration with the amount of past earnings or employment. In 1969, these varying provisions resulted in 52 percent of all claimants exhausting benefits before receipt of 26 weeks of unemployment compensation. In 24 States, over 60 percent of all exhaustees had drawn benefits for less than 26 weeks. The average duration of benefits in some States is a mere 19 or 20 weeks, and, in other States, it is consistently 26 weeks or more. Experience under the temporary unemployment compensation programs of 1958 and 1961 and the Federal-State Extended Unemployment Compensation Act of 1970 (Public Law 91-373) indicate the need for a uniform standard for duration.

Our current unemployment insurance system provides a mechanism for paying benefits for up to 39 weeks. But the additional 13 weeks, above the basic 26-week period provided by most States, is contingent upon levels of unemployment throughout the entire State or the entire Nation. There is, however, no reason why an individual who is unable to find a job, or for whom an unemployment service is unable to find a job, should be penalized because most people around

him have a job and, therefore, the trigger is not activated.

The Federal-State extended benefit program, established by Public Law 91–373, is designed to pay extended benefits to workers during periods of high unemployment. The program is financed equally from Federal and State funds and may become operative either in an individual State or in the entire country as the result of State or National "on" indicators. Unfortunately, the extended benefits program has proven a failure. The complicated separate National and State trigger mechanisms have denied extended benefits to hundreds of thousands of the long-term jobless. Under the triggers, the national extended benefits were shut off at the height of a recessionary period. Many of the State programs have triggered "off" with unemployment levels as high as 8, 10, or 12 percent in major labor market areas.

The triggers are also discriminatory. The triggers rule out of the extended benefits program those areas which may experience high levels of unemployment but which are not included in States which have a level of unemployment high enough to satisfy the "on" trigger. Similarly, individuals may have lost their jobs but do not receive extended benefits because they do not happen to live in an area where the aggregate level of unemployment has reached the specified level. And the 120 percent requirement, which requires not only the existence of an "on" trigger but also that unemployment be 20 percent greater than the corresponding period in the two prior years, has prevented the successful operation of the extended benefits program. Recently the Department of Labor revealed that 17 States had an insured rate of unemployment in excess of 4 percent but could not pay extended benefits because they did not meet the dual trigger requirement of 4.0 percent insured unemployment and 20 percent greater unemployment than the corresponding period in the two prior years.

My bill would provide for a uniform, national maximum duration of 39 weeks. Triggers would be eliminated. And the duration of unemployment compensation payments would be uniform.

It must be remembered that requiring a uniform, maximum duration of 39 weeks does not mean that all employed workers will draw benefits for 39 weeks. If a *suitable job is* available after 3 weeks, the worker must accept it, or, under all State laws, he will be disqualified from receiving benefits. What it does mean is that, if the labor market does not provide a job for the individual during the 39 week period, he will not be required to shoulder the entire, difficult burden of unemployment. Our unemployment compensation system will provide him with benefits for at least the required 39 week period. In addition, of course, all qualifying requirements must be met.

ELIGIBILITY

There are no Federal standards for qualifying requirements for benefits. Under all State unemployment insurance laws, a worker's benefit rights depend on his experience in covered employment in a past period of time, called the "base period". The period during which the weekly rate and the duration of the benefits determined for a given worker apply to him is called his "benefit year." The qualifying wage or employment provisions attempt to measure the worker's attachment to the labor force. To qualify for benefits as an insured worker, a claimant must have earned a specified amount of wages or must have worked a certain number of weeks or calendar quarters in covered employment within the base period, or must have met some combination of wage and employment requirements.

Under the present State laws, the amount of work needed to qualify for benefits, like the duration of benefits, vary widely. In an attempt to make such requirements uniform, my bill provides that, as a qualifying requirement, the States may not require more than 20 weeks of employment, or the equivalent, as a prerequisite to the receipt of the maximum duration of benefits.

In some States, too long a period is required before a worker can qualify for benefits. Although this bill accepts the requirement that a worker must have demonstrated a past attachment to the labor force in order to be eligible for benefits, it precludes overly stringent qualifying requirements.

BENEFIT AMOUNT

Under all State laws, a weekly benefit amount—the amount payable for a week of total unemployment—varies with the worker's past wages within certain minimum and maximum limits. The period of past wages used, and the formulas for computing benefits from these past wages, vary greatly among the States. Although many States have statutory provisions which provide that the worker will receive 50 percent of his average weekly wage, this provision is qualified by a maximum level of benefits which is often set so low that it effectively undercuts the 50-percent guarantee. In fact, more than two-fifths of all workers now covered by the unemployment insurance system, find their benefits limited by State ceilings at a level below the half-pay ostensibly guaranteed them.

President Nixon, in July 1969, recognized this problem when in a message to Congress, he said:

> Up to now, the responsibility for determining benefit amounts has been the responsibility of the States. There are advantages in States having that freedom. However, the overriding consideration is that the objective of adequate benefits be achieved. I call upon the States to act within the next two years to meet this goal, thereby averting the need for Federal action.

Unfortunately, State efforts to guarantee adequate benefit levels were not readily forthcoming. Thus, in his message to Congress in April 1973, the President recognized the need for Federal action.

The purpose of the benefit amount requirement is to assure that the unemployment insurance system provides adequate benefits to the worker and provides the Nation with reasonably full protection against reduction in consumer purchasing power resulting from wage losses attributable to unemployment. Accordingly, this legislation would amend the Federal Unemployment Tax Act by adding a provision requiring that every eligible insured worker, when unemployed, must be paid a benefit equal to at least 66⅔ percent of his average weekly wage up to a State maximum which shall be at least 100 percent of the average weekly wage of covered workers in the State.

Here, too, it must be understood that requiring a State to provide a maximum dollar benefit amount equal to the average wage in covered employment in that State only means that more workers will not be cut off by the maximum benefit amount. It does not mean that any worker will receive either 100 percent of the average wage in the State or even 100 percent of his own wage when he is unemployed. My bill would merely assure most workers two-thirds of his wage. He would still lose one-third of his wage during periods of unemployment.

COVERAGE

Many unemployed persons are not eligible for unemployment compensation. In March 1974, about 40 percent, or 2 million, of the unemployed were not covered by the unemployment insurance system or were not eligible for benefits under its provisions. Frequently, the workers who are not covered are the poorest and the most needy workers in the country. This bill would extend coverage to three broad categories of workers: Agricultural workers, domestics, and employees of State and local governments. The 1973 manpower report of the President revealed that more than 1.3 million workers are employed as farm laborers or foremen; 1.4 million workers are employed as private household workers; and more than 10.6 million workers are employed by State and local governments.

State laws generally exclude agricultural labor from coverage. Farmworkers were excluded from the definition of employment in the original 1935 law on the grounds that it was not administratively feasible to apply the statutory scheme to them. The extension to agricultural enterprises of income and social security taxes, and the extension to farmworkers of income tax withholding, have removed lack of administrative feasibility as an objection to eliminating the original exclusion.

This bill would apply the Federal unemployment tax and the unemployment compensation system to farm employers who, during the current or preceding calendar year, employed four or more workers in each of 20 weeks or paid $5,000 in wages in a calendar quarter.

For a large number of businesses engaged in agriculture, the proposed extension of coverage will not be their first experience with unemployment insurance. Many of these firms are already covered under the Federal Unemployment Tax Act and under State laws because of their substantial nonfarm employment.

In his April 1973 message to Congress, President Nixon noted:

> I consider it of urgent importance that we act at once to extend unemployment insur-

ance coverage to as many agricultural employees as can feasibly be accommodated in the system.

Almost all State unemployment insurance laws exclude those who perform domestic service from coverage. This legislation would cover those who perform domestic service for an employer who paid $225 in any calendar quarter for domestic service.

Although the Federal act requires that certain service for State hospitals and State institutions of higher learning be covered under State law, it continues to exclude from State coverage service performed for State and local governments or their instrumentalities. Most States provide some form of coverage for State and local workers. About one half of the States provide mandatory coverage for all State employees and permit election of coverage by municipalities or other local government units. This legislation would, with certain exclusions, mandate coverage of State and local government employees.

There is no reason why a worker who meets all other tests should be denied benefits because he happens to be a farmworker, a domestic worker, or an employee of a State or local government. These workers face the same insecurities as other workers. Their children are just as hungry as other children when their parents are unemployed. We now have the administrative know-how, the lack of which was long used as a basis for excluding these workers, to include such workers in our unemployment insurance system.

MISCELLANEOUS

The waiting period is a noncompensable period of unemployment in which the worker would have otherwise been eligible for benefits. Most States require a waiting period of total unemployment before the benefits are payable. This legislation would permit a waiting period of no longer than 1 week. If an eligible individual has received compensation for 3 or more weeks in a benefit year, compensation will be retroactively paid to such individual for the waiting period.

The rationale that the imposition of a waiting period permits administrative time to process and verify claims is questionable in light of modern procedures. If a waiting period is, in fact, necessary, such a waiting period is still permitted. However, because the first week of unemployment is as deserving of unemployment compensation benefits as any other week of unemployment, the period will be covered by benefits after the unemployed worker reaches his fourth week of unemployment. The retroactive payment for the waiting period will be particularly useful at this point, since many obligations will be coming due.

Finally, the legislation provides for the appointment of a Special Advisory Commission on Unemployment Compensation for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations for the improvement of the system. The Commission is to consider, among other things, the changes made by this legislation and make recommendations with respect to the relationship between unemployment compensation and other insurance programs. The Commission is to be appointed by the Secretary of Labor. It will consist of 12 persons who will be representatives of employers and employees in equal numbers, representatives of State and Federal agencies concerned with the administration of the unemployment compensation program, other persons with special knowledge, experience or qualifications with respect to such programs, and members of the public.

While this legislation does much to modernize our present unemployment insurance system, it is only a first step toward a comprehensive system which will provide every American who wants to work with employment and truly protect every American working man and woman who is unemployed through no fault of their own. Such a system might not deny benefits after 39 weeks, if the individual's unemployment is still not his own fault. It is interesting to note that Congress, in providing security for the railroad worker who becomes unemployed because of mergers or technological change, provided for benefits without limit. Similarly, there may be no good reason why an unemployment compensation system should not provide benefits to individuals who want to work even though they are unable to get the initial job which is now required as a prerequisite to the receipt of benefits.

What America needs above all is a system which will provide jobs for all people who want to work and give them economic security during periods when our system proves unable to provide employment. To accomplish this, a comprehensive system is needed which will provide incentives to private industry to provide jobs, expand programs for public service employment so that much of our needed public works can be accomplished, provide job training in needed job skills, and provide income maintenance based upon unemployment compensation when work is unavailable.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 3512

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Unemployment Compensation Amendments of 1974".

COVERAGE OF AGRICULTURAL EMPLOYMENT

SEC. 2. (a) Section 3306(b) of the Internal Revenue Code of 1954 is amended by striking out the period at the end of paragraph (10) and inserting in lieu of such period "; or"; and by adding the following new paragraph (11):

"(11) remuneration paid in any medium other than cash for agricultural labor.".

(b) Section 3306(c)(1) of the Internal Revenue Code of 1954 is amended to read as follows:

"(1) agricultural labor (as defined in subsection (k)) unless performed for an employer who—

"(A) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in case of $5,000 or more to individuals employed in agricultural labor, or

"(B) on each of some 20 days during the calendar year or preceding calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day (whether or not at the same moment of time) 4 or more individuals;

excluding, however, for the purpose of this paragraph agricultural labor performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101 (a)(15)(H) of the Immigration and Nationality Act;".

(c) The amendment made by this section shall apply with respect to remuneration paid after December 31, 1975, for services performed after such date.

COVERAGE OF DOMESTIC SERVICE

SEC. 3. (a) Section 3306(c)(2) of the Internal Revenue Code of 1954 is amended to read as follows:

"(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for an employer who paid cash remuneration of $225 or more for such domestic service in any calendar quarter in the current or preceding calendar year;".

(b) The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1975, for services performed after such date.

COVERAGE OF CERTAIN SERVICE PERFORMED FOR NONPROFIT CORPORATIONS AND FOR STATE AND LOCAL GOVERNMENTS

SEC. 4. (a) Section 3304 (a)(6)(A) of the Internal Revenue Code of 1954 is amended by striking out the semicolon and all that follows, and by inserting in lieu of the matter stricken ", and".

(b)(1) Section 3309(a)(1)(B) of such Code is amended to read as follows:

"(B) service performed in the employ of the State, a political subdivision of the State, or any instrumentality of the State and one or more States, if such service is excluded from the term 'employment' solely by reason of paragraph (7) of section 3306(c); and".

(2) Section 3309(a)(2) of such Code is amended by adding at the end thereof the following new sentences: "The State law may also provide that an organization so electing may further elect to limit its payments in lieu of contributions to amounts which were (A) equal to the amount of that compensation attributable to service in its employ which would be considered for experience-rating purposes in computing its contribution rate if it were an employer that was liable for contributions and (B) did not exceed, in any calendar year, 10 percent of the wages (as the State law definies wages subject to contributions) paid by such organization. The State law which permits such further election shall require an organization which makes such further election to make a supplementary payment in addition to its limited payments in lieu of contributions. Such supplementary payment, in any calendar year, shall not exceed the lesser of (A) 1 percent of the wages (as the State law defines wages subject to contributions) paid by the organization during that year, or (B) that percentage of such wages which was equal to that portion, if any; of the contribution rate which is payable all of the State's experience-rated employers that are subject to contributions and which is computed without regard to their individual experience with unemployment or other factors bearing a direct relation to unemployment risk.".

(3) Section 3309(b) of such Code is amended by striking out paragraphs (3), (4), and (5) thereof and inserting in lieu of such paragraphs the following:

"(3) in a facility conducted for the purpose of carrying out a program of—

"(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

"(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot readily be absorbed in the competitive job market, by an individual receiving such rehabilitative or remunerative work;

"(4) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or any agency of a State or political subdivision thereof, by an individual receiving such work relief or work training; and

"(5) in the case of a State, a political subdivision of a State, or any instrumentality of a State, by elected officials, officials appointed for statutory or specified terms, members of legislative bodies, members and employees of the judiciary, national guardsmen, inmates of institutions, or part-time officials.".

(4) Section 3309 of such Code is further amended by striking out subsection (d) thereof.

(c) The amendments made by subsections (a) and (b) shall apply with respect to certifications of State laws for 1977 and subsequent years, but only with respect to services performed after December 31, 1975.

PROVISIONS REQUIRED TO BE INCLUDED IN STATE LAWS

SEC. 5. (a) Section 3304(a) of the Internal Revenue Code of 1954 is amended, effective January 1, 1976, by striking out paragraph (12) thereof and by inserting in lieu thereof the following new paragraph (12):

"(12) with respect to benefit years beginning on or after January 1, 1976—

"(A) compensation shall be paid to an otherwise eligible individual if he satisfies a qualifying requirement of not more than 20 weeks of base period employment or the equivalent in base period wages;

"(B) no waiting period in excess of 1 week of total or partial employment shall be required of any other individual otherwise eligible for compensation; and if an eligible individual has received compensation for 3 or more weeks in his benefit year, compensation shall be paid to such individual for such waiting period;

"(C) the weekly benefit amount of any eligible individual for a week of total unemployment shall be (i) an amount equal to at least two-thirds of such individual's average weekly wage (as determined by the State agency), or (ii) the maximum weekly benefit amount payable under such State law, whichever is the lesser;

"(D) the State maximum weekly benefit amount (exclusive of allowances with respect to dependents) shall be no less than the statewide average weekly wage most recently computed before the beginning of the individual's benefit year;

"(E) an otherwise eligible individual may receive for weeks of unemployment in his benefit year a total amount of compensation equal to at least 39 times his weekly benefit amount;

"(F) for the purpose of this paragraph—

"(i) 'benefit year' means a period as defined in State law except that it shall not exceed 1 year beginning subsequent to the end of an individual's base period;

"(ii) 'base period' means a period as defined in State law except that it shall be 52 consecutive weeks, 1 year, or 4 calendar quarters ending not earlier than 6 months prior to the beginning of an individual's benefit year;

"(iii) 'individual's average weekly wage' means (I) in a State which computes individual weekly benefit amounts on the basis of high quarter wages, an amount equal to one-thirteenth of an individual's high quarter wages; or (II) in any other State, an amount computed by dividing the total amount of wages (irrespective of the limitation on the amount of wages subject to contributions under the State law) in the individual's base period by the number of weeks in which he performed services in employment covered under such State law during such base period;

"(iv) 'high quarter wages' means the amount of wages for services performed in employment covered under the State law to an individual in that quarter of his base period in which such wages were highest, irrespective of the limitation on the amount of wages subject to contributions under such State law;

"(v) 'statewide average weekly wage' means the amount computed by the State agency at least once each year on the basis of the aggregate amount of wages, irrespective of the limitation on the amount of wages subject to contributions under such State law, reported by employers as paid for services covered under such State law, during the first 4 of the last 6 completed calendar quarters prior to the effective date of the computation, divided by a figure representing 52 times the 12-month average of the number of employees in the pay period containing the twelfth day of each month during the same 4 calendar quarters, as reported by such employers;

"(vi) the term 'regular compensation' means compensation, other than 'extended compensation' or 'additional compensation' payable to an individual under the State law, and the terms 'extended compensation' and 'additional compensation' shall have the meaning ascribed to them in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970; and

"(vii)(I) the term 'week of base period employment', as used in subparagraph (A), shall have the meaning ascribed to such term by such State law but there shall be counted as a week of base period employment any week in which the individual earned an amount which equals or exceeds 25 percent of the statewide average weekly wage, and (II) the equivalent in base period wages of 20 weeks of base period employment shall, for purposes of subparagraph (A), be total base period wages equal to five times the statewide average weekly wage and either one and one-half times the individual's high quarter earnings or 40 times the weekly benefit amount, whichever is appropriate under State law.

Any weekly benefit amount payable under such State law may be rounded to an even dollar in accordance with the provisions of such State law.".

(b) The amendment made by subsection (a) shall take effect January 1, 1976, and shall apply to the taxable year 1976 and taxable years thereafter; except that the provisions of section 3304(a)(12)(E) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not be a requirement for the State law of any State prior to January 1, 1977.

(c) Title IX of the Social Security Act is amended by adding at the end thereof the following new section:

"PAYMENTS INTO STATE ACCOUNTS WITH RESPECT TO EXPENDITURES REQUIRED TO MEET MINIMUM LENGTH-OF-ELIGIBILITY STANDARDS

"SEC. 909. (a)(1) Each State the State law of which has been approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954 shall be entitled to receive, with respect to regular compensation paid under such State law for any period after such law has been modified so as to comply with the requirement imposed by subsection (a)(12)(E) of such section, an amount equal to one-half of the excess of—

"(A) the aggregate of whichever of the following is less: (I) the regular compensation paid during such period, or (II) the regular compensation which would be paid during such period if the State law meets such requirement by providing regular compensation for not more than 39 weeks, over

"(B) the aggregate of regular compensation which would have been paid under such law during such period if such State law had provided for the payment of regular compensation for 26 weeks.

For purposes of this paragraph, the term 'regular compensation' shall have the meaning assigned to such term by section 3304(a)(12)(F)(vi) of the Internal Revenue Code of 1954.

"(2) For purposes of paragraph (1), the provisions of section 3304(a)(12)(E) shall be deemed to impose the requirement prescribed thereby for the period beginning on the date of enactment of this section. In the case of any such State law which (on the date of enactment of this section) meets the requirement imposed by such section 3304(a)(12)(E), such law shall, for purposes of paragraph (1), be deemed to have been modified so as to meet such requirement on such date.

"(b) An amount payable to a State under this section shall be payable in the manner prescribed by subsections (d) and (e) of section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 for the payment of amounts to which States are entitled under such Act, and shall be paid from the Extended Unemployment Compensation Account.".

(d)(1) Whenever the State law of a State is modified (or is deemed to be modified under section 909(a) of the Social Security Act) so as to comply with the requirement imposed by section 3304(a)(12)(E) of the Internal Revenue Code of 1954 (as added by subsection (a)), then for the period commencing with the first day of the first week with respect to which such modification (or deemed modification) is effective—

(A) section 3304(a)(11) of such Code shall no longer be a requirement in the case of the State law of such State, and

(B) no payment shall be made to such State, under the Federal-State Extended Unemployment Compensation Act of 1970, with respect to extended compensation or additional compensation paid to individuals for weeks of unemployment in such period.

(2)(A) Effective January 1, 1977, section 3304(a)(11) of such Code shall no longer be a requirement in the case of the State law of any State.

(B) No payment shall be made to any State, under the Federal-State Extended Unemployment Compensation Act of 1970, with respect to extended compensation or additional compensation paid to individuals for any day of unemployment which occurs after December 31, 1976.

PRORATION OF COSTS OF CLAIMS FILED JOINTLY UNDER STATE LAW AND SECTION 8505 OF TITLE 5, UNITED STATES CODE

SEC. 6. (a) Section 8505(a) of title 5, United States Code, is hereby amended to read as follows:

"(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of benefits paid to such individual as the amount of his Federal wages in his base periods bears to the total amount of his base period wages computed to the nearest percentage point".

(b) The amendment made by subsection (a) shall apply with regard to compensation paid on the basis of claims for compensation filed on or after July 1, 1975.

REPEAL OF FINALTY CLAUSE

SEC. 7. (a) Section 8506(a) of title 5, United States Code, is amended—

(1) by striking out paragraph (4),

(2) by inserting "and" at the end of paragraph (2), and

(3) by striking out "; and" at the end of paragraph (3) and inserting in lieu thereof a period.

(b) The amendments made by subsection (a) shall take effect upon the date of enactment of this Act.

SPECIAL ADVISORY COMMISSION

SEC. 8. (a) The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall, three years after the date of enactment of this Act, appoint a Special Advisory Commission on Unemployment Compensation for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations for improvement of the system, with particular reference to (but not limited to) the changes made by this Act, and making recommendations with respect to the relationship between unemployment compensation and other social insurance programs, and any other matters bearing on the Federal-State unemployment compensation program.

(b) The Commission shall be appointed by the Secretary without regard to the civil service laws and shall consist of twelve persons who shall be representatives of employers and employees in equal number, representatives of State and Federal agencies concerned with the administration of the unemployment compensation program, other persons with special knowledge, experience, or qualifications with respect to such a program, and members of the public.

(c) The Commission is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Commission such secretarial, clerical, and other assistance, and such pertinent data prepared by the Department of Labor as it may require to carry out such functions.

(d) The Commission shall make a report of its findings and recommendations (including recommendations for changes in the provisions of the Social Security Act and the Federal Unemployment Tax Act) to the Secretary, such report to be submitted not later than two years after it commences its review, after which date such Commission shall cease to exist.

(e) Members of the Commission who are not regular full-time employees of the United States shall, while serving on business of the Commission, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in government service employed intermittently.

## ADDITIONAL COSPONSORS OF BILLS

S. 2008

At the request of Mr. WILLIAMS, the Senator from Rhode Island (Mr. PELL), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of S. 2008, the National Workers' Compensation Standard Act of 1973.

S. 2665

At the request of Mr. SPARKMAN, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of C. 2665, to authorize funds for participation in the International Development Association.

S. 2782

At the request of Mr. CRANSTON, for Mr. NELSON, the Senator from Connecticut (Mr. RIBICOFF) was added as a cosponsor of S. 2782, to establish a National Energy Information System, to authorize the Department of the Interior to undertake an inventory of U.S. energy resources on public lands and elsewhere, and for other purposes.

S. 3221

At the request of Mr. JACKSON, the Senator from Utah (Mr. Moss) was added as a cosponsor of S. 3221, the Energy Supply Act of 1974.

S. 3311

At the request of Mr. CHILES, the Senator from Maine (Mr. HATHAWAY), the Senator from Illinois (Mr. PERCY), and the Senator from Maryland (Mr. BEALL), were added as cosponsors of S. 3311, a bill to provide for the use of simplified procedures in the procurement of property and services by the Government where the amount involved does not exceed $10,000.

S. 3485

At the request of Mr. WEICKER, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 3485, to amend the Rail Reorganization Act of 1973 to allow adequate time for citizen participation in public hearings, and for other purposes.

## SENATE RESOLUTION 326—SUBMISSION OF A RESOLUTION TO CONSERVE ENERGY

(Referred to the Committee on Rules and Administration.)

Mr. BARTLETT (for himself, Mr. HANSEN, Mr. HELMS, and Mr. COOK) submitted the following resolution:

S. RES. 326

Whereas the United States continues to be in the midst of an energy crisis; and

Whereas we may experience actual shortages of energy this summer unless we continue our present conservation programs and emphasize the need for new conservation ideas; and

Whereas significant amounts of energy can be saved by maintaining our air conditioning at a higher terperature; and

Whereas the U.S. Senate should set an example of energy conservation for the rest of the nation; therefore be it

*Resolved*, that the temperature in building space occupied by the United States Senate be maintained at 78° during the summer months; and

That Senators, staff and visitors shall be encouraged to dress in a manner to minimize the discomfort of the higher temperature and accordingly that neither Senators nor staff shall be required to wear coats on the Senate floor during the summer months.

## EDUCATION AMENDMENTS OF 1974—AMENDMENTS

AMENDMENT NO. 1340

(Ordered to be printed, and to lie on the table.)

Mr. PERCY. Mr. President, I introduce an amendment to S. 1539 and ask that it be printed in the RECORD and lie on the table.

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

The amendment is as follows:

On page 238, line 22, after the word "amount" insert "(i)".

On page 238, line 24, insert the following: "and (ii) not less than 15 per centum shall be expended for programs or projects designed to meet the special educational needs of female children".

On page 240, between lines 3 and 4, insert the following new section:

"(d) Notwithstanding any other provisions in this section, no funds may be used for any purpose described in subsection (c) of this section which contributes to sex discrimination.".

On page 241, line 21, before the semicolon insert a comma and the following: "and to the extent that such materials and services are free from sex bias".

On page 358, between lines 22 and 23, insert the following new section:

"WOMEN'S EQUAL EDUCATIONAL OPPORTUNITY PROGRAM

"SEC. 535. (a) The Congress finds that sex discrimination in education is detrimental to the welfare of the Nation since it limits the potential of all citizens and that women in particular are prevented by the existence of such practice from realizing their full potential. The Congress therefore finds that the welfare of the United States would be promoted by the elimination of sex discrimination from public education and by the use of federally supported education programs to assist in the development of improved educational opportunities for women insuring women equal educational opportunity.

"(b)(1) Section 203(a)(4) of the Elementary and Secondary Education Act of 1965 is amended by inserting after the word 'used' a comma and the following: 'including criteria designed to preclude sex bias,'.

"(2) Section 203(a) of such Act is amended—

"(A) by striking out the word 'and' at the end of clause (6);

"(B) by redesigning clause '(7)', and all references thereto, as clause '(8)'; and

"(C) by inserting immediately after clause (6) the following new clause:

"'(7) provides assurances that Federal funds made available under this title for any fiscal year shall be used, on a priority basis and where possible, in the acquisition of non-sex-biased library resources, textbooks, and other instructional materials; and'.

"(3) Section 303(b)(3) of such Act is amended—

"(A) by striking out in subclause (J) the word 'and';

"(B) by redesignating subclause '(K)', and all references thereto, as subclause '(L)'; and

"(C) by inserting after subclause (J) the following new subclause:

"'(K) demonstration projects designed to promote new approaches to expand educational opportunities for women, including the provision of comprehensive physical education programs and sports activities for women; and'.

"(4) Section 306 of such Act is amended by inserting '(1)' immediately after the subsection designation '(b)' and by inserting after subsection (b) of such section the following new paragraph:

"'(2) Not less than 15 per centum of the funds granted pursuant to this section in any fiscal year shall be used for programs or projects designed to meet the special educational needs of female children.'.

"(5) Section 503 of such Act is amended—

"(A) by striking out the word 'and' at the end of clause (11);

"(B) by striking out the period at the end of clause (12) and inserting in lieu thereof a semicolon and the word 'and'; and

"(C) by adding at the end thereof the following new clause;

"'(13) programs and other activities to promote equal educational opportunities for women, including public information activities to increase the awareness of educational personnel and the public concerning problems incident to sex discrimination and the elimination, reduction, or prevention of sex discrimination in education.'.

"(6) Section 505 of such Act is amended by adding at the end thereof the following new sentence: 'In using the 5 per centum of the funds appropriated pursuant to section 501 for any fiscal year, for grants to State educational agencies to pay part of the cost of experimental projects for developing State leadership, the Commissioner shall give priority consideration to projects designed to increase the proportion of women serving in leadership positions and to promote equal educational opportunities for women.'.

"(7) Section 521(a) of such Act is amended by inserting after the word 'districts' the following: '(giving priority consideration to such agencies interested in increasing the proportion of women serving in leadership positions and in promoting equal educational opportunities for women)'.

"(C) (1) Section 404(a)(1) of the General Education Provisions Act is amended by inserting before the semicolon a comma and the following: 'including activities designed to improve the status of women in postsecondary education';

"(2) Section 404(a) of such Act is amended—

"(A) by striking out the semicolon at the end of clause (6); and

"(B) by adding at the end thereof the following: 'including the creation of innovative administrative and educational practices that respond to the special needs of persons who have or have had responsibilities of caring for dependents;'.

"(3) Section 405(b)(2) of such Act is amended by inserting after the phrase 'including career education' a comma and the following: 'and programs designed to meet the needs of women,'.

"(d) Section 105(a)(3)(A) of the Higher Education Act of 1965 is amended by inserting after the word 'programs' a comma and the following: 'including programs designed to improve the status of women'.

"(e)(1) Section 121 of the Vocational Education Act of 1963 is amended—

"(A) by striking out the period at the end of the clause and inserting in lieu thereof a comma; and

"(B) by adding: 'and which are designed to encourage the training of students of both sexes for occupations dominated by the other sex.'.

"(2) Section 123(a)(6) of such Act is amended—

"(A) by inserting immediately after subclause (D) the following new subclause:

"'(E) due consideration will be given to the need to insure the training of students of both sexes for occupations traditionally dominated by the other sex,';

"(B) by redesignating subclauses '(E)', '(F)', and '(G)' as subclause '(F)', '(G)', and '(H)', respectively; and

"(C) by striking out 'and (D)' in subclause (F) (as redesignated by paragraph (2)) and inserting in lieu thereof '(D), and (E)'.

"(3) Section 132 of such Act is amended—

"(A) by striking out the word 'and' at the end of clause (5);

"(B) by redesignating clause '(6)' as clause '(7)'; and

"(C) by inserting after clause (5) the following new clause:

"'(6) experimental, developmental, and pilot programs designed to encourage the participation of students of both sexes in fields traditionally dominated by the other sex and to insure the elimination of sex bias in vocational education; and'.

"(4) Section 143(a)(2) of such Act is amended by inserting after the word 'broaden' a comma and the following: 'including the elimination of barriers based on sex,'.

"(5) Section 161(b)(1) is amended—

"(A) by striking out subclause (E); and

"(B) by inserting in lieu thereof a new subclause:

"'(E) are designed for all persons, male and female, who may have use for skills relating to the establishment and the maintenance of the home, and'.

"(6)(A) Section 191(c)(1)(A) of such Act is amended by inserting after the word 'fields' the following: 'and for increasing awareness of the changing role of women in the world of work'.

"(B) Section 191(c)(2) of such Act is amended by inserting immediately before the word 'designed' the following: 'free of sex biases and'."

On page 358, line 24, strike out "SEC. 535." and insert in lieu thereof "SEC. 536.".

On page 123, in the table of contents, redesignate item "Sec. 535." as item "Sec. 536." and insert in lieu thereof the following:

"Sec. 535. Women's equal educational opportunity program.".

AMENDMENT NO. 1342

(Ordered to be printed, and to lie on the table.)

Mr. WEICKER. Mr. President, I submit an amendment, intended to be proposed by me, to the bill (S. 1539) to amend and extend certain acts relating to elementary and secondary education programs, and for other purposes. I ask unanimous consent that the amendment be printed in the RECORD.

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

At the end of the bill, add the following new title:

"TITLE IX—QUALITY SCHOOL AID ASSISTANCE

"STATEMENT OF PURPOSE

"SEC. 901. In order to provide increased resources for the improvement of equality of educational opportunity in the public elementary and secondary schools of the States it is the purpose of this part to make unconditional grants to States.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 902. (a) There are authorized to be appropriated for the purpose of carrying out this Act $2,500,000,000 for the fiscal year ending June 30, 1974, and for each of the four succeeding fiscal years. Funds appropriated pursuant to the preceding sentence shall remain available for obligation and expenditure during the fiscal year succeeding the fiscal year for which they are appropriated.

"(b) Funds appropriated pursuant to this part shall be in addition to any other authorization of appropriations for financial assistance to public elementary and secondary schools.

"ALLOTMENT

"SEC. 903. (a) From the funds appropriated pursuant to section 902, the Commissioner shall allot not less than 3 per centum among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands and the Trust Territory of the Pacific Islands according to their respective needs. From the remainder of such sums the Commissioner shall allot to each State an amount which bears the same ratio to the number of children in each such State—

"(1) who are aged five to seventeen, inclusive; and

"(2) (A) who are enrolled in the public elementary and secondary schools of the local educational agencies, and

"(B) enrolled in such schools of the State educational agency of such State;

bears to the number of such children in all States. For the purposes of this subsection, the term 'State' does not include Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(b) The portion of any State's allotment under subsection (a) for a fiscal year which the Commissioner determines will not be required, for the period such allotment is available, for carrying out the purposes of this Act shall be available for reallotment from time to time, on such dates during such period as the Commissioner may fix, to other States in proportion to the original allotments to such States under subsection (a) for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum which the Commissioner estimates will be needed in such State and will be used for such period for carrying out applications approved under this Act, and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts are not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for such year.

"USES OF FUNDS

"SEC. 904. Grants made under this part may be used in accordance with applications approved under section 905 to improve equality of educational opportunities in the public elementary and secondary schools of local educational agencies and of such schools operated by State educational agencies.

"APPLICATIONS

"SEC. 905. (a) A grant under this part may be made to any State educational agency upon application to the Commissioner at such time, in such manner, and containing and accompanied by such information as the Commissioner deems necessary. Each such application shall—

"(1) provide that the programs and activities for which assistance under this part is sought will be administered by or under the supervision of the applicant;

"(2) describe with particularity the programs and activities for which such assistance is sought;

"(3) provide procedures for submitting applications by local educational agencies within that State for grants under this part, for approval by the State educational agency, including appropriate procedures to assure that the State educational agency concerned will not disapprove an application of any such local educational agency without notice and an opportunity for a hearing;

"(4) provide for making such reasonable reports in such form and containing such information as the Commissioner may reasonably require to carry out his functions under this part, and for keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

"(b) Applications for grants under this part may be approved by the Commissioner only if—

"(1) the application meets the requirements set forth in subsection (a); and

"(2) the application is consistent with objective criteria established by the Commissioner for the purpose of achieving an equitable distribution under this part within such State. Such criteria shall be based upon a consideration of—

"(A) the number of children aged 5 to 17, inclusive, who are enrolled in the public elementary and secondary schools of the local educational agencies within each such State; and

"(B) the relative need of the local educational agencies within the State for assistance under this part.

"(c) Amendments of applications shall, except as the Commissioner may otherwise provide, be subject to approval in the same manner as the original applications.

"PAYMENTS

"SEC. 906. (a)(1) From the amounts allotted to each State under section 903, the Commissioner shall pay to that State an amount equal to the cost of carrying out the application of that State.

"(2) From the funds paid to it pursuant to paragraph (1), each State educational agency shall distribute to each local educational agency of that State which has submitted an application approved pursuant to section 905(a)(3) the amount for which such application has been approved, except that this amount shall not exceed the maximum amount determined for that agency pursuant to section 905(b)(2).

"(b)(1) The Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this part (including technical assistance for the measurements and evaluations), except that the total of such payments in any fiscal year shall not exceed—

"(A) 1 per centum of the total maximum grants for State and local educational agencies of the State as determined for that year; or

"(B) $150,000 or $25,000 in the case of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands,

whichever is greater.

"(2) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

"WITHHOLDING

"SEC. 907. Whenever the Commissioner, after giving reasonable notice and opportunity for hearing to a grant recipient under this part, finds—

"(1) that the program or activity for which such grant was made has been so changed that it no longer complies with the provisions of this Act; or

"(2) that in the operation of the program or activity there is failure to comply substantially with any such provision;

the Commissioner shall notify such recipient of his findings and no further payments may be made to such recipient by the Commissioner until he is satisfied that such noncompliance has been, or will promptly be, corrected. The Commissioner may authorize the continuance of payments with payment to any programs or activities pursuant to this Act which are being carried out by such recipient and which are not involved in the noncompliance.

"JUDICIAL REVIEW

"SEC. 908. (a) If any State or local education agency is dissatisfied with the Commissioner's final action with respect to the approval of its application submitted under section 905, or with his final action under section 907, such State or local educational agency may within 60 days after notice of such action file with the United States courts of appeals for the circuit for which such agency is located a petition for review of that action. A copy of that petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner shall file promptly in the court the record of the proceedings on which he based his action, as provided for in section 2112 of title 28, United States Code.

"(b) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 26, United States Code.

"ADMINISTRATION

"SEC. 909. Unless otherwise inconsistent with the provisions of this part the provisions of the General Education Provisions Act shall apply to the program authorized by this Act."

On page 123, in the Table of Contents after title VIII add the following:

"TITLE IX—QUALITY SCHOOL AID ASSISTANCE

"Sec. 901. Statement of purpose.
"Sec. 902. Authorization of appropriations.
"Sec. 903. Allotment.
"Sec. 904. Uses of funds.
"Sec. 905. Applications.
"Sec. 906. Payments.
"Sec. 907. Withholding.
"Sec. 908. Judicial review.
"Sec. 909. Administration.".

AMENDMENT NO. 1343

(Ordered to be printed, and to lie on the table.)

Mr. TOWER submitted amendments, intended to be proposed by him, to Senate bill 1539, supra.

AMENDMENT NO. 1344

(Ordered to be printed, and to lie on the table.)

Mr. CHILES submitted an amendment, intended to be proposed by him, to Senate bill 1539, supra.

AMENDMENT NO. 1345

(Ordered to be printed, and to lie on the table.)

Mr. METCALF. Mr. President, after analyzing the effect of the McGovern amendment and the Beall amendment to S. 1539 there would appear to be a need for a slight adjustment to keep the category A children who are in districts with less than 25 percent impact in an equitable situation with those taken care of by the McGovern amendment.

Therefore I offer an amendment to clarify this situation.

My amendment would make some adjustments in the S. 1539 impact aid formula payment schedule which are consistent with amendments offered by Senator MCGOVERN and Senator BEALL. These amendments were approved earlier this week.

The amendment to line 15 would, in effect, restore to 90 percent the amount of local contribution payment for military A children and children living on Indian lands. According to the chart entered on page 14930 of the May 15 CONGRESSIONAL RECORD, these children are authorized to receive 100 percent of the local contribution rate.

But, the chart notes, appropriations acts have limited this category to 90 percent of the local contribution rate. Thus, my amendment schedule, would not change the language of the appropriations acts, but would restore the 90 percent payment for this class.

My amendment to line 21 would provide a percentage increase in the S. 1539 payment schedule for civilian A children. This increase is identical to the payment schedule increase accorded to all B children in the Beall amendment.

As Senator PELL explained yesterday, the S. 1539 payment schedule divides the impact aid payments into three parts. For the first part, each impact aid category would received a 25 percent payment of its entitlement. For the second part, each impact aid category would receive a 60 percent payment of its entitlement.

The effect of the Beall amendment was to raise this second part payment to 70 percent of the entitlement for the difference B categories. My amendment would extend this 70 percent second part payment to the civilian A children category.

Mr. President, on May 15, the Senate approved the McGovern amendment which aids school districts with enrollments of A children exceeding 25 percent. However, there are many school districts whose A child enrollments do not reach 25 percent.

In States such as Montana, where the amount of A payments is greater than the amount of B payments, a loss of these A funds would have a profound effect. This is particularly true in the less wealthy school districts in which Federal installations cause a loss in potential tax yields.

## STANDBY ENERGY EMERGENCY AUTHORITIES ACT—AMENDMENT

AMENDMENT NO. 1341

(Ordered to be printed, and to lie on the table.)

AMENDMENT TO S. 3267—TO INCREASE FROM $5 MILLION TO $25 MILLION THE CARPOOL PROMOTION AUTHORIZATION

Mr. HUMPHREY. Mr. President, on November 19, 1973, the Senate passed my carpool promotion amendment to S. 2589—The Emergency Energy Act. It created an Office of Carpool Promotion in the Department of Transportation and authorized a vigorous 2-year and $25 million program to assist State and local government in this important and proven area of energy conservation.

Identical language to my amendment was adopted as a committee amendment, with the same $25 authorization, by the House Committee on Interstate and Foreign Commerce. After discussion of this amendment, the vote of the committee was nearly unanimous with strong bipartisan backing.

Regrettably, a floor amendment reducing the funding level to $1 million was offered and adopted by voice vote with no discussion near the very end of a marathon House session on S. 2589, that ended at about midnight. Obviously, the House was in no mood for debate and simply acted to bring this bill itself to a final vote.

However, because of the unfortunate floor action in the House, the final conference version of S. 2589, sent to the President, included a compromise authorization level of $5 million. As you know, the President vetoed the emergency energy bill and we must now repeat action on similar legislation.

The amendment I am offering would increase the authorized level of Federal

support for carpool promotion from the $5 million in the bill before us, an unfortunate carryover of the conference compromise, to the full $25 million level approved by the Senate last November and by the House committee in December.

I believe this level, for a 2-year period, is very reasonable. Such support can, I believe, substantially reduce gasoline consumption, environmental pollution, and transportation congestion.

Without support from the Federal Government, the carpool promotion effort will remain largely a hit-or-miss approach, funded only where State and local governments have the expertise and funds available to do so on their own.

In many cases, this will not correspond to areas where the greatest need exists for carpooling.

Mr. President, our commitment to energy conservation must not be allowed to slacken as the lines at the gas pump are reduced. Indeed, now that we are all aware of our Nation's economic and political vulnerability to an energy squeeze, the priority on conservation should be increased.

Mr. Sawhill, the Director of the Federal Energy Office and his predecessor, Mr. Simon, have repeatedly warned us of the need to continue conserving energy or face the possibility of recurring shortages.

Mr. Sawhill has specifically testified before my Consumer Economics Subcommittee of the Joint Economic Committee that expanded carpooling could have an important impact on our Nation's energy demand and voiced his support for increased carpool promotion activities.

I believe that we have an obligation to act decisively in developing and promoting effective energy conservation measures, especially those which can be implemented quickly, such as carpooling.

There is an urgent need to conserve gasoline, and carpooling is the least painful way of doing so of which I am aware. It certainly is a good deal more desirable than forcing many of our citizens to forego vacations this summer. We can probably avoid this hardship, and the recurrence of gas lines, if we mount an expanded program to use commuter trips more effectively by filling more seats for each trip by each vehicle.

But to do so, information on who to carpool with must be easily available to commuters. When this information is available, the impact has been substantial. It has resulted in as much as a 30 percent drop in auto travel in some areas.

The 3M Co. in St. Paul, Minn., provides a good example of what ride sharing can accomplish, with sufficient know-how and financing.

During the past year, 3M initiated a pilot "commute-a-van" program with 6 vans. Recently this was expanded to 50 vans with another 25 on the way. The program was so well received by employees it is now considered permanent. Each van saves the fuel of 8 to 10 cars. In addition, carpooling has increased considerably to where approximately 40 percent of the 3M employees now share a ride. I understand this is nearly double the rate for the average organization.

This is just one of the many ride sharing programs that have been successfully mounted by private corporations in response to the energy crisis. These efforts have reduced auto travel at rush hour, from these sources, by from 5 to 30 percent.

While we all have been exposed to limited public service advertising on the merits of carpooling, most auto commuters have absolutely no viable matching services available to them. There is presently no effective way of putting potential carpoolers in touch with each other. Mass media promotion of carpools, without superb carpool locator services, which cost about 50 cents per auto commuter, has proven to be very inefficient.

An incomplete package will obtain only limited results. In fact, it may well, in the long run, do more harm than good to promote carpools before the supporting system for the program has been established.

Mr. President, I believe it would be negligent for Congress to underfund this opportunity to help our States and cities save billions of gallons of fuel, millions of consumer dollars in an inflated economy, millions of hours of valuable time and millions of tons of pollutants.

More specifically, a successful carpooling program, one that is adequately funded, can be expected to return the following benefits.

First. Annual saving of 5 billion gallons of gasoline and over 80 billion vehicle miles, by increasing auto occupancy from 1.6 to 2.0 persons per automobile, a 20 percent reduction in commuter travel.

Second. Annually save commuters $8.6 billion through a 20-percent drop in travel and operating costs, assuming they run 12 cents per mile.

Third. Up to a 50-percent drop in air pollution can result from a 20-percent reduction in commuter auto travel.

Fourth. Up to an 80-percent reduction in traffic delays experienced in Los Angeles in February, 1974, simply because of a 7-percent drop in commuter travel.

Fifth. Annually save a full 5 percent of total highway fuel consumption, double the 55-mile per hour limit savings, by 20 percent reduction in commuter travel.

Mr. President, given the tremendous potential of carpooling for accomplishing our energy saving and clean air goals, I recommend that we once again authorize the appropriation of $25 million for this program over the next 2 years.

Mr. President, $25 million over the next 2 years is far from complete Federal funding. In fact, if the money were to be used to cover the full operating costs of carpool programs it would not go very far at all. At $1 per commuter, less than 14 percent of the American work force could be handled.

However, the carpooling section of this bill is specifically designed to help communities initiate programs. Once operational, a 60-percent Federal share is available only in the first year. However, 100 percent of the initial planning and systems design phase can be federally financed.

Mr. President, I believe that $5 million for 2 years is unrealistic. The funds could be absorbed in a dozen planning grants or by half a dozen operating subsidies in major metropolitan areas.

If we are to stimulate expanded carpooling and derive the conservation benefits it provides, we must not starve the effort before it gets underway.

For this reason I am offering an amendment today to section 115 of S. 3267. My amendment simply changes the dollar amount authorized for carpool promotion from $5 million to $25 million. I believe we need this additional authority, and I urge Senators to support this amendment.

## ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1282

At the request of Mr. BIDEN, the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor to amendment No. 1282, to S. 3000 the fiscal year 1975 Defense Department authorization bill.

AMENDMENT NO. 1305

At the request of Mr. MATHIAS, the Sentor from New Jersey (Mr. CASE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of amendment No. 1305 to S. 1539, the Education Amendments of 1974.

## COMMODITY FUTURES TRADING HEARINGS

Mr. HUMPHREY. Mr. President, on May 15 I appeared before the Senate Committee on Agriculture and Forestry to testify on commodity futures trading legislation.

I pointed out in my statement that the House of Representatives has already spent a great deal of time on this subject, and we are in a good position to develop a sound bill.

I also attempted to highlight the main areas which remain to be resolved before a final bill can be developed.

In closing, I warned that, while legislation improving the regulation of the Commodity Futures Markets is desirable, we should not expect the prices of agriculture commodities to be stable as long as we lack stabilizing mechanisms such as a grain reserve and a stable dollar.

The commodity futures market reflects the market situation, and it cannot insure against violent price swings in commodity prices.

Mr. President, I ask unanimous consent that my statement be included in the RECORD.

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

TESTIMONY OF SENATOR HUBERT H. HUMPHREY

Mr. Chairman, on September 26, 1973 I introduced S. 2485, my bill to improve and strengthen the regulation of our commodity market system in this country. I believe my bill was the first of those now under consideration that was introduced.

As I said at the time I introduced S. 2485, there is an obvious need not only to improve and strengthen the regulation of commodities now subject to regulation on the futures

market, but also to extend such regulation to all trading, in all futures, on all markets.

The value of trading in all futures this year is estimated to approach 500 billion dollars. The value of trading for all regulated commodities combined has increased from about $45 billion in 1962–63 to $270 billion in 1972–73.

There is no question, in my judgment, that futures trading plays an important and worthwhile role in the economics of our U.S. marketplace. It is a mechanism that we must maintain and encourage ever greater use of in the future. However, because of the impact of its growing size, the amount of money invested in it, the increasing numbers of people investing in it, and the impact of prices arrived at on this market in terms of the well-being of American farmers, other producers and consumers, its operation must be diligently monitored and properly regulated in the interest of all the people.

S. 2485 was introduced not only to stimulate discussion and interest regarding needed improvements in the regulation of these markets, but also to identify some of the specific areas of that reform.

While my bill itself does not address certain areas or issues that have often been discussed as needing reform, I did call attention to many of those additional areas at the time I introduced S. 2485.

They included:

(1) tightening up on qualifications and checks on qualifications of individuals handling commodity customer accounts;

(2) strengthening the qualifications and capital requirements for establishing commodity exchanges and of member firms thereof;

(3) mandating the strengthening and improvement of the self-regulatory aspects of futures trading activities by the commodity exchanges;

(4) providing for more effective money penalties in regulatory administrative proceedings taken against violators of the trading laws or regulations;

(5) examining floor trader practices, margin rules, hedging, option trading and other trading practices;

(6) examining consolidation of some of the clearing houses now serving exchanges;

(7) providing the new agency with sufficient manpower and facilities to carry out adequately its functions and responsibilities, "an essential requirement if regulation of these markets is to be enforced properly in the future."

Many of the bills that were introduced either here in the Senate or in the House following my introduction of S. 2485 do address and deal with many of these important items. And in looking over these other bills, I believe our Committee now has before it all the relevant issues relating to this matter of reform.

The main features of my bill—which also have been included in most other bills now under consideration—include:

(1) the establishment of an independent full-time regulatory commission, outside of USDA;

(2) bringing all future contracts under government regulation;

(3) providing the new commission with injunctive power to stop or prevent violation of regulations of the law before they occur or cause major market disruptions; and

(4) require that establishment of a futures contract market must serve an economic purpose in other words, not permit the legalization of "crap game."

We have before us not only my bill, S. 2485, but also S. 2837 and S. 2578. The House passed bill H.R. 13113 reflects a great deal of hard work, and we can draw profitably from that effort.

We now also have the recommendations of the General Accounting Office's May 3 Interim Report on the Commodity Exchange Authority and on Commodity Futures Trading for guidance and focus on key issues.

At this point, we need to draw on this information and gather the testimony of the witnesses so that we can develop sound legislation.

There has already been a great deal of useful testimony from a variety of sources. Discussion to date has also reflected a fair degree of agreement on many points. In several instances there are only minor language differences on a particular point.

The discussion, I believe, should focus most attention on the issues which appear to remain in need of resolution. There are four main categories which the testimony has indicated as being in need of further work. They are: (1) Should the proposed agency be independent or part of the Department of Agriculture? (2) Shall the commissioners be full or part-time? (3) Shall dual trading by brokers be allowed? and (4) What kind of injunctive and emergency powers should the agency be given?

I believe that the new agency should be independent of the Department of Agriculture and have full-time commissioners. The GAO report supports this view as did Congressman Smith in his Monday testimony. I am open to compromise on the number of commissioners needed.

The size of the commodity trade itself would appear to warrant an independent agency. The Commodity Exchange now has a staff of 160 people with fourteen active commodity exchanges in operation. In 1973, as I indicated, $270 billion in regulated commodities were bought and sold. The expectation is that the volume will continue to grow by leaps and bounds.

There is also the inherent issue that the Secretary of Agriculture could otherwise be placed in a potential conflict of interest situation. The Secretary has a role and duty in trying to maintain the prices of many commodities traded on the futures markets, and the commodity futures markets need to be able to fluctuate freely with supply and demand. We need to face up to the fact also that the new agency will require adequate staffing to do the job. Maintaining it under the umbrella of the Department of Agriculture represents a false notion of achieving economies in personnel.

Full-time commissioners are needed because trading in futures is a complex subject having a significant impact on virtually everyone. Under the pending bills, the Commission would have significant powers under emergencies and where injunctions are warranted. These powers need to be exercised intelligently and carefully by people fully familiar with the intricacies of the market. Full-time commissioners would assure vigilant regulation and at the same time not be subject to domination by staff as could be the case under a part-time situation.

An independent agency would also answer the issue that many other non-agricultural commodities are likely to be included under the responsibility of that agency.

The various bills differ as to whether the Commission can seek injunctions directly or through the Attorney General. It is essential that the Commission have the power to obtain a court order without delay. I am concerned over the possibility of delays which could result from having to go through the Attorney General. Going through the Attorney General also risks political abuse.

I am prepared to be flexible on this point, but it is significant, in my judgment, that the Securities and Exchange Commission has the power to seek its own injunctions. I am not aware of any misuse of this authority by the SEC, although concern has been voiced as to the way in which the proposed new agency would exercise this authority.

A great amount of discussion has also centered on restricting brokers and others who handle customer accounts from trading for their own account. H.R. 13113 in principle allows the commission to decide this question, while S. 2578 and S. 2837 prohibit "dual" trading with minor exceptions.

The concern was raised in the House hearings that an outright prohibition would hurt small or new boards of trade. While we could do a better job of regulating brokers, it is almost impossible to secure evidence of abuses, and the most strict regulation would probably not meet the problem. The House Subcommittee on Special Small Business Problems and the Yale Legislative Service have both recommended the elimination of "dual" trading. It should be noted that the Securities and Exchange Commission prohibited such trading in 1964.

Some have argued that brokers trading for their own accounts are needed to provide liquidity in thin markets. This argument is unpersuasive because there is no requirement that a broker trade for his own account when the market is thin. We assume that he trades for his own account because of an interest in a profit, not liquidity for the market. Brokers more often trade in liquid markets rather than in the thin ones.

The Securities and Exchange Commission solved this problem by creating specialists who deal only for their own accounts, and they are required to do so whenever the market is thin.

Mr. Chairman, there are a lot more areas that we could discuss, but I will touch on only one. We need to enable the new agency to adopt the most modern systems of conducting business. With the volume envisioned, we must look into computerization in order to handle the volume of trade and also improve the oversight.

My main interest is in coming up with the broad framework for a good bill which makes an improvement over the present legislation. We can always make refinements in the future as experience dictates.

We must not expect this bill to provide us a plateau of regularly high prices. With the world market tight, we must continue to expect rather sharp fluctuations in prices.

Mr. Chairman, I spent a full day in Chicago last year visiting the Board of Trade and the Mercantile Exchange. This was an extremely educational and worthwhile visit. At that time I suggested that, in my opinion, new legislation to strengthen the regulation of Commodity Futures appeared likely.

With the work already completed, I feel that we will produce a sound bill.

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## NOTICE OF WITNESSES TO TESTIFY AT HEARINGS ON OPEN GOVERNMENT LEGISLATION

Mr. RIBICOFF. Mr. President, the Subcommittee on Reorganization, Research, and International Organizations of the Committee on Government Operations will hold hearings on S. 260, "Government in the Sunshine Act," which provides for open meetings of Government agencies and congressional committees. I have asked Senator CHILES, the chief sponsor of the "Sunshine" bill, to chair these hearings.

The hearings will begin at 10 a.m. next Tuesday and Wednesday on May 21, in room 1124, Dirksen Senate Office Building, and May 22, in room 3302, Dirksen Senate Office Building.

The witnesses are as follows:

May 21: Senator DICK CLARK, of Iowa; Senator WILLIAM ROTH, of Delaware; Hon. DANTE FASCELL, 15th Congressional District of Florida; Hon. BILL GUNTER, Fifth Congressional District of Florida;

Bill Mullen, Secretary and general counsel of the National Newspaper Association, Washington, D.C.; Charles S. Rowe, editor of the Free Lance-Star, Fredericksburg, Va., and member of the National Newspaper Association's Freedom of Information Committee.

May 22: Hon. Reubin O'D. Askew, Governor of Florida; John Gardner, Chairman of Common Cause, Washington, D.C.; Lou Harris, of Harris Associates, New York, N.Y.

## ADDITIONAL STATEMENTS

## ADMINISTRATION ACTION IN THE TRUCKING INDUSTRY

Mr. HUGH SCOTT. Mr. President, in April, the administration learned that the editor of Overdrive magazine, Michael Parkhurst was urging independent truck owner-drivers to shut down the Nation's highways to truck traffic on May 13. It appeared that he was advocating a rollback in diesel fuel prices and an increase in the 55-miles-per-hour national speeed limit.

Ever since the truckers disruption in January–February of 1974, the administration has been meeting continually with various independent truck groups to work on their legitimate grievances. Representatives from the U.S. Department of Transportation, Department of Labor, SBA, and other interested agencies have had virtually hundreds of meetings with truckers all over the country. A summary of action which has been taken and which is currently underway will be submitted for the RECORD.

It is clear that the truckers did have legitimate concerns largely because of the decrease in diesel supply and increase in prices due to the Arab oil boycott. All legitimate Federal action that could be taken by the Executive has, in fact, been accomplished and, in addition, there are several more complicated steps which will require legislation under consideration now by the Congress. Two examples of the latter are the legislation to increase the weights and lengths of trucks and to permit low-interest SBA loans to independent owner-operators.

The segment of the independent drivers which is currently least affected by the Federal actions are the exempt haulers. They have made the decision to operate outside the ICC rules and regulations by hauling exempt products. Because they have elected this course of action for business reasons, the 6 percent surcharge and passthrough provisions do not apply and, therefore, some of their costs have not been passed on to the consumer. However, the forces of the marketplace apply in their situation and this situation is correcting itself.

The administration has deliberately avoided overreacting to the threat of disruptions of the highways for Monday, May 13. Mr. William J. Usery, Special Assistant to the President and Director of the Federal Mediation and Conciliation Service, did meet with Michael Parkhurst at his request and considered his grievances and offered to explain all the administration's actions.

Although there was sporadic instances of violence—but generally not a great deal more than normal—on our Nation's highways on Sunday, Monday, and Monday night, in general, all our Nation's truckers avoided illegal acts and continued to drive in a normal fashion. In fact, Teamsters President Frank Fitzsimmons went on national television urging the drivers to stay on the job. In addition, William Hill of the steel haulers, representing a large portion of independent drivers, also urged his men to avoid illegal and violent acts and remain on the job.

As a result of the commendable action by the truck drivers, our Nation's commerce was not disrupted. Nevertheless, the administration continues to move forward in its desire to do everything reasonable and proper to address legitimate grievances of all our Nation's truck-drivers. The fact that the drivers acted in a responsible way has resulted in Federal officials redoubling their efforts to solve legitimate problems that they have.

The Justice Department will move resolutely to investigate any violations of Federal laws in connection with violence on the highways, and these investigations will go forward until the guilty parties are identified and prosecution is completed.

Mr. President, I ask unanimous consent to include in the RECORD a summary of Government actions for independent owner-operators.

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

SUMMARY OF GOVERNMENT ACTIONS FOR INDEPENDENT OWNER-OPERATORS

ACTION

*I. Interstate Commerce Commission*

A 6 percent surcharge to compensate for increased fuel costs to truckers.

Revision of its leasing regulations to provide owner-operators with the revenue necessary to reimburse them for added fuel costs.

A recommendation that state regulatory agencies take similar steps in revising their tariffs.

To work with members of the industry and the truck operators in implementing rule changes.

STATUS

ICC implemented the surcharge. Several shippers sued ICC to set aside the surcharge ruling, but the Government filed a motion to dismiss the complaint. A hearing was held May 9, 1974. Also, on May 9, the ICC denied various petitions for reconsideration of this surcharge.

Revised leasing rules provide for cost pass throughs independent of the 6 percent fuel surcharge.

ICC continues to work closely with state regulatory agencies to review their tariffs and procedures.

ICC continues to work closely with industry and owner-operators in reviewing rate structure and has established its own toll-free telephone hot line for receiving complaints. From 100 calls a day in late February and early March, the number has declined to between 20 and 30.

Over 400 complaints received on energy orders and 50 warranted full field investigation. This has resulted in several enforcement actions one of which has been settled for a $5,000 civil forfeiture.

ACTION

*II. Department of Transportation*

A thorough review of the question of increasing permissible weights and sizes of trucks using the Interstate Highway System.

Would look into the differences in state laws on truck sizes and weights, and would study other aspects in which state laws and regulations impose undesirable burdens on interstate trucking.

Would ask shippers of exempt products, typically farm products, to recognize the impact of higher fuel prices on owner-operators and the need for higher shipping rates.

STATUS

The Department of Transportation conducted a review of the various Federal and State laws that concern the sizes and weights of trucks on Interstate highways. On March 20, Secretary Brinegar transmitted to both the Senate and the House of Representatives a draft of a bill which would provide relief from certain restrictions on sizes and weights of motor vehicles on the Interstate Highway System.

The Bill would increase existing Federal weight limits for vehicles on the Interstate Highway System and would allow a maximum overall length of 70 feet. The Bill would permit travel on the Interstate System of combinations of vehicles with 20,000 pound single axle loadings and 34,000 pound tandem axle loadings, within the 70-foot limitation. Allowable gross weights would be determined by the "bridge formula." In essence, passage of the legislation would allow operation on the Interstate Highway System of existing vehicles with weight payloads 10 to 15 percent greater than now allowed.

The Department of Transportation has undertaken extensive studies concerning disparate state trucking regulations. Procedures providing for owner-operator participation in these studies have been established. Because of the complexity of the issues, immediate relief in this area will be difficult to attain. Legislation will probably be needed.

Secretary Brinegar and his staff continue to press shippers of exempt products for higher shipping rates in order to permit owner-operators to pass through increased fuel and other costs.

During the last three weeks, has addressed three major groups of owner-operators to review administrative and legislative actions affecting their industry. This was in addition to the continuing contact and close relationship already established with the industry.

ACTION

III. *Small Business Administration*

Would begin a program to consider appropriate relief for owner-operators who have been so financially squeezed by increased fuel prices that they have not been able to recover.

STATUS

SBA is now able to guarantee certain loans for truckers at a 10½ percent interest rate. Bills are pending which would amend the SBA Act to include the energy shortage along with other disasters and make truckers, as well as other businesses, hit by the energy shortage eligible for long-term direct loans at a lower rate of interest. Hearings were held on April 30, 1974.

ACTION

IV. *Federal Energy Office*

Would freeze the price of diesel fuel at the pumps until Congress authorized the immediate enactment of the 6 percent surcharge.

Would give the trucking industry a higher priority for fuel allocations. This change would make an additional 76,000 barrels of diesel fuel a day available at truck stops.

Would establish a Nation-wide toll-free telephone number to receive complaints from Truckers regarding alleged price gouging or supply problems.

Would take regulatory action to prevent excessive inventories of diesel fuel by truck lines. This would include the monitoring of bulk facilities of truck lines.

Would encourage truck stops to sell diesel fuel on Sundays and to stop limiting sales.

STATUS

The Congress has adopted a resolution proposed by the Administration allowing the ICC to waive the 30-day waiting period before regulated carriers can pass through to shippers the costs resulting from increased fuel prices.

Regulations were changed giving a higher allocation priority to the trucking industry. This resulted in improved availability of diesel fuel and gasoline at the Nation's truck stops. The diesel situation was helped by the use of excess home heating oil. Admittedly, spot shortages still occur, but the FEO is continuing to work with suppliers and truck-stop operators to get the fuel delivered where needed.

A Nation-wide toll-free hot line has been established linked to a computerized system with the FEO Regional Offices for prompt response. Price investigation results through April 19 were:

Complaints, 4,258.

Violations uncovered, 583.

Roll-backs ordered, 558.

Totaled, $593,856.

Follow-up investigations resolved possible fuel-hoarding cases. Allegations of fuel hoarding have practically ceased, but are being investigated by IRS when received.

Most truck stops have agreed to Sunday openings. During late December and January, a sampling of numerous truck stops indicated that more than 40 percent were limiting sales of diesel fuel and about 15 percent were limiting sales of gasoline. The action by the FEO has resulted in a recent sampling indicating that approximately 1 percent of sampled truck stops are currently limiting No. 2 diesel fuel and approximately 4 percent are currently limiting gasoline. FEO is continuing to urge truck-stop operators to refrain from limiting sales.

## TERRORIST ATROCITIES IN ISRAEL

Mr. BENTSEN. Mr. President, I rise to express my sense of personal outrage over the tragic events at Maalot, Israel, yesterday and to extend to the people of Israel—in particular to the families of the innocent victims—my deepest sympathy over their terrible loss. This is the latest but perhaps the most barbarous in a series of violent attacks on the nation of Israel by those who refuse to abide by the orderly rules of international legal and moral behavior. Making the lives of children an item for barter represents a new low in human decency for the radicals of the Middle East.

Mr. President, this despicable act and those who perpetrated it must be condemned by the world community and those nations harboring terrorist groups must make every effort to eliminate such elements from their soil. Certainly there will be no end to terrorist activities until nations giving refuge to these reprehensible international criminals take strong action against them. As a cosponsor of Senate Resolution 324, which passed the Senate unanimously yesterday, I join with my colleagues in urging the President and Secretary of State Kissinger, during the on-going Middle East negotiations, to press hard for appropriate action to eradicate the root of these terrorist activities once and for all.

Mr. President, the nation of Israel will survive these unconscionable attacks and it will survive with the support of the United States. I hope all nations will join in condemning terrorism as a brutal travesty of any nation's standard of justice.

## THE GENTLEMAN IN S–208

Mr. HUGH SCOTT. Mr. President, the thoughtful consideration which our distinguished majority leader brings to all Senate matters is precisely and perceptively described by James Reston in yesterday's New York Times. It is his calm approach and conscientiousness, described by Reston, which makes the Senator from Montana the outstanding leader he is. In this time of national turmoil we all look to him for guidance and leadership and he unflinching provides it.

James Reston's article is excellent.

I ask unanimous consent that it be printed at this point in the RECORD.

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

[From the New York Times, May 15, 1974]

THE GENTLEMAN IN S–208

(By James Reston)

WASHINGTON, May 14—Senator Mike Mansfield of Montana is a reminder that there are still a lot of steady decent folk around here watching the store. Everybody in Washington is not crazy; it just seems that way.

Room S–208 in the Capitol Building, Mike's hideaway, is as plain and calm as a country lawyer's office. The door is always open. Inside, no fancy elegant people or heroic portraits of the majority leader. Some old amiable cartoons, and a big picture of Jack Kennedy throwing out the first pitch on opening day, with Mike in the background as usual. An atmosphere of cheerful and relaxed efficiency, coffee perking on the shelf and cookies on the table.

Mike is sad but not pessimistic about the present mess in Washington. He thinks it is wrong to press the President to resign, but he understands why the Republican leader in the Senate, Hugh Scott of Pennsylvania, condemned the President's private Watergate conversations, and why the Republican leader in the House, John Rhodes, suggests that resignation has to be considered. That's Mike's way: He tries to understand everybody's problems.

But pressuring the President to resign, he insists, would be unfair, evading rather than resolving the moral and legal issues. Give the President not only the presumption of innocence, he says, but every opportunity to have his lawyers in the House and Senate to argue his case, cross-examine witnesses, and appear on the floor of the House and Senate, if he chooses, to defend himself personally.

Let the system work, says Mike. It is not only the President but the Congress and the Constitution that are on trial. But—and here he is very tough—let it work all the way, not half way. Take the President at his word. Give him every conceivable opportunity to state his case, all the lawyers he wants to challenge the evidence, and the time he needs to do so. But, he insists, "let's have the evidence."

Mansfield has a sense of pity about human folly and tragedy—and he sees it not in partisan terms. He is beyond all personal ambition now, even beyond his own party's battles. For example, he not only sees Watergate and Vietnam in moral terms, but also Chappaquiddick and Senator Kennedy, and admires Kennedy as a good Senator but is against him as the Presidential nominee of his party in 1976.

Mansfield, if I hear him right, is looking beyond the present turmoil in Washington. He fears the nation would be deeply divided for a long time if President Nixon were forced to resign by political or newspaper pressure.

He thinks the whole Watergate scandal could have been avoided if the President had been open and trusted the system, and had wondered about what was right or wrong and had said yes or no at the right time. But he is not worrying about the past now. He agrees with the President that resignation is a bad idea and that the impeachment process should go to the end but not in the way the President means it. The Constitution, the courts, the House and Senate must decide, and nothing else.

By which Mansfield means: no fiddling, no holding back, not just the transcripts but the tapes. Open all the way. Full and complete disclosure, as the President claimed. Defense lawyers for the President in the Judiciary Committee and on the floor of the House to cross-examine witnesses, and in the well of the Senate, if the House votes to impeach.

Put it all to the test, he says, and bring the people into it all the way. He wants televised hearings in the House and Senate. He wants not merely the evidence the President wants to give but the best evidence, including the tapes; and if necessary, he wants them played, when relevant, in the chambers of the Congress and on radio and television.

There are many arguments against this procedure, set out in this space before, but Mansfield thinks we've had enough secrecy and enough deception. The President has asked for a fair trial under the Constitution, so let it begin with all the relevant facts out plain and clear.

This simple approach carries great weight here, for the importance of Mansfield is that his colleagues in both parties and in both houses believe in him. They watch him in S–208 and on the floor of the Senate, struggling to be fair, opposing the President on troops in Europe, opposing his own party on many issues, arguing for the thing he thinks is right.

So he has the power, even though he doesn't want it, maybe because he doesn't want it. Others here are jumping to conclusions, calling for resignation, shifting around. But Mansfield waits. He is in no hurry. He goes on with the business of the Senate. He won't even talk about whether he has made any preparations for a trial of the President. "That's not before us yet," he says.

He may be right or wrong in this procedure, but he has the influence of integrity, and in the end, that may be what the controversy is all about.

## DELAWARE'S COASTAL ZONE ACT

Mr. BIDEN. Mr. President, we in the Senate devote much of our time and energies to improving the quality of life

for the citizens of our country. Sometimes I think we tend to forget the many good things being accomplished at the State and local levels of government. One example of this is Delaware's Coastal Zone Act which has become a model nationally as to how to protect our precious coastal areas. Therefore I am deeply concerned when I hear about proposals to amend the Coastal Zone Act.

The purpose of the act as originally adopted was to provide the protection so critically needed for areas adjacent to the Delaware River and Bay, and particularly some of our precious wetland areas. The stretches of our coastal zone are rich in a variety of natural, recreational, and esthetic resources which are both immediate and have long range value to the citizens of our State, and indeed of the whole Nation. In many States today the important ecological, cultural, and historic values of these areas are being irretrievably and unnecessarily lost. Fortunately, Delaware has moved ahead to prevent this.

In Washington, we have been working to strengthen rather than weaken coastal zone management. In 1972, the Congress passed the Coastal Zone Management Act in an effort to stimulate protection of coastal areas by the States. Since I came to the Senate I have been deeply involved in issues involving our Nation's coasts and waters. I have served on a Special Subcommittee on Deep Water Ports made up of representatives from the Public Works Committee, and Interior Committees of the Senate. More recently I have been appointed to a special Senate committee to study National Ocean Policy and we have already started to work. On both of these committees I have been grappling with the problems created by man's use of the oceans.

One thing is very clear from my work on these committees. The most dangerous impact of these ocean activities would be on the on-shore development related to the development of the ocean. Almost everyone predicts that there would arise on the shore new industries, new refineries, new petrochemical plants as well as the housing, roads, and public facilities to support them. Problems of air and water pollution would increase vastly.

In the case of deep water ports I have been pressing strongly for the right of affected States to veto such a port, to have a right to determine their own destiny. The bill that I introduced, however, would require a State to have planning protections not unlike those now in force in Delaware in order to exercise that veto. In the innumerable discussions that I have had with other Senators from all over the country, Delaware is always pointed to as a model of how to protect coastal areas.

You can see then why I am dismayed to learn that Delaware itself is considering retreating from its front-line position in the field of coastal management. I am particularly concerned about the proposal to eliminate the statutory prohibition against certain heavy industries such as refineries and steel mills. I know full well from my opposition to the refinery proposal when I was a county councilman, the kind of pressure that big corporations can bring. Any proposal that proposes to treat these major polluters just like every other industry can only be the opening wedge for more undesirable industrial development of our coast.

I want development. I want more jobs for our people. I want the opportunities that commercial and industrial development bring. I do not believe that the way to get them is to open our coastal area to heavy industry. In fact, I believe that most industries, looking at the efforts that Delaware has made to protect its environment, would feel that this law made Delaware a good place to locate, a place where they can be sure of decent living and working conditions.

There are other provisions being considered which I regard as efforts to make it more difficult for groups, including State agencies, trying to protect our State's environment to keep on top of what is happening in our coastal zone. I include suggestions that an industry that has been rejected could ask for reconsideration, thus triggering a 6-month period of delay, pressure and compromise which I could not favor. Another proposal to require acquisition by the State within 6 months of a court requirement to do so would probably be financially unworkable, resulting in a further breakdown, of the Coastal Zone Act.

I am not one to say that laws should never be changed. Quite the contrary. But I do not believe that the changes being proposed now to Delaware's Coastal Zone Act will be beneficial to our State. They certainly fly in the face of the increasing national concern over effective coastal zone management.

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## A WORLD FOOD PLAN

Mr. JAVITS. Mr. President, I wish to commend our colleague, Senator HUMPHREY, for his farsighted and humanitarian proposal for a world food plan. We must not turn away from the increasingly desperate plight of over half the world's people, while we increase our meat consumption, spend billions on pet food, and give more nourishment to our lawns than most of the world's people can give to their crops. I urge my colleagues to give these proposals the very serious attention they deserve. Mr. President, I ask unanimous consent that the article from the New York Times reporting Senator HUMPHREY's proposals and the editorial from today's New York Times, which warmly applauds Senator HUMPHREY's moral challenge to the best in the American spirit, be printed in the RECORD.

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

[From the New York Times, May 10, 1974]

HUMPHREY GIVES WORLD FOOD PLAN—TELLS A PARLEY UNITED STATES SHOULD TAKE THE INITIATIVE ALONG FOUR BROAD FRONTS

(By Kathleen Teltsch)

UNITED NATIONS, N.Y., May 9.—Senator Hubert H. Humphrey proposed a world food action program today "to lead the world back from the precipice of famine."

Offering his program at the opening of an internationl conference on food and energy, the Minnesota Democrat urged that the United States take the initiative on the following broad fronts:

Expanded food aid, which he said could and should begin in the next few weeks to help the very poorest nations and those already suffering famine.

A program of food reserves.

An improved system of fertilizer distribution.

Increased emphasis on agricultural development.

SPONSORS OF CONFERENCE

The four-day conference is being held to examine how United Nations agencies can work to help combat food and energy scarcity. The parley is being sponsored jointly by the Aspen Institute for Humanistic Studies, the Overseas Development Council, the Kettering Foundation and the Institute of Man and Science, a private center that conducts seminars.

Secretary General Waldheim, another speaker, called on governments to help the countries most affected by steep rises in the prices of food, oil and other imports and to help them meet their balance-of-payments deficits over the next 12 months.

In complying with a new General Assembly decision, he sent out appeals for contributions today to 44 countries that are industrialized or rich from oil. China was omitted, because, it was explained here, she maintains she is a developing country.

Senator Humphrey's proposal today were presented to the conference as urgent measures that should be acted on before the World Food Conference in Rome in November.

The Senator's proposals were his own initiative. However, they had been informed of his proposals.

The program was directed in particular at the countries of Southern Asia and Africa, with a combined population of more than a billion.

Specifically, Senator Humphrey called for a three-year emergency food-aid effort under which countries with food surpluses would set aside a part of their exports for the poorest countries on terms they could afford.

As part of this effort, he proposed that the United States restore the drastically reduced Food for Peace assistance at least to its 1972 level of 9.5 million tons. The program now provides 3.5 million tons.

RESERVE PLAN

In proposing a food reserve program, he said he recently proposed legislation under which the United States, as the world's leading grain producer, would build up reserves to be used after droughts or crop failures. He argued that these measures could be taken in such a way as to protect American farmers and insure their receiving reasonable prices.

To expand fertilizer distribution he urged expansion of existing facilities—they are mainly in the United States and Japan—with Government credits or tax incentives offered as inducements. He also advocated curbing nonfarm use of fertilizers, objecting that the fertilizers used for lawns were

needed desperately for crops in Asia, and said this could save three million tons.

Expansion of agricultural production in food-deficit countries would be increased significantly under the plan by providing financing, technical help and equipment and by expanding research in higher-yield seeds.

The food aid program, he argued, could be carried out by diverting some stocks now being sold on the commercial market.

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[From the New York Times, May 14, 1974]

AND TO THE HUNGRY

Senator Humphrey has posed a moral challenge to well-fed—and frequently overfed—Americans with his recent call for generous United States contributions to a broad new world food action program.

Responding to the threat of widespread starvation that has been sharply increased by worldwide shortages and soaring prices of basic commodities, the Senator proposes: Resumption of large-scale food aid by the United States and other food-exporting nations; establishment of national and international food reserves; expansion of fertilizer distribution and production, and stepped up aid to agricultural development, including the pending contribution to I.D.A.

Although Mr. Humphrey's plan for action merely elaborates on promises already advanced by Secretary of State Kissinger at the recent special United Nations session, it faces stiff resistance within the Nixon Administration and from a people who have just begun to see some hope for relief from soaring food prices. The day is gone when Americans had food to burn, when overseas aid was a convenient way to unload embarrassing surpluses. Even with record harvests due, a new giveaway program on the scale contemplated by the Senator would put fresh pressure on domestic prices and would compete with potential cash sales to more affluent foreign buyers.

There will be those who will seek refuge from responsibility in the heartless suggestion of Agriculture Secretary Earl L. Butz that "hunger is relative—if your larder is empty, you cut back some." For one billion already undernourished people in the thirty poorest countries, cutting back means sinking from acute malnutrition into starvation, or diverting to food purchases scarce resources that are desperately needed to help develop food self-sufficiency.

The cost to Americans of helping these nations through the current crisis would be trivial in comparison. For example, Senator Humphrey estimates that a decision by Americans to eat one less hamburger a week would make some 10 million tons of grain available for food assistance, twice India's expected import requirements for the coming year. The fertilizer Americans lavish on lawns and other non-agricultural luxuries would make up Asia's anticipated fertilizer deficit, helping Asians to feed themselves.

The primary responsibility for overcoming food shortages and for curbing the runaway population growth that vastly compounds the food problem lies with the stricken nations themselves. This does not mitigate the moral obligation of the more fortunate, including the newly-rich oil states, to extend emergency relief. Population control at best requires years to take effect; and while that is an essential element in the solution, the United States in the meanwhile cannot shirk the food-supply role to which it is committed by virtue of is vast resources and its tradition of humanitarian leadership.

## THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, some people who oppose American ratification of the Genocide Treaty do so because they believe that the convention's definition of the word "genocide" dangerously twists the true meaning of the word. They maintain that article II of the convention requires each signatory to prosecute everyone who commits such an offense against any single member of the groups protected. They claim this definition is too broad.

This concern is unwarranted. The convention puts great emphasis on the fact that there must be intent to destroy the entire group, not just a single member of that group. As Dean Rusk pointed out in 1950, the principal difference between genocide and homicide, is that in genocide there is the intent to do violent damage to an entire ethnic, racial, religious, or national group, while in homicide, the damage is contemplated against an individual.

The convention is not concerned with the harm done to individuals within a society, for there exist laws to deal with these cases. Rather this treaty is concerned with mass violence and the destruction of entire populations.

Mr. President, I urge the Congress to act speedily on the ratification of this convention.

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## SPORTS AND CABLE TV

Mr. HUGH SCOTT. Mr. President, on June 6, 1974, the Senate Judiciary Committee is expected to consider the copyright revision bill, S. 1361.

Section 111(c)(2)(C) of the bill has caused some misunderstandings. This section places limitations on the right of cable television stations to carry some sports programs without the permission of the copyright owner.

I have received a letter frome Bowie K. Kuhn, commissioner of baseball. In his letter he outlines the position of professional baseball on the copyright bill and the carriage of baseball on cable television.

Commissioner Kuhn essentially states no matter what kind of sports provision the copyright bill contains that—

Professional baseball is . . . most anxious that our nationally televised games be given the widest possible circulation. This would include carriage by cable.

He notes the nationally televised games like the World Series, All-Star Game, league championship series, and Saturday and Monday games-of-the-week will be available to cable stations under any circumstances.

I think it is excellent that professional baseball is willing to go on the public record favoring full exposure for its nationally televised games. This should be good news for all sports fans.

I commend Commissioner Kuhn's letter and accompanying memorandum on the sports provision of the copyright revision bill to each Senator's attention. I ask unanimous consent for insertion of the letter and memorandum into the RECORD.

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

BOWIE K. KUHN,
*Commissioner,*
*May 8, 1974.*

Hon. HUGH SCOTT,
*Old Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR SCOTT: Professional Baseball and other professional sports leagues strongly support the provisions of Section 111(c)(4)(C) of S. 1361, the Copyright Revision Bill, which was recently reported out of the Subcommittee on Patents, Trademarks and Copyrights. These provisions would, in effect, allow professional sports organizations like Baseball to determine when and where their sporting events will be distributed by cable TV, just as professional sports presently have control over the distribution of sports programming by over-the-air TV.

It has recently come to our attention that charges have been circulated to Members of Congress which seriously misconstrue Baseball's interest in the Copyright Revision Bill. The essence of these charges is that our nationally televised games (World Series, All Star, League Championship Series, and Saturday and Monday Games-of-the-Week) would no longer be available to cable subscribers if the Copyright Revision Bill were adopted. The purpose of my letter is to strongly assert that there is no such possibility. In professional Baseball we are most anxious that our nationally-televised games be given the widest possible circulation. This would include carriage by cable.

This is fundamental to our broadcasting policy. Just as fundamental is our policy of not diverting to any form of pay TV the games which are now carried by over-the-air TV. For instance, there is no prospect of the World Series or the All Star Game being diverted from over-the-air TV.

Our position is more fully stated in the attached memorandum. I appreciate your taking the time to consider these points.

Sincerely yours,

BOWIE KUHN,
*Commissioner of Baseball.*

Enclosure.

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MAY 8, 1974.

MEMORANDUM OF COMMISSIONER OF BASEBALL IN SUPPORT OF SPORTS/CABLE PROVISIONS OF SECTION 111(c)(2)(C) OF THE COPYRIGHT REVISION BILL

Professional Baseball and other professional sports leagues strongly support the provisions of Section 111(c)(2)(C) of S. 1361, the Copyright Revision Bill, which was recently reported out of the Subcommittee on Patents, Trademarks and Copyrights. These provisions would, in effect, allow professional sports organizations like Baseball to determine when and where their sporting events will be distributed by cable TV, just as professional sports presently have control over the distribution of sports programming by over-the-air TV.

It has recently come to our attention that substantial portions of the cable television industry have seriously misconstrued Baseball's interests in Section 111(c)(2)(C) and have expressed concern that, under this provision, certain nationally distributed Baseball programs, such as the Saturday and Monday Games of the Week and the World

Series, would no longer be available to cable subscribers. Baseball wants to make it abundantly clear that there is no possibility that this will occur.

Baseball fully appreciates the potential public benefits inherent in the newly-emerging cable television technology. Cable offers an opportunity for extending more programming, and more programming choices, to the American viewing public, especially in rural and other underserved areas. As emphasized in Baseball's testimony before the Copyright Subcommittee last August, Baseball will be most aware in times ahead of opportunities to experiment with all forms of the new technology—as long as we can be assured that no fundamental damage is done to Baseball's existing television packages and the home gate.

It should be recognized, however, that Baseball's strong sports position has been considerably enhanced by the game's extensive exposure on network, regional, and local over-the-air telecasts. Today, about 60 percent of all Major League Baseball games are telecast. Revenues from this programming obviously constitute a crucial ingredient in the maintenance of Baseball's economic health; exposure by television is important not only in developing fan interest generally but also in enhancing the interest and support in a particular geographic region for a local team. Indiscriminate dispersion of multiple cable retransmission of Baseball games across the country would seriously undermine these essential practices. Nevertheless, cable can be quite useful in bringing Baseball to underserved areas. The problem is in striking the appropriate balance.

In assessing the equities of the situation, one must be mindful that Baseball has two distinct telecasting patterns: (1) The national package of about 60 games broadcast by the NBC Television Network; and (2) about 1100 games distributed over regional television networks which are set up by each individual club. The impact of cable television on the two patterns is totally different.

Nationally, over NBC, at least one game (the NBC Game of the Week) is carried over a nationwide network on 26 Saturdays during the season in 200 television markets. In addition, this NBC network also carries 15 Monday night games nationwide. These games are selected for maximum audience interest based upon the current state of the various pennant races. And, of course, the most significant events in Baseball—the World Series, and the All-Star Game—are also carried by NBC throughout the nation. The NBC contract is negotiated with the network by the Commissioner's office.

All told, NBC broadcasts nearly 60 prime games nationally each season. Contrary to the apparent belief of some in the cable industry, Baseball welcomes cable dissemination of these NBC games over the widest possible areas. Baseball would not exercise the authority granted under Section 111(c)(2)(C) to restrict cable carriage of these NBC games broadcast nationally in any manner whatsoever. The only exception would be the home cities of the clubs involved in the Games of the Week which receive a back-up game under the NBC contract. Indeed, Baseball views cable carriage of its nationally-broadcast games as especially important in underserved rural areas or smaller television markets which may not have direct access to an NBC-affiliated station.

The 1100 games that individual teams telecast over regional networks present a far different, and more vexing, problem. Broadcast rights to these games are sold by individual teams; they are generally broadcast in the local team's trade territory, but not nationally. Often, teams broadcast few, if any, home games in order to protect their gate attendance. The indiscriminate importation of distant signals by cable systems will undermine important revenues Baseball currently receives from local and regional television packages and curtail the home gate for both Major and Minor League games.

For example, if cable television could bring in an important game in the Mets-Reds pennant race into a city with a weaker team, *e.g.*, Philadelphia, when the Phillies are playing at home, the effect on the Phillies' home gate attendance could be most substantial.

This same threat is posed to the 110 Minor League clubs which provide live professional sports contests in small and medium size cities across the country; last year more than 11 million persons attended minor league games. However, indiscriminate importation of cable signals could wreck home attendance.

Finally, distant cable signals can destroy the value of the local and regional telecasting packages of the 24 individual teams. If cable signals can be imported without control into Major League cities and into the areas served by team networks, this will immensely curtail the value of television contracts, depriving Baseball of revenues that are absolutely essential to its continued health.

Because cable is only in an embryonic stage of development, there may be other unforeseen hazards, beyond those mentioned, above, arising from the indiscriminate cable importation of distant Baseball signals. Hence, Baseball has urged that it have the authority to continue this distribution of the broadcast signals. This authority will be exercised in a responsible fashion in the public interest. As noted above, the authority granted under Section 111 will not be used to limit cable dissemination of games that Baseball has distributed nationwide—the Game of the Week, the World Series, and the All Star Game.

## TRIBUTE TO DEAN CLARENCE MANION

Mr. ALLEN. Mr. President, last night the distinguished Senator from North Carolina (Mr. HELMS) delivered an eloquent tribute to Dean Clarence Manion at a dinner in Dean Manion's honor in Washington, D.C.

Since this speech outlines much of the distinguished Senator's political philosophy, I believe it will be of interest to Members of the Senate, and I ask that a copy of the speech be printed at this point in the RECORD.

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

ADDRESS BY SENATOR HELMS

Mr. Chairman, Dean Manion, dedicated Americans, ladies and gentlemen:

This evening will forever be for me a memorable event—the privilege of coming here, at your invitation, to join in your tribute to one of the great spirits of our time, a most remarkable defender of American freedom—Dean Clarence Manion.

Dean Manion deserves someone far more eloquent than I for the honor of delivering the testimonial address on this occasion. I can advance only the credentials that he has no friend who admires and respects him more, or who is more grateful for his inspiring career as one of the great teachers of our time.

When I describe Dean Manion as a teacher, I am not being metaphorical. He is, to borrow a phrase Ortega y Gasset used about himself, a "public pedagogue."

The word pedagogue has an unfortunate ring to it. But every American who has profited from Dean Manion's instruction—and everyone in this room tonight *has* profited from it—knows that Clarence Manion has been a teacher in a most remarkable and courageous way.

Not just a teacher in the classroom—though he was Professor of Constitutional law at Notre Dame for more than a quarter of a century, and Dean of the College of Law for more than eleven years.

He has been not just a teacher to people of a particular age, or a particular region, or a particular persuasion.

Rather, Clarence Manion has been a teacher to the Nation he loves so deeply.

As I contemplate the life of this great man who we honor tonight, I am reminded of the observation by Henry Adams that a teacher never knows where his influence ends, because a teacher affects eternity. It is obvious, then, that we cannot even begin to measure the dimensions of Dean Manion's influence. His life is a great, inspiring monument to the living traditions of the United States, indeed of the entire Western Civilization.

So, as "Teacher to the Nation," Dean Manion has helped keep alive the miracle of America. He has held high the truth that freedom's survival depends on man's willingness to live by principle, honesty, sacrifice, personal responsibility—and, most of all, with faith in our Creator.

He has given us hope, by constantly reminding us that we can, if we will, retrace our steps—and return to the sound ground of personal liberty and personal responsibility. For my part, I have long held the notion that the process would be neither complex nor particularly difficult.

But it will require a return to intellectual honesty, and it will absolutely require a spiritual rebirth across the land—a return to the faith of our fathers, and a confession that we have vainly tried to make a god of government, instead of recognizing that America was destined in the beginning to be a government of God.

Viewed in that frame of reference, it is not surprising that we see around us today scarcely any serious efforts to solve the great national man-made problems which threaten the very survival of our nation. The artful dodgers of politics and government are in absolute control. They continue to believe that government is god. They think not of the next generation—only of the next election.

Small wonder that the nation is being stifled by an inflation that refuses to be restrained by inept and unwise efforts to control it by artificial devices. The laws of economics, and simple arithmetic, are not subject to repeal. It is a fair observation to note that today we have a full-employment budget, a bloated bureaucracy, a mindless Congress—and an empty dollar.

The tentacles of Federal Government are reaching out to entwine our daily lives, our right to privacy, and our right to property.

Our Federal tax mechanisms of our country are proving with a vengeance the correctness of the adage, "the power to tax is the power to destroy." We see taxation destroying not only the fruits of the labor of our people, but destroying their morale, sapping their incentive, and leaving them befuddled even about the prerogatives of honesty.

Abroad not only our own great power, but the power of the West—the very will to survive—is in dangerous decline. Our strategic

capability has deteriorated *vis-a-vis* the Soviet Union. Our diplomats think only in terms of retreat and giveaway. The Third World long ago turned its back on the American formula for success and creative technology, and is blaming us paradoxically for its economic and social failures. And across Europe the candles of liberty flicker uncertainly, and one by one, go out.

Is there any discussion of these problems in concrete terms in Washington? Is there any great debate about the restoration of stability and freedom? Does anyone express confidence that America has a valid answer, a sound answer to these problems of our country, and of the world?

No. In Washington we are obsessed with the tapes.

We are instructed in the lessons of the tapes every day by the Constitutional lawyers of the Washington Post and The New York Times. We are tutored every hour by the television networks in our role as aghast and humbled citizens. The monopoly media are solemnly warning us about the dangers of the concentration of power. (They do not, however, allude to the dangers of the concentration of the power of the major media.)

And so we have the tapes with Wheaties for breakfast, the tapes with lettuce and tomato for lunch, and the tapes with potatoes and gravy for dinner.

We are learning, for example, that the President was brutally frank and appallingly salty in his private evaluation of political opponents. His language is the scandal of the day. We haven't been so shocked since Rhett Butler's language in the last scene with Scarlett in *Gone With the Wind*.

In the broad view, however, I have the feeling that the whole affair of the tapes might well be summed up by Clark Gable's immortal line in that scene: "Frankly, my dear, I don't give a (expletive deleted)."

I do care about what happens to our Republic, and what happens to our people. I care about the things that really matter to them. And I think I know what they are. Let me explain.

Every once in a while, some inkling of what the American people are really thinking slips through the monopoly of the major media. The Gallup Poll published on May 6 gives us a powerful clue. I quote:

"The latest nationwide Gallup survey reveals that Republican Party affiliation is at an all-time low, but the number of voters who describe themselves as conservatives is at a record high."

Now isn't that interesting? The Republican candidate for President won the election in 1968 because he ran on a conservative platform. The American people long ago learned that party platforms are an uncertain foundation on which to build your hopes; but the same candidate who won in 1968 enjoyed the benefit of running for reelection in 1972 against someone whom the public recognized as a radical liberal. Mr. Nixon won overwhelmingly by basking in a reputation of relative conservatism. You and I know that this is the only reason why he won, all the volumes of the Watergate investigation to the contrary notwithstanding.

This emphatic rejection of liberalism in 1972 was a bitter pill for some to swallow. Through a process of selective indignation, Watergate became the lever to reverse the judgment of the people. The same pundits who swallowed the pragmatic self-enrichment of the Johnson Administration whole, who wolfed down the ideological corruption of the Kennedy Administration, who voiced no objection to the Pendergast politics of the Truman era, and who thought that Roosevelt provided a feast for empty bellies, suddenly gagged on Watergate.

So a year and half later, the Gallup Poll finds that only 24 percent of the voters classify themselves as Republicans, 42 percent describe themselves as Democrats, and 34 percent as Independents. But when Gallup asked the question whether these same people would describe themselves as conservatives or liberals, the figures show a startling change. Thirty-eight percent said they would choose a conservative party label, only 26 percent would choose a liberal party label, while 36 percent are undecided.

This means that the largest political bloc in the United States today is composed of conservatives.

It means that a large chunk of those 42 percent who are Democrats are conservatives, that the great majority of the 26 percent Republicans are conservatives, and that the independents, by and large, are people who don't perceive either party as matching their conservative philosophy.

This last fact is a point you won't discover in the major media monopoly. We are always told that the independents are so-called "moderates"—middle-of-the-roaders, who are repelled by those terrible extremists who belong to the two major political parties.

Actually, I have a hunch that they are conservatives, by and large, who may regard both major parties as too liberal.

The Gallup Poll goes on to prove this, I think. When Gallup asked those Undecideds to choose—forced them to choose, between conservative and liberal party labels, the over-all breakdown of all respondents rose to 59 percent Conservative, and 41 percent Liberal.

Imagine that: Fifty-nine percent of the people would choose to belong to a Conservative Party if offered that choice—even after one of the greatest campaigns of smear and slander against conservatives in the history of the nation. Not only that, the American people are more conservative because of Watergate. Even though the main object of the Watergate media campaign is to discredit President Nixon as being what you get when you elect a conservative, the people instead are rejecting liberalism in droves. Gallup has been asking the same question about conservatives and liberals since 1936. This year, 1974, the conservative percentage is the highest ever, at 50 percent! Even after Watergate—and I believe because of the anti-conservative campaign of the media—the people are more conservative than ever.

I think that this is the real political news story of the year, and as many of you know, I have been in the news business myself for most of my life.

But was this significant political news story on page one? Was it the subject of penetrating analysis by Joe Alsop, Scotty Reston, or even Eric Severeid?

No, I found it on page 20, next to a little item headlined "Smallpox Deaths Rise in India."

But let me tell you about yet another opinion survey that was released only a few days after the Gallup Poll I just mentioned. The University of Michigan Institute for Social Research conducted an elaborate in-depth study of the public's ranking of American institutions. Fifteen U.S. institutions were covered in the poll, and the public was asked what they thought of each one. Now which one do you think was ranked the highest?

It wasn't the President and the Administration—they were ranked last.

It wasn't the Federal Government generally—it was next to last.

It wasn't labor unions—they were third from the bottom.

The U.S. Congress ranked slightly behind large corporations.

This means that the largest political bloc in the United States today is composed of conservatives.

The news media were a shade above the Supreme Court.

I'll tell you what was in *first* place. First place, in the people's hearts, was won by the U.S. military!

Now imagine that! The U.S. military in *first place*—after ten years of being reviled, spat upon, and viciously attacked by the major monopoly of the news media and political opportunists who have been inflated by the news media as "public opinion leaders." In spite of all these attacks, the military is most admired as an institution by the American people. Perhaps as in the case of true conservatism, the military is most admired *because* of the media attack, not in spite of it.

For it shows once again that the American people are fundamentally conservative. The military was followed, in rank of esteem, by colleges and universities, churches and religious organizations, and small business, in that order. The fundamental verities of the defense of liberty, the attainment of knowledge, the worship of God, and the practice of private enterprise are *still* the American goals. I would say that the priorities of Americans are arranged in good order.

Ladies and Gentlemen, the time has come when the people of America must be given a true choice. Both of our major political parties today are in a state of confusion. Our party leaders are thrashing around without vision. The people have lost confidence in both parties, and in the news media. They have lost confidence in the Presidency, and in the Congress as well. Clearly, our major parties have failed to articulate the philosophy of our people and to give them a choice of leadership.

I venture to suggest that all of this may indicate a desire, on the part of the majority of the American people, for a realignment of our political parties.

I ask you the question: Could it be that it is time to forge new political parties, fashioned along the lines that the people are thinking, not along the existing lines of political power-seeking? If we are going to have honesty in government today, we must have honesty in the basic philosophies of our political parties. I do not in any sense downplay the need for personal honesty and personal integrity. But our basic political system must be made honest. It must give an honest choice, and it must furnish the mechanism for politicians to carry out honestly the principles they set before the people.

So, I would pose this question to you here tonight, and to all other Americans—Democrats, Republicans, Independents, and members of other political groups: Is it logical to assume that the great masses of Americans are yearning for someone to begin the task of realigning our existing political parties, so that the people, when they go to the polls, will know *what* they are voting for—instead of merely whom?

Ladies and Gentlemen, let me be plain. I am a Republican. I was a Democrat, by registration, until 1970, but I became a Republican because I thought that the Republican Party was the only party hospitable to those working for conservative principles. The Gallup Poll I have been quoting shows that most Republicans think the same way, since 57 percent of the Republicans identify themselves as conservative, and only 11 percent call themselves liberal. That is no sensational revelation. But the rank and file of the Democratic party is filled with conservatives too—as may be evidenced by my own election in 1972—and these are good people who have had their party taken away from them.

Moreover, I intend to remain a Republican, unless there is a general realignment into Conservative and Liberal Parties, by whatever names.

The problem is this: The majority of Americans are locked into two major political parties—by geography, by tradition, by sentiment, by other reasons which no doubt will come to mind when you think about it. In the Senate, for example, conservative Democrats look across the aisle and they count the faces of men who wear the label of Republicans and practice the philosophy of liberalism. Conservative Republicans, meanwhile, look across the same aisle and you know what they see.

Conservatives in both parties feel that they have no place to go. Meanwhile, businessmen throughout the country are being convinced, more and more with each passing day, that they must make peace with the liberals of both parties. So when election time rolls around, we have the spectacle of citizens who profess to believe in the free enterprise system nevertheless contributing to the campaigns of liberal candidates for public office.

To put it bluntly, they are trying to "buy in." They hope to court the favor of the very liberals who are dedicated to the destruction of the free enterprise system. It's the old story of feeding the crocodile, hoping that he'll eat you *last*.

But what do you suppose would happen, ladies and gentlemen, if a serious movement were launched to realign the political parties in our country—a movement that offered the majority of Americans, the conservative majority, an opportunity to unite, and to work together for the principles in which the majority of people, according to the polls, believe?

Someone has referred to this majority as the *"New American Majority."* I very much doubt that it's new. I think it's as old as 1776, and Bunker Hill; as old as Paul Revere and Tom Jefferson, and the Boston Tea Party, and Iwo Jima.

What is needed, is for someone to find the handle; to put it together, to work it out so that the majority of Americans can once again hope and dream, and work and sacrifice, so that there can once again be the reality of the Miracle of America.

Just suppose, here tonight, there could be a dedication to try. Could there be a finer tribute to the great patriot whom we have gathered to honor? Could it be, for example, that out of this occasion we should refuse merely to meet, eat and retreat—and instead, go back to our homes and give consideration to the mechanics of realignment?

What's the proper starting point? How about a Platform Convention, to which delegates would be selected by conservatives in every Congressional District in the land, plus two at-large delegates from each state?

Is that the proper starting mechanism—the drafting of a platform to restore to the American people their liberties and their responsibilities?

The more I think about it, I believe that at this crucial point in our history, the "New American Majority," if indeed it is "new," might just rally around such an idea. History supplies a fairly good precedent for it—at Philadelphia. And I would remind you that it was there that Ben Franklin admonished us all that we had a republic—if we could keep it.

Realignment is not a new idea. Senator Karl Mundt of South Dakota urged it for years. I ask you if it is not an idea whose time has come. Our domestic political system, the system of political parties, is now at a crisis stage. Confidence will not be restored until the people are given an honest choice of principles and philosophies—and a mechanism to prevent these principles and philosophies from being trampled underfoot.

I believe the people, if enough of us work hard enough, will choose a conservative party, one based on sound conservative principles and a solid conservative program for the solution of America's problems. They will choose a conservative party because of its platform, and how well its subsequent performance reflects an honest adherence to platform—but not merely because it *calls* itself the "Conservative Party."

A meaningful political realignment must be based on sound, honest political philosophy, and that calls for an honest and workable Conservative Platform.

What should be the Conservative Platform? I am not so presumptuous as to say that I can lay it out in all its details, its programs, its ramifications.

Surely we agree, first of all, that Jefferson spoke truth, not a mere cliche, when he counseled that the best government is the least government. Government was intended to restrain evil men, but not to shackle innocent men.

America became a giant in the world because men were left free to create, to produce, to earn, to invest, to compete—and, yes, to accumulate. It may sound harsh to say so, but America grew great because there were men and women who wanted to be *better* than average, to accomplish *more* than average, and to *be* more than average. Men forced to be equal are not free—and free men cannot be forced to be equal.

So the concept of government control of enterprise is a contradiction of the very meaning of freedom. Bureaucrats armed with the power of controls, edicts, guidelines are disrupting the genius of America.

Secondly, I presume that we agree that we have no hope of halting inflation, or of solving America's economic crisis, unless and until we stop deficit financing and balance the Federal budget. This is not something to consider next year, or next month. It is imperative today.

Thus, surely we believe that a healthy economy means a balanced budget, reduced Federal spending, and a simplified tax system. The existing folly is not only impoverishing the middle class—the vast majority of Americans—but it is distorting our investments, it is blurring our morality, it is directing funds to dubious priorities, and it is providing vast amounts of money for purposes that are subverting the values of America.

Fourth, I assume we agree that the American family must be preserved, to encourage the virtues of personal integrity, self-reliance, and faith in God. We must reverse the trend that insists the State is the only proper custodian and educator of children, and that Federal funding and Federal control is the only measure of educational success. We must reverse the trend that says that women must be liberated from the dignity of motherhood, and from the femininity of her natural development. We must reverse the Supreme Court decision that says that killing an unborn child is somehow different from killing a child that has been born. And we must desecularize our daily life, reminding ourselves that prayer is, after all, a Constitutional right and a moral duty, and understanding that man is fulfilled not in himself, not merely in his neighbor alone, but ultimately in God.

Finally, we believe that the United States must regain its dynamic posture as the leader of the West. We must stop apologizing for our leadership position. We must once again become convinced of the value of our culture and society, and we must work to convince other nations that our leadership is decisive, based on principles, and dedicated to the common good of all nations. And of course, that means that we must regain decisive control of the international strategic arms situation, superiority in technology, and a mix of strategic weapons best suited to our unique geography. For in the end, United States sovereignty revolves upon the power to defend it.

These are just a few of the principles that I believe the majority of Americans will support, regardless of present party affiliation.

I can't believe that most Americans want government spending so badly that they are ready to adapt to double-digit inflation ascending in a quantum leap.

I can't believe that most Americans believe that government regulation can ever take the place of healthy competition in a free market.

I can't believe that most Americans are ready to give away the Panama Canal, subdue our economic and strategic position to the heel of Communist Russia, or subordinate our sovereignty and dignity to a babel of foreign tongues and oppressive ideologies.

Nor can I believe that Americans are ready to abandon their historic understanding of the moral virtues, the obligations of patriotic duty, or the faith in a just and merciful God.

These things I hold to be unchanging, and no sociology of manipulation can persuade me otherwise.

So, as we pay tribute tonight to our splendid friend, let us consider whether we do not owe it to him, and to America's future, to try to set things straight again.

I cannot guarantee that we will succeed. But I can guarantee that we will fail if we do not try. I am convinced that by standing together, working together, and sacrificing together, we will be astonished at how far we can go, and how much we can achieve.

Many years have passed since that Easter morning when a young man and his wife, and their two small daughters, ages six and three, went to the mountains of western North Carolina to attend an Easter sunrise service.

In the pre-dawn chill, they made their way to the crest of a mountain, joining perhaps a hundred others who had also come to worship in quiet simplicity.

There were no seats, and the three-year old became impatient because she could see neither over the heads of the adults, nor around them. So she began to improvise.

She spotted a huge boulder off to one side. She scampered over to it, and attempted to climb it. But her slick-soled, black patent-leather shoes made it impossible. And besides, she had proper concern for her new Easter dress.

So she solicited—and received—the assistance of her Daddy, who—being younger and far more agile than he is today—easily climbed on top of the big rock.

By that time, the six-year old had been captivated by the idea also. So with a word of caution to his two little girls, making clear that they should "hold on tight," the Daddy pulled them, one by one, to that high vantage point atop the boulder.

It was at that precise moment, when the three of them had reached the top, that the rays of the morning sun seemed almost to burst above the mountain ridge across the valley, with a promise of light and warmth to push away the chill of the dark night.

It was then that the little three-year-old spoke some words of faith that I shall never forget. She looked up to her Daddy, with an expression of loving admiration that he could not possibly deserve, and said:

"Daddy, you know something? I bet, if we all held hands tight—we could go anywhere."

That child's words have remained in my consciousness all these years.

A simple expression of child-like faith, yes.

But truth, in a most profound sort of way.

That's the test. Shall we, ladies and gentlemen, hold hands tight with Clarence Manion, and with others who are willing to work and sacrifice for their country?

If so, I truly believe we can go anywhere.

God bless you, Dean Manion, for being my friend, and for the unselfish way you have given of yourself, and your time and immense talent, for the good of America. I am very proud of you.

## GARBAGE AS A FUEL

Mr. MATHIAS. Mr. President, it has recently come to my attention that the people of the Netherlands have for some time converted their garbage into significant amounts of electric power. This is an undertaking of tremendous importance to all of us. Only the most tentative beginnings have been made in this country to produce energy in this fashion. Our increasing problems in disposing of solid waste and current energy shortages both dictate that increased efforts be made to convert waste to energy.

I ask unanimous consent that an article in the Baltimore News-American be included in the RECORD at this point.

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

GARBAGE: AS A FUEL IT'S PLENTIFUL, CHEAP

AMSTERDAM.—As a fuel, it has no equal for being plentiful, cheap and always available. It is so cheap that the average Dutch family discards ten pounds a day, and so plentiful that it can be found in abundance anywhere in the world.

The fuel is garbage—ordinary household garbage—and the Dutch have been using it to produce steam heat and electricity for more than 50 years.

Only now is the idea of obtaining energy from garbage coming into its own in other parts of Europe and the United States, where experts estimate that enough solid waste exists in big cities to light every home and commercial establishment throughout the year.

Here in Amsterdam, virtually all trash—some 1,500 tons a day—generated by the city and surrounding suburbs is burned under pressure through high-temperature turbines to generate 5 per cent of the region's electricity, an amount sufficient for an American city the size of Santa Barbara, Calif., or Princeton, N.J.

The "garbage power" system is financially self-supporting. The municipal Garbage Department ("Stadsreiniging") collects the trash twice a week, hauling half of it by barge along Amsterdam's interconnecting canals and the other half by truck to the municipal incinerator, where the garbage is burned and converted into electricity at a cost of 10 dollars a day.

According to Tony Pingen, assistant director of Amsterdam's department, the system produced 150 million kilowatt hours of electricity last year—an output equivalent to 300,000 tons of residual fuel oil.

In addition, the burning of trash is accompanied by the recovery of metals for recycling. The value of scrap metal has more than tripled in the last year, and its sale to German steelmakers has become a major asset for Amsterdam's collection system.

Such resource recovery is solving a number of other critical problems, including the scarcity of land for dumps and the high cost of fuel for electric power plants. There are also clean air benefits, as trash is low in sulphur (0.1 per cent).

The Amsterdam system has been producing steam heat and electric power since 1917. Such other cities as Rotterdam, Copenhagen and Paris have been using similar systems almost as long; but it wasn't until recently that the skyrocketing cost of oil and coal made it economical for most cities to produce electricity from household garbage.

Most major West European cities are adopting garbage power for their electricity. By next year, West Germany expects 25 per cent of its total population to get electricity derived from garbage.

By 1977, the first major garbage-fueled system to produce power in the United States will reach full operation in St. Louis, where two coal-fired plants are being converted to burn 7,500 tons of trash a day.

Here in Amsterdam the Dutch have provided convincing evidence that a large, virtually untapped energy source—household garbage—can play a crucial role in meeting urban power demands at a time when other fuels are becoming increasingly scarce.

## TERRORIST VIOLENCE RESULTING IN THE DEATHS OF 16 INNOCENT TEENAGE HOSTAGES

Mr. MONTOYA. Mr. President, yesterday, I joined over 45 of my colleagues in sponsoring Senate Resolution 324, Condemning Terrorist Actions. This resolution applies specifically to the recent terrorist attack on an Israeli school in which approximately 85 children were held hostage by Palestinian guerillas. When an attempt was made to rescue the hostages 16 of them were killed and 70 more were wounded.

No civilized nation or people can condone such actions in which innocent teenagers are held as hostages and ultimately killed. In the words of the resolution, "Such acts of violence are an affront to human decency and the standards of civilized conduct between nations."

It is the responsibility of all nations not only to vigorously condemn such terrorist acts but also to do everything possible to see that the terrorists are apprehended and brought to trial. Certainly no nation can legitimately justify giving aid and comfort to such terrorists regardless of the political aims espoused by the particular terrorist group in question. It is time for the world community to regard terrorists not as political revolutionaries but as what they are, namely perpetrators of crimes against humanity.

During this time of sorrow, our sympathy goes out to the family and friends of those innocent victims who were killed or wounded in this latest senseless episode. Perhaps the most fitting tribute which we can give to these victims and their survivors is our determination to prevent such terrorist acts in the future, to vigorously prosecute terrorists, and to make clear the fact that terrorism is not and will never be an effective means to accomplish political goals.

## BILL HOLBROOK IN RECENT CROSS-COUNTRY DERBY

Mr. BEALL. Mr. President, a resident of my home county in western Maryland, Mr. William C. Holbrook of Cumberland, this week added another first in a list of notable accomplishments in soaring.

Mr. Holbrook finished first in the Smirnoff Crosscountry Sailplane Derby culminating a 12-day, 2,900-mile race from Los Angeles to Dulles Airport. He is also the holder of the world's "goal and return" distance record of 783 miles.

Bill Holbrook, who is the chief pilot for Kelly-Springfield Tire Co., is also the chairman of the Municipal Airport Commission in Cumberland, Md. He has long been active in community affairs and I am happy to have this opportunity to make my colleagues aware of this most recent achievement. Mr. President, I ask unanimous consent that articles from the Washington Post and the Cumberland News, pertaining to this recent cross-country derby, be printed in the RECORD at the conclusion of my remarks.

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

FLIERS BIG ON HOT AIR

By Nancy Scannell

Dick Schreder hadn't counted on landing in Boulder Canyon so he wasn't too surprised yesterday when he finished last in the Smirnoff cross-country sailplane derby. At least he did finish, he pointed out.

The 58-year-old engineer and part owner of an airport at Brian, Ohio, started off May 1 for a 12-day, 2,900-mile race from Los Angeles to Dulles Airport with six other sailplane pilots in the third annual derby.

"But on the leg between Las Vegas to Phoenix, I went down in the mountains, in a dry gulch, just south of the Hoover Dam," Schreder said. "I landed the plane near an old gold mine, with lots of boulders and bushes around.

"I wandered around the mountains for 10 to 12 hours. I wasn't sure I'd ever get back to civilization and then finally found a gas station around 1:30 a.m. My ground crew had already gone on to Phoenix, expecting me to have arrived before them.

"I called them and they had to come all the way back and we went up into the mountains with a car and a small trailer. The gas station attendant said we were crazy to do it. But we went on. I had put three stones together at all the forks on the trail so we could follow the right route back.

"We found the plane, loaded it up and drove on to Phoenix just in time to start the next leg of the race."

Schreder's misadventure is not common to many sailplane pilots, but this enthusiasm to get back into the race is. They describe an exhilaration and sense of serenity soaring through the skies in their engineless crafts also known as gliders.

But, when they're in competition, said William C. Holbrook of Cumberland, Md. "You've got to concentrate on keeping the airplane in the air. It's no time to wax lyrical about the thrills or you'll be down on the ground."

Holbrook, 54, the chief pilot for Kelly Springfield Tire Co., ought to know because he finished first in the derby yesterday and is the holder of the world's "goal and return" distance record—783 miles.

To win the contest, Holbrook had to accumulate more points than any of the other pilots. Points are based on distance flown and on amount of time, with the highest number of points being 1,000 for each leg of the derby.

Out of a possible 8,000 points for the Smirnoff derby, Holbrook won 7,881. He was followed by Hannes Linke at 7,836; Ken Briegleb, 7,775; Karl Striedieck, 6,933; Dan Pierson, 6,091; Ross Brieg, 4,819 and Schreder with 4,603.

In the Smirnoff derby, the sailplanes are towed by powered aircraft to an altitude of about 3,000 feet and let go. The sailplanes are powered mainly by solar energy, soaring on columns of rising air (thermals) caused by unequal heating of the earth's surface by the sun.

"Most of the time, it's relaxing, peaceful," said Striedieck, a pilot for the Pennsylvania Air National Guard. "I got interested in it as a child, going to Hawk Mountain and watching the soaring birds.

"I suppose it's like being a chess player. You think of it (the game) as being such a docile thing, but I'm sure there's a lot of

wracking of brains in it. And there is in soaring when you're competing."

From a distance, sailplanes look like seagulls, landing gracefully on one tire although they weigh around 600 pounds. They are so delicately designed that costs range from $4,000 to $20,000.

Competitors in the derby receive no prize money, but Smirnoff does pay expenses up to $3,000 for the pilot and ground crew, plus a $6,000 donation to the U.S. World Team fund for the world gliding championship.

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[From the Cumberland News, May 16, 1974]

HOLBROOK GETS MEDAL FOR WINNING DERBY

William C. Holbrook, Kelly-Springfield Tire Company's chief pilot, was presented a gold medal plus the challenger's certificate at Dulles International Airport yesterday afternoon in the final ceremony of the Smirnoff Sailplane Derby.

Mr. Holbrook, in his first attempt, won first place in the trans-continental soaring contest by a narrow 45-point margin over Hannes Linke, Los Angeles, Calif.

The local pilot had 7,881 out of a possible 10,000 points. Mr. Linke ended the race with 7,836 points, while Ken Briegleg of Adelanto, Calif. had 7,775 points.

Points totals of the other contestants were Karl Striediek, Port Matilda, Pa., 6,933; Dan Pierson, Compton, Calif., 6,091; Ross Briegleg, Las Vegas, Nev., 4,819, and Dick Schreder, Bryan, Ohio, 4,603.

The 2,900-mile derby for motorless gliders ended at Frederick Airport Monday. Contest leaders decided to skip the Latrobe, Pa., stop, and the gliders soared from Akron to Frederick on the final leg of the long race.

Only Dan Pierson was unable to complete the last competitive lap. He was grounded near Latrobe Monday with equipment problems.

Mr. Holbrook's crew consisted of his wife, Sophia, and daughter, Lisa, 19, who were three hours behind the pilot on the Akron-to-Frederick lap. Mr. Holbrook touched down in second place at 4 p.m. and had to wait three hours for his crew to arrive.

Throughout the race, Mr. Holbrook was often the second place finisher on a particular leg, but his overall consistency was good enough to win him the gold medal. His glider was named The Spirit of Cumberland.

Yesterday's final flight from Frederick to Dulles was largely ceremonial in nature.

Mr. Holbrook and his family returned to their home at 408 Washington Street last night.

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## AMENDMENT TO AGREEMENT FOR COOPERATION WITH SWEDEN

Mr. MONTOYA. Mr. President, on May 10, the Atomic Energy Commission forwarded to the Joint Committee on Atomic Energy pursuant to section 123c of the Atomic Energy Act of 1954, as amended, a proposed amendment to the Agreement for Cooperation with the Government of Sweden. The Agreement will become effective only after it has lain before the committee for 30 days, not including periods during which the Congress is in recess for more than 3 days. The 30-day period for the proposed agreement with Sweden will expire on June 14.

The new agreement makes the following changes, among others:

First. The section dealing with provision of uranium enrichment services no longer constitutes an assurance that such services will be provided. The agreement instead represents an enabling document to allow provision for such services up to a maximum amount;

Second. The agreement now allows transfer of special nuclear material other than U–235, such as U–233 or plutonium, to Sweden; and

Third. The ceiling on distribution is now expressed in terms of the amount necessary to fuel power reactors with a total electric capacity up to 21,000 megawatts. This is equivalent to about 420,000 kilograms of U–235. The previous ceiling was 50,000 kilograms.

Without objection, I would like to enter into the RECORD a copy of the Atomic Energy Commission's letter of May 10 forwarding the proposed agreement.

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

U.S. ATOMIC ENERGY COMMISSION,
*Washington, D.C., May 10, 1974.*

Hon. MELVIN PRICE,
*Chairman, Joint Committee on Atomic Energy, Congress of the United States.*

DEAR MR. PRICE: Pursuant to Section 123c of the Atomic Energy Act of 1954, as amended, copies of the following are submitted with this letter:

a. a proposed amendment to the "Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy", together with a diplomatic note which is regarded as an integral part of the amendment;

b. a letter from the Commission to the President recommending approval of the amendment, including the note; and

c. a memorandum from the President containing his determination that the performance of the amendment (which includes the note) will promote and will not constitute an unreasonable risk to the common defense and security and authorizing execution of the amendment.

The amendment modifies the comprehensive thirty-year research and power agreement, which entered into force in 1966 and expires in 1996. The purpose of the amendment is to revise the provisions of the present agreement governing supply of special nuclear material, principally enriched uranium for fueling nuclear power reactors in Sweden. Sweden did not wish to extend the agreement's term. The purpose of the diplomatic note is to establish understandings with respect to the continued application of certain provisions of the present agreement.

The amendment reflects the Commission's revised policy governing the long-term provision of uranium enrichment services, which was adopted in 1971 and has been reflected in bilateral amendments and agreements negotiated since that time, for example, the Spanish agreement and the amendments to the Agreements for Cooperation with the Republic of China and Japan. Pursuant to this policy, the revised agreement with Sweden would be essentially an enabling document and would no longer represent any kind of supply assurance prior to execution of specific toll enrichment contracts covering reactor projects not contemplated by the present agreement. The amendment also is consistent with the modified Uranium Enrichment Services Criteria published by the Commission on May 9, 1973.

Article I of the amendment sets forth the basic, enabling framework for long-term supply of enriched uranium for fueling purposes. The Commission would be authorized to enter into toll enrichment contracts for supplying power reactor fuel, subject to the availability of capacity in Commission facilities and within the ceiling quantity established in Article III of the amendment. Once customers in Sweden are ready to contract for a particular quantity, they would compete on an equitable basis with the Commission's other customers. Such competition for access to available capacity will, in general, be on a "first come, first served" basis.

Article I continues provision for supply of U–235 to fuel research and experimental reactors. Further, as in the Chinese and Japanese amendments, for example, and in view of the expected commercial use of plutonium as reactor fuel, a new provision has been incorporated (paragraph D) to permit transfer of special nuclear material other than U-235 (i.e., plutonium and U-233) for fueling purposes. The Commission does not plan to be a world supplier of such material, particularly plutonium; rather, Swedish reactor operators would be expected to look to the commercial market to meet needs which arise. Further, paragraph E continues the provision of the current agreement permitting transfer of special nuclear material to Sweden for performance of conversion and fabrication services for third countries.

Article II sets forth conditions governing material supply from the U.S. and use within Sweden. These are similar to conditions in the current agreement and are common to other Agreements for Cooperation. For example, an economic or technical justification is required before the Commission will give consideration to the transfer of uranium enriched to more than 20% in U-235. Further, the Commission would participate in any decision as to where fuel reprocessing shall be performed. Regarding special nuclear material produced through the use of U.S. material acquired under the bilateral, such produced material may be transferred to third countries provided that such countries have an appropriate agreement for cooperation with the United States or guarantee the peaceful uses of such produced material under safeguards acceptable to the U.S. and Sweden.

Article III amends the current U-235 ceiling article of the agreement. Under the revised supply policy mentioned earlier, the U-235 ceiling becomes merely an upper limit on the amount which may be transferred for power applications and does not represent an advance allocation of U.S. diffusion plant capacity for power projects not covered by the present agreement. Following the approach adopted in other recent amendments, the ceiling in the Swedish amendment is based on the total megawatts of nuclear power anticipated to be supported, and it covers a program composed of existing reactor projects and those for which supply contracts are expected to be executed within the next five years. Since the Commission's policy pursuant to the Uranium Enrichment Services Criteria normally requires that initial deliveries of enriched uranium for first core loadings be contracted for at least eight years in advance of such need, the quantity limitation in the Swedish amendment contemplates the execution of contracts calling for initial first core deliveries up to thirteen years in the future. The Swedish power program which would be supported by the amendment totals 21,000 megawatts (electric).

The diplomatic note accompanying the Swedish amendment was requested by Sweden in connection with its acceptance of the new supply policy noted earlier. The note deals with two matters which were raised by Japan in connection with the 1973 amendment to the U.S.-Japan Agreement for Cooperation. The first of these involves the maintenance of the U–235 allocation for Swedish reactor projects identified in the present agreement. The second involves continuation of a U.S. commitment that charges for enrichment services supplied pursuant to contracts executed under the present

agreement will be those in effect at the time of delivery for users in the United States. As in the Japanese case, it was recognized that, as a matter of equity, these earlier commitments should be continued. Accordingly, following the precedent of the 1973 Japanese note, the proposed Swedish note establishes the following understandings:

(1) The allocation of U-235 currently established for fueling the Swedish nuclear power program will be maintained for reactor projects identified in the appendix to the Agreement for Cooperation prior to entry into force of the amendment.

(2) With respect to contracts executed prior to entry into force of the amendment, charges for enrichment services applicable to Swedish customers would be those in effect for users in the United States at the time of delivery.

With respect to safeguards, in 1972 the United States, Sweden, and the International Atomic Energy Agency concluded a trilateral safeguards agreement respecting transfers under the Agreement for Cooperation. This trilateral arrangement would not be affected by the proposed amendment. The bilateral safeguards rights of the United States are suspended during the time and to the extent that Agency safeguards apply to transfers under the bilateral.

The amendment will enter into force on the date on which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for entry into force.

Sincerely,

_____,
*Acting Chairman.*

## MRS. PHYLLIS BROWN MARRIOTT, NATIONAL MOTHER OF THE YEAR FOR 1974

Mr. MATHIAS. Mr. President, it is with some pride that I note that a Maryland woman, Mrs. Phyllis Brown Marriott of Kensington, has been named National American Mother of the Year for 1974 by the American Mothers Committee. To describe the long list of activities and accomplishments of Mrs. Marriott, I defer to a news account from the Associated Press, printed in the Cumberland, Md., Times, May 11, 1974. Her optimism and faith in this nation are still bright, and I am convinced that she represents not only American mothers but all the people of our Nation in this regard. I ask that unanimous consent be granted for the printing of this article in the RECORD.

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

KENSINGTON, MD., WOMAN NAMED 1974 AMERICAN MOTHER OF YEAR

NEW YORK.—Phyllis Brown Marriott of Kensington, Md., was named the 1974 National American Mother of the Year on Friday by the American Mothers Committee.

Mrs. Marriott received the award at the committee's 59th award week luncheon at the Waldorf Astoria Hotel.

She was selected from among 52 contestants representing the 50 states, the District of Columbia and Puerto Rico.

Mrs. Marriott, who was the representative from the District of Columbia, was born in Ogden, Utah, and attended school there.

In 1939, she married Russell S. Marriott. They have three children—Russell S. Jr., 31, Douglas, 28; and Philip, 25.

Mrs. Marriott also has seven grandchildren.

She has been active in church and community affairs, working for nearly 30 years with young adults in the Church of Jesus Christ of Latter Day Saints—Young Women's Mutual Improvement Association.

Associated with the Boy Scout program for several years. Mrs. Marriott was a member of the executive board of the National Capital Area Council BSA.

She has also participated in Local PTA functions and is a member of the League of Republican Women.

"It's something I've never expected in my life," she said in winning. "When they first told me, I said they had the wrong Mrs. Marriott."

She remained optimistic about the future.

"I have a strong belief in God and I know that he will take care of us." she said. But she added, "There are so many more temptations in the world today" that make it more difficult to raise children.

Mrs. Marriott said she had worked on President Nixon's Inaugural Committee in 1972.

"I did the running errands," she said.

Asked whether she felt President Nixon should resign or be impeached, she responded: "I hope that someday we will all know the truth, but I'm sure everything will come out all right in the end."

## ADDRESS BY DONALD C. ALEXANDER, COMMISSIONER OF THE INTERNAL REVENUE SERVICE

Mr. COOK. Mr. President, the Honorable Donald C. Alexander, Commissioner of the Internal Revenue Service, made an excellent speech before the American Newspaper Publishers Association in New York City on April 23, 1974. In the speech, Mr. Alexander presented a status report on the Presidential election campaign fund checkoff during the recently completed income tax filing period and discussed a number of responsibilities of IRS, including expanded service to taxpayers, and the requirement of the law regarding confidentiality of tax return information.

He also discussed the responsibility of the press in reporting recently repeated allegations about the integrity of the IRS, noting that they had been largely refuted months ago in a report by the staff of the Joint Committee on Internal Revenue Taxation.

Mr. President, because I believe that many of the points made by Commissioner Alexander are worthy of our consideration, I ask unanimous consent that the speech be printed in the RECORD.

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

REMARKS BY DONALD C. ALEXANDER

(NOTE.—This text is the basis of Commissioner Alexander's oral remarks. It should be used with the understanding that some material may be added or omitted during presentation.)

I am very pleased to have the opportunity to join this distinguished group of newspaper executives during the 88th annual meeting of ANPA. In the past several months I have appeared on national television as the object of intensive questioning by members of the press, I have been interviewed many times by print-media journalists, I have been telephoned late at night by reporters, and I was almost sued by one major newspaper over a little misunderstanding involving some telephone records.

In fact, during the relatively short period I have served as Commissioner of Internal Revenue, I think I have run the entire gamut of "press relations" as a government official. This is my first opportunity, however, to express my views to representatives of the American press without interruption for approximately half an hour. It is a government official's dream.

A moment ago, I may have sounded as though I disliked being queried by the press. Let me hasten to correct such an impression. I believe I understand as well as any government official the watchdog role that the press serves in our society, that the press is indeed an unofficial fourth branch of government.

I also recognize that in a free society there must be an adversary relationship between the press and the government. Such a relationship is healthy and essential to our form of government. The ultimate beneficiaries are the American people, who do indeed have a right to know—a need to know—what their government is doing if they are to govern themselves effectively. The press serves as their eyes and ears in this continual quest for information.

As Thomas Jefferson said: "Our citizens may be deceived for a while, and have been deceived; but as long as the presses can be protected, we may trust them for light."

The responsibility of the news media in this respect is clear, and certainly the government has a responsibility to be as open and candid as possible, for we as government officials also serve the people.

In recent years, the Internal Revenue Service has become increasingly conscious of its responsibility under our system of tax administration—which is one of self-assessment and voluntary compliance—to assist the taxpayer with the yearly chore of filing a tax return.

Each year, we help millions of taxpayers prepare their returns, answer the questions they have, and even figure out their tax for them in many cases. We now have a toll-free telephone service available to taxpayers in every state. We extend our hours during the tax filing period at the more than 800 offices we maintain throughout the country and we set up satellite offices in shopping centers, store front locations and in mobile vans. We also train volunteers to help elderly and low-income people prepare their own returns. We take great care to tell taxpayers about their rights as well as their obligations under the tax laws.

We have rewritten and have simplified and clarified the language of our form letters, our publications, and other communications we send taxpayers so that they will better understand what is expected of them and what deductions they can take under the law.

These direct efforts must be supplemented by assistance from the Nation's mass communications media. This past filing season, perhaps our most successful in history, was typical from the standpoint of help provided by the press. Our news releases, tax information columns, public service advertisements and other information were carried extensively and in a timely fashion in newspapers all over the country.

There is no doubt in my mind that the success of the Presidential Election Campaign Fund Check-off this year is due in large part to the news reports and editorials carried by the media. We project that more than $25 million will have been designated this year for the 1976 Presidential Election Campaign when all 81 million returns have been processed. When this amount is added to the almost $4 million designated last year, the campaign fund should have a balance of over $29 million by the end of this year.

With continued media help in publicizing the check-off option in the next two years, the balance in the fund should be more than enough to meet the amount required by law to permit public funding of the 1976 Presidential Campaign.

Thus far I have discussed the responsibility of the Internal Revenue Service to help the taxpayer know his rights and meet his obligations under the tax laws. Now let me turn to an equally important responsibility of the IRS, that of guarding the privacy of financial information which taxpayers have entrusted to us, a responsibility which we have often had difficulty explaining to the satisfaction of inquiring journalists.

The IRS is ever mindful that our voluntary compliance tax system depends upon public confidence—confidence that we administer the system fairly, justly and impartially and that the confidentiality of personal and financial information entrusted to us will be preserved.

We are bound by law to limit the disclosure of information from tax returns. Section 6103 of the Internal Revenue Code limits disclosure of tax return information to the States for tax administration purposes, to certain committees of Congress and, under certain conditions, to other Federal agencies.

Under existing law, the unauthorized disclosure of tax return information is a criminal act. Section 7213 of the Internal Revenue Code provides a penalty of one year in jail or $1,000 fine, or both, for the unlawful disclosure of tax returns or financial information related to these returns. I might add that while this provision of the Code governs our conduct at the IRS, the law does not limit the penalty sanctions just to government employees. The Code uses the words "any person." The question may then arise whether this provision might also apply to a newspaper, for example, which publishes information from a tax return without proper authorization. If so, would its application constitute an infringement on the First Amendment rights of the press? Is there a conflict between First Amendment rights of freedom of the press on the one hand, and on the other our duty to enforce the anti-disclosure law and perhaps the Fourth Amendment rights of privacy of American taxpayers?

Even if disclosure were not prohibited by law, the Internal Revenue Service would be bound by a moral obligation of confidentiality. In the process of filing an income tax return, a citizen lays bare to the scrutiny of IRS employees his financial affairs and much personal information. It seems clear to us that this citizen is entitled to a guarantee that his financial nakedness under the law will not be exploited.

This guarantee has not always prevailed under the various tax laws in our history. The Revenue Act of 1924 required Internal Revenue to make available for public inspection lists of individuals who filed returns and the amount of tax they paid. I understand that shortly after it was announced that tax lists were ready for inspection, Internal Revenue offices throughout the country were flooded with requests to see the lists by promoters, salesmen and advertisers.

Two years later, the provision was repealed by Congress. Then in 1934, in the belief that publicity would combat tax evasion Congress authorized the "pink slip" provision, requiring each taxpayer to enter basic income tax data from his return on an extra sheet which anyone could examine at an IRS office. The public terror over the Lindbergh kidnapping had so thoroughly gripped the country, however, that the kidnapping and ransom implications of disclosing taxpayer financial information apparently contribute to repeal of the pink slip scheme before it could ever be implemented.

I think these two experiences indicate the dangers that could arise in regard to publicity of tax return information.

Of course, some political office holders and office seekers have published their tax returns, net worth and other financial information. If they feel that such action is appropriate or advisable, that is their business. They are perfectly free to make such a disclosure. The IRS is *not*, unless the taxpayer has clearly disclosed such information, and even then we limit our comments to the four corners of what has already been disclosed by the taxpayer.

Thus, I am greatly concerned about the overblown rhetoric of recent weeks that the IRS has become a lending library of tax return information. Such an allegation simply isn't true. And I am surprised at the extent to which some of the press seem willing to repeat allegations which were refuted just a few months ago by an organization as highly respected as the staff of the Joint Committee on Internal Revenue Taxation.

For example, a newspaper which reported the findings of the Joint Committee staff last December apparently ignored its earlier story when the stale allegations were dredged up again in April. These allegations, previously discredited, were first treated as fact and then used as fact to supply the basis for an editorial lamenting abuse of the tax system. I would not be surprised to see certain politicians dust off these charges and bring them out each year at the peak of the annual filing season.

You have heard of the enemies lists and that attempts had been made to have the IRS use the lists as the basis of harassing certain people. This old story has been revived as if it were a new development and as if it were fact.

If those spreading this story had looked at the Joint Committee report on the enemies lists, they would have seen that in the case of list 1, the staff found "no evidence that this list ever went to the IRS." In the case of list 2, the Committee staff "found no evidence that any returns were screened as a result of White House pressure on the IRS." It further found "absolutely no evidence that audits of people on the political opponents list were on the average conducted more harshly than normal." The staff found no evidence to indicate that the IRS was "more vigorous in its attempts to collect unpaid taxes" or "in recommending prosecution for tax violations in the cases of political opponents of the White House."

The Joint Committee staff paid particular attention to the cases of individuals mentioned in the press as victims of politically motivated audits and concluded: "In none of these cases has the staff found any evidence that the taxpayer was unfairly treated by the Internal Revenue Service because of political views or activities. If the staff were freed from restraint as to disclosure of information, it believes the information it has would indicate that these taxpayers were treated in the same manner as taxpayers generally."

Regarding both friends and enemies, the Committee staff stated:

"In summary, there are cases on both the friends and enemies lists in which people who probably should have been audited were not audited, in which audits were not done adequately, or in which returns were not filed and no collection activity has been undertaken. Therefore, the Joint Committee staff does not conclude, although it cannot foreclose, that the instances of lenient audits of White House friends were the result of White House pressure on the IRS. As a result, the staff, with the approval of the Joint Committee, has requested further reports from the IRS with respect to certain friends' cases, as well as in the cases of certain enemies."

We are now doing the further work that was requested. And we may find that some mistakes were made; we lay no claims to perfection. But we are trying to do the best and fairest job that we can.

Let's turn to the IRS Special Service Staff, about which there has been a recently reactivated allegation. The Staff was originally formed in 1969 as a result of inquiries made of IRS by the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations. At that time, in the wake of civil disruptions and demonstrations by "extremist" organizations, the Subcommittee raised questions about the financial resources of these organizations. Apparently some of the organizations which enjoyed tax exempt status were not complying with tax requirements. The Staff was to gather information on the sources of funding of these organizations and to check the income tax status of the organizations and their principals.

Just after I became Commissioner, I ordered a study of the Special Service Staff. I concluded that this group was unnecessary and I disbanded it. As I stated last August, the IRS will continue to pay close attention to tax rebels—tax resistance organizations and those individuals who publicly advocate noncompliance with the tax laws—but political or social views, "extremist" or otherwise, are irrelevant to taxation.

Although the Joint Committee staff has not completed its investigation of the disbanded Special Service Staff, the December 20 report provided interim information, stating that it "has found no evidence that individuals about whom referrals of information were made by the Special Service Staff to the Audit, Intelligence and Collection Divisions were treated any more harshly by these divisions than was normal. Indeed, in some cases the IRS seems to have been more lenient than normal with prominent extremists, perhaps in order to avoid the charge that radicals were being persecuted."

However, once, again, when the old charges about the Special Service Staff were repeated recently, a few journalists seemed to pay no attention to the Joint Committee report.

In the recent filing period there were stories quoting a few individuals who could read the minds of 81 million American taxpayers. These seers forecast a wave of noncompliance because of the President's tax situation.

To a few this might sound like a good story and some writers were quick to board the bandwagon. What happened? Our indicators show that the American taxpayer did the same thorough, conscientious job of self-assessment and voluntary compliance as before. There was no wave of noncompliance this year. Perhaps the American taxpayers read the oath they attest to when they sign their tax returns. Perhaps they have too much of a sense of responsibility to their fellow citizens.

Since over 75 percent of the American people receive tax refunds, refund statistics are good indicators of compliance trends. If people were taking all kinds of questionable deductions the average refund this year would have risen dramatically over what we projected. We release statistics every week of the filing period, and these show that the average tax refund, for example, is up only 5.2 percent over last year. We had predicted an increase of approximately 5 percent based on normal economic factors.

I know it is not my job to tell the media how to run their business—it is their job to tell me how to run mine. However, I don't believe it is unreasonable for me to urge even greater effort toward balanced reporting, objectivity and checking of facts. I am sure you agree that the media have a responsibility to be responsible in reporting, for you are the primary outlet for truth to the vast majority of the American people.

We also recognize your right and your responsibility to keep close watch on the government and to comment and criticize when

a mistake is made. The IRS makes mistakes and we expect to hear from you when we do. That's your job. And when we hear from you we are probably inclined to move faster to correct our errors.

All of the 75,000 employees in IRS are human. If each of us made one mistake a year, that's 75,000 mistakes. But let's see if the mistake is simply a goof, a matter of poor judgment, or a lack of thoroughness on the part of an employee, and if it is, let's call it what it is.

All 75,000 employees of the IRS, with the exception of the Commissioner, are career civil servants. I know of no other Government agency which has such a high percentage of career employees. The IRS has spent the last 22 years—since its reorganization was approved by Congress—trying to insure a non-political, non-partisan, career service approach toward tax administration, and I believe it has achieved just that.

I believe the Nation has a great stake in better public understanding of how American tax administration works. Such understanding is essential to maintaining confidence in our voluntary compliance tax system.

I sincerely hope that you will give these matters your serious consideration and that you will let me and the IRS have the benefit or your suggestions and views.

## YESTERDAY'S OUTRAGEOUS ATROCITY IN ISRAEL

Mr. TUNNEY. Mr. President, the barbarism in the schoolhouse in Maalot in Israel is an outrageous assault on all humanity. Clearly, this most heinous atrocity by Palestinian terrorists, should be repudiated and deplored in every capital, by every government around the globe, including those in Arab countries. Otherwise, the hideous slaughter may provoke the lightning stroke of revenge, and the Middle East again could explode in war.

Our hearts go out to the parents of the slain and wounded youngsters and to all Israel, which so courageously has faced the savagery of terrorist attack. Golda Meir, once again, is the stalwart voice of that nation's indomitable will and courage. Her impassioned cry that Israel will do everything in its power "to chop off the hands that intend to harm a child" reverberates in the conscience of parents around the world.

Hopefully, the massacre at Maalot will not unravel the few fragile threads that Secretary of State Kissinger so far has begun to weave into a tapestry of peace for the Middle East.

Hopefully, Syria and other Arab countries that have encouraged, if not supported outright, the Palestinian terrorists will now reject them and repudiate their bloodthirsty tactics.

Hopefully, they will proclaim their bond with mankind and declare their compassion for the riddled victims in that shattered school.

Hopefully, they will deny support and dispatch police to roundup the terrorists and breakup their murderous camps.

Hopefully, they will do so before Israel, in the heat of her understandable anger and heartbreak, retaliates militarily in order to protect her people and preserve her freedom and independence.

The response to yesterday's horror today lies with the Arab leaders in Damascus and throughout the Middle East.

## U.S. SUPPORT TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

Mr. JAVITS. Mr. President, very soon the Senate will vote on S. 2665, a bill which will provide continuing U.S. support to the International Development Association, one of the most crucial components of our multilateral assistance effort. I cannot stress too strongly the importance of favorable action by the Senate, especially in view of the serious problems now being faced by the poorest of the developing countries, those to which the IDA program is directed. The editorial from today's New York Times states the case for IDA so well that I ask unanimous consent, Mr. President, that the editorial be printed in the RECORD.

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

COMMITMENT TO IDA . . .

The sincerity of American concern for the poorer peoples of the world will be put to the test this week, when the Senate votes on a four-year commitment of $1.5 billion to the World Bank's aid affiliate, the International Development Association.

Buffeted between disillusionment with foreign aid and President Nixon's dwindling influence on Capitol Hill, the House of Representatives unexpectedly defeated the Administration-backed I.D.A. authorization last January. It is no exaggeration to say that if the Senate fails to revive the measure now, and by an impressive majority, this effective international institution will be in danger of closing its doors to any new loans just as a time when the world economy is most in need of cooperative ventures.

I.D.A. is neither a "giveaway" nor a mere tool for the advancement of specific foreign policy goals. Two dozen nations contribute, alongside the United States; this country has always been the largest single contributor, but the American share has dropped from 40 per cent to one-third in the current funding. Japan, by contrast, has nearly doubled its share of the total; Germany's pledged contribution has more than doubled.

What makes the Senate's action so crucial is the nervousness with which these other donor countries are watching. Shaken by the adverse House vote, Germany, Japan, Canada and others have indicated that they will not be bound by their pledges if the United States reneges. I.D.A. cannot by itself solve the inflationary and balance-of-payments pressures bearing down across the world economy, hitting the poorest nations hardest of all. But without a strong United States commitment, the hope of inducing other countries to carry their share of the burden will be sorely dimmed.

## MANSFIELD AMENDMENT TO FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS

Mr. PERCY. Mr. President, on April 11 of this year I vote against the Mansfield amendment to the Federal Election Campaign Act amendments. The Mansfield amendment would require the General Accounting Office to inspect and audit the tax returns of each employee or official of the executive, judicial, and legislative branch whose gross income for the most recent year exceeds $20,000. The audit would be for the 5 previous years.

On the floor that day I asked three questions. What is the manpower required by GAO to do this? How many employees would this involve? How many millions of dollars a year will this cost? There were no answers available to these questions during the floor debate and I voted against the amendment.

In a letter to me dated May 3, 1974, Mr. Elmer Staats, Comptroller General of the United States, answers these questions I asked. His answers make me feel even more secure in the vote I cast.

Mr. Staats estimates that there are 312,000 employees and officials of the Federal Government whose tax returns would have to be audited under terms of the amendment. The cost the first year would be $105 million for the auditing of the previous 5 years of tax returns and the annual cost thereafter would be $21 million.

Mr. Staats opposes the amendment and states:

We do not think it is appropriate to require the GAO to perform the auditing work which is already the responsibility of the Internal Revenue Service, particularly in view of the substantial expense involved, and we are, therefore, opposed to the enactment of section 503 in its present form.

Mr. President, I ask unanimous consent that the letter from Mr. Staats outlining his objections to the amendment be printed in the RECORD at this point.

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

COMPTROLLER GENERAL
OF THE UNITED STATES,
*Washington, D.C., May 3, 1974.*

Hon. CHARLES H. PERCY,
*U.S. Senate*

DEAR SENATOR PERCY: We think you will be interested in the cost to the General Accounting Office to carry out section 503 of S. 3044, the "Federal Election Campaign Act Amendments of 1974," which was passed by the Senate on April 11, 1974.

Section 503 requires the Comptroller General on or before July 1 of each and every year hereafter to make an intensive inspection and audit of the income tax returns filed by each Member of Congress and each employee or official of the executive, judicial and legislative branch whose gross income for the most recent year exceeds $20,000, for the five previous years.

We estimate that at present there are approximately 312,000 employees and officials (including military personnel) of the Federal Government having a gross income in excess of $20,000 per year and therefore subject to the audit requirements of section 503.

We have had no experience in auditing income tax returns. However, we have consulted with the Internal Revenue Service and have found that its experience shows a cost of $66.64 for a detailed audit of a tax return with a gross income range of $10,000 to $50,000. Assuming the GAO could perform its work at the same cost as IRS, we estimate that an audit for one year of 312,000 returns would cost nearly $21 million. To that figure must be added space rental, equipment, travel, etc. We have not been able to make an estimate of the audit of the previous four years. It is conceivable

that some economies could be brought about by auditing five years of returns at one time but we have no experience upon which to base an estimate of any economies that might be achieved. Therefore, we have to assume that our estimated cost for one year would have to be multiplied by five to arrive at a figure for auditing each return submitted during a five year period. This would raise the first year audit cost to $105 million plus space rental, equipment, travel, etc.

We do not think it is appropriate to require the GAO to perform the auditing work which is already the responsibility of the Internal Revenue Service, particularly in view of the substantial expense involved, and we are, therefore, opposed to the enactment of section 503 in its present form.

The GAO on its own initiatives has not been able to make any reviews of the audits performed by the IRS of taxpayers' returns. It is the position of the IRS, with which we do not agree, that no matter involving the administration of the Internal Revenue laws can be officially before the GAO and therefore *GAO* has no audit responsibility. The Commissioner of IRS in a letter to the Comptroller General dated June 6, 1968, stated:

"* * * I must note that the (chief counsel, IRS) opinion holds that the Commissioner of Internal Revenue is barred by Section 6406 and 8022 of the Internal Revenue Code from allowing any of your representatives to review any documents that pertain to the administration of the Internal Revenue laws. Thus, Federal tax returns and related records can be made available to you only where the matter officially before GAO does not involve administration of those laws."

We are making some reviews of IRS' operations for the Joint Committee on Internal Revenue Taxation which involve the administration of the tax laws. Under this arrangement the IRS has given us complete cooperation but we are considered as performing work as agents of the Joint Committee rather than performing work on our own initiative.

As an alternative to section 503, the Congress could make it clear that the GAO has the authority to audit the work performed by the IRS and the GAO could then make periodic reviews of the audit performed by the Service on individual income tax returns.

Sincerely yours,

ELMER B. STAATS,
*Comptroller General of the United States.*

## THE MOST IMPORTANT DIPLOMATIC-MILITARY ISSUE

Mr. SYMINGTON. Mr. President, soon the Congress will consider by far the largest peacetime budget request in its history—and this some $100 billion request is being asked for at a time when it is generally agreed the economy of the United States—its fiscal and monetary position—is in unprecedentedly poor shape and steadily declining.

In this connection, I would hope that "Politics and the Nukes," an article by George Sherman in the Washington Star News of May 13, will be read by all those who later must vote on the military posture of the United States in this fast-changing world.

As ranking member of the Senate Armed Services Committee, as a long-time member of the Foreign Relations Committee, and as chairman of the Military Applications Subcommittee of the Joint Atomic Energy Committee, it is my considered opinion this article could be the most important presentation of the overall problem of just what is true national security that has come out in recent years.

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

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

POLITICS AND THE NUKES

(By George Sherman)

The beleaguered Atlantic alliance is facing still another challenge these days—growing controversy over the size of the American nuclear stockpile in Europe.

For the first time in more than ten years the pros and cons are being debated publicly over the need to station upwards of 7,000 tactical nuclear warheads on the territory of NATO allies. Whether the imperatives of defense or the chemistry of detente any longer demand such a large nuclear crutch is in dispute.

The spark has come from Sen. Stuart Symington and his Foreign Relations subcommittee on national security commitments. An array of critics, among them key advisers of former Defense Secretary Robert S. McNamara, have testified that NATO no longer needs a nuclear arsenal designed and built for the Cold War days of the 1950's and 1960's.

Alain C. Enthoven, a former "whiz kid" under McNamara at the Pentagon, stated that no more than a thousand warheads are needed in Europe for the limited task of deterring a sudden Soviet invasion of Europe. Both he and Paul C. Warnke, also a former top aide of McNamara, charged that strong conventional forces should be the real focus of Western defense in this age of nuclear equality between the superpowers.

Defense Secretary James R. Schlesinger is clearly on the defensive. He himself has spent much time and energy on both sides of the Atlantic arguing for greater efforts in conventional NATO defenses. He has also become the chief administration architect of turning the U.S. strategic deterrent of long-range missiles and bombers into a more efficient and accurate force for "limited strikes" against Soviet targets in case of an invasion of Europe.

Therefore, the critics can and do ask—why keep 7,000 warheads in Europe, and another—less publicized—8,000 or so tactical warheads in reserve in the continental United States, when no serious planner sees a long intermediate stage between a "conventional" and a "nuclear" war?

To the Symington subcommittee in early April, Schlesinger allowed that the number of U.S. tactical nuclear weapons overseas was "not immutable." It seemed a sharp blow at the status quo. But several weeks later, when visiting the troops in Germany the defense secretary reassured the NATO establishment. A number might not be "immutable," he said, but that meant also it might go either up or down.

The point is that the tactical nuclear problem is as much political and diplomatic, as military. The American stockpile actually visible in Europe—50 percent of it in West Germany—is a guarantee of the United States security commitment to Europe. Any talk of tampering with it, particularly at a moment when congressional pressure remains high for large U.S. troop reductions in Europe, sends tremors through the military and political high commands of NATO.

European officials acknowledge that they are caught in an enormous contradiction. On the one hand, they openly resist the thought that tactical nuclear weapons would actually be used in their homelands. They, like Enthoven, believe studies that show the use of "small-yield" tactical nuclear warheads in a limited nuclear war would cost between 2 million and 20 million lives and result in the virtual destruction of Europe.

On the other hand, the presence of these weapons in Europe gives strong political cement to the alliance. The numbers may be high—some 300 atomic ground mines; 3,000 short-range artillery shells; 500 longer-range surface-to-surface missiles; 2,200 bombs aboard Phantom, Starfighter and other supersonic jet aircraft; 700 surface-to-air missiles; and, 380 nuclear depth charges and torpedos aboard land-based planes for anti-submarine warfare.

Yet the knowledge they are there keeps the United States hostage to Europe. Since few European politicians think tactical nuclear weapons would keep a war limited for long, the weapons become a "bridge" to the big U.S. strategic deterrent against Soviet power.

Furthermore, this arsenal of "nukes" is obviously a bargaining chip in two highly delicate negotiations with Moscow—the talks in Vienna on mutual East-West force reductions in central Europe, and the Soviet-American strategic arms limitation talks in Geneva.

The Nixon administration so far has excluded tactical nuclear weapons from both negotiations. In the SALT talks with the Soviet Union, the United States insists these weapons involve the whole Western alliance, not just bilateral superpower relations. And because of the sensitivity of European allies to a lessening U.S. commitment to Europe, the NATO position in the Vienna talks on force reductions has given proposals to reduce tactical nuclear stockpiles on both sides a wide berth.

If Washington now were to make drastic one-sided cuts in these American weapons on European soil, goes the Schlesinger argument, the Russians would get a free dividend before negotiations are even completed, and disrupt the Western alliance in the process.

Therefore, Schlesinger—with the support of Secretary of State Henry A. Kissinger—has taken a more subtle tack. He is trying to shift the argument away from numbers, by focusing on discovering what tactical nuclear weapons best combine to make the most credible deterrent. The emphasis is on military utility, on efficiency, above all on modernization—of the arsenal—not on its size.

"There are certain classes of weapons in Europe that may have reached the stage in which they're obsolescent or quasi-obsolescent," the defense secretary told newsmen at the Grafenwohr training field last month in Germany.

But changes would be made in terms of "military effectiveness" and in consultation with allies, he continued. "Whether there's an adjustment of 100 weapons up or down should be looked at in terms of its military impact rather than in terms of symbolic and political sensitivities."

At the Pentagon, in the Military Planning Committee at SHAPE military headquarters of the alliance in Belgium, in the Nuclear Planning Group of NATO defense ministers, studies are underway to look at the nuclear force structure and aging weapons.

Ranking American sources insist that the thrust is not toward reduced numbers—although that may be a by product. It is toward fitting this stockpile into the Schlesinger thesis that nuclear weapons—strategic and tactical—only become credible as a deterrent if the Russians are convinced they can be used.

In fact, present Pentagon thinking strongly disputes the Enthoven thesis that the tactical nuclear stockpile in Europe is of largely symbolic importance, perhaps only for very limited use in one or two "demonstration

blasts" to convince the Russians to stop an invasion before the war goes all-out nuclear. Top U.S. officials insist that nuclear technology has so improved since Enthoven left government—blasts can be refined and warheads made more accurate—that nuclear artillery and other weapons can be used on the battlefield without destroying Europe.

Furthermore, the argument goes, even if military planners foresee only a limited use of any nuclear weapon on the battlefield or behind the lines, the inventory must contain a large enough variety and in sufficient numbers to give the American president and his allies the widest possible options in a crisis. By this logic, larger numbers, efficiently controlled, guarantee flexibility in crisis management—regardless of how many may actually be used.

A whole array of more modern warheads is also being developed by the Atomic Energy Commission—which Schlesinger headed earlier—and the Pentagon. They range from "dial-a-yield" warheads, allowing a computer to set the strength of blast desired on any particular target, to new television-guided and laser-beam missiles giving far greater precision. Officials stress that "development" of these warheads is different from "deployment"—still years away, if at all, certainly not before the early 1980's.

But Paul Warnke and his fellow critics deplore this development of a new generation of tactical nuclear weapons. They argue not only that the cost would run into the billions, but also that such refinement and accuracy will make the escalation from conventional to nuclear war far easier.

"If the distinction between conventional and nuclear weapons were to be blurred by the introduction of a species of nuclear weapon which is not much morse than a conventional weapon," he told the Symington subcommittee, "then the consequences of breaching the nuclear barrier become less awesome." Once this lower nuclear threshold is crossed, he continued, the escalation to all-out nuclear war remains as certain as ever.

Schlesinger and his school respond that the critics cannot have it both ways. They cannot argue for keeping "some" tactical nuclear weapons in Europe to bolster alliance defenses, and still expect the Russians to take those weapons seriously as a deterrent if they are not programmed for use. More efficient warheads, more precisely targeted, says the official argument, also mean that fewer numbers may be needed—saving both money and a part of the estimated 30,000 U.S. troops now detailed to "guard" the 7,000 warheads scattered around Europe.

"It is simply nonsense to suggest that we are passing these nuclear weapons out to the allies like candy bars," said one well-placed source about the "black-box system" of electronic control for each warhead. "We are perfecting a command-and-control mechanism so that no nuclear weapon can be fired without the direct approval of the President of the United States."

There is also an economic argument for modernizing the stockpile. According to informed sources, plans are being developed at the Atomic Energy Commission to obtain up to $1 billion in enriched uranium for civilian nuclear reactors from outdated 7-inch and 155 millimeter artillery shells to be replaced in Europe. This valuable source of energy will come into the American economy in the early 1980's, when demand for uranium will be at its height.

Thanks to the Joint Committee on Atomic Energy, the AEC has also slowed down and changed design of the two artillery shells set as replacements. They will use smaller amounts of enriched plutonium and will have advanced guidance systems. For this fiscal year, the congressional committee cut $50 million which the AEC had intended to use for production facilities, before the design was completed.

But even the drive for careful modernization is being tuned to the political realities of the alliance. Military arguments are not supreme. Take, for instance, the most controversial of the tactical nuclear weapons, the so-called "Quick Reaction Alert" aircraft kept by the U.S., German, British and allied air forces, with U.S. nuclear bombs, around Europe. Two aircraft on each base, heavily guarded and always ready, are set to be on their way within 15 minutes to major Soviet and East European targets.

Protagonists for nuclear weapons in Europe themselves acknowledge that these "QRA" aircraft may have outlived their usefulness. Soviet intermediate missiles could knock out their bases before they even got off the ground. The short distances in Europe in this jet age, plus the knowledge of the vulnerability of the air bases, critics argue, could lead to premature use of the nuclear bombs in a sudden Soviet invasion.

These critics also find other weapons available to guarantee a nuclear response, if and when necessary—a change which would also release these hundreds of "QRA" jet fighter-bombers for conventional defense. It is argued that existing mobile Pershing tactical missiles (with range up to 600 miles) can be dispersed throughout Germany and fortified against Soviet nuclear attack. More important, perhaps, invulnerable U.S. Poseidon submarines, each with 16 long-range missiles carrying multiple warheads, are already available to hit the same targets as the Quick Reaction Alert aircraft.

Officials acknowledge that this "tactical" use of the Poseidon is perfectly practical, and is under study at SHAPE headquarters. But the QRA planes serve a political purpose which the American submarine can never equal. There they are, the Phantoms and Starfighters, highly visible on German and other allied airfields, being flown by Germans, Americans and others—tangible proof of the allied nuclear deterrent.

"It's good for political cohesion," said a European military planner here. "An American submarine at sea provides no such political demonstration. We will have to think long and hard about the impact of getting rid of the QRA."

So it is with attempts to alter the status quo in the nuclear business. It goes to the heart of the trans-Atlantic alliance. Whatever the arguments for military utility, sooner or later officials and critics alike have to grapple with the political role of keeping tactical nuclear weapons in Europe.

## ST. JOHN THE EVANGELIST PARISH BICENTENNIAL

Mr. MATHIAS. Mr. President, 2 years ahead of our Nation's Bicentennial, a nearby parish is marking its own 200th anniversary. St. John the Evangelist Church in Silver Spring traces its founding back to colonial times, and its founder, Father John Carroll, became the first Catholic bishop and then the first archbishop in the United States of America. The Senate of Maryland in its recent session adopted a resolution marking the St. John the Evangelist Parish bicentennial. I ask unanimous consent that the resolution be printed in the RECORD.

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

SENATE RESOLUTION No. 158

A Senate resolution concerning Saint John the Evangelist Parish of Silver Spring

For the purpose of congratulating Saint John the Evangelist Parish of Silver Spring upon the occasion of the 200th anniversary of its founding.

Whereas, Saint John the Evangelist Parish of Silver Spring has given two centuries of service to Montgomery County; and

Whereas, Father John Carroll, the founder of this parish, became the first Bishop and the first Archbishop in the United States; and

Whereas, This Parish has the cemetery where Eleanor Carroll is buried, who was the mother of both the Archbishop and of Commissioner Daniel Carroll, whose historical marker was placed on Rosensteel Avenue at Forest Glen Road by the Montgomery County Historical Society. Also buried in this cemetery is Washington's first Mayor, Robert Brent and his wife, Anne, sister of the Archbishop; and

Whereas, The Parish is celebrating this entire year with many affairs; now, therefore, be it

Resolved by the Senate of Maryland, That congratulations be extended to Saint John the Evangelist Parish of Silver Spring upon the occasion of the 200th anniversary of its founding by Father John Carroll; and be it further

Resolved, That copies of this Resolution be sent to Saint John the Evangelist Parish, 10103 Georgia Avenue, Silver Spring, Maryland; and to Mrs. John M. Falcao, 10109 Leder Road, Silver Spring, Maryland 20902.

## THE MASSACRE AT MAALOT

Mr. STEVENSON. Mr. President, I was shocked and saddened by the barbaric and senseless massacre of Israeli schoolchildren at Maalot and extend my most heartfelt condolences to these families.

The Senate, by unanimous passage of a resolution which I cosponsored, has urged the President and the Secretary of State to call upon all governments to condemn such acts of inhumanity, and to urge all governments to take action against those who subvert the search for peace by means of terrorism.

The tragedy at Maalot gives new urgency to Secretary Kissinger's efforts to negotiate a peaceful settlement between Israel and her neighbors. But we cannot hope for lasting peace in the Middle East until the Arab nations join all other nations in putting an end to the acts of terrorism which affront human decency and the standards of civilized conduct.

## NATIONAL HEALTH INSURANCE—FACT VERSUS FICTION

Mr. HANSEN. Mr. President, a number of us in the Congress look forward to the coming debate on national health insurance. It is important to have public participation in this debate. Every group interested in solving our health care problems has a right and a duty to offer its solutions to problems of health care delivery. These groups will help focus attention on the important issues to be resolved.

But if this discussion is to be of value to the public and to those of us who legislate national health issues, the information and the debate must be factual. It does us no good to appeal to emotionalism. Such a course of action does not help solve the problem.

Thus, no useful purpose is served by printed material which distorts misleads, and tells only part of the story. I have

seldom seen or read as many misstatements in one document as there are in a pamphlet distributed by the Committee for National Health Insurance, a pamphlet designed to help promote the Health Security Act (S. 3).

This pamphlet is entitled, "Health Security Program Questions and Answers." It was prepared by the Committee for National Health Insurance and was evidently widely distributed as part of the committee's lobbying for the Health Security Act.

I would hope that in the future the Committee for National Health Insurance would be more accurate in its communications so that it contributes to the debate rather than to the confusion that misleads the public.

Let me cite some of the distortions and misstatements in this booklet:

First. The booklet says:

If you checked it out, you'd find that in the past ten years, doctor and hospital bills have gone up 145% while the overall cost of living rose only 36%. In fact, the average American today works about one month just to pay his medical bills.

Fact: While hospital bills went up at this rate for the 10 years prior to 1971, physician bills did not. In fact, physicians' fees increased on the average about as much as other services recorded by the Consumer Price Index, and only slightly above the "all items" index listing.

In addition, under phases I, II, and III, and IV, the health sector has outperformed every other sector of the Consumer Price Index in holding down increases. Here are the facts:

From August 1971 through December 1973, the Consumer Price Index increased 13.3 percent. The "services" category increased 11.2 percent. The "medical care" category increased 8.7 percent. "Physicians' fees" increased only 7.3 percent.

Furthermore, according to the Statistical Abstract—1973, the average income of an American worker in 1971 was $6,195. This amounts to $516 per month. The U.S. Department of Health, Education, and Welfare and Social Security System cite the average American's health cost in 1971 to be $361.

Obviously in 1971 the average American actually worked only a little over one-half of a month—18 days—to pay for his health costs. It can be safely said that the average American now works 18 to 20 days a year for health costs—hardly the 1 *month* cited by the pamphlet.

Second. Booklet:

Can those who manage private health insurance do something about controlling costs? No.

Fact: The ability of the private health insurance companies to hold down costs was demonstrated during the recent experience of wage and price controls. According to a survey of rate increases from January to July 1973, representing 55 percent of the group business in the United States, the weighted average rate increase was 3.2 percent. In comparison, during the phase II period surveyed a year previous, the average increase was 7.8 percent. If they did it once, they can do it again, and I hope and trust that they will.

The ability of the private health insurance industry to voluntarily control unnecessary costs was adeptly demonstrated by the Blue Shield's medical review plan in California. This utilization review plan has saved Blue Shield subscribers $100 million a year. It has resulted in $9.1 million in fee reductions.

Third. Booklet:

Have private health insurance managers done anything to control rising costs?

No. Insurance is actually driving up costs in several ways. For example: most people with private health insurance are covered only when hospitalized. So, the tendency is to put you in the hospital for treatment which often could be given at home or in the doctor's office. Because hospitalization is much more expensive than outpatient treatment, unnecessary hospital stays drive up the total cost of health care—including the premiums you pay for health insurance.

Fact: Not only has an increasing proportion of care been given on an outpatient basis, but health insurers have increasingly extended the coverage of health insurance policies to include payment for more outpatient care.

For every patient admitted to a hospital in 1972, there were nearly seven visits by outpatients. The ratio of outpatient visits to hospital admissions has been growing for some years and shows no signs of reducing.

A a result of the use of outpatient facilities and the decreased use of inpatient care, one out of four hospital beds stood vacant during 1972 in non-Federal short-term general hospitals. Even in long-term hospitals the occupancy rate was only 83 percent.

Five years ago Blue Cross paid more claims for outpatient services than for hospital admissions for the first time in its history. This trend has continued since then. Most member plans of the Blue Cross Association now provide coverage for preadmission hospital testing in order to reduce hospitalization and the cost to the patient. A study by Blue Cross at Baltimore's Sinai Hospital indicated that this preadmission testing resulted in an average savings of 1.4 days of bed care for each Blue Cross patient who used it.

Fourth. Booklet:

We lag behind most industrial countries in the usual measurements of health care and we're worse off—by comparison—than we were 20 years ago. What are the facts of the lag?

They are shown by statistics comparing such things as infant deaths and life expectancy on a country-by-country basis. The most recent statistics available show the United States ranks: 15th among industrial countries in the death of infants during the first year of life; 27th in life expectancy of males and 12th among females; 28th among industrial countries in the life expectancy of its males at 45.

Fact: First of all, what are legitimate measurements of health care? It is not fair to judge the health status of a nation on such factors as infant mortality and age expectancy.

It is true that the infant mortality rate is higher among blacks, but most health authorities agree that this is not due solely to medical care or the lack thereof. It is also due to problems common in the urban ghetto such as poor sanitation, absentee landlords, inadequate sanitation facilities, trash, rubbish and litter accumulation, poor education on health, inadequate transportation, and other socioeconomic reasons.

I quote from a study made recently by the American Medical Association:

The infant mortality rate is not the best, or even a good indicator of the health status of a nation or the efficacy of a nation's health delivery system. *Infant mortality is, for the most part, a social rather than a medical problem.* Such factors as poverty, malnutrition, poor housing, low education levels, and racial or ethnic differences are surely much more highly correlated with infant mortality than such factors as the number of physicians or hospitals.

The study concludes:

The infant mortality rate has been misused and misinterpreted for some years. It is time to dispel the idea that it is a valid indicator of the health status of the U.S. population. It is not. If we are to properly evaluate the health status of the population and the efficacy of the health delivery system, a broad set of data, probably summarized into a weighted index, should be used.

The important facts are that the infant mortality rate has been decreasing steadily and the life expectancy rate has been increasing steadily. This should give us reason for a minimum of concern.

Fifth. Booklet:

What are some of the other elements of the health care crisis in the United States?

We have health personnel shortages of nearly 500,000—including 50,000 doctors, 20,000 dentists, 150,000 nurses and 280,000 other health specialists and professionals. By 1980, the shortages are expected to climb to 725,000.

In contrast to the assertion is a statement made by Dr. Charles C. Edwards, Assistant Secretary for Health in the Department of Health, Education, and Welfare, that a $3.5 billion governmental program to alleviate the doctor shortage had eased the doctor shortage during the last 10 years and now threatens to create a doctor surplus. Accordingly the program may be cut. Another study issued by the Association of American Geographers of Washington, finds that the problem is more one of maldistribution that shortage. It traces many of the roots of the maldistribution problem to "Federal medical programs that are indirectly fostering a widening gap between doctor-poor inland States and doctor-rich coastal States."

Furthermore, according to a 1972 Gallup survey, 84 percent of the American people have at least a "fair amount" of confidence in their ability to obtain good health care. Only 3 percent expressed that they had no confidence at all. That represents a problem still, but not of the proportions purported in the pamphlet.

Sixth. Booklet.

Why do we have a doctor shortage? Since 1950, the ration of physicians to patients has gone up slightly. But, many doctors have gone into vital areas of research and other pursuits. So, the actual number treating private patients has gone down by about 10 percent, compared to the total population. Today, the number of doctors providing family care is only about one for 2,000 people as compared to three for 2,000 in the 1930's. Part of the reason for this is so many new

doctors have gone into the specialties in recent years and not into family practice.

Fact. First of all the ration of physicians to patients has gone up more than "slightly." The ration of physicians (M.D.'s) to population shows progress as follows:

| | | | |
|---|---|---|---|
| 1960 | 146 | per | 100,000 |
| 1971 | 163 | per | 100,000 |
| 1980 | 180 | per | 100,000 |

The physician population has grown 28 percent since 1960 while overall population is up 14 percent. The physician increase rate has grown two times faster than the population growth rate.

The pamphlet uses the phrase "number of doctors providing family care." Apparently this is supposed to show that only one-third as many physicians are providing care to families now as in the 1930's. Not only is this a gross misstatement of fact as the figures above clearly show, but apparently it is an attempt to mislead the American people about the very real progress that is being made in producing physicians. By using the phrase "number of doctors providing family care" the pamphlet perhaps is trying to make some comparison between the number of general practitioners in the 1930's and now. It is true that many physicians in recent years have gone into specialties other than family medicine. As we learn more about treating various diseases and illnesses, physicians must specialize in order to provide the miracle cures which we are now fortunate enough to have. But to try to stretch the fact that there are fewer "generalists" and more specialists into a statement that fewer physicians are treating families is misleading in the worst way. Certainly the specialists treat families just as do the family physicians.

The fact is that there are more doctors taking care of patients today than ever before.

As for a geographical maldistribution of physicians, it is certainly true that there are more in the metropolitan areas and in the pleasant Southern and Southwestern climates. At the same time, this is a reflection of the growth of the country.

I do not mean to imply that there are not distribution problems. There are. This is why the Congress passed the National Health Service Corps. This is why there are a number of bills before the Congress sponsored by individual members—and in one case drafted by the AMA—to focus attention on the shortage of physicians in many rural areas.

Seventh. Booklet:

How would Health Security do this? (Answer the crisis)

It would:

Control costs by setting limits on fees and requiring approved budgeting for hospitals and other institutions, thus controlling overuse of hospitals and forcing greater efficiency.

Create alternative health care plans for people all over the country...

Increase our manpower and other resources.

Impose quality safeguards to eliminate unnecessary surgery and limit doctors to providing only those services they're qualified to provide.

Give the consumer an equal voice in arranging for better health care services.

Fact: H. L. Mencken said:

For every human problem there is a solution that is simple, neat, and wrong.

This could certainly be said of the pamphlet's description of how the Health Security Act would answer "the crises" which this pamphlet describes.

First of all it is unrealistic to think that costs can be controlled simply by setting limits on fees and hospital charges. While this may work in the short run, it is only commonsense that in the long run it will lead to poorer quality of care. Hospitals and physicians would naturally try to see or handle more patients in the same amount of time in order to stay abreast with rising price for everything they buy. This leads to impersonal, assembly-line medicine.

A committee of the Congress affirmed this in a recent report which stated that a fixed fee for prescription services provides no incentive to improve the quality of services provided, especially the extra services which a pharmacist tries to provide. The report says that a fixed fee drives out innovation.

It is obvious also that setting arbitrary limits on charges will have an adverse effect on the productivity and use of allied health personnel. For instance, if physicians cannot offer salary increases to their employees they will lose some of their employees and be forced to provide those services themselves, which is an inefficient use of highly trained and expensive manpower.

In other words, arbitrary cost ceilings are a disincentive manpower.

In other words, arbitrary cost ceilings are a disincentive to increase production.

And finally, historical precedent shows that such arbitrary cost controls have never worked. They did not work in Rome, nor in Nazi Germany, nor during the American Revolution.

As far as the claim that the Health Security Act would create "alternative health care plans" the Congress recently passed a multimillion dollar HMO bill to do just that. Many of us question whether such a bill was even necessary, since the private insurance industry and the Blue Cross/Blue Shield are moving vigorously into the prepaid field without Government subsidy. In addition, many medical schools, medical clinics, universities, consumer groups, and other institutions are also active in starting HMO's as are many major American corporations.

In regards to the claim that health security would increase our manpower, the Congress has provided aid to medical schools and other professional health schools for over a dozen years. Private efforts are underway which will greatly expand the medical personnel of the country. In fact, as noted earlier, surpluses are envisioned by some. It does not appear that we need the Health Security Act to duplicate present efforts.

The claim that the Health Security Act would impose quality safeguards is a duplication of the purpose of the professional standards review organizations. The organizations are being formed voluntarily around the country now, and it is their job to safeguard the quality of medicare and medicaid, and may ultimately extend beyond to all hospital and ambulatory care. Such organizations incorporate physician participation on a local level in the review process, something never envisioned by health security.

As for giving the consumer an equal voice, other national health insurance bills would probably give the consumer as much or more choice of the type of care he receives and the setting in which he receives it than the health security system. A voluntary pluralistic approach insures more consumer freedom and participation than a single, rigid, monolithic governmental system, run by bureaucrats.

Eighth. Booklet:

How would the program be financed?

The costs would be met by contributions—in the same way Social Security now operates—from you and your employer, from the self-employed and from the Federal Government.

The Health Security contribution for employees would be one percent on the first $15,000 a year in wages or non-earned income. . . . Your employer would pay 3.5 percent of his payroll toward Health Security. . . . Self-employed people would pay 2.5 percent of all yearly income to $15,000. The total amount paid by workers, employers and the self-employed would be matched by the Federal Government...

Fact: Nowhere is this booklet more deceiving than in its discussion of the financing of the Health Security Act.

May I point out that by the time the listed taxes are matched by the Federal Government, it will be costing the American worker a total 9 percent tax. That is $900 on an average family income of about $10,000 a year.

Again, what the booklet fails to tell you is that HEW has estimated that the new taxes called for under the Health Security Act would be woefully short of meeting the expenses. The study estimated that the new taxes would fall $24.6 billion short of paying the bills.

Comparable foreign health plans, such as the British National Health Service, have far outstripped even the most liberal expenditure estimates. The cost of the National Health Service in Britain today has risen 11 times the original estimated cost. This may be traced to administrative bungling and inefficiency and over-utilization inherent in any such plan.

The Health Security Act is not self-supporting; it is not social security; it is a mishmash of financing which would leave the program billions of dollars short of paying for medical care it promises Americans. It would require heavy new taxes and add many billions more to the national debt.

Ninth. Booklet:

It isn't necessary to tear down the present structure in the United States.

Fact: The Health Security Act would destroy an industry that provides jobs to hundreds of thousands of people—the health insurance industry. The Social Security Administration reported recently that health insurance is a better buy today than it has even been, because more of the premium dollars paid by the public are returned in benefits than ever before.

Most national health insurance plans offered in the Congress would build on this private insurance. Most would assure that benefits are improved and standardized and that the Federal dollar helps pay for the care for those who cannot afford it.

The Health Security Act would destroy this industry and all of the jobs that it provides. It would take from the States and cities all of the taxes that this industry provides. It would replace it with a mammoth bureaucracy supported by the taxpayers.

With 9 out of every 10 Americans covered in some way by private health insurance, and with 90 percent with hospital expense coverage, I see no reason why this coverage should be duplicated or replaced with a governmental insurance policy.

Ten. Booklet:

The solution (to the health crisis) must *get at the* very roots of the crisis by attacking the inadequate service, the manpower and resources difficulties and the soaring costs.

Fact: I submit that the "roots" of our present-day health problems are not near as much organizational and administrative as they are social. It would seem logical to say that if the American people practiced better health care habits, many of our most serious health problems would be solved. The health care practices of individuals are related to social and moral values of human dignity, personal responsibility, and concern for others. These are the "root" problems, and national health system must deal basically with these aspects.

To say that the problem of health care in America today is the high cost of health care services, and then to propose a system of reform based solely on financial considerations is not realistic in the long-range and universal scope of health care. To propose measures to alleviate maldistribution of health care services without also considering the effect of such measures on other vital components that contribute to good health, will be at best a superficial and temporary relief. To proclaim that health care will be basic right henceforth gratuitously bestowed upon every individual regardless of merit, without considering the ramifications of this type of health care system upon other, more basic and vital considerations such as freedom, self-reliance, responsibility, and moral values, is reminiscent of treating symptoms and not the basic problem. Physicians today treat the symptoms of the common cold, but are unable to treat the root cause, as they are unfamiliar with the diagnostic methods to control viruses. Only an approach at the "roots" of our health care problems will be realistic and successful in curing the illness.

And these roots lie in the realm of encouraging people to be responsible for their own health, to work, to improve their condition, and to practice preventive health care habits. The way to help the poor is not to do it for them, but to help them do it themselves.

The idea of giving every American "free" health care benefits is fundamentally at cross-purposes to the larger goal of improving his life condition. To propose an approach that does not encourage traits of self-reliance is to defeat the intended purpose. Dependence upon the Government, the suppression of individuality, incentive and dignity—in short the ethic of getting-something-for-nothing—is encouraged by such sweeping promises.

We must not lead the American people into false expectations, which when not met, will only promote further disillusionment and discontent.

## DEMOCRATIC GOVERNORS ENDORSE TAX CUT

Mr. HUMPHREY. Mr. President, I ask unanimous consent that a resolution in support of tax relief for those in low-, middle-, and fixed-income brackets, which was unanimously endorsed on April 22 by the Democratic Governors Caucus, be printed at this point in the RECORD.

I also request that a letter from Gov. Wendell H. Ford, of Kentucky, transmitting a copy of this resolution to me, be printed in the RECORD

Mr. President, I am very pleased to learn of the Democratic Governors support for this kind of a tax cut. I fully support such inflation relief for those who have been hardest hit by soaring prices.

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

OFFICE OF THE GOVERNOR,
*Frankfort, Ky., April 25, 1974.*

Hon. HUBERT H. HUMPHREY,
*Old Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR HUMPHREY: On Monday, April 22, Democratic Governors who met in Chicago unanimously endorsed the enclosed resolution which I proposed in support of tax relief for those in low, middle and fixed income brackets. We strongly urge your favorable consideration, especially at a time when the economic structure of this nation continues to be imperiled because of improper economic management by the national administration.

Attention to those already carrying an unfair tax burden is imperative. As Governors we can be the conduit which transmits the voices of those most adversely affected, and assure you of your full support of a program designed to achieve corrective results.

Sincerely,

WENDELL FORD.

A RESOLUTION

Whereas, the present national administration's domestic policies have led to the highest inflation rate since the early 1950s; and

Whereas, the country's rate of economic growth has now experienced its sharpest decline in sixteen years; and

Whereas, tax reform and relief have annually been the lowest priority of the present national Republican administration; and

Whereas, this country is now in a borderline recession with no foreseeable prospects of a reversal under the present Republican economic domestic policy, and

Whereas, this continuing and worsening economic stagnation has led to an unprecedented burden on those citizens of middle, low and fixed income,

Now, therefore, be it resolved, that the Democratic Governors' Caucus go on record as supporting the immediate action by the United States Congress to grant tax relief to those citizens adversely affected by this unprecedented inflation through selected tax credits or exemptions, thus relieving the burden on those most harmed by inflation; and thereby stimulating the national economy through job creation and a stronger flow of dollars into the national economic mainstream.

## HAWAII SENATE SUPPORTS ARIZONA MEMORIAL MUSEUM

Mr. FONG. Mr. President, the Senate of the State of Hawaii has recognized the efforts of the Fleet Reserve Association, Hawaii Branch 46, to establish the Arizona Memorial Museum.

The Arizona Memorial was established earlier at Pearl Harbor in memory of Americans who gave their lives in the Pacific theater of war.

In a resolution adopted April 9, 1974, a copy of which I have just received, the Senate of Hawaii extends best wishes for success to the association on its museum project.

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

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

SENATE RESOLUTION

Extending best wishes to the Fleet Reserve Association, Hawaii Branch 46, on their efforts to establish the Arizona Memorial Museum

Whereas, the Fleet Reserve Association is a nationally organized nonprofit association of retired and active Navy, Marine Corps, and Coast Guard personnel, dedicated to the principles of loyalty, protection, and service to God, country, and shipmates and their families; and

Whereas, the Fleet Reserve Association has a membership of more than 92,000, and 296 branches located throughout the United States and abroad; and

Whereas, the local branch of the Fleet Reserve Association, Branch 46, chartered in March 1940, has pledged membership, manhours, and funds to assist in community projects in the Pearl Harbor area and in 1966 accepted as a continuing branch project the task of assisting in upkeep and improvement of the Arizona Memorial; and

Whereas, in 1967 the Branch solicited and received donations from all other Fleet Reserve Association branches the amount of $5,800 for the construction of a one-eighth scale model of the U.S.S. Arizona, which is now installed on the Memorial; and

Whereas, the Fleet Reserve Association, Branch 46, has recognized the need for a shoreside facility to accommodate the ever increasing numbers of persons desiring to visit the Arizona Memorial, a facility appropriate to the memory of those thousands of Americans, civilian and military, who gave their lives in the Pacific theater of war; and

Whereas, Branch 46 has established the Arizona Memorial Museum Foundation, an incorporated group dedicated to raise $6,000,000 through public solicitation to develop and construct such a shoreside facility consisting of a museum and observation tower within a park setting, and designed as a multi-purpose complex serving the needs of the general public; and

Whereas, every penny of the collected funds will be turned over to the Secretary of the Navy for construction of the facility on donated land (approximately 11.3 acres); now, therefore,

Be it resolved by the Senate of the Seventh Legislature of the State of Hawaii, Regular Session of 1974, that this body extend its best wishes for success to the Fleet Reserve Association, Hawaii Branch 46, on their ef-

forts to establish the Arizona Memorial Museum; and

Be it further resolved that certified copies of this Resolution be transmitted to the Hawaii Congressional Delegation, the National Headquarters of the Fleet Reserve Association, and the Hawaii Branch 46 of the Fleet Reserve Association.

## VETERANS AND EDUCATION

Mr. CLARK. Mr. President, in many States a veteran seeking a college education today faces severe financial obstacles. He certainly is at a serious disadvantage in comparison with his World War II counterpart. While every veteran of World War II could command a 4-year public education, today's veteran can do the same and still have enough money to live on—however marginally—only if he attends a public college with a tuition charge equal to or below the national average of $419.

On the $220 a month provided by the GI bill for the 9-month school year, today's veteran cannot even consider attending a private school, where tuition, books and fees average about $4,300 a year. By contrast, World War II veterans attended private colleges in great numbers.

Veterans in many States, including Iowa, even have problems financing their education if they attend State schools. At the University of Iowa, for example, where the 1973–74 tuition rate for State residents was $620 and the average cost for books was $216, the veteran would have a mere $127 a month left for living expenses. This adds up to $31.75—hardly a significant sum in these days of record inflation.

The higher unemployment rates for veterans also means that today's veteran has a much more difficult time making up the difference between GI bill benefits and a reasonable monthly earning to support him and his family. According to a recent Harris survey, commissioned by the Veterans' Administration, the number of unemployed veterans reached a level of 15 percent, with 21 percent of all black veterans unemployed and 31 percent of veterans with less than a high school education unemployed. By contrast, the post-World War II years were years of full employment.

Mr. President, Representative NEAL SMITH, Democrat of Iowa, recently addressed himself to these problems in testimony before the House Veterans' Affairs Committee. His comments appeared in a May 8 article of the Des Moines Register by George Anthan. I ask unanimous consent to have this article printed in the RECORD.

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

[From the Des Moines Register, May 8, 1974]

SMITH CHARGES GI BENEFITS ARE LACKING FOR IOWANS

(By George Anthan)

WASHINGTON, D.C.—Representative Neal Smith (Dem., Iowa) charged Tuesday that "all we have is a GI bill for those veterans who live in California" and he said relatively few former servicemen in Iowa are able to take advantage of federal education benefits.

Smith told the House Veterans' Affairs Committee that in Iowa, as in many other states, many Vietnam-era veterans are unable to utilize the GI bill's education aid because of high tuition costs and because schools are in small towns where job opportunities are limited.

Smith said 19.2 per cent of Iowa's Vietnam-era veterans are attending colleges or universities compared with some 38 per cent in California.

His argument before the committee touches on a basic complaint of Vietnam-era veterans—that their GI bill benefits are too meager and cover only a fraction of the cost of going to a college or university in most states.

Smith noted that the basic GI benefit of $220 a month for the nine-month school year probably is adequate in a state like California where public education is virtually free.

But he said the amount is inadequate to cover tuition and costs at Iowa's three state universities and falls far short of the amount needed at any private college.

The Veterans' Administration (VA) has emphasized that across the U.S. 24 per cent of Vietnam-era veterans are taking advantage of the GI bill and going to college compared with 15 per cent following World War II.

But Smith and other critics of the current veterans aid program content that college education is not so rare now as it was in the 1940s, when only about 7 per cent of Americans in the 20s had attended an institution of higher learning. They say a college education is now considered a virtual necessity for entry to many jobs.

Smith told the committee, "It is clear that institutions of higher education are going to depend more and more upon tuition to pay the cost of operating the institution and that tuition rates will rise on an annual basis at a considerably greater rate than the cost of other services in our society.

"The only way to be fair to these veterans and to provide the increases in the amounts that are needed at the time they are needed is to authorize payment of tuition in whatever amount an institution charges students, in addition to other veterans benefits designed to cover non-tuition items."

Smith actually advocates a return to the post-World War II GI bill.

At that time, the federal government provided that a veteran could go to school anywhere he chose—from Harvard University to a small state college—and the government would pick up the entire tab for fees, books and tuition up to $500, which covered costs at most schools, including Harvard.

The single veteran also received $75 a month for living expenses and slightly more if he had a family. As result, veterans flocked to colleges and universities, especially the prestigious ones. For example, Harvard's enrollment in 1947 was almost 60 per cent veterans.

The system was changed in 1950 after it was found some schools were increasing their tuitions to the government maximum.

In any event, the $1,980 a veteran now receives for tuition, books, fees, rent, food and other expenses would hardly cover costs at Harvard, where the tuition, room and board will cost $5,700 a year this fall.

Smith said the U.S. education commissioner estimates it will cost $4,300 a year to attend the average private college, with expenses at public institutions averaging $1,600 less.

"Most veterans," said Smith, "are not able to attend a public institution for various reasons . . . including family relationships, the wife's place of employment, special school problems for the youngsters and other matters which are much different for adult veterans than they are for a young man or woman who just graduated from high school.

"Timidity, procrastination and plain lack of concern by the U.S. government on this matter is something for which the Congress must accept a share of the blame. Although the administration has been for even less than the Congress has been willing to provide, that is no excuse for not going forward with an adequate bill and at least trying to pass it, and if necessary, over a veto."

Smith, sponsor of a bill to pay full tuition and other education expenses of veterans, said, "Through the draft these young men were forced to serve at far less than they could have made in private employment . . .

"We don't really have a national GI bill. And we won't have until or unless we go back to the World War II approach."

## HISTORIC PRESERVATION WEEK AND THE CHICAGO SCHOOL

Mr. PERCY. Mr. President, last week was Historic Preservation Week, sponsored by the National Trust for Historic Preservation and affirmed by the Senate. I was very pleased that Historic Preservation Week was observed nationally, for, having been reared in Chicago, I am particularly dedicated to the preservation of historic structures. Chicago can rightfully boast of one of the proudest architectural traditions in America, and I have had the good fortune to spend much of my life among many of the historic landmarks of the 19th and 20th centuries.

I know many Americans are familiar with Chicago's reputation as the home of a unique display of fine architecture, and many have heard the term "The Chicago School." I feel, however, that many people are unaware of the actual characteristics and landmarks that make up the Chicago School. I am pleased to have the opportunity to bring to public attention some information on this subject.

The Commission on Chicago Historical and Architectural Landmarks marked last week with the publications of first issue of its newsletter, the Landmark News, which contains an excellent brief analysis of the Chicago School. I ask that it be included at this point in the RECORD.

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

THE CHICAGO SCHOOL: WHAT IS IT?

In many ways, Chicago is the birthplace of modern architecture. Important new building techniques and styles were pioneered here in the late 19th century, thus the name Chicago School of Architecture. These innovations, as revolutionary as any in this history of architecture, led directly to the development of today's skyscraper.

After the 1871 fire, the people of Chicago quickly replaced their burned buildings; new office buildings sprang up one after another in the rapidly-growing business district. Most had walls of masonry (brick or stone) that bore the entire weight of the structure. As a result, buildings were rarely taller than eight or ten stories; their walls were thick and heavy, with small openings for windows.

The first major step in the development of a new structural technique was taken in 1879, when an architect-engineer named William LeBaron Jenney designed the first Leiter Building. The interior floor loads of the Leiter were supported by timber joists and girders. The joists in turn were supported by cast-iron columns. A brick facade rested in

front of, but was not structurally integrated with, the load-bearing columns.

The real breakthrough—a true integration of the facade with the supporting beams—came in 1884 with Jenney's Home Insurance Building. It was the first to be constructed with an iron frame.

A skeletal framed building is built of iron or steel beams which form a three-dimensional, cellular grid of rectangles. The outer walls of such a building are formed by filling in the rectangles with glass or brick, forming a sort of curtain that has no supporting function of its own—thus the often-used term "curtain wall construction."

The framed, or skeletal construction, was to have two important results. With outer walls non-supporting, arhitects could build higher buildings than ever before. Second, the walls now could be opened up with large windows to allow more light inside the building. As the noted architectural historian Carl Condit explained:

"In a framed building the curtain wall has only a protective function. A finished building of skeletal construction can be reduced to nothing more than a framework covered with glass, as many today are."

The development of framed buildings saw a new type of window which was designed to fill the now-large spaces between exterior grids. Known as the "Chicago window," it is horizontally elongated and divided into three sections. The two outer sections are double-hung windows of much narrower dimension than the center pane, which is a wide solid sheet of fixed glass.

The giants of "Chicago School" architecture—Dankmar Adler, Louis Sullivan, John Wellborn Root, Daniel Hudson Burnham, William Holabird, Martin Roche—all trained in Jenney's office. By around 1890, these men began to recognize and develop the artistic possibilities inherent in the new functional architecture. The architectural design of a building could directly express the building's cellular steel frame. When construction and architecture were fused into a single expression, technology and art became one.

Prime illustrations of fully-developed "Chicago Style" buildings are among Chicago's most cherished structures. Examples are Jenney's 1889 Leiter II Building (now Sears, Roebuck & Co.); Holabird and Roche's 1893 Marquette Building and the 1895 Reliance Building of D. H. Burnham & Co. (both proposed to the City Council for landmark designation); and Louis Sullivan's Carson Pirie Scott Building of 1899 (a designated "Chicago Landmark").

## MINNESOTA ORGANIZATION RECEIVES 1973 NATIONAL VOLUNTARY GROUP AWARD

Mr. HUMPHREY. Mr. President, the Town View Improvement Corp. of Duluth, Minn., was recently honored by the National Center for Voluntary Action with the 1973 National Volunteer Group Award.

This unique nonprofit organization has carried out an effective program of rehabilitation and construction of housing for low and moderate income families.

Mr. President, I have always been very proud of the community-mindedness of Minnesotans—of their interest in and deep concern for other people and for their environment. The Town View Improvement Corporation exemplifies the best of this community-minded tradition.

It is with great pride that I bring this organization and its achievements to the attention of my colleagues.

I ask unanimous consent that a brief summary of their accomplishments be printed at this point in the RECORD.

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

1973 GROUP WINNER—TOWN VIEW IMPROVEMENT CORP., DULUTH, MINN.

The problems of a deteriorating central city are familiar. Disturbed by what they saw in Duluth, Minnesota—old houses, once elegant and now decaying, half empty schools and other facilities, a departure of all but the poorest to the suburbs—a group of women decided to do something about it.

From their determination developed the Town View Improvement Corporation, a nonprofit organization managed entirely by its 17-member Board of Directors, all women, and all unpaid. Their efforts resulted in an uniquely successful rehabilitation and new construction of housing for low and moderate income families.

Town View was organized in 1968. Its founders were motivated by an unwillingness to see a core city abandoned by all but the poorest of families. Impetus came with passage of the Federal Housing Act of 1968 for housing assistance to low and moderate income families.

Central city deterioration, a depressed economy and a high rate of unemployment had resulted in very little development, either commercial or residential, in Duluth's central city in the mid-sixties.

To correct this, Town View started with a $5,000 mortgage, privately raised, to finance rehabilitation of its first house. Since then, it has raised private capital and negotiated major loans from the Department of Housing and Urban Development and has completed more than 100 units of low cost housing. The combined value of housing constructed is $1.7 million and this provided tax income to the City of Duluth 500 percent greater than was formerly levied on unrenovated properties in the areas concerned.

HUD officials in the area have praised the results of the work of these women volunteers, and Mayor Ben Boo says that housing professionals have learned something from Town View's operations. He noted that in the corporation's first year of operation, it produced housing at a faster rate than did the city's own housing authority.

## CONSERVATISM IN AMERICA

Mr. HANSEN. Mr. President, contrary to the interpretations of the press and news media in these difficult times, the conservative mandate of the people of November 1972 is as real and strong today as it ever was. My respected colleague, Senator JESSE HELMS of North Carolina, affirmed this point in a recent speech before a group here in Washington. He quoted a May 6, 1974, Gallup survey:

The latest nationwide Gallup survey reveals that Republican Party affiliation is at an all-time low, but the number of voters who describe themselves as conservatives is at a record high.

Senator HELMS's speech is a reaffirmation of the spirit of America. I submit it to my colleagues for their study as a pertinent and inspirational commentary. With unanimous consent, I ask that it be printed in the RECORD.

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

THE NEW AMERICAN MAJORITY: TIME FOR A POLITICAL REALIGNMENT?

(Address by the Honorable JESSE HELMS, of North Carolina, at Dean Manion Testimonial Dinner, Washington, D.C., May 15, 1974)

Mr. Chairman, Dean Manion, dedicated Americans, ladies and gentlemen:

This evening will forever be for me a memorable event—the privilege of coming here, at your invitation, to join in your tribute to one of the great spirits of our time, a most remarkable defender of American freedom—Dean Clarence Manion.

Dean Manion deserves someone far more eloquent than I for the honor of delivering the testimonial address on this occasion. I can advance only the credentials that he has no friend who admires and respects him more, or who is more grateful for his inspiring career as one of the great teachers of our time.

When I describe Dean Manion as a teacher, I am not being metaphorical. He is, to borrow a phrase Ortegay Gasset used about himself, a "public pedagogue."

The word pedagogue has an unfortunate ring to it. But every American who has profited from Dean Manion's instruction—and everyone in this room tonight has profited from it—knows that Clarence Manion has been a teacher in a most remarkable and courageous way.

Not just a teacher in the classroom—though he was Professor of Constitutional Law at Notre Dame for more than a quarter of a century, and Dean of the College of Law for more than eleven years.

He has been not just a teacher to people of a particular age, or a particular region, or a particular persuasion.

Rather, Clarence Manion has been a teacher to the Nation he loves so deeply.

As I contemplate the life of this great man who we honor tonight, I am reminded of the observation by Henry Adams that a teacher never knows where his influence ends, because a teacher affects eternity. It is obvious, then, that we cannot even begin to measure the dimensions of Dean Manion's influence. His life is a great, inspiring monument to the living traditions of the United States, indeed of the entire Western Civilization.

So, as "teacher to the Nation," Dean Manion has helped keep alive the miracle of America. He has held high the truth that freedom's survival depends on man's willingness to live by principle, honesty, sacrifice, personal responsibility—and, most of all, with faith in our Creator.

He has given us hope, by constantly reminding us that we can, if we will, retrace our steps—and return to the sound ground of personal liberty and personal responsibility. For my part, I have long held the notion that the process would be neither complex nor particularly difficult.

But it will require a return to intellectual honesty, and it will absolutely require a spiritual rebirth across the land—a return to the faith of our fathers, and a confession that we have vainly tried to make a god of government, instead of recognizing that America was destined in the beginning to be a government of God.

Viewed in that frame of reference, it is not surprising that we see around us today scarcely any serious efforts to solve the great national man-made problems which threaten the very survival of our nation. The artful dodgers of politics and government are in absolute control. They continue to believe that government is god. They think not of the next generation—only of the next election.

Small wonder that the nation is being stifled by an inflation that refuses to be restrained by inept and unwise efforts to con-

trol it by artificial devices. The laws of economics, and simple arithmetic, are not subject to repeal. It is a fair observation to note that today we have a full-employment budget, a bloated bureaucracy, a mindless Congress—and an empty dollar.

The tentacles of Federal Government are reaching out to entwine our daily lives, our right to privacy, and our right to property.

Our Federal tax mechanisms of our country are proving with a vengeance the correctness of the adage, "the power to tax is the power to destroy." We see taxation destroying not only the fruits of the labor of our people, but destroying their morale, sapping their incentive, and leaving them befuddled even about the prerogatives of honesty.

Abroad not only our own great power, but the power of the West—the very will to survive—is in dangerous decline. Our strategic capability has deteriorated vis-a-vis the Soviet Union. Our diplomats think only in terms of retreat and giveaway. The Third World long ago turned its back on the American formula for success and creative technology, and is blaming us paradoxically for its economic and social failures. And across Europe the candles of liberty flicker uncertainly, and one by one, go out.

Is there any discussion of these problems in concrete terms in Washington? Is there any great debate about the restoration of stability and freedom? Does anyone express confidence that America has a valid answer, a sound answer to these problems of our country, and of the world?

No. In Washington we are obsessed with the tapes.

We are instructed in the lessons of the tapes every day by the Constitutional lawyers of the Washington Post and the New York Times. We are tutored every hour by the television networks in our role as aghast and humbled citizens. The monopoly media are solemnly warning us about the dangers of the concentration of power. (They do not, however, allude to the dangers of the concentration of the power of the major media.)

And so we have the tapes with Wheaties for breakfast, the tapes with lettuce and tomato for lunch, and the tapes with potatoes and gravy for dinner.

We are learning, for example, that the President was brutally frank and appallingly salty in his private evaluation of political opponents. His language is the scandal of the day. We haven't been so shocked since Rhett Butler's language in the last scene with Scarlet in *Gone With the Wind*.

In the broad view, however, I have the feeling that the whole affair of the tapes might well be summed up by Clark Gable's immortal line in that scene: "Frankly, my dear, I don't give a (expletive deleted)."

I do care about what happens to our Republic, and what happens to our people. I care about the things that really matter to them. And I think I know what they are. Let me explain.

Every once in a while, some inkling of what the American people are really thinking slips through the monopoly of the major media. The Gallop Poll published on May 6 gives us a powerful clue. I quote:

"The latest nationwide Gallop survey reveals that Republican Party affiliation is at an all-time low, but the number of voters who describe themselves as conservatives is at a record high." Now isn't that interesting? The Republican candidate for President won the election in 1968 because he ran on a conservative platform. The American people long ago learned that party platforms are an uncertain foundation on which to build your hopes; but the same candidate who won in 1968 enjoyed the benefit of running for reelection in 1972 against someone whom the public recognized as a radical liberal. Mr. Nixon won overwhelmingly by basking in a reputation of relative conservatism. You and I know that this is the only reason why he won, all the volumes of the Watergate investigation to the contrary notwithstanding.

This emphatic rejection of liberalism in 1972 was a bitter pill for some to swallow. Through a process of selective indignation, Watergate became the lever to reverse the judgment of the people. The same pundits who swallowed the pragmatic self-enrichment of the Johnson Administration whole, who wolfed down the ideological corruption of the Kennedy Administration, who voiced no objection to the Pendergast politics of the Truman era, and who thought that Roosevelt provided a feast for empty bellies, suddenly gagged on Watergate.

So a year and half later, the Gallup Poll finds that only 24 percent of the voters classify themselves as Republicans, 42 percent describe themselves as Democrats, and 34 percent as Independents. But when Gallup asked the question whether these same people would describe themselves as conservatives or liberals, the figures show a startling change. 38 percent said they would choose a conservatve party label, only 26 percent would choose a liberal party laber, while 36 percent are undecided. This means that the largest political bloc in the United States today is composed of conservatives.

It means that a large chunk of those 42 percent who are Democrats are conservatives, that the great majority of the 26 percent Republicans are conservatives, and that the Independents, by and large, are people who don't perceive either party as matching their conservative philosophy.

This last fact is a point you won't discover in the major media monopoly. We are always told that the independents are so-called "moderates," — middle-of-the-roaders, who are repelled by those terrible extremists who belong to the two major political parties.

Actually, I have a hunch that they are conservatives, by and large, who may regard both major parties as too liberal.

The Gallup Poll goes on to prove this, I think. When Gallup asked that Undecideds to choose—forced them to choose, between conservative and liberal party labels, the over-all breakdown of all respondents rose to 59 percent Conservative, and 41 percent Liberal.

Imagine that: 59 percent of the people would choose to belong to a Conservative Party if offered that choice—even after one of the greatest campaigns of smear and slander against conservatives in the history of the nation. Not only that, the American people are more conservative because of Watergate. Even though the main object of the Watergate media campaign is to discredit President Nixon as being what you get when you elect a conservative, the people instead are rejecting liberalism in droves. Gallup has been asking the same question about conservatives and liberals since 1936. This year, 1974, the conservative percentage is the highest ever, at 59 percent! Even after Watergate—and I believe because of the anti-conservative campaign of the media—the people are more conservative than ever.

I think that this is the real political news story of the year, and as many of you know, I have been in the news business myself for most of my life.

But was this significant political news story on page one? Was it the subject of penetrating analysis by Joe Alsop, Scotty Reston, or even Eric Severeid?

No, I found it on page 20, next to a little item headlined "Smallpox Deaths Rise in India."

But let me tell you about yet another opinion survey that was released only a few days after the Gallup poll I just mentioned. The University of Michigan Institute for Social Research conducted an elaborate in-depth study of the public's ranking of American institutions. Fifteen U.S. institutions were covered in the poll, and the public was asked what they thought of each one. Now which one do you think was ranked the highest?

It wasn't the President and the Administration—they were ranked last.

It wasn't the Federal Government generally—it was next to last.

It wasn't labor unions—they were third from the bottom.

The U.S. Congress ranked slightly behind large corporations.

The news media were a shade above the Supreme Court.

I'll tell you what was in first place. First place in the people's hearts, was won by the U.S. military!

Now imagine that! The U.S. military in *first place*—after ten years of being reviled, spat upon, and viciously attacked by the major monopoly of the news media and political opportunists who have been inflated by the news media as "public opinion leaders." In spite of all these attacks, the military is most admired as an institution by the American people. Perhaps as in the case of true conservatism, the military is most admired *because* of the media attack, not in spite of it.

For it shows once again that the American people are fundamentally conservative. The military was followed, in rank of esteem, by colleges, and universities, churches and religious organizations, and small business, in that order. The fundamental verities of the defense of liberty, the attainment of knowledge, the worship of God, and the practice of private enterprise are still the American goals. I would say that the priorities of Americans are arranged in good order.

Ladies and Gentlemen, the time has come when the people of America must be given a true choice. Both of our major political parties today are in a state of confusion. Our party leaders are thrashing around without vision. The people have lost confidence in both parties, and in the news media. They have lost confidence in the Presidency, and in the Congress as well. Clearly, our major parties have failed to articulate the philosophy of our people and to give them a choice of leadership.

I venture to suggest that all of this may indicate a desire, on the part of the majority of the American people, for a realignment of our political parties.

I ask you the question: Could it be that it is time to forge new political parties, fashioned along the lines that the people are thinking, not along the existing lines of political power-seeking. If we are going to have honesty in government today, we must have honesty in the basic philosophies of our political parties. I do not in any sense downplay the need for personal honesty and personal integrity. But our basic political system must be made honest. It must give an honest choice, and it must furnish the mechanism for politicians to carry out honestly the principles they set before the people.

So, I would pose this question to you here tonight, and to all other Americans—Democrats, Republicans, Independents, and members of other political groups: Is it logical to assume that the great masses of Americans are yearning for someone to begin the task of realigning our existing politcal parties, so that the people, when they go to the polls, will know *what* they are voting for—instead of merely whom?

Ladies and Gentlemen, let me be plain. I am a Republican. I am a Democrat, by registration until 1970, but I became a Republican because I thought that the Republican Party was the only party hospitable to those working for conservative principles. The Gallup Poll I have been quoting shows that most Repubicans think the same way, since 57 percent of the Republicans identify themselves as conservative, and only 11 percent call themselves liberal. That is no sensational revelation. But the rank and file of

the Democratic party is filled with conservatives too—as may be evidenced by my own election in 1972—and these are good people who have had their party taken away from them.

Moreover, I intend to remain a Republican, unless there is a general realignment into Conservative and Liberal Parties, by whatever names.

The problem is this: The majority of Americans are locked into two major political parties—by geography, by tradition, by sentiment, by other reasons which no doubt will come to mind when you think about it. In the Senate, for example, conservative Democrats look across the aisle and they count the faces of men who wear the label of Republicans and practice the philosophy of liberalism. Conservative Republicans, meanwhile, look across the same aisle and you know what they see.

Conservatives in both parties feel that they have no place to go. Meanwhile, businessmen throughout the country are being convinced, more and more with each passing day, that they must make peace with the liberals of both parties. So when election time rolls around, we have the spectacle of citizens who profess to believe in the free enterprise system nevertheless contributing to the campaigns of liberal candidates for public office.

To put it bluntly, they are trying to "buy in." They hope to court the favor of the very liberals who are dedicated to the destruction of the free enterprise system. It's the old story of feeding the crocodile, hoping that he'll eat you *last*.

But what do you suppose would happen, ladies and gentlemen, if a serious movement were launched to realign the political parties in our country—a movement that offered the majority of Americans, the conservative majority, an opportunity to unite, and to work together for the principles in which the majority of people, according to the polls, believe?

Someone has referred to this majority as the "New American Majority." I very much doubt that it's new. I think it's as old as 1776, and Bunker Hill; as old as Paul Revere and Tom Jefferson, and the Boston Tea Party, and Iwo Jima.

What is needed, is for someone to find the handle; to put it together, to work it out so that the majority of Americans can once again hope and dream, and work and sacrifice, so that there can once again be the reality of the Miracle of America.

Just suppose, here tonight, there could be a dedication to try. Could there be a finer tribute to the great patriot whom we have gathered to honor? Could it be, for example, that out of this occasion we should refuse merely to meet, eat and retreat—and instead, go back to our homes and give consideration to the mechanics of realignment?

What's the proper starting point? How about a Platform Convention, to which delegates would be selected by conservatives in every Congressional district in the land, plus two at-large delegates from each state?

Is that the proper starting mechanism—the drafting of a platform to restore to the American people their liberties and their responsibilities?

The more I think about it, I believe that at this crucial point in our history, the "New American Majority," if indeed it is "new," might just rally around such an idea. History supplies a fairly good precedent for it—at Philadelphia. And I would remind you that it was there that Ben Franklin admonished us all that we had a republic—if we could keep it.

Realignment is not a new idea. Senator Karl Mundt of South Dakota urged it for years. I ask you if it is not an idea whose time has come. Our domestic political system, the system of political parties, is now at a crisis stage. Confidence will not be restored until the people are given an honest choice of principles and philosophies—and a mechanism to prevent these principles and philosophies from being trampled underfoot.

I believe the people, if enough of us work hard enough, will choose a conservative party, one based on sound conservative principles and a solid conservative program for the solution of America's problems. They will choose a conservative party because of its platform, and how well its subsequent performance reflects an honest adherence to platform—but not merely because it calls itself the "Conservative Party."

A meaningful political realignment must be based on sound, honest political philosophy, and that calls for an honest and workable Conservative Platform.

What should be the Conservative Platform? I am not so presumptuous as to say that I can lay it out in all its details, its programs, its ramifications.

Surely we agree, first of all, that Jefferson spoke truth, not a mere cliche, when he counseled that the best government is the least government. Government was intended to restrain evil men, but not to shackle innocent men.

America became a giant in the world because men were left free to create, to produce, to earn, to invest, to compete—and, yes, to accumulate. It may sound harsh to say so, but America grew great because there were men and women who wanted to be better than average, to accomplish more than average, and to be more than average. Men forced to be equal are not free—and free men cannot be forced to be equal.

So the concept of government control of enterprise is a contradiction of the very meaning of freedom. Bureaucrats armed with the power of controls, edicts, guidelines are disrupting the genius of America.

Secondly, I presume that we agree that we have no hope of halting inflation, or of solving America's economic crisis, unless and until we stop deficit financing and balance the Federal budget. This is not something to consider next year, or next month. It is imperative today.

Thus, surely we believe that a healthy economy means a balanced budget, reduced Federal spending, and a simplified tax system. The existing folly is not only impoverishing the middle class—the vast majority of Americans—but it is distorting our investments, it is blurring our morality, it is directing funds to dubious priorities, and it is providing vast amounts of money for purposes that are subverting the values of America.

Fourth, I assume we agree that the American family must be preserved, to encourage the virtues of personal integrity, self-reliance, and faith in God. We must reverse the trend that insists the State is the only proper custodian and educator of children, and that Federal funding and Federal control is the only measure of educational success. We must reverse the trend that says that women must be liberated from the dignity of motherhood, and from the femininity of her natural development. We must reverse the Supreme Court decision that says that killing an unborn child is somehow different from killing a child that has been born. And we must desecularize our daily life, reminding ourselves that prayer is, after all, a Constitutional right and moral duty, and understanding that man is fulfilled not in himself, not merely in his neighbor alone, but ultimately in God.

Finally, we believe that the United States must regain its dynamic posture as the leader of the West. We must stop apologizing for our leadership position. We must once again become convinced of the value of our culture and society, and we must work to convince other nations that our leadership is decisive, based on principles, and dedicated to the common good of all nations.

And of course, that means that we must regain decisive control of the international strategic arms situation, superiority in technology, and a mix of strategic weapons best suited to our unique geography. For in the end, United States sovereignty resolves upon the power to defend it.

These are just a few of the principles that I believe the majority of Americans will support, regardless of present party affiliation.

I can't believe that most Americans want government spending so badly that they are ready to adapt to double-digit inflation ascending in a quantum leap.

I can't believe that most Americans believe that government regulation can ever take the place of healthy competition in a free market.

I can't believe that most Americans are ready to give away the Panama Canal, subdue our economic and strategic position to the heel of Communist Russia, or subordinate our sovereignty and dignity to a babel of foreign tongues and oppressive ideologies.

Nor can I believe that Americans are ready to abandon their historic understanding of the moral virtues, the obligations of patriotic duty, or their faith in a just and merciful God.

These things I hold to be unchanging, and no sociology of manipulation can persuade me otherwise.

So, as we pay tribute tonight to our splendid friend, let us consider whether we do not owe it to him, and to America's future, to try to set things straight again.

I cannot guarantee that we will succeed. But I guarantee that we will fail if we do not try. I am convinced that by standing together, working together, and sacrificing together, we will be astonished at how far we can go, and how much we can achieve.

Many years have passed since that Easter morning when a young man and his wife, and their two small daughters, ages six and three, went to the mountains of western North Carolina to attend an Easter sunrise service.

In the pre-dawn chill, they made their way to the crest of a mountain, joining perhaps a hundred others who had also come to worship in quiet simplicity.

There were no seats, and the three-year-old became impatient because she could see neither over the heads of the adults, nor around them. So she began to improvise. She scampered over to it, and attempted to climb it. But her new slick-soled, black patent-leather shoes made it impossible. And besides, she had proper concern for her new Easter dress.

So she solicited—and received—the assistance of her Daddy, who—being younger and far more agile than he is today—easily climbed on top of the big rock.

By that time, the six-year-old had been captivated by the idea also. So with a word of caution to his two little girls, making clear that they should "hold on tight," the Daddy pulled them, one by one, to that high vantage point atop the bolder.

It was at that precise moment, when the three of them had reached the top, that the rays of the morning sun seemed almost to burst above the mountain ridge across the valley, with a promise of light and warmth to push away the chill of the dark night.

It was then that the little three-year-old spoke some words of faith that I shall never forget. She looked up to her Daddy, with an expression of loving admiration that he could not possibly deserve, and said:

"Daddy, you know something? I bet, if we all held hands tight—we could go anywhere."

That child's words have remained in my consciousness all these years.

A simple expression of child-like faith, yes.

But truth, in a most profound sort of way.

That's the test. Shall we, ladies and gentlemen, hold hands tight with Clarence Manion, and with others who are willing to work and sacrifice for their country?

If so, I truly believe we can go anywhere.

God bless you, Dean Manion, for being my friend, and for the unselfish way you have given of yourself, and your time and immense talent, for the good of America. I am very proud of you.

And I am grateful to you, ladies and gentlemen, for being such a wonderful, patient audience. Thank you, and God bless you.

## COMMENCEMENT ADDRESS BY SENATOR BROOKE

Mr. PELL. Mr. President, at the recent graduation ceremony of Virginia Union College, the junior Senator from Massachusetts (Mr. BROOKE) made an excellent statement in which he discussed the role of black institutions of higher education; both their historic role and the function which they can perform in the future. All too often these schools have been shortchanged, but I am proud to say that recent education legislation has sought to reduce that imbalance. Senator BROOKE took a leading role in those efforts.

I commend this speech to my fellow Senators and ask unanimous consent that it be inserted in the RECORD.

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

BLACK HIGHER EDUCATION—A TIME OF CHANGE AND CHALLENGE

In the words of Langston Hughes:

"O, let America be America again—
The land that never has been yet—
And yet must be."

It is an honor to speak to you, the 105th graduating class of Virginia Union University. You are a part of one of the proudest and most vital traditions in American education, its black colleges and universities.

From the beginning, black colleges and universities were forced to function outside the mainstream of American education and life. Though little noticed and poorly nurtured, they have survived. And their roster of graduates shows that they have survived with distinction in the midst of imposed adversity. Only now are white Americans beginning to realize the great role which black institutions of higher education have fulfilled. Black Americans have no need to be reminded.

Today, Blacks and their colleges and universities find themselves in a strange halfway world—no longer segregated by law, yet not truly integrated in fact.

Until now, black institutions of higher education have trained almost the entire black leadership and professional class in America. Even we Blacks who went on to white graduate schools in the main received our college education in black colleges.

Traditionally, black institutions have been the sole repository of black culture and history and almost the only institutions concerned with black interests, rights and well-being. Black studies and courses and programs in Afro-American history and culture are now widely appreciated and fashionable. But most black institutions traditionally had black history projects and maintained ties with African nations and culture long before black studies became popular in the 1960's.

For years, a college degree from one of the black educational institutions offered us Blacks virtually the only certainty of job security and economic improvement. But even here the limits of economic participation were controlled and circumscribed by the white community. Few professions were open to Blacks and even these were to be practiced in the isolated black community with its marginal economy.

Black colleges primarily trained teachers for black elementary and secondary schools and the small number of professors, ministers, lawyers, doctors and other professionals which the economically depressed black community could afford.

For over a century, black higher education has suffered from a lack of resources. Few Blacks could afford high tuitions. There has been no strong tradition of alumni giving—even in the area in which alumni are usually most active. An article in last Thursday's Washington Evening Star reported that the championship basketball coach at Maryland Eastern Shore College was resigning over the futility of trying to compete with white schools without alumni assistance. Contributions from foundations, state governments and even the federal government have been inadequate and far below those granted to white institutions. Endowments to aid students, establish teaching chairs, or expand and improve facilities have been insufficient. In the academic economy, black colleges and universities on the whole have been poorly equipped to compete.

Today, 20 years after the Brown v. Topeka Board of Education Supreme Court decision to end the doctrine of separate but equal, we find that integration in education has not yet proved to be a panacea and that growing black pride, as vital as it is, has raised questions as well as created opportunities.

Integration has intensified the economic problems of black higher education. Today, almost two-thirds of our black students now attend traditionally white institutions. And, with scarcer financial resources than white schools, black institutions must compete with their white counterparts for both black professors and students.

Often black pride, though commendable, does raise questions as to whether black colleges should prepare their graduates to share the risks and rewards of the national economy or prepare them primarily to build a separate black community and separate black economy. On the one hand, black institutions of higher learning are criticized for not paralleling their wealthier white counterparts. On the other hand, black institutions are criticized for not exclusively serving the black community.

The basic question is whether black institutions of higher education are still needed now that we have partial integration. But, integration is too often seen simply as a question of integrating white institutions, while leaving most black ones to struggle for survival. I submit that the need which black colleges and universities fill, makes a compelling case for the useful and essential existence of black colleges and universities.

Even though the majority of Blacks are now attending white institutions, the number of Blacks enrolled in black institutions has grown significantly. In 1900 only .3 per cent of college and university students were black. During the boom period of the 1960's, enrollment in higher education in general nearly doubled and black enrollments kept pace. By 1970, seven per cent of college enrollments were black—an encouraging growth even though the figure for black enrollment still fell considerably short of the 11 per cent which Blacks constitute in the population as a whole.

And despite the fact that some 400,000 Blacks are enrolled in white institutions as compared to some 185,000 in black institutions, more Blacks are receiving their degrees from black rather than white institutions, due to the higher attrition rates of Blacks in white schools. The 85 four-year black colleges enroll less than 40 per cent of all black students but award 70 per cent of the bachelor's degrees earned by all black students.

Thus, black institutions bear the brunt of providing those special educational services which enable many black college students to overcome the deficiencies in their primary and secondary education. Almost 50 per cent of Blacks are under the age of 21. They should not have to enter competitive adult life without the chance for a higher education or for the training they need in order to hold meaningful jobs.

To be sure, black students need black colleges and universities. But the nation also needs black colleges and universities.

These are days of great challenge for black institutions of higher education. Some would say of insurmountable challenge. But I disagree. Of course, there is much to be done. Black schools must meet the challenges of closing the proportionate gap between the number of Whites and Blacks with professional training. We must have twice as many young Blacks enrolled in graduate schools as we have at present if that gap is to be closed by 1990. In stark contrast to the fact that Blacks comprise 11 per cent of the American population is the fact that in medicine only two per cent of all physicians are black and less than three per cent of all medical school students are black.

In my field, the law, one out of every 750 white Americans is a lawyer, but only one out of every 5,000 black Americans is a lawyer. In doctoral and professional degree programs, only 1.75 per cent of the graduate enrollment in arts and sciences is black.

Many of the better jobs, professional and paraprofessional, in today's modern, post-industrial economy require at least some scientific and technical training.

The absence of black students in science-oriented courses reflects the historical lack of laboratories, science facilities, and curriculum from black grade schools through black graduate schools.

In addition to our goal of matching the resources of white schools, black colleges and universities must make the changes now demanded of all higher education. Traditionally, the duty of American higher education has been to provide a liberal arts background or at most to prepare the student to follow one of only a few occupations—teaching, the law, the ministry, or engineering. But, now we are increasingly aware that postsecondary education must be a more comprehensive education. It must provide more choice. In addition to a liberal arts background, junior colleges, colleges, and universities must also prepare a student for a career. We know there are now over 20,000 occupations. Students must be made aware of their alternatives and opportunities and must receive the career training they need to make the choices and take advantage of the opportunities.

By 1980, four out of every five jobs will not require the traditional four-year college degree, but will require extensive training and education beyond high school. Jobs will be available in fields which were unknown at the time your parents and I graduated from high school. Positions in urban planning, in mass transit design, in nuclear medicine, in bio-medicine, electromechanics, environmental science and many other new occupations are numerous and exciting.

And these opportunities are coming at a time when, at long last, Blacks are increasingly free to participate in the whole American economy. I am not a Pollyanna. I know too well the lingering economic injustices from which Blacks suffer. But I will not close my eyes to the opportunities which are now opening to our young black people.

And in considering career opportunities for young Blacks and the need for career education, we must not be paralyzed by a fear

of past mistakes. No one can deny that in the past vocational education of young Blacks too often meant a preparation for marginal jobs, jobs in a rural agricultural economy at the very time that our country was becoming urban and industrialized.

Today we must prepare black students for jobs in our nation's total economy—not in a separate economy. Higher education must insure that Blacks are no longer faced with few occupational choices or with left-over jobs.

The American economy is changing in many ways which make further demands upon American higher education. With a rapidly changing technology and an ever expanding knowledge, a student graduating from college today must be prepared to fill several different jobs during the course of his lifetime.

Black colleges and universities must meet this need for intermittent continuing education through a person's adult life. The days are past when one might expect to hold only one job, or type of job, during the course of his lifetime—or his early years alone receive all his training.

It is long past time for the nation to give substance to this need for continuing education. Our tax policies, our employment laws, and especially our student aid policies are geared almost entirely to a lock-step educational process. To be more relevant and responsive, the federal government should grant each individual some form of financial education credit to which he would be entitled throughout his life at a time of his own choosing or need. All of American higher education should make increasing provisions for our nation's need for continuing and career education.

Many black colleges and universities also wish to fill a special role in the building of a strong and viable black community. The focus of black colleges on black culture and black studies is widely known. And this is good. It creates pride and an essential sense of identity. But we must not overlook other compelling interests. Compensatory education in inner-city elementary and secondary schools and assistance in establishing black community self-help organizations and black enterprises should be important areas of endeavor by black universities and colleges.

The greatest challenge to black higher education, however, has been and remains, the need for increased financial resources. While the nation expects more of black higher education, it has given it only a small fraction of the resources given to white institutions of higher education. The financial problems which beset all of American higher education are magnified in black higher education. And we must remember that the special tasks assigned to black higher education, remedial education in particular, are exceedingly costly.

There are few financial options open to black higher education. Tuition increases for most black students are unbearable. One recent survey showed that almost 40% of students in black colleges came from families with less than $4,000 annual income.

Many state governments in the South where most black colleges are located, are still reluctant to grant black institutions sufficient funds. Indeed, there are instances where state governments have chosen to locate a new competing college in a community rather than strengthening an already existing black college.

Until recently, foundations and corporations have seemed oblivious to the imbalance between gifts to black and to white institutions of higher education. Even with the help of vigorous fundraising drives such as yours here at Virginia Union, endowments at black institutions cannot alone acccomplish what is needed.

Thus, when we speak of the survival and growth of black institutions of higher education, we primarily mean assistance from the federal government, in terms of both student aid and aid to the institutions themselves.

For decades most of the massive federal aid to higher education has ignored the needs of black colleges—and of many small white colleges as well. Federal aid has given little attention to the fact that it costs more for a college to educate a student coming from an educationally deprived background. It has particularly ignored the great backlog of needs found in black colleges for faculty, modern facilities, good libraries, curriculum expansion, and for a greater amount of student aid than that needed in colleges serving students from more affluent families.

Most of all, federal aid to higher education has discriminated in funding research at the cost of funding teaching. Hundreds of millions of dollars have been poured into academic research with no comparable subsidies for the teaching of students.

Most federal money has been directed to the "hard" sciences, which are expensive academic disciplines in terms of faculty and facilities. Traditionally, they have been disciplines too expensive for black colleges to fully support. Thus, our black institutions have been denied one immense block of money which has been allocated to higher education.

Only in recent years has the federal government become more sensitive and responsive to the needs of black institutions of higher education. More money has been made available for student aid and student loans. Beginning with the Higher Education Act of 1965, the federal government provided money for undergraduate training. The Education Amendments of 1972 further increased the possibilities for student financial assistance creating the new Basic Education Opportunity Grants program to supplement existing student aid programs. Now the BEOG program assures every student who can gain admittance to college some financial support, if needed, but not enough.

Equally important to black colleges, the federal government program for strengthening developing institutions was established in 1965 to provide the much needed financial assistance to those institutions which have been left out of the mainstream of American higher education. Far over one-half of the Developing Institutions' funds have gone to black colleges and universities. In the current fiscal 1974 year the Senate Labor-Health, Education and Welfare Appropriations Subcommittee on which I serve, included $100 million for this essential program.

Other federal programs have made some grants to construct and develop college libraries and facilities. The National Science Foundation has made some money available for improved college science programs. Training grants have been made in the health professions.

Federal aid for black higher education more than doubled between 1969 and 1972.

Virginia Union alone received an increase in federal funds from $1 million in 1970 to three and one-quarter million dollars in the current school year. And as tribute to its potential and excellence, Virginia Union received one of the largest grants the Developing Institutions program made.

While black colleges enroll about 2.6 per cent of all college students in the nation, they now receive about 5.5 per cent of federal funds.

This trend in federal support for developing black institutions must continue. We must discourage any slackening of effort. Even middle class parents are now finding it difficult to send their children through college because of the escalating costs of education. But we cannot resolve this problem of middle class students at the expense of those students who most need federal student aid assistance.

In every instance, we must help most where help is most needed to insure each and every American an equal chance to aspire and achieve.

Thomas Wolfe wrote:

"To every man his chance, to every man, regardless of his birth, his shining golden opportunity—to every man the right to live, to work, to be himself, and to become whatever thing his manhood and his vision can combine to make him—this, seeker, is the promise of America."

You now enter the world for which your families and your university have diligently and devotedly tried to prepare you. You enter life with more hope than any generation of Blacks before you that at long last the promise of America is coming true for black Americans. May you find your shining golden opportunities, may you seize your chances to become whatever your vision and values combine to make. This is the wish we who gather here today have for you.

Thank you.

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## PROFILE OF A DISTINGUISHED OLDER AMERICAN

Mr. PERCY. Mr. President, May is Older Americans Month, a time when every American should consider the concerns of our Nation's 20 million citizens 65 years of age and older. Although we have made considerable progress over the few years toward improving the economic and social conditions of the elderly, much more remains to be done. This month I have proposed a number of legislative solutions to the problems facing our elderly citizens, and look forward to discussing and debating these measures with my colleagues.

The theme this year is "older Americans are a National Resource." No where is this more evident than in an excellent profile of Ray W. Smith, president of the Chicago chapter of the American Association of Retired Persons, which appeared in the Chicago Sun-Times edition of Monday, May 13, 1974. Mr. Smith is a most enthusiastic and dedicated leader of the 314,000 members of AARP in Illinois.

In the Sun-Times article, Mr. Smith discusses many of the concerns of his members, including the level of social security benefits and the earnings limitation. He also points out a number of the association's activities, among them the youth-age alliance, a program that brings together retired person with high school or college students to exchange ideas.

I commend the Sun-Times, and reporter David Anderson, for bringing Mr. Smith's story, and AARP's efforts, to the public's attention and request unanimous consent that the article be printed in the RECORD at this time.

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

OVER 55? HERE'S RECIPE FOR 'YOUTH'

(By David Anderson)

Ray W. Smith has a recipe for growing old which is shared by some 6 million other people over the age of 55.

"Retire from your job or business, if you must, but don't retire from life. To age successfully, you must be mature. To grow old

and be reasonably happy, you need a cushion."

Smith, who is 66, short-haired and balding, has such a cushion. It is the Chicago chapter of the American Assn. of Retired Persons (AARP). As he puts it:

"AARP is the fastest-growing association in the United States. We are growing at the rate of 7,000 members a day. By the end of 1976, we should have between 11 and 12 million members."

Smith is president of the Chicago chapter, which has its headquarters in his home at 6528 N. Lakewood. There are some 314,000 AARP members in Illinois and about 150,000 of these live in the metropolitan Chicago area.

"Why are people over 55 flocking to AARP?" you ask. "What does it do for them?"

Smith has a no-nonsense answer:

"Because we do things that make aging and retirement fairly palatable. We lobby. We are nonpartisan, but not nonpolitical. Our aims are to increase Social Security payments, get better housing for the elderly—subsidized, when necessary, by the government. In short, open the door to a fuller, richer retirement life.

"It's a sad thing for people who have worked 40 and 50 years to retire on a pension and Social Security only to find that their standard of living they had when they were working to shrink," says Smith.

"And 'shrink' is the word," he tells you. "It's enough to drive you to a shrink. For example, if a retired person gets less than $160 month, or a couple gets less than $214, they can apply under Social Security for what is called Social Supplement income. That means Social Security will bring it up to $160 for a single person and to $214 for a couple. In other words, bring it up to a substandard level!"

Another thing that tees Smith off about Social Security is the rule that a person getting Social Security from age 65 to 72 may not have an outside income of more than $2,100 a year.

"After 72, the sky is the limit as far as your outside income is concerned," he says. "How ridiculous can you get? After 72, you can go out, theoretically, and get a big-paying job, make $100,000 a year or more. Now who is going to hire a 72-year-old? Why should you be penalized financially between the ages of 65 to 72? It's unjust. It's senseless."

This "senselessness" is one of the things AARP is working to change. Also, it's working, with its three paid lobbyists in Washington, to bring Congress to put the brakes on inflation, to establish a National Health Plan to "bring quality health care to all Americans, regardless of age or the ability to pay," the cutting of fares for the elderly on all railroads, buses and airlines and the stepping up of the war against water and air pollution.

Smith, who joined AARP in January, 1973, after retiring two years earlier as a personnel manager in the production department of Pullman-Standard Division of the Pullman Co., says members pay $2 a year in dues to AARP and another $2 a year to the Chicago chapter. He says members who buy medicine can save that much in a week by buying their drugs from AARP's own pharmacies.

Getting their medicines from AARP's drug stores by mail order—the pharmacy for its Chicago members is in Kansas City, Mo.—"we save 50 per cent, at least that," says Smith.

Smith likes to push AARP's AIM program (Action, Independent Maturity) which is part of its Youth-Age Alliance, a plan whereby AARP members get together with high school or college students to exchange ideas.

"I used to bristle when I saw the young kids with long hair," he says. "But I'm used to it now. These kids may lack experience and knowledge, but the thing I admire in them is their absolute honesty."

These seminars, held in high schools and universities, benefit both the young and the old, he believes.

As Smith sees it, the United States by 1976 will have taken "great strides toward a true democracy," because of this "honesty" in youth and because of senior-citizen organizations such as AARP. He bases this on his prediction that 100 million Americans will vote for a President that year.

"That will be a turnout of 80 per cent of those eligible to vote," says Smith. "In 1972, there was a turnout of 55.4 per cent of those eligible. Statistically, only 48 per cent of the young turned out. It was the older voters who brought this figure up to 55.4 per cent.

"In this last election in France, they had an 85 per cent turnout. If France can turn out 85 per cent, we certainly should be able to muster 80 per cent."

With its expected 11 to 12 million membership by 1976, says Smith, "AARP will be a decisive force in the next presidential election. And the significant fact to remember is that 93 per cent of our people register and vote."

The month of May is the most important one of the year to Smith because May has been officially proclaimed by the White House as Older Americans Month.

Its official theme, which fits what Smith has been thinking all the time, is "Older Americans—A National Resource."

## GSA PROPOSES THE ULTIMATE COMPUTER

Mr. ERVIN. Mr. President, 2 weeks ago it came to my attention that GSA has been quietly moving to establish a data communications network which could eventually combine all Federal agency computer hardware procurements and link all "general purpose" computers in the Federal Government. This system, called FEDNET, has been described by M. Shy Meeker, Commissioner of GSA's Automatic Data and Telecommunications Service, as a network which ultimately will "make virtually every modern computer in the Government accessible anywhere in the Nation." Because of the obvious and immense implications for privacy which such a massive system of nationwide computer sharing pose, I have been working with Senators GOLDWATER and HRUSKA and Congressmen Moss and MOORHEAD to get a full explanation of the FEDNET system from GSA.

As I understand the proposal, the FEDNET concept was devised to prevent the proliferation of "incompatible" computer systems which now exist in the Federal Government. All participating Federal agencies would join in cooperative computer usage at selected automatic data processing centers on a time sharing basis. All automatic data processing centers and remote terminals would be interconnected and available to system users through a common data communications network. A "packet-switch" concept included in the proposal would provide "access capabilities to other agencies as well."

The current plans call for the consolidating of computer operations and the maintenance of information systems within GSA and the Department of Agriculture. GSA will move from 10 computer centers it now operates into 1 center; Agriculture's information systems will be housed at 4 sites instead of the 45 sites they now occupy. Included in the proposal is the option for four additional sites which are to be operated by GSA to provide computers and computer services for other Government agencies.

The performance specifications issued by GSA on the FEDNET project require that the design of the various components of the network and the method of interconnecting them provide for "modular expandability" so that other automatic data processing sites beyond the nine in the current proposal, can readily be accommodated. The proposal also references "separate procurement action" to provide support networks and interfacing between FEDNET and other Government systems. Some 3,000 remote terminals are being contemplated, but obviously the system is designed to add uncounted other as it expands.

That the hardware system contemplated for FEDNET poses a serious threat to individual rights cannot be denied. I am especially concerned about the hierarchial system for administrative control over access to and utilization of system facilities envisioned by GSA. One of its performance specifications, ostensibly designed to protect privacy, requires that such administrative controls "should permit the (FEDNET) system administrator to enforce who may use the system, what facilities each authorized user may access and how many resources he may consume. Only the system administrator shall be able to establish, modify, or delete account user or project identifiers."

In short GSA would create an "information czar" with absolute control over all Government information systems. I am not prepared to give that authority to any one individual, and it is curious that a GSA proposal for "economy and efficiency" should involve the creation of a centralized information authority.

Yet officials at GSA insist that "FEDNET" is an unfortunate misnomer which misrepresents the planned joint computer procurement of GSA and the Department of Agriculture. They assert that the proposal was "intended merely to recognize the economies inherent in a joint procurement and shared use of common facilities," involving only GSA and Agriculture. However, it is a fact that GSA has already approached the Veterans' Administration and the Social Security Administration about joining the system. I have also received information that the Advanced Research Project Agency of the Defense Department Research and Engineering Office has had some input into devising the FEDNET system. Discussions pertain to linking or building the potential to link DOD with the FEDNET system. Indeed, the foundation is being laid for a national data center.

When I first learned of this FEDNET project I was extremely concerned about its implications. The name suggests a great Federal net which may catch and imprison the privacy of all Americans.

The first reaction of GSA, when faced with criticism, was to change the project's name from FEDNET to CDN (computer data network), as though mere semantics would satisfy its critics. I am now informed that the project has a new name—NEP—new equipment project. Well, a rose by any other name still smells, and MEDNET does not strike me as a privacy rose.

I see little difference between this so-called FEDNET system, or "New Equipment Project" as GSA has now labeled it, and the national data bank concept expressly rejected by Congress during the 1960's. At that time a full public debate of the issue was held and Congress then directed that "no work be done to establish the national data bank until privacy protection is explored fully and guaranteed to the greatest extent possible to the citizens whose personal records would form its information base." Congress received explicit assurances that no such project would be undertaken without full public debate and congressional authorization. Today those assurances appear to be no longer "operative."

No congressional authorization has ever been given FEDNET. No explicit appropriation for such a massive information system has ever been sought. Not one congressional oversight committee had been briefed about the proposal before last week. No description of the project was ever made in GSA's appropriation request. GSA officials failed to mention the program when questioned in oversight hearings about advanced information techniques. And GSA has never made the project known in response to specific questions about computerized government information systems, such as Congressman MOORHEAD's survey by his Foreign Operations and Government Information Subcommittee last year, and my survey by the Constitutional Rights Subcommittee of data systems on individuals maintained by Federal agencies. If it is as innocuous as GSA claims, why all the secrecy?

Had Congressman JOHN E. MOSS not disclosed the proposal on April 25, Congress may never have known about the project until it was faced with a $100 million "fait accompli"—an operational FEDNET system. Fortunately, for the American people, Congress has learned about FEDNET, and in plenty of time to give the proposal full legislative scrutiny.

I have had a number of contacts with representatives of the GSA regarding FEDNET, and I am presently awaiting a written response from the Administrator. During our discussions it has become apparent that the GSA has not adequately considered the implications for privacy inherent in the FEDNET concept or the magnitude of the policy decision it unilaterally made without congressional direction or authorization. Furthermore, GSA apparently did not even have administration sanction to embark upon this program.

Within the past few days both the Office of Management and Budget and the Office of Telecommunications Policy have objected to the FEDNET program. Budget Director Ash wrote GSA that after carefully reviewing the extensive volume of material supplied by GSA, OMB has concluded that the "pending request for proposal (RFP CPDA 74–14) to acquire nine computer sites and a data communications network should be withdrawn."

After reciting a number of practical and budgetary reasons for abandoning the current concept of FEDNET, Mr. Ash concluded:

> The proposed acquisition of ADP and telecommunications capability for unspecified uses poses a serious potential threat to the right of privacy at a time when this issue is under intense review by the Executive Branch and the Congress.

Vice President FORD expressed similar concern to the National Computer Conference in Chicago on May 9, 1974:

> The contemplated system, known as FED NET, would link Federal agencies in a network that would allow GSA to obtain personal information from the files of many Federal Departments. . . . I am concerned that Federal protection of individual privacy is not yet developed to the degree necessary to prevent FEDNET from being used to probe into the lives of individuals.

In the face of all this criticism, GSA grudgingly conceded that the privacy concerns which have been raised are "legitimate concerns" and that GSA would review the project in this light. In testimony before the House Appropriations Subcommittee on Tuesday, May 14, Administrator Sampson informed the subcommittee that he had that morning ordered that the request for proposal be suspended until he personally could review the proposal. This token gesture by the administrator falls far short of the action which is required. Mr. Sampson did not revoke the proposal, he simply suspended it indefinitely. He refused to discuss what alternatives he was considering, and was adamantly opposed to congressional review of FEDNET or submitting the proposal for congressional authorization. All he would offer was a pledge to review the project.

Administrator Sampson, as his remarks indicate, still had not grasped the serious issues of privacy raised by FEDNET, as well as the role of Congress in policy decisions in this area. This is not a decision to be made on an admnistrative level. Much more is involved than a simple decision to purchase a computer, as depicted by GSA officials at the appropriation hearings. A fundamental philosophical decision affecting all our lives is at issue. Such a substantive decison ought to be made by legislative bodies only after extensive public debate on the subject.

Before attempting such a decision, it is encumbent upon Congress to consider carefully the desirability of such a large-scale computer network, the safeguards needed to ensure that fundamental human rights are protected, and the desirability of any national data center, be it FEDNET or any other system. What is needed is a national policy on computer data exchange in America, and Congress is now moving in that direction. Various proposals to control the manner in which personal information is maintained and disseminated in the Federal Government are receiving thorough consideration in both the Senate and House of Representatives at the present time. For GSA to proceed with the largest single nonmilitary government data communications procurement in American history, in the face of these congressional deliberations, is not only irresponsible but borders on contempt.

The economy argument advanced by GSA in support of this FEDNET system is always attractive. But, apparently, OMB is not convinced that the project is even justified on economic or practical grounds. Even if it were true that GSA would be saving the taxpayer some money, we should not be selling individual rights for 30 pieces of silver. In this as in so many other areas of our national life, mere expediency cannot be permitted to be the overriding factor in making decisions about the public good. When Congress charged the GSA with the responsibility to coordinate and provide for the economic and efficient use of automatic data processing equipment, it did not delegate its legislative responsibility with regard to a national data policy in that authorization. Such an assumption is a distortion of the spirit and intent of Public Law 89–306.

Mr. President, in my judgment, FEDNET truly contains the basis of a national data center. In this single massive system all the information Agriculture has on American farmers, all the information the Veterans' Administration has on veterans, and all the information Social Security Administration has on every American wage earner, employer, recipient of medicare benefits and social security pensions, might be easily accessible, subject only to GSA control. Eventually as more agencies join the system, information about every individual who has ever had any contact with the Federal Government, regardless of the nature of that contact, could be instantaneously retrievable from the FEDNET system. I cannot conceive of any individual who would be unaffected by FEDNET.

At a time when Congress and the Vice President's Privacy Committee and all Americans are concerned about threats to privacy, it is a shock to discover that GSA should be quietly proceeding with a computer network that would involve agencies like the VA, Agriculture, Social Security, and the Defense Department at the start, and eventually all the Federal Government in the future. There is much about FEDNET that is peculiar, and I fear even yet we do not have the full story. Certainly, I believe that all Americans would agree that nothing with a potential for a national data center should be built without full public debate and express statutory authority. Personally, it is hard for me to conceive of any reasons why such a fatal blow to privacy should ever be permitted.

I shall continue my efforts through the Constitutional Rights Subcommittee and the various other congressional offices to investigate the GSA plans. I hope that the GSA will recognize the need to halt permanently all FEDNET plans

until Congress has given its express consent.

I ask unanimous consent that the text of my letter to GSA and the interim reply I received, as well as the letters from OMB and the Office of Telecommunications Policy to GSA, and newspaper articles by Seth Kantor describing FEDNET, be printed in the RECORD at this point.

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

MAY 6, 1974.

HAROLD S. TRIMMER, Esq.,
*General Counsel, General Services Administration, Washington, D.C.*

DEAR MR. TRIMMER: On Friday, May 3, at your suggestion, you and other members of GSA met with members of the Constitutional Rights Subcommittee staff and those of Congressmen Moss and Moorhead. The subject of the meeting was the proposed FEDNET project which just recently came to our attention.

The FEDNET proposal raises serious issues of privacy and the role of Congress in policy decisions in this area. As now contemplated, the proposal is to combine procurement and systems design to be compatible with those of other government agencies, with a view to cooperative computer usage in the future. At present the plan envisages compatible systems for GSA and the Department of Agriculture, but with the capability of adding other departments in the future. Such a massive system poses the possibility of nationwide computer sharing, with obvious and immense implications for privacy. Indeed, a similar proposal in the 1960's for a National Data Center was rejected by Congress after much public outcry. Congress received an explicit commitment then that no such project would be undertaken without full public debate and express statutory authority. It is our understanding that GSA has proceeded with its project on the good faith belief that it has full statutory authority already and that the privacy implications were minor or nonexistent.

We understand that in the meeting you and your associates acknowledged that our privacy concerns are valid and agreed that GSA should review the project in this light. It is our strong belief that we must subject the FEDNET concept and similar major data systems proposals to full legislative scrutiny and to require explicit legislative authorization before any of them are undertaken. You expressed your personal views that these would be appropriated for FEDNET, and said you would urge that GSA take the position that the FEDNET concept should be the subject of express statutory authorization. You also agreed that a letter would be forthcoming from GSA to us and other interested legislators by May 10 containing GSA's decision on this point.

We cannot stress too much our insistence that this is the only way to proceed. Public and congressional concern with privacy makes it necessary that all such proposals receive public scrutiny of this kind. In this regard, you may be familiar with proposals we have introduced (S. 2963-Ervin, S. 2964-Hruska and S. 2810-Goldwater), and which have already been the subject of hearings before the Constitutional Rights Subcommittee. The President's Privacy Commission, headed by Vice-President Ford, was established for this purpose.

We appreciate the speed with which you acknowledged the validity of this concern, and the promise of full cooperation that you made. We look forward to Mr. Sampson's letter and we are confident that with this joint cooperation, both the legitimate needs of citizen privacy and government efficiency can be accommodated.

With kindest wishes,
Sincerely,

SAM J. ERVIN, JR.,
ROMAN L. HRUSKA,
BARRY GOLDWATER.

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GENERAL SERVICES ADMINISTRATION,
*Washington, D.C., May 14, 1974.*

HON. SAM J. ERVIN, JR.,
*Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for your letter of May 6, also signed by Senators Roman Hruska and Barry Goldwater, regarding the planned joint computer procurement of General Services Administration and the Department of Agriculture.

The May 3 meeting, to which you refer, occurred as a result of statements by Mr. Lawrence Baskir at a Federal Bar Association seminar characterizing the procurement, which had acquired the unfortunate journalistic identification of FEDNET, as an apparent effort at creating a National Data Center. Since I felt this represented a misunderstanding of what was intended merely to recognize the economies inherent in a joint procurement and shared use of common facilities, and where the data bases of users would remain separate and secure, I suggested a meeting might be mutually beneficial.

In the course of that meeting, to which Mr. Baskir invited the representatives of Congressmen Moss and Moorehead, it became apparent that strong concern existed with respect to the concept of shared use of common data facilities reflected in the statutory authority (P.L. 89-306) under which GSA was proceeding, and the increased potential for privacy abuse, compared to continued proliferation of separate facilities, which it may reflect. We agreed that these privacy concerns were valid and that GSA should review the project in this light. We also agreed that the accommodation of these two policy objectives, economy and privacy, was a proper matter for legislative determination, perhaps within the context of the consideration of your recently introduced privacy bill.

I expressed my personal view that any expansion of the facilities contemplated in the current procurement beyond the immediate needs of Agriculture and GSA, for other agency use, through the exercise of options, should be preceded by legislative review and determination. I agreed to communicate the full results of the meeting to GSA line officials, and to attempt to secure an agency determination by May 10 of how we might most appropriately recognize and accommodate the very valid concerns you express.

As you are aware, this matter has been a subject of continued public and Congressional interest, and we have been occupied this week with obtaining the views of all appropriate parties on the action we should take. In the absence of Administrator Sampson, no final decision has yet been made. I am sure, however, he will communicate with you directly upon his return to Washington this coming week.

With warm regards,
Sincerely,

HAROLD S. TRIMMER, JR.,
*General Counsel.*

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HON. ARTHUR F. SAMPSON,
*Administrator, General Services Administration, Washington, D.C.*

DEAR ART: This is in regard to your April 2, 1974, letter concerning GSA's proposed acquisition of ADP and telecommunications equipment. We have carefully reviewed the extensive volume of material supplied by GSA and have discussed the matter with representatives of the Department of Agriculture and the Office of Telecommunications Policy.

We have concluded that your pending Request for Proposal (RFPCOPA 74-14) to acquire nine computer sites and a data communications network should be withdrawn. The proposed data communications network is not responsive to the Department of Agriculture requirements. Moreover, the pending procurement is inconsistent with guidance of the Office of Telecommunications Policy which has called for termination of the proposal.

There is no economic advantage to the proposed acquisition of the initial GSA site. More importantly, there are a number of viable alternatives which would satisfy GSA's internal processing requirements. Those include: Reutilization of Agriculture's IBM 370-168 computer which will be replaced by the new equipment now being procured, use of excess USDA capacity which will be available at the new sites, purchase of a smaller computer for GSA for use along with commercial ADP services.

With regard to the three optional GSA sites, there is no identifiable workload associated with these machines nor is there an assurance that this particular configuration will satisfy future needs. In addition, considering "single prime contractor" approach of the RFP, the relative inflexibility of the data communications requirements, and the potentially limited competition, the solicitation for these three options is not without inherent cost to the Government. Finally, the proposed acquisition of ADP and telecommunications capability for unspecified uses poses a serious potential threat to the right of privacy at a time when this issue is under intense review by the Executive Branch and the Congress.

In view of the above considerations, GSA should take the following actions:

1. Immediately withdraw the Request for Proposal (RFP).

2. Reissue a new RFP limited to four firm and two optional sites (one for USDA and one for GSA). The GSA option should only be exercised after a thorough review of available alternatives and the necessary budget approval has been obtained.

3. The communication requirements should be acquired separately in accordance with OTP guidance and should be restated in a manner acceptable to the users.

Any procurement of ADP and telecommunications equipment or services with funds available to GSA may be obligated only in accordance with guidance contained in this letter.

Sincerely,

ROY L. ASH,
*Director.*

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OFFICE OF TELECOMMUNICATIONS POLICY,
*Washington, D.C., April 30, 1974.*

HON. ARTHUR F. SAMPSON,
*Administrator, General Services Administration, Washington, D.C.*

DEAR MR. SAMPSON: I am quite concerned over the approach GSA is taking to obtain data processing and communications network services. Instead of obtaining the necessary services directly from the private sector, GSA has chosen instead to procure and operate a large amount of data processing and communications hardware itself.

Procurement of service rather than hardware allows the government to take maximum advantage of continuing improvements in technology while at the same time remaining sensitive to changes in user demands. New commercial offerings are constantly arising which offer an ever widening range of features to satisfy a great variety of user needs. Since it is the policy of the Federal

Government to encourage the private sector in continuing to offer new and innovative communications services on a fully competitive basis, the government should take advantage of this capability where possible to meet its own internal needs.

The cost of commercial data communications services has been declining at an annual rate of over 10% during the past few years. Even at today's rates, equivalent commercial services would cost about half as much as the proposed GSA data communications network.

It is my view that present GSA plans for an in-house government designed and operated data communications network should be terminated and at least the communications portion of the present solicitation should be reoriented toward procurement of commercial services. Further serious consideration should also be given to the advantages of obtaining the data processing service on a similar basis.

Moreover, a government-owned network of computers of such large capacity and with such widespread remote access, raises important questions about privacy: For example, how will access be controlled through use of the communications links, and what incentives will there be to fill the computers with unnecessary data on individuals and firms?

Please let me know what action you plan to take on this matter. Because the request for bids has already been released prompt action is necessary.

Sincerely,

CLAY T. WHITEHEAD.

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[From the Detroit (Mich.) Sunday News, May 5, 1974]

FIGHT IS MAPPED AGAINST U.S. COMPUTER "SNOOPING"

(By Seth Kantor)

WASHINGTON.—Vice President Gerald R. Ford heads a new Nixon administration group aimed at safeguarding the public from government snooping devices.

Now the Ford group is preparing to crack down on one federal agency's secretly drawn blueprint for a national computer network that ultimately could pry into private lives across the nation.

The action by the Ford group against FEDNET, the $100-million brainchild of the General Services Administration (GSA), underscores a major power struggle among Nixon forces over who is to set policy in the sprawling empire of federal computers.

Ford heads the recently started Domestic Council on the Right to Privacy, which this week will launch a special task force expected to make the GSA back off from its hard-and-fast plans to have FEDNET rolling by next year.

According to GSA plans, FEDNET eventually could tie all civilian agencies of the government into one time-sharing computer system under GSA control. But congressional investigators charge those plans fail to spell out protection for individual rights.

Critics fear the GSA plan could eventually result in the development of a federal "supersnoop" operation by computer.

Those investigators held a private meeting with three top GSA officials two days ago on Capitol Hill, and accused the GSA of intentionally failing to notify Congress of its plans to establish FEDNET.

Ford's right-to-privacy group was ignored by the GSA bureaucrats also as they proceeded in recent weeks with plans to award contracts to build FEDNET and to attract other federal agencies into the network.

Douglas W. Metz, deputy director of the Ford group, said a key aim of the task force is "to prevent surprises like this" from happening again.

Metz said it is vital that when a system such as FEDNET is conceived there be "a series of checkpoints" in the specifications to protect the files of individuals and organizations from government supersnoop.

Three volumes of specifications for FEDNET were quietly circulated to possible contractors in March by the GSA. In them there are no step-by-step safeguards for private rights of Americans, according to charges made behind scenes by officials of the Office of Management and Budget (OMB) and the Office of Telecommunications Policy (OTP in the Nixon administration.

Their views are of critical importance because experts from the OMB and OTP will be on the task force examining FEDNET.

Officials at GSA insist their plans for FEDNET would establish a massive system where only time—and never data—would be shared in the computer centers by federal agencies.

The GSA concept calls for a set of secret password codes to unlock information an agency would store in FEDNET. Each agency would be given its own passwords as protection against data raids by other government units.

But stepped-up federal research projects have failed so far to produce an information computer system that can't be tapped into through digital codes.

Also, in their meeting Friday on Capitol Hill, congressional investigators told GSA officials that someone would have to control the password codes envisioned in the FEDNET plan. If corrupted, or ordered by some future White House authority to activate the passwords, the controller could render the safeguards meaningless.

The GSA points out there is overlap, duplication and chaos in present government computer systems, which "cannot talk to each other."

"The incompatible systems we have now," said a staff member of the House Government Operations Committee, "create privacy by confusion. In this case, we opt for chaos."

House Government Operations probers and staff members of the Senate constitutional rights subcommittee, headed by Sen. Sam J. Ervin Jr., D–N.C., discussed FEDNET privately for several hours Friday with GSA officials.

In the meeting were GSA General Counsel Ted Trimmer and GSA telecommunications planning executives Sidney Weinstein and Michael Muntner.

They defended FEDNET largely in terms of the money the system would save.

Last year, a House Government Operations subcommittee held extensive hearings on "federal information systems and plans—implications and issues."

GSA officials testified at length at the hearings and never mentioned FEDNET, which is recognized as the biggest planned purchase of civilian data communications equipment in government history.

Technically, FEDNET is being set up as computer-pool arrangement between the Agriculture Department and GSA. But the GSA's Weinstein and Muntner have told the congressional investigators that FEDNET is to have a "building block concept" that would permit other agencies to hook on.

The GSA has been conducting unpublicized briefings for other agencies in an effort to bring them into the system.

Two of those agencies are the Social Security Administration and the Veterans Adminisration, both of which keep hundreds of millions of pieces of private information on people.

The Detroit News disclosed a week ago that Rep. John E. Moss, D-Calif., has demanded a full report by the GSA on its secretive FEDNET operations.

The Moss action has triggered interest on Capitol Hill that could lead to House and Senate hearings.

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PROTESTS FORCE GSA CUTBACKS IN "SUPERSNOOP"

(By Seth Kantor)

WASHINGTON.—Mounting opposition has forced the General Services Administration (GSA) to backtrack on its plan for a new controversial computer system known as FEDNET.

Plans for the $100-million computer network were revealed by The Detroit News two weeks ago. Since then many top government officials have said they were unaware of the project and expressed fears of a Washington-based "supersnoop" system capable of gathering private information on individuals and institutions.

Now the Nixon administration's Office and Management and Budget (OMB) has sent a strongly worded message to the GSA, virtually demanding that it revamp its plans for FEDNET, which had been scheduled to be in operation by next year.

This resulted in the GSA issuing a statement that it has decided to review its plans "because of concern raised in several quarters of government over various aspects of the procurement, including whether adequate safeguards would be provided to ensure the system does not increase the risk of invasion of individual privacy."

"The capability is there" for a system to invade the privacy of people across America, admits M. Shy Meeker. Meeker, a former "whiz kid' Ford Motor Co. executive, heads the GSA automated data and telecommunications service.

Meeker said in an interview with The News that he has been made aware of at least one missing safeguard to potential contractors.

This he described as a guarantee that each user of the computer would be recorded, as well as the nature of the information retrieved.

A new federal right-of-privacy committee, headed by Vice-President Gerald R. Ford, is raising questions about GSAs approach to FEDNET.

Sen. Sam J. Ervin Jr., D-N.C., chairman of a Judiciary subcommittee on constitutional rights, has expressed concern about FEDNET in a letter to the GSA, cosigned by a piar of Republican senators, Barry M. Goldwater of Arizona, and Roman L. Hruska of Nebraska.

Their concern developed after disclosures were made about the computer network's potential dangers by Rep. John E. Moss, D-Calif., who fathered the freedom of information act.

GSA plans call for five initial cross-country computer centers to be set up in a cooperative venture with the Agriculture Department.

But GSA officials already have held private talks with the Veterans Administration and Social Security Administration, to bring them into the FEDNET system, which would expand into additional centers and would include more federal agencies system."

Meeker, who holds three university degrees, including one in industrial psychology, describes FEDNET as a state of mind—"a philosophy and not a physical system."

"It's an attempt," he said, "to prevent the proliferation of incompatible federal computer systems, through intelligent planning on our part."

The GSA computer chief said "the whole thrust of what we're trying to do is to save money. We're replacing antiquated equipment, which is just cranking along."

Meeker said FEDNET eventually "would save the taxpayers tens of millions of dollars."

"To begin with," he said, "we're replacing 50 computers with five new ones."

Meeker said FEDNET would only represent about 1 percent of the nation's total federal computer capacity, once the system was fully into operation.

"You can't buy a secure box—a black box that guarantees privacy security," he said. "It's people who make the security. It will have to be done through the controls of law."

As an illustration, Meeker said "there will have to be tough rules drawn up, such as you can't use social security numbers in the data base of the system, as a means of prohibiting the cross-breeding of information" among agencies.

But Meeker said FEDNET has been drawn up without the GSA explaining how it would work before any congressional committee.

Last year, for instance, GSA experts testified before a House subcommittee looking into new federal computer plans, and never mentioned FEDNET, although Meeker says it has been in the planning stage for at least two years.

Meeker's move "to save money" for the taxpayers is not appreciated by the OMB.

In a private communique to GSA Administrator Arthur Sampson, the OMB has questioned the whole GSA approach to FEDNET—raising the possibility that the specifications should be redrawn.

The OMB wants Meeker's office to issue separate bid proposals. One would cover the computer hardware. The other would govern communications rules and regulations.

The net effect would be to delay Meeker's plans so that both Congress and the Nixon administration could draw up a well-planned approach to see that FEDNET could not become a future tool to fold, mutilate or spindle private rights.

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[From the Detroit Sunday News, Apr. 28, 1974]

WILL WASHINGTON BE A SUPERSNOOP?

(By Seth Kantor)

WASHINGTON.—In George Orwell's ominous novel, "1984," the government is Big Brother and no life is private. And now, 10 years ahead of the fictional schedule, a real-life federal agency is independently setting up a massive computer network, which has the potential of getting a personal readout on people all across America.

Known as FEDNET, the network is to be controlled entirely by the General Services Administration (GSA), which plans to have it under way by next year. The plan calls for other federal agency computers to hook into the network, which would create a potential for the GSA to gather personal information from the files of many government departments.

Some communications specialists express concern that FEDNET will develop into an intricate system that eventually could snoop into individual lives, despite federal protections set up to insure the right to privacy.

For instance, Rep. John E. Moss, D-Calif., said he is deeply troubled by the GSA plan because of "the significant danger" in years ahead when future generations of computers could store cradle-to-grave information on people in a government-run surveillance system.

Moss, who authored the freedom of information act on Capitol Hill, charged this weekend in a letter to GSA Administrator Arthur F. Sampson that "experts tell me cooperation among various federal agencies would allow assembly of dossiers on any individual or institution" with expansion of the computer system.

FEDNET also has touched off a power struggle in the upper reaches of the Nixon administration, where White House advisers are concerned over the what they see as the GSA's grab for power and the cost-heavy way the agency is going about it.

At stake in the struggle is who is going to set federal policy on the operation of the government's multi-billion-dollar computer business.

Estimated construction costs of FEDNET range up to $180 million. Qualified observers said it will be the biggest buy of civilian data communications equipment in government history.

Unlike other massive purchases, this one is being made without an appropriation from Congress. Instead, the GSA intends to use a $50 million kitty it controls for government-wide automatic data processing expenditures, as a starter.

Dr. H.R.J. Grosch, a nationally-known computer expert and former director of computer operations at the National Bureau of Standards, said the type of system GSA intends to install is not the most efficient "and sounds to me as if it were pushed by people out to make a fast buck."

Money watchers in the administration's Office of Management and Budget (OMB) are equally upset. They privately threaten to blow the whistle on what Rep. Moss calls the "extraordinary circumstances" surrounding the secretive GSA plan.

These are the circumstances. On the surface FEDNET is being set up by the GSA for its own needs and for the Agriculture Department as a leasing client. The GSA is the government's equipment and real estate supply agency.

Early last month the GSA began distributing thick volumes of specifications to potential bidders. Bids are due June 28. The contract is to be awarded Dec. 27, with the first of nine new computer centers to be installed by mid-1975.

Specifications call for five basic centers. There are to be four for the Agriculture Department—at New Orleans, Kansas City, Washington, D.C., and Fort Collins, Colo.—and another to handle GSA needs in Washington.

There are to be four optional sites, including one in the San Francisco area for Agriculture. The other three would be set up for the GSA at Chicago, Fort Worth, Tex., and Laguna Niguel, Calif.

Dennis Bracy, who is special assistant to the GSA's commissioner for Automated Data and Telecommunications, said his agency doesn't need to use more than one new center but the others would be established "so we can take advantage of the discounts" in equipment purchases.

Other agencies are certain to sign up for the network once the facilities are available. For instance, the GSA and the Veterans Administration began quiet negotiations on FEDNET several days ago.

GSA plans call for one of the option sites to provide a massive computer complex near President Nixon's home at San Clemente, Calif. It would be located on a $19.5-million piece of property at obscure Laguna Niguel, which the GSA acquired only last month in a trade with a defense contractors, Rockwell International Corp.

But there is growing unhappiness over the GSA plan at two important policy levels of the Nixon administration—the OMB and the White House Office of Telecommunications Policy (OTP)

Privately, OMB and OTP officials are upset because they are convinced the GSA didn't go about planning FEDNET in the most economical way, while at the same time making federal policy on its own by conceiving the network.

There is no doubt about GSA's policy aims, which are spelled out on Page 39 of the second book in the three-volume set of specifications for FEDNET. They call for "controls (to) permit the system administrator to enforce who may use the system" and specify what facilities can be used.

Moss is convinced that GSA officials are skirting the intent of Congress by establishing that kind of system.

"By its very conceptual size," said Moss in his letter to Sampson, "the plan guarantees that only the very largest contractors will be able to fulfill the requirements, in turn guaranteeing a huge system. "It would appear that not only would smaller contractors automatically be excluded from participation, but the government will have no option but to create the largest possible system."

Bracy, the GSA spokesman, denies that FEDNET is to be a single, tightly-controlled system.

"In no way are we planning for a monolithic network," he said. "I would assume agencies could lock up their own systems to keep any other federal agency from snooping through its computerized files."

Bracy admits the agencies "could willingly supply information" to each other through FEDNET in future years, "which is something agencies will have to be very careful about."

Asked if a Big Brother government 10 years from now could use FEDNET to pry into private lives, the GSA official laughed. "Not any more than with a telephone network," he said.

In Orwell's "1984," a time when the fictional government's motto was "Ignorance is Strength," every phone was tapped.

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## EXTENDED FUNDING FOR EOF

Mr. DOLE. Mr. President, within the next 45 days Congress will make an important decision which will affect the CAP agencies across the country. The decision relates to the question of what is to be done with legislation which will extend the authority of the economic opportunity program beyond its present expiration date of June 30, 1974.

There have been a variety of opinions expressed regarding the performance of CAP's and the future of the community action program. However, I observe an overall growing appreciation of the job CAP's are doing and swelling support for their continued support through some form of Federal legislation. This change in sentiment, I feel, is largely the result of the CAP's effort to better coordinate their programs with local government and involve local leaders in their programs. Through this effort, I feel there has developed a growing awareness of the unique ability of CAP's to help people to help themselves—to offer a hand up—not a hand out.

I have indicated my support of pending legislation to extend OEO funding to the ranking members of the Senate labor and public Welfare Committee and would like to call to the attention of my colleagues a significant event which recently occurred in Kansas City, Kans. The mayor of Kansas City, Kans., Richard F. Walsh, presented a key to Kansas City, Kans., to Uriel Owens, the managing director of the Economic Opportunity Foundation. EOF is the Federal community action program for Wyandotte County which includes Kansas City, Kans. This event is significant because it evidences a period of substantially increased communication, understanding, and cooperation between EOF and the local government.

CAP's, to be effective advocates for the poor, cannot be controlled by local government. However, a good working relationship between CAP's and local government is essential for an effective agency.

Mr. Owens joined EOF as managing director 1 year ago. His major goal was to increase community awareness of and participation in the ACTION agency programs and to make it clear that the purpose of community action is to help the disadvantaged to help themselves rather than to provide a financial crutch. In each aspect EOF is succeeding. The giving of the key to the city expresses support and appreciation for this progress which has come during the difficult time of uncertain funding for the agency.

In deciding whether to continue the Office of Economic Opportunity funding of CAP's beyond June 30, I hope my colleagues will note the progress which is being made by EOF in working with local government. Not only has EOF received support from Mayor Walsh, but also letters of support have been received from Wyandotte County, Bonner Springs, and Edwardsville, the other cities within the county. This progress and support is not new across Kansas, for the other CAP agencies have previously developed a good working relationship with local government.

It is my impression that what is happening at EOF is probably happening many times over around the Nation.

I ask unanimous consent to include in the CONGRESSIONAL RECORD coverage in the Kansas City Kansan of the presentation of the key to the city to Mr. Owens and a sample of the letters of support OEF has received.

I also ask that my letter to the ranking minority leader of the Labor and Public Welfare Committee, the distinguished Senator from New York (Mr. JAVITS), expressing my feelings on the extension of CAP programs, be printed immediately thereafter.

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

U.S. SENATE,
*May 13, 1974.*

Hon. JACOB K. JAVITS,
*Ranking Minority Member, Labor and Public Welfare Committee, U.S. Senate, Washington, D.C.*

DEAR JACK: Recently I had the opportunity to visit the annual meeting of SEK–CAP, the Community Action Agency for Southeast Kansas. The meeting was attended by approximately 600 residents of the area, and the program consisted of a review of the accomplishments of the agency over the past year.

The program was most impressive, and I feel illustrated the ability of CAPs to provide a flexible program able to meet the particular needs of a given area. I have also worked with other CAP agencies across the State, including EOF in Kansas City, ECKAN in Ottawa, MIDKAP in El Dorado, NEK–CAP in Horton, the CAP agencies in Wichita and Topeka, and the single purpose agency serving migrants in Western Kansas. I feel I can *safely* say Kansans generally believe that CAPs, after a few early year growing pais, have established a credible record in their communities.

I bring this to your attention at this time since I understand you will be introducing legislation to extend the CAP funding. Unless a bill can be passed in the next six weeks, the CAPs and the myriad of programs delivered through the CAPs are in grave danger.

I want to bring to your attention my concern regarding this legislation, especially as it relates to the placement of the poverty program within the federal administrative structure and the independence to be granted the agency once established. I agree it is important that CAP activities be coordinated and work in conjunction with local elected officials and local programs; yet, at the same time we must recognize that it is the independence of CAPs which has enabled them to cut through bureaucratic red tape and deliver a variety of grass roots programs tailored to the specific needs of each community.

I feel that a legislative middle ground is available which will assure community involvement outside the CAP agency with CAP delivered programs but which will also assure that the CAP has sufficient autonomy to function as it should. I, therefore, trust that your proposal would extend the CAP authority either as an independent agency or within ACTION. The agency must have sufficient autonomy to sustain its programs in their current form. In conjunction with this autonomy, it would also be necessary to maintain at some level of operation the regional OEO offices.

Arguments against extension of the CAP authority have been presented by the Administration on the basis of the concept's conflict with the general Administration policy of returning funds and decision making powers to the local level. I support this general direction in government programs, but feel also that in funding the local CAPs we are actually turning resources and decision making power over to the people at the grass roots level. So long as these programs are coordinated with local public officials and other community based programs, I feel they can play an important role in the new federalism concept.

Thanks for the time and consideration given this important matter.

Sincerely yours,

BOB DOLE,
*U.S. Senate.*

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WALSH PRAISES EOF

(By Marilyn Petterson)

Economic Opportunity Foundation Managing Director Uriel Owens was given a key to the city Friday—a key Mayor Richard F. Walsh said he hoped would open the door to much needed financing and office space in the old city hall.

Presentation of the key was made during a Community Action Day program at EOF headquarters, 1014 Armstrong. About 200 persons gathered for the observance, which included a brief talk by Walsh.

Walsh praised EOF programs, with special emphasis on the Handiman home repair and senior citizens programs, as vital in meeting human needs in Wyandotte County.

There have been, of course, good and bad programs in EOF, Walsh said. But the good programs have stayed around and these are the programs "we are celebrating today."

He said altho he hopes some revenue sharing dollars can be found to help fund such programs as Handiman, the city budget is not prepared to support the programs on a dollar for dollar basis. He urged citizens to write their congressmen to provide a broader basis of federal funding of at least a 60–40.

Bringing congratulation from U.S. Sen. Bob Dole, R-Kan., aide Bill Wohlford said the senator sees some support in Congress for not just the continuation of anti-poverty programs set up under the Office of Economic Opportuity umbrella, but for continuation also of the community action agencies themselves.

Speculation is that Congress will extend the Economic Opportunity Act at least one more year with an eye on placing many programs under other social service networks. Walsh also said Friday that, thru discussions with federal officials, he feels that even if OEO is discontinued, some type of social service legislation will transfer the on-going successful programs to other areas so they may continue.

With the key to the city around his neck, Owens said, "When you hear remarks like that you can start planning where you will be after June 30 (the date OEO legislation runs out)."

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BOARD OF COUNTY COMMISSIONERS,
*Kansas City, Kans., April 15, 1974.*

Mr. URIEL OWENS,
*Managing Director, Economic Opportunity Foundation, Kansas City, Kans.*

DEAR URIEL: I have enjoyed working with the Economic Opportunity Foundation over the years. Tackling the causes of poverty is a very difficult task in any community. However, it appears to me that EOF in Wyandotte County, through its variety of approaches and dedicated staff, is making headway in this direction. I certainly support you in this effort.

I join with you in hoping that legislation will soon be passed by the Congress in Washington, D.C., to continue the Office of Economic Opportunity funding for Community Action Agencies such as EOF. There is a demonstrated need in this county for continued community action to help meet human needs of the deprived and disadvantaged. EOF is proving itself remarkably capable of helping provide that action.

The best to you in your efforts to build an even stronger agency that will work toward a better county for us all.

Appreciate your feeling free to keep me informed about current events at the Foundation, and know you will call on me wherever I can help.

Sincerely yours,

JAMES P. DAVIS,
*Chairman, Board of County Commissioners, Wyandotte County, Kans.*

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EDWARDSVILLE, KANS., *March 15, 1974.*

Mrs. ROBERT L. HADLEY,
*Edwardsville, Kans.*

DEAR MRS. HADLEY: The City of Edwardsville and the undersigned personally have been interested in the community service program in the western Wyandotte County area with which you have been associated for some period of time.

We are aware of the extent of the program and particularly that service which is offered by your organization to the aged population throughout the area and especially those who have no transportation or are unable to get their doctors or grocers without your help.

This letter is written to you for any purpose for which it may be used to assure you of the interest and support of the undersigned and to further corroborate the integrity of your organization and the service which is rendered. If I can be of further assistance, please feel free to call upon me.

Very sincerely yours,

BLAKE A. WILLIAMSON,
*City Attorney.*

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BONNER SPRINGS, KANS., *March 12, 1974.*

Mrs. CONNIE HADLEY,
*Western Wyandotte County, Coordination & Development Center, Bonner Springs, Kans.*

DEAR MRS. HADLEY: I would like to take this time to commend the Western Wyandotte County Coordination & Development Center

for a job well done. The many services provided our community and surrounding areas by the C & D Center have proved to be most beneficial to all concerned. Indeed, the timeless efforts have resulted in a very effective program.

It is our hope that in the future we can rely even more on the C & D Center's services to this community.

If I may be of any help to you or to the C & D Center, please do not hesitate to call upon me.

Sincerely,

RANDY GUSTAFSON,
*City Manager.*

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KANSAS CITY, KANS., *March 22, 1974.*

Mr. URIEL OWENS,
*Managing Director, Economic Opportunity Foundation, Inc., Kansas City, Kans.*

DEAR URIEL: I wish to join with others in this community in expressing support and appreciation for the efforts of the Economic Opportunity Foundation in helping the deprived and disadvantaged of Kansas City, Kansas.

I came to know your Western Wyandotte Neighborhood Center well during my tenure as county commissioner and readily recognized the high quality of its operations and the many benefits it provided to the western part of Wyandotte County.

As Mayor, I have attempted to follow the activities of the three (3) neighborhood centers in Kansas City, Kansas, and the many other E.O.F. activities. Based on my personal knowledge, and from everything I've heard, I am pleased to say that E.O.F. is doing a good job in providing much needed services.

Also, I want to express my appreciation for the special efforts your agency has recently made in attempting to include the city in your planning process and to keep me informed about your program.

Please feel free to call on me or my staff whenever we may be of help.

Very truly yours,

RICHARD F. WALSH,
*Mayor.*

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## THE TERRORIST ATTACK AT MAALOT ISRAEL MAY 15, 1974

Mr. BROOKE. Mr. President, we have once again witnessed the cowardly brutality of the terrorist. The attack at the Israeli village of Maalot by Palestinian zealots, whose ends have been swallowed up and distorted by the inhumane means they have chosen to use, deserves condemnation by all individuals and nations truly desirous of peace in the Middle East.

We cannot, we must not pass over this incident as just a minor one as did the Syrian official who reportedly stated:

. . . over-all peace in the region is more important than any incident. . . .

While I fervently pray that the efforts underway to achieve peace will ultimately prove successful, I reject the view that the massacre at Maalot is just "any incident." Rather it is the cold-blooded murder of innocent children by individuals whose passions have deadened, if not destroyed, the spark of humanity that maintains the distinction between a civilized existence and the violence of the jungle.

The Israeli death toll at Maalot stands at 30 and it may go higher. If this tragedy could only have been avoided. And yet, it is difficult to see how it could have been. As an editorial in the New York Times stated this morning:

At Maalot, Israeli army action may have compounded the tragedy for some hapless innocent victims, and yet it succeeded in freeing the rest. There seems to be no humane way of countering the brute barbarity repeatedly demonstrated by one terrorist group after another.

Such "brute barbarity" will not be controlled until all governments recognize that the acts of the terrorists, no matter what their justification, are an affront to man's dignity and a threat to the orderly and peaceful functioning of any society. So long as states are willing to harbor and protect the terrorist, we are likely to see more incidents such as those that have occurred at Maalot and Quiryat Shemona.

Mr. President, it is important for us to understand the reasons why the Israeli Government felt compelled to order the army to move on the terrorists. Therefore, I ask unanimous consent that Premier Meir's official statement concerning the terrorist attack at Maalot be entered into the RECORD at this point.

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

TEXT OF ISRAELI PREMIER'S STATEMENT ON THE TERRORIST ATTACK AT VILLAGE OF MAALOT

JERUSALEM, May 15.—Following is an unofficial translation of the statement by Premier Golda Meir today:

This has been a terrible day.

It began when at about 3 A.M. three terrorists attacked a house in Maalot and murdered the father, the mother and a child.

Afterward, just a little before 5 A.M., they arrived at the school. In the school there were children from the 8th, 9th, 10th and 11th grades from Safad and from Hatsor. They entered the school, planted explosive charges and distributed bombs, and it was absolutely clear that they intended to blow up the building.

They allowed a nurse to leave the school with their demands as well as instructions how to carry them out.

DEMANDED RELEASE OF 20

They demanded [the release of] 20 terrorists. They insisted on negotiating only with the Ambassadors of France and Rumania. The Cabinet met at 9 A.M. and sat until about 7 P.M., with a break of about an hour and a half.

We were faced with a most serious problem.

Everyone in the country knows the problems involved in releasing terrorists, but the Cabinet decided that one doesn't conduct wars on the backs of children.

We decided to meet the terrorists' terms and to release 20 terrorists as they demanded.

We announced this. On the scene were the Minister of Defense and the Chief of Staff, from 6 or 6:30 in the morning. Afterward the Minister of Police joined them. And they informed the terrorists who were in the building that we were prepared to release the terrorists.

NEEDED A CODE WORD

The French Ambassador informed us that, according to instructions from his Government, he could enter negotiations with the terrorists.

The terrorists were not prepared to accept the French Ambassador, to speak to him, negotiate with him, as long as he did not have the code word he was to receive.

I can tell you that up to this moment, the French do not have the code word.

He was ready to go to Maalot. He went to Maalot in the afternoon, toward evening, but they were not prepared to exchange a word with him and enter negotiations with him.

At about 3 or even before 3 P.M. the Rumanian Ambassador informed us that he was notified by his Government that a representative of the Hawatmeh organization, from Bucharest, had told the Rumanian Government that the Rumanian Ambassador was the only one with whom the terrorists would be prepared to negotiate.

IN TOUCH WITH RUMANIAN AMBASSADOR

And if the Israeli Government would announce that I was prepared to release the terrorists we hold imprisoned here, then the Rumanian Ambassador here would receive the code word from Bucharest.

From about 3 or just before 3 P.M. and until 5 P.M. we were in constant touch with the Rumanian Ambassador. Why wasn't anything being done? By 5 P.M. he had not yet received the code word. On the contrary, he came and told us their conditions.

Before that, we had told the terrorists on the spot and informed the French Ambassador and the Rumanian Ambassador that we had brought together the 20—later they raised that to 23—terrorists, that we had brought them together and they would be ready to leave.

The terrorists at Maalot demanded the following arrangements: We were to fly the released prisoners to either Damascus or Nicosia. When they arrived, for example, in Nicosia, then the Rumanian Ambassador would received the code word. Upon receiving it, this would mean that the terrorists had arrived, and then they would be prepared to release 50 per cent of the children.

The other 50 per cent of the children, they—the terrorists wanted to go to an airport together with the children, board a plane and fly the terrorists together with our children to an Arab country.

But, I want everybody to know, that was already at 5 P.M.

We contacted the French Government and the Rumanian Government. We saw that it was getting 4:30 and 5, and the time they had set to blow up the school was 6 P.M.

We realized we could not manage in time. Because at 5, the Rumanian Ambassador reached us with this plan. And even if we accepted it and even if we had agreed to fly the children to an Arab country, there was no possibility to do this, not even to fly the people to Nicosia, get the code word from them and afterwards fly the terrorists and our children to some place, and all this by 6. And we had no doubt whatsoever, as the terrorists insisted stubbornly and firmly that they would not budge a single minute after 6 P.M. And then it became 5:15, 5:20, and they were not prepared to extend the time, and there was no other possibility. And we knew that all the children were in danger.

At that moment there was no longer any doubt that they intended, in truth, to blow up the school. Then at 5:30 the army went into action.

RESULTS ARE GRIM

The results are grim because in the first assault, the immediate action, they did not kill the terrorists but only wounded them. They were hurt sufficiently so as to be unable to activate the explosives, but they had enough strength left to start shooting into the groups of children and throw hand grenades. It also enabled our unit to go upstairs to the second story, while grenades were being thrown at them. It was very hard to go upstairs. They weren't certain that the explosives would not go off at any moment. They operated with speed and the terrorists were killed. The results as we know them at present, from the hospitals—and I am not certain if these results are accurate—there are 16 killed, about 70 wounded, and we are informed by the hospitals that about nine are seriously wounded. I repeat, there may

be changes in this number, I hope a change for the better.

This is the Hawatmeh organization. That is the organization whose leader, Hawatmeh, wants to lure us into living in a secular democratic state together with him. This is an organization that knows only blood and murder—and of children.

I know what this day means to every mother and father, brother and sister. But this has been a bitter day and a terrible one for each and every one of the people. Of that I am certain.

CUT OFF THE HANDS

I want to promise one thing:

I can't promise that they will let us live in peace. But I want to and can promise that the Government—any government of Israel—will do everything in its power in order to cut off the hands that want to harm a child, a grown-up, a settlement, a town or a village. And for all of us there is only one thing left: to guard in the most careful manner our strength and our spirit.

I want to take this opportunity to thank those who already now during the day have had time to identify with us in our trouble and to condemn the crime—the U.S. Secretary of State, Dr. Henry Kissinger, who is at present here with us; the Pope; great people from Italy and many other places.

I want to hope that the international community will finally recognize who they are who stand at the head of so-called liberation movements, to what they send their men and to what they educate their people.

Mr. BROOKE. In conclusion, the escalation of terrorism in the Middle East illustrates, as nothing else can, the need for peace in the area, peace based on an acceptance of the right of all the states to exist in a secure environment. The attack at Maalot cannot help but make the task of achieving peace much more difficult. It makes the importance of doing so much more apparent.

## CONGRESSMEN RAILSBACK AND SARBANES ON FACE THE NATION

Mr. PERCY. Mr. President, on Sunday, May 5, my colleague from Illinois, Congressman TOM RAILSBACK, and Congressman PAUL SARBANES from Maryland, were guests on the CBS show, Face the Nation.

Seeing these two lawyer-Congressmen, both members of the House Judiciary Committee, should have given considerable comfort to many Americans who fear the constitutional process of impeachment which is now in the first stage in the House.

These gentlemen, though members of different parties, exhibited the kind of unemotional, impersonal and yet inclusive logic that I trust will be representative of the other members of that important committee. They were thoughtful and judicious in their comments, in the best tradition of the Congress. I believe their appearance helped demonstrate that the constitutional process of impeachment is in the hands of good and wise men and women.

Mr. President, because of the timeliness of their responses, I ask unanimous consent that the transcript of that broadcast be printed in the RECORD at this point.

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

TRANSCRIPT OF FACE THE NATION, SUNDAY, MAY 5, 1974

GEORGE HERMAN. Representative Sarbanes, Representative Railsback, you are both members of the House Judiciary Committee which has received from President Nixon the transcripts of certain tapes, plus two briefs or arguments based on those transcripts. I'd like to ask you both whether this submission from the White House provides the material you need to fulfill your constitutional duties in exploring the question of impeachment. Mr. Sarbanes?

Representative SARBANES. George, I don't think it does. I think it's an important beginning, but the subpoena that the committee sent to the White House asked for tapes and other matters, and we're entitled I think to the best evidence. If tapes are available, I think those should be provided to the committee. It's also important to note that the committee has also requested of the White House other material in other areas, which we are conducting our inquiry. Now that's been done by letter so far, but those are important matters as well, so that the reach of the matters that are being looked into is not solely of the Watergate matter, so we have both getting a full response to this subpoena and receiving a response with respect to the other matters that we are seeking.

HERMAN. Mr. Railsback?

Representative RAILSBACK. I would basically agree. I think the White House made a very constructive first step which is certainly going to help us, but I think it's become pretty apparent from reading some of the transcripts that it would be much better for instance, if we had been able to use our own transcribing equipment, which is much more sophisticated than the White House equipment. I think, as Paul mentioned, that the people would be misled if they believed that we were only interested in the Watergate cover-up. And of course there are many other allegations that have been levelled. I think it is in the President's best interest that we really consider all of these allegations and do so with a degree of thoroughness so that we can say to the American people, we've examined this carefully, we've done our job, and we find whatever we do find.

ANNOUNCER. From CBS News, Washington, a spontaneous and unrehearsed news interview on FACE THE NATION with two members of the House Judiciary Committee, Representative Paul Sarbanes, Democrat of Maryland, and Representative Tom Railsback, Republican of Illinois. They will be questioned by CBS News Correspondent Bruce Morton, Helen Thomas, White House Correspondent for United Press International, and CBS News Correspondent George Herman.

HERMAN. In your answer to this first question, you talked a little bit about the superior—more sophisticated equipment, I guess was the word, possessed by the committee. I gather that some of the gaps called unintelligible in the White House transcripts have been pieced out now by staff of your committee. Have you seen them? Can you tell us anything about them? Are they substantial? Are they substantive? Either of you?

Representative RAILSBACK. My information really comes from both counsel as well as the ranking minority member, Ed Hutchinson, and from my first response I don't mean to imply that there was anything purposely substantively omitted. In other words, that is not the information that has been given to us, but I personally think—going one step further—I think it's essential that insofar as either our two top members of the committee or counsel, if they finally are permitted to participate in the screening, that they be able to determine what may be relevant. And then I think the rest of the members of the committee in those cases ought to also have a right to at least hear the edited tapes, so that we would be in a position to judge the tone of the conversation, voice inflections, and so forth.

Representative SARBANES. We haven't seen them yet, but we are informed that in a few instances in which we already had tapes, for which transcripts have now been provided, that the transcripts that our staff was able to develop from those tapes are more complete than the transcripts that were furnished us in terms of the inaudible portion of the transcripts. The other thing that I think is important about the tapes is that a sentence on a written page can have very different meanings, depending on how it is said. Those words can be said in two entirely different ways that carry with them a very different meaning, and that's another reason why in a very substantive sense it is important for the tapes to be furnished to the committee and be available to the members if it becomes necessary, is deemed pertinent to be able to actually hear them.

THOMAS. I'd like to ask both our guests if either of you, in the reading of the transcripts, has found any impeachable offense so far?

Representative RAILSBACK. If I could answer that, I would say that I think it would be very poor judgment on our part to make that kind of a finding at this particular stage when frankly we haven't even begun to hear all of the evidence, and I would guess too that we're going to have to call some live witnesses, and some of those live witnesses will be people that are on these tapes that we have.

Representative SARBANES. I think it's important to appreciate the process that the committee is about to embark upon, beginning this week with the statement of information and its correlation to evidentiary material by the staff to us, and I think it's important that we go through that entire process, examining this material, examining the transcripts as they relate to other information which is in the files of the committee that bears upon what is said in the transcripts, that provides additional factual information, that provides the complete picture. At the end of that process, each member of the committee is going to be called upon to make a judgment—that's what we're engaged in—and we should move through a period in which all of the factual information that's available and what we are seeking is brought to us, and at the end of that period I think then we're in a posture to make a judgment.

MORTON. Mr. Railsback, it seems clear from your opening remarks that you don't think the President has complied with the committee's subpoena, but you voted against sending him a letter that said that. Why?

Representative RAILSBACK. I voted for the Cohn substitute which it seemed to me was much more meaningful than what I characterized as sending the President a declaration of non-compliance. What the Cohn sub——

MORTON. But it's true that he didn't comply, isn't it?

Representative RAILSBACK. I think that you could say that he was in what I would call partial compliance, but certainly not full compliance—there's no doubt about that. But I like the idea of doing something constructive, and it seemed to me—and Cohn's proposal would have gone a step further and said, Mr. President, we acknowledge receipt, we don't think you are in full compliance, we would like our counsel to be able to hear the tapes and—in other words, we'd like to get together and see if we couldn't pursue this, and hopefully we could work out some-

thing that would be mutually satisfactory.

MORTON. Well, let me ask each of you then—you have this other request pending for evidence which deals with other areas, with ITT, with milk, and so on. Assuming—which I think is a fair assumption of White House comments this past week—that you don't get it, or at least you don't get all of it—would you support a subpoena for that evidence?

Representative RAILSBACK. Yes, I think that what we have to do is have a presentation by our counsel, which we will have. They have sent us a detailed document that details the need for this additional material. To be quite honest, I haven't had a chance to really carefully review that. If I'm convinced, and I in all likelihood will be, that this material is essential for us to get to the truth of all of the allegations, then I'm certainly going to support a subpoena. Let me just add one thing—I've been also led to believe that this is a very substantial request, and it involves I think something like 46 hours of conversations. I hope, and I'm led to believe from something that was said to us by one of our staff, that this may be a final request, and I would hope that that would be the case. Otherwise, I don't think we're going to have any chance to meet our deadline of June 30.

THOMAS. I'd like to ask both of you—do you think that the President has been hurt or helped by his release to the public of these transcripts?

Representative SARBANES. Oh, I think he's been helped to the extent that he at least has come forth with something that the committee has been seeking. I think he may well have been hurt by the substance of what is contained in the transcripts. That is a judgment that——

THOMAS. How do you mean?

Representative SARBANES. That's a judgment that the people will have to make. Well, I think having an opportunity to see what's in these transcripts—they begin to appreciate the dimensions of the inquiry upon which the committee is engaged. I would think that with a careful reading of those transcripts, most people would have to conclude that this inquiry upon which the Judiciary Committee is engaged is a very serious matter indeed, that additional material ought to be furnished to the committee in order to provide the full factual picture with respect to this matter. If I could just go back to Bruce's question, I think that the additional requests for material are supported by a memoranda which clearly show why it's pertinent. That request was sent by Chairman Rodino and Mr. Hutchinson jointly, and it would seem to me that a failure to comply with that would require the committee then to consider issuing the subpoena. Now with response to the action which we took the other evening, I think it's important to recognize that there are very few if any members of the committee who really thought that there had been full compliance with the subpoena. There was a difference of opinion on what the response should be, essentially between a simple statement that there had been a failure to comply, as opposed to a letter that then went on and continued to negotiate. One of the problems with the negotiation was that we had been at that, I think, for two months and five days, beginning the 25th of February. We had extended the time for five days on the 25th of April, and it seemed to some of us that it was a need just to state what the fact was with respect to compliance.

HERMAN. Mr. Railsback wanted to get in on that one.

Representative RAILSBACK. Yes, I just think that we ought to maybe point out that this business of either transcribing or listening to tapes is a very laborious process, and that's one of the reasons why some of us favor having our counsel go with our chairman and the ranking minority member. It's plain hard work, and that explains some of the reasons I think why it's taken so long.

THOMAS. Why does the White House not want the counsel to go along?

Representative RAILSBACK. You know, Helen, I really don't know. I think they would be well advised to let counsel—in other words, it seems to me that it's a rather arbitrary—and on that particular point, I think it's been kind of an arbitrary decision.

THOMAS. You know that vote on the letter to the President was a very party line vote; do you think that that reflects an ultimate decision on the part of the committee, that that's the way they'll go on the impeachment question?

Representative RAILSBACK. I really don't. I think that most members of the committee are genuinely determined and interested in getting to the truth. Now, we may disagree about procedures. I don't remember how Paul Sarbanes voted; I feel very strongly that the President's counsel—and the President himself, if he wants to—should have great leeway in participating so that when we finally are ready to make our judgment, we can say that we've acted judiciously, we've bent over backwards to see that they've been able to participate fully.

Representative SARBANES. The committee was unanimous the following day in adopting rules of procedure that would govern how the evidentiary presentation would proceed, and what the role of the President's counsel will be in that matter, so I don't think that when we have these divisions as we move along, they should be taken as having any ultimate significance. I think every member of that committee is committed to the process of carrying through a fair, thorough, full inquiry in reaching a judgment.

THOMAS. You don't think there's been an attempt to drive a wedge along party lines?

Representative SABRANES. By whom? Not by members of the committee, I don't think. I think the members of the committee are united in the purpose——

HERMAN. Wedge or no wedge, do you think eventually this is going to turn out to be a party line vote?

Representative SARBANES. You can't answer that question until you've been through a review of the factual material. There seems to be an assumption that somehow the facts are not going to bear on the decision, and they're going to bear greatly on the decision.

THOMAS. You know, the White House keeps complaining that—I'll put it another way—do you agree with the White House that an impeachable offense has to be a criminal offense?

Representative SARBANES. No, I do not.

HERMAN. Mr. Railsback?

Representative RAILSBACK. I don't either, but let me say that all likelihood, in this particular case, it will be. William Dobrovir, who managed to play a tape at a cocktail party, who also co-authored a manual on impeachment, had something like 28 allegations against the President and he was able to find indictability, or an indictable offense to match up with every one of those allegations, all of which have been duplicated in our inquiry. In other words, I think we're talking about a serious offense which in all likelihood will involve criminality.

THOMAS. But you think that impropriety itself, in the office, of the presidency would be grounds?

Representative RAILSBACK. To be quite candid, I don't think we're going to impute any—I'll speak for myself on this—I don't favor imputing criminal responsibility without some kind of direct involvement or evidence of direct involvement of the President himself, and I just—I think there are many other members, including many Democrats, at least in the House—the full House—that feel the same way.

Representative SABANES. I think there's a view that a serious abuse of power or violation of the public trust would fall within the definition of impeachable conduct, according to the constitutional standard. Now, you have to make a very careful judgment on the facts that come before you. It may in fact be that those facts fall so clearly in the area of indictable crimes that you don't reach that question, but I do not think as a legal matter the definition can be narrowly limited in that way. I do not think—

THOMAS. Is the committee going to make a definition?

Representative SARBANES. I think each member in the end is going to have to make his own judgment on the facts and his view of the constitutional standard.

Representative RAILSBACK. And I want to say, I think it's in the best interest of the President that we not come up with a formal definition, because what would probably happen, we would adopt the committee's staff report, which is much broader than many members want to support.

MORTON. Miss Thomas asked you earlier if you had found anything impeachable in the transcripts and you said you didn't want to go into that because the committee really hasn't heard the evidence yet. Let me ask you a more general question about the transcripts which you've both read or read parts of. And that's about the tone—does it read like the way you always thought life was in the Oval Office?

Representative SARBANES. Well, the tone is disturbing but the tone doesn't reach to the essential question that the committee is addressing itself to.

MORTON. I understand that; I'm just asking for impressions.

Representative SARBANES. Well, as regrettable as the tone of some of that may be, I mean our job is to press on with a different question and seek a response to that, but I find the tone of some of that quite disturbing, yes.

Representative RAILSBACK. The President said in his speech to the nation that there were some things in there that were embarrassing, and I agree. I think it's—

THOMAS. In what respect?

Representative RAILSBACK. I think that he has laid bare his soul and I'm inclined to think that perhaps it will ultimately help him and it probably should have been done earlier. But I'm talking now about the implications by the—some of the language that was deleted and adjective deleted, expletive, expletive—

THOMAS. How do you think that Dean looks in all this—the image of Dean as had been projected in the Senate Watergate Committee hearings versus the transcripts?

Representative RAILSBACK. I really think that John Dean—I think if I was President of the United States, I would not want John Dean advising me.

THOMAS. But he was.

Representative SARBANES. That's why we have some serious questions in front of the Judiciary Committee today.

HERMAN. Let me just tie up one loose end here. I asked you much earlier on about the various parts that your staff has been able to interpret, which the White House found unintelligible. I'm not sure I nailed down whether there were any surprises in it, or anything which your staff considers to be important or significant?

Representative SARBANES. Of course that

presentation hasn't been made, so we don't know the full answer to that question. The staff's point is that they have been able to develop transcripts sufficiently more complete, to argue for availablity of the tapes and the opportunity to develop those transcripts.

HERMAN. But they haven't let you know whether they are surprising or non-surprising?

Representative SARBANES. That's what we're going to start to look at, beginning this coming week.

HERMAN. Has Mr. Hutchinson informed you any further? Do you have any better grasp on that?

Representative RAILSBACK. No, I really don't. I would like to add one thing to what Paul said. I personally don't care if I see anything that concerns national security or any vulgar language or anything like that. What I want to be able to see is even an edited tape, not an edited transcript—an edited tape that would permit me to really have a better grasp of the actual conversations, and I hope the White House relents and decides to let us see at least edited tapes.

Representative SARBANES. Let me just add there, it's important—

THOMAS. Who does the editing?

Representative SARBANES. The committee must do the editing in the end. In the end, the ultimate control must be in the committee to determine relevancy. That's very important, because one of the objectives out of all of this is that the committee, when it completes its process, must be able to say to the American people that the judgment we are making was reached on the basis of the best evidence, it was all available to us, we examined it, we considered it, we thought about it, and we reached this judgment. Nothing that was pertinent was hidden from us or denied to us. Otherwise, unless we can say that, the judgment that we reach is subject to attack and criticisms, because—

THOMAS. Well, the White House claims you have eight tapes already and that this is the full story, and they seem to have drawn a line. Do you see a confrontation? You talk of subpoenas but you can't enforce them.

Representative SARBANES. Well, our job is to press on to get the material that is necessary for us to make a judgment. We would hope that they would respond to that.

HERMAN. Let me ask you an internal question about that, both of you gentlemen. How can you do this job that you've been outlining here so carefully, get all the evidence you need, if you go along with Mr. Hutchinson, the senior Republican, and refuse to grant immunity to important witnesses whose testimony you may require? Can you do that?

Representative RAILSBACK. Let me answer that by saying that I think Mr. Hutchinson made it very clear that he was speaking for himself, and I haven't had a chance to talk to other minority members. I've taken the position that this particular question, the impeachment or the possible impeachment of the President of the United States should be of preemptive importance—in other words, overriding importance, and if we decide that we need somebody's testimony to really clear it up so that we can make an intelligent decision, I personally think that we will probably—we may very well have to grant immunity and there are provisions for doing just that.

Representative SARBANES. I think the committee may well have to follow that course. You don't like to grant immunity, but it may become necessary if you are to obtain the full story. It all depends upon how fully you can put together the facts short of that, but it ought not to be—no matter how much reluctance one may have—it ought not to be precluded as a general rule ahead of time.

MORTON. If the committee can't get the best evidence, can't get the tapes, and there is no way to force the White House to hand over something it doesn't want to hand over, what do you do then? Does that turn into a ground for impeachment—refusal to furnish evidence?

Representative SARBANES. Well, I think failure of the White House to comply with a lawful subpoena seeking pertinent information in an impeachment inquiry, which after all is a very high constitutional responsibility of the House of Representatives, could become the basis for a charge in articles of impeachment.

Representative RAILSBACK. Let me disagree just to this extent. I think—I said all along that it may very well be that we're going to have to bring in the third branch of government to act as an arbiter. What that means is, and I don't know exactly who would do that—whether it would be the President—if the President persists in refusing to cooperate, and I don't mean to imply that he hasn't been somewhat cooperative, because I think he has—I think if the courts came in and upheld the congressional right to subpoena and the President still refused to turn over materials, then at that point the President has probably committed an impeachable offense.

THOMAS. Well, the White House argues, White House lawyers, that the President is not subject to the ultimate Supreme Court decision, and you are both lawyers, do you agree with that?

Representative RAILSBACK. Well, he's going to be in my opinion—the American public would be so outraged if the court ruled in favor of the congress—I think the American people feel that no man is above the law, and I don't think the White House would do that. I think the White House wants a definitive decision on the issue of executive privilege.

Representative SARBANES. Well, the White House is involved of course with the special prosecutor and the courts with respect to the furnishing of material which the special prosecutor has subpoenaed, and it's not only the House Judiciary Committee that is having this difficulty. The special prosecutor has encountered it as well, and in fact has gone through the courts and received a court decision previously that indicated he was entitled to the information, and they are now pursuing that matter again. I think it would greatly help the entire situation if the White House would be forthcoming with the material that is being sought. It is not accurate to state that the committee is on any sort of fishing expedition. What they are seeking has been well documented, they are making an effort to make the request as comprehensive as possible, and it would enable us to get on with the very important responsibility with which we've been charged.

HERMAN. You just have time to agree or disagree, Mr. Railsback.

Representative RAILSBACK. I would generally agree.

HERMAN. Thank you very much, Mr. Railsback and Mr. Sarbanes for being with us today on Face the Nation.

ANNOUNCER. Today on Face the Nation, Representative Paul Sarbanes, Democrat of Maryland, and Representative Tom Railsback, Republican of Illinois, were interviewed by CBS Correspondent Bruce Morton, Helen Thomas, White House Correspondent for United Press International, and CBS News Correspondent George Herman. Next week another prominent figure in the news will Face the Nation.

## WIRETAP DECISIONS OF THE SUPREME COURT

Mr. KENNEDY. Mr. President, on May 13 the U.S. Supreme Court decided two cases that are of major importance in the area of wiretapping and electronic surveillance.

In United States against Giordano and United States against Chavez, the Court unanimously held that under the procedure used by former Attorney General Mitchell, where the Attorney Generals's executive assistant, rather than the Attorney General or a specially designated Assistant Attorney General, authorized a wiretap application to a court, title III of the Omnibus Crime Control and Safe Streets Act of 1968 was violated. As a result, the Court held all evidence derived from communications intercepted in those wiretaps must be suppressed.

Newspaper accounts have indicated that as a result of former Attorney General Mitchell's failure to follow the procedures specified in title III, indictments are likely to be dismissed or convictions overturned in at least 60 cases involving more than 600 criminal defendants.

It is distressing that in an administration which has advocated "law and order" so strongly, over 600 convictions may be reversed because of the failure of the Nation's highest law enforcement officer to abide by the law and adhere to congressionally mandated safeguards and procedures. Moreover, as the Court's opinion points out, the requirement that the Attorney General or a designated Assistant Attorney General authorize the wiretap application was originally included in the legislation at the urging of the Justice Department in 1961, in order to "give greater assurance of the need and justifiability of each interception." It is thus doubly unfortunate that these safeguards should not have been followed by the Attorney General.

The decisions of the Supreme Court point up more than ever the necessity for adhering to specific procedural guidelines before citizens of this country are subjected to court-ordered wiretaps. But such safeguards are even more important in the area of warrantless wiretaps and electronic surveillances. These wiretaps, installed and conducted without court supervision, pose the greatest dangers to the constitutional liberties of American citizens, since they are conducted secretly, without the shield of an impartial judge to stand between the executive branch of government and the citizen. Unchecked warrantless wiretapping has contributed to a crisis of confidence in our leaders and our governmental institutions that is unparalleled in recent times.

My Subcommittee on Administrative Practice and Procedure, together with two other Senate subcommittees, has been holding hearings on these warrantless surveillances. We are planning to propose new administrative and legislative guidelines to protect the rights of citizens and prevent future abuses in this critical area. The decisions in Giordano

and Chavez underscore the importance of this inquiry and highlight the need for the development of more adequate procedures and safeguards to govern the conduct of "national security" electronic surveillances.

Mr. President, I ask unanimous consent that the text of the opinions in the Giordano and Chavez cases, together with articles from the New York Times, the Washington Post, and the Washington Star-News of May 14, 1974 and May 15, 1974 and a New York Times editorial be ordered to be printed in the RECORD, at this point.

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

[No. 72-1057]

United States, *Petitioner, versus* Dominic Nicholas Giordano, et al.

On Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit, May 13, 1974.

WHITE, J., delivered the opinion of the Court, in Parts I, II, and III of which all Members joined, and in Part IV of which DOUGLAS, BRENNAN, STEWART, and MARSHALL, JJ., joined. DOUGLAS, J., filed a concurring opinion, in which BRENNAN, STEWART, and MARSHALL, JJ., joined, see No. 72-1319. POWELL, J., filed an opinion concurring in Parts I, II, and III of the Court's opinion and dissenting from Part IV, in which BURGER, C. J., and BLACKMUN and REHNQUIST, JJ., joined.

MR. JUSTICE WHITE delivered the opinion of the Court.

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 197, 211-225, 18 U.S.C. §§ 2510-2520, prescribes the procedure for securing judicial authority to intercept wire communications in the investigation of specified serious offenses. The Court must here determine whether the Government sufficiently complied with the required application procedures in this case and whether, if not, evidence obtained as a result of such surveillance, under a court order based on the applications, is admissible at the criminal trial of those whose conversations were overheard. In particular, we must decide whether the provision of 18 U.S.C. § 2516(1) [1] conferring power on the "Attorney General, or any Assistant Attorney General specially designated by the Attorney General" to "authorize an application a Federal judge . . . for . . . an order authorizing or approving the interception of wire or oral communications" by federal investigative agencies seeking evidence of certain designated offenses permits the Attorney General's Executive Assistant to validly authorize a wiretap application to be made. We conclude that Congress did not intend the power to authorize wiretap applications to be exercised by any individuals other than the Attorney General or an Assistant Attorney General specially designated by him and that primary or derivative evidence secured by wire interceptions pursuant to a court order issued in response to an application which was, in fact, not authorized by one of the statutorily designated officials must be suppressed under 18 U.S.C. § 2515 upon a motion properly made under 18 U.S.C. § 2518(10)(a). Accordingly, we affirm the judgment of the Court of Appeals.

I

In the course of an initial investigation of suspected narcotics dealings on the part of respondent Giordano, it developed that Giordano himself sold narcotics to an undercover agent on October 5, 1970, and also told an informant to call a specified number when interested in transacting narcotics business. Based on this and other information, Francis Brocato, an Assistant United States Attorney, on October 16, 1970, submitted an application to the Chief Judge of the District of Maryland for an order permitting interception of the communications of Giordano, and of others as yet unknown, to or from Giordano's telephone. The application recited that Assistant Attorney General Will Wilson had been specially designated by the Attorney General to authorize the application. Attached to the application was a letter from Will Wilson to Brocato which stated that Wilson had reviewed Brocato's request for authorization and had made the necessary probable cause determinations and which then purported to authorize Brocato to proceed with the application to the court. Also attached were various affidavits of law enforcement officers stating the reasons and justification for the proposed interception. Upon reviewing the application, the Chief Judge issued an order on the same day authorizing the interception "pursuant to application authorized by the Assistant Attorney General . . . Will Wilson, who has been specially designated in this proceeding by the Attorney General . . . to exercise the powers conferred on him by [18 U.S.C. § 2516]." On November 6, the same judge extended the intercept authority based on an application similar in form to the original, but also including information obtained from the interception already authorized and carried out and extending the authority to conversations of additional named individuals calling from or to Giordano's telephone. The interception was terminated on November 18 when Giordano and the other respondents were arrested and charged with violations of the narcotics laws.

Suppression hearings followed pretrial notification by the Government, see § 2518(9), that it intended to use in evidence the results of the court-authorized interceptions of communications on Giordano's telephone. It developed at the hearings that the applications for interception authority presented to the District Court had inaccurately described the official who had authorized the applications and that neither the initial application for the October 16 order nor the application for the November 6 extension order had been approved and authorized by Assistant Attorney General Will Wilson, as the applications had indicated.

An affidavit of the Executive Assistant to the Attorney General divulged that he, the Executive Assistant, had reviewed the request for authorization to apply for the initial order, had concluded from his "knowledge of the Attorney General's actions on previous cases that he would approve the request if submitted to him[,]" and, because the Attorney General was then on a trip away from Washington, D.C., and pursuant to authorization by the Attorney General for him to do so in such circumstances, had approved the request and caused the Attorney General's initials to be placed on a memorandum to Wilson instructing him to authorize Brocato to proceed. The affidavit also stated that the Attorney General himself had approved the November 6 request for extension and had initialed the memorandum to Wilson designating him to authorize Brocato to make application for an extension order. It was also revealed that although the applications recited that they had been authorized by Will Wilson, he had not himself reviewed Brocato's applications, and that his action was at best only formal authorization to Brocato. Furthermore, it became apparent that Wilson did not himself sign either of the letters bearing his name and accompanying the applications to the District Court. Instead, it appeared that someone in Wilson's office had affixed his signature after the signing of the letters had been authorized by a Deputy Assistant Attorney General in the Criminal Division who had, in turn, acted after the approval of the request for authorization had occurred in and had been received from the Office of the Attorney General.

The District Court sustained the motions to suppress on the ground that the officer in the Justice Department approving each application had been misidentified in the applications and intercept orders, in violation of 18 U.S.C. §§ 2518(1)(a) and (4)(d), *United States* v. *Focarile*, 340 F. Supp. 1043, 1060 (Md. 1972). On the Government's pretrial appeal under 18 U. S. C. § 3731, the Court of Appeals affirmed on the different ground that the authorization of the October 16 wiretap application by the Attorney General's Executive Assistant violated § 2516(1) of the statute and struck at "the very heart" of Title III, thereby requiring suppression of the wiretap and derivative evidence under §§ 2515 and 2518(10)(a)(1) and (ii).[2] 469 F. 2d 522, 531. We granted certiorari to resolve the conflict with decisions of the Court of Appeals for the Second Circuit [3] with respect to the administration of the circumscribed authority Congress has granted in Title III for the use of wiretapping and wiretap evidence by law enforcement officers. 411 U.S. 905.

II

The United States contends that the authorization of intercept applications by the Attorney General's Executive Assistant was not inconsistent with the statute and that even if it were, there being no constitutional violation, the wiretap and derivative evidence should not have been ordered suppressed. We disagree with both contentions.[4]

Turning first to whether the statute permits the authorization of wiretap applications by the Attorney General's Executive Assistant, we begin with the language of § 2516(1), which provides that "the Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize" an application for intercept authority. Plainly enough, the Executive Assistant is neither the Attorney General nor a specially designated Assistant Attorney General; but the United States argues that 28 U.S.C. § 509,[5] deriving from the Reorganization Acts of 1949 and 1950, vests all functions of the Department of Justice, with some exceptions, in the Attorney General, and that Congress characteristically assigns newly created duties to the Attorney General rather than to the Department of Justice, thus making essential the provision for delegation appearing in 28 U.S.C. § 510:

"The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General."

It is therefore argued that merely vesting a duty in the Attorney General, as it is said Congress did in § 2516(1), evinces no intention whatsoever to preclude delegation to other officers in the Department of Justice, including those on the Attorney General's own staff.

As a general proposition, the argument is unexceptionable. But here the matter of delegation is expressly addressed by § 2516 and the power of the Attorney General in this respect is specifically limited to delegating his authority to "any Assistant Attorney General specially designated by the Attorney General." Despite § 510, Congress does not always contemplate that the duties assigned to the Attorney General may be freely delegated. Under the Civil Rights Act of 1968, for

Footnotes at end of article.

instance, certain prosecutions are authorized only on the certification of the Attorney General or the Deputy Attorney General "which function of certification may not be delegated." 18 U.S.C. § 245(a)(1). Equally precise language forbidding delegation was not employed in the legislation before us; but we think § 2516(1), fairly read, was intended to limit the power to authorize wiretap applications to the Attorney General himself and to any Assistant Attorney General he might designate. This interpretation of the statute is also strongly supported by its purpose and legislative history.

The purpose of the legislation, which was passed in 1968, was effectively to prohibit, on the pain of criminal and civil penalties,[6] all interceptions of oral and wire communications, except those specifically provided for in the Act, most notably those interceptions permitted to law enforcement officers when authorized by court order in connection with the investigation of the serious crimes listed in § 2516. Judicial wiretap orders must be preceded by applications containing prescribed information, § 2518(1). The judge must make certain findings before authorizing interceptions, including the existence of probable cause, § 2518(3). The orders themselves must particularize the extent and nature of the interceptions that they authorize, § 2518(4), and they expire within a specified time unless expressly extended by a judge based on further application by enforcement officials, § 2518(5). Judicial supervision of the progress of the interception is provided for, § 2518(6), as is official control of the custody of any recordings or tapes produced by the interceptions carried out pursuant to the order, § 2518(8). The Act also contains provisions specifying the circumstances and procedures under and by which aggrieved persons may seek and obtain orders for the suppression of intercepted wire or oral communications sought to be used in evidence by the Government. § 2518(10)(a).

The Act is not as clear in some respects as it might be, but it is at once apparent that it not only limits the crimes for which intercept authority may be obtained but also imposes important preconditions to obtaining any intercept authority at all. Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous. §§ 2518(1)(c) and (3)(c). The Act plainly calls for the prior, informed judgment of enforcement officers desiring court approval for intercept authority, and investigative personnel may not themselves ask a judge for authority to wiretap or eavesdrop. The mature judgment of a particular, responsible Department of Justice official is interposed as a critical precondition to any judicial order.

The legislative history of the Act supports this view. As we have indicated, the Act was passed in 1968, but the provision of § 2516 requiring approval of applications by the Attorney General or a designated Assistant Attorney General dates from 1961, when a predecessor bill was being considered in the 87th Congress. Section 4(b) of that bill, S. 1495, which was also aimed at prohibiting all but designated official interception, initially provided that the "Attorney General, or any officer of the Department of Justice or any United States Attorney specially designated by the Attorney General, may authorize any investigative or law enforcement officer of the United States or any Federal agency to apply to a judge" for a wire interception order. Hearings on S. 1495 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 87th Congress, first session, May 9, 10, 11, 12, 1961, at 5. Under that phraseology, the authority was centered in the Attorney General but he could empower any officer of the Department of Justice, including United States Attorneys and the Executive Assistant, to authorize applications for intercept orders. At hearings on the bill, the Assistant Attorney General in charge of the Criminal Division stated the views of the Department of Justice, and the Department later officially proposed, that the authority to approve applications be substantially narrowed so that the Attorney General could delegate his authority only to an Assistant Attorney General. The testimony was:

"This is the approach of S. 1495, with which the Department of Justice is in general agreement. The bill makes wiretapping a crime unless specifically authorized by a Federal judge in situations involving specified crimes. As I understand the bill, the application for a court order could be made only by the authority of the Attorney General or an officer of the Department of Justice or U.S. Attorney authorized by him. I suggest that the bill should confine the power to authorize an application for a court order to the Attorney General and any assistant Attorney General whom he may designate. This would give greater assurance of a responsible executive determination of the need and justifiability of each interception." *Id.*, at 356.

The official proposal was that § 4(b) be changed to provide that the "Attorney General, or any Assistant Attorney General of the Department of Justice specially designated by the Attorney General, may authorize" a wiretap application. *Id.*, at 372.

S. 1495 was not enacted, but its provision limiting those who could approve applications for court orders survived and was included in almost identical form in later legislative proposals, including the bill that became Title III of the Act now before us.[7] In the course of testimony before a House Committee in 1967, the draftsman of the bill containing the basic outline of Title III engaged in the following colloquy:

"The CHAIRMAN. About the origin of the application, as I understand it, your bill provides it must be originated by the Attorney General or an Assistant Attorney General. Am I correct in that regard?

"Professor BLAKEY. Yes, you are, Mr. Chairman.

"The CHAIRMAN. The application must be made by the Attorney General or an Assistant Attorney General.

"Professor BLAKEY. If I am not mistaken, the present procedure is before any wiretapping or electronic equipment is used now it is generally approved at that level anyway, Mr. Chairman, and I would not want this equipment used without high level responsible officials passing on it. It may very well be that in some number of cases there will not be time to get the Attorney General to approve it. I think we are going to have just [*sic*] to let those cases go, and that if this equipment is to be used it ought to be approved by the highest level in the Department of Justice. If we cannot make certain cases, that is going to have to be the price we will have to pay." Hearings before a Subcomm. of the House Comm. on the Judiciary, Anti-Crime Program, 90th Cong., 1st Sess., March 15, 16, 22, 23; April 5, 7, 10, 12, 19, 20, 26, 27, 1967, at 1379.[8]

As it turned out, the House Judiciary Committee did not report out a wiretap bill, but the House did pass H.R. 5037, entitled the "Law Enforcement and Criminal Justice Assistance Act of 1967," 113 Cong. Rec. 21861 (August 8, 1967). The Senate amended that bill by adding to it Title III, which in turn essentially reflected the provisions of S. 917, which had been favorably reported by the Senate Judiciary Committee and which contained the Committee's own proposals with respect to the interception of oral and wire communications. The report on the bill stated:

"Section 2516 of the new chapter authorizes the interception of particular wire or oral communication under court order pursuant to the authorization of the appropriate Federal, State, or local prosecuting officer. Paragraph (1) . . . centralizes in a publicly responsible official subject to the political process the formulation of law enforcement policy on the use of electronic surveillance techniques. Centralization will avoid the possibility that divergent practices might develop. Should abuses occur, the lines of responsibility lead to an identifiable person. This provision in itself should go a long way toward guaranteeing that no abuses will happen." S. Rep. No. 1097, 90th Cong., 2d Sess., 96–97 (1968).

This report is particularly significant in that it not only recognizes that the authority to apply for court orders is to be narrowly confined but also declares that it is to be limited to those responsive to the political process, a category to which the Executive Assistant to the Attorney General obviously does not belong.[9]

The Senate passed H.R. 5037, with the amendments tracking the provisions of S. 917, on May 23, 1968, as the Omnibus Crime Control and Safe Streets Act of 1968, 114 Cong. Rec. 14798 and 14889. During the proceedings leading to the passage of the bill, emphasis was again placed on § 2516. That the Attorney General had the exclusive authority to approve or provide for the approval of wiretap applications was reiterated, and it was made clear that as the bill was drafted no United States Attorney would have or could be given the authority to apply for an intercept order without the advance approval of a senior officer in the Department.[10] There was no congressional attempt, however, to extend that authority beyond the Attorney General or his Assistant Attorney General designate.

The Government insists that because § 2516(2) provides for a wider dispersal of authority among state officers to approve wiretap applications and leaves the matter of delegation up to state law,[11] it is inappropriate to continue the authority so narrowly on the federal level. But it is apparent that Congress desired to centralize and limit this authority where it was feasible to do so, a desire easily implemented in the federal establishment by confining the authority to approve wiretap applications to the Attorney General or a designated Assistant Attorney General. To us, it appears wholly at odds with the scheme and history of the Act to construe § 2516 to permit the Attorney General to delegate his authority at will, whether it be to his Executive Assistant or to any officer in the Department other than an Assistant Attorney General.[12]

III

We also reject the Government's contention that even if the approval by the Attorney General's Executive Assistant of the October 16 application did not comply with the statutory requirements, the evidence obtained from the interceptions should not have been suppressed. The issue does not turn on the judicially fashioned exclusionary rule aimed at deterring violation of Fourth Amendment rights, but upon the provisions of Title III; and, in our view, the Court of

Footnotes at end of article.

Appeals correctly suppressed the challenged wiretap evidence.

Section 2515 provides that no part of the contents of any wire or oral communication, and no evidence derived therefrom, may be received at certain proceedings, including trials, "if the disclosure of that information would be in violation of this chapter." What disclosures are forbidden, and are subject to motions to suppress, is in turn governed by § 2518(10)(a), which provides for suppression of evidence on the following grounds:

"(i) the communication was unlawfully intercepted;

"(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

"(iii) the interception was not made in conformity with the order of authorization or approval." [13]

The Court of Appeals held that the communications the Government desired to offer in evidence had been "unlawfully intercepted" within the meaning of paragraph (i), because the October application had been approved by the Executive Assistant to the Attorney General rather than by the Attorney General himself or a designated Assistant Attorney General.[14] We have already determined that delegation to the Executive Assistant was indeed contrary to the statute; but the Government contends that approval by the wrong official is a statutory violation only and that paragraph (i) must be construed to reach constitutional, but not statutory, violations.[15] The argument is a straightforward one based on the structure of § 2518 (10)(a). On the one hand, the unlawful interceptions referred to in paragraph (i) must include some constitutional violations, suppression for lack of probable cause, for example, is not provided for in so many words and must fall within paragraph (i) unless, as is most unlikely, the statutory suppression procedures were not intended to reach constitutional violations at all. On the other hand (ii) and (iii) plainly reach some purely statutory defaults without constitutional overtones, and these omissions cannot be deemed unlawful interceptions under paragraph (i), else there would have been no necessity for paragraphs (ii) and (iii)—or to put the matter another way, if unlawful interceptions under paragraph (i) include purely statutory issues, paragraphs (ii) and (iii) are drained of all meaning and surplusage. The conclusion of the argument is that if nonconstitutional omissions reached by paragraphs (ii) and (iii) are not unlawful interceptions under paragraph (i), then there is no basis for holding that "unlawful interceptions" include *any* such statutory matters; the *only* purely statutory transgressions warranting suppression are those falling within (ii) and (iii).

The position gains some support from the fact that precedessor bills specified a fourth ground for suppression—the lack of probable cause—which was omitted in subsequent bills, apparently on the ground that it was not needed because official interceptions without probable cause would be unlawful within the meaning of paragraph (i).[16] Arguably, the inference is that since (ii) and (iii) were retained, they must have been considered "necessary," that is, not covered by paragraph (i).

The argument of the United States has substance, and it does appear that paragraphs (ii) and (iii) must be deemed to provide suppression for failure to observe some statutory requirements that would not render interceptions unlawful under paragraph (i). But it does not necessarily follow, and we cannot believe, that no statutory infringements whatsoever are also unlawful interceptions within the meaning of paragraph (i). The words "unlawfully intercepted" are themselves not limited to constitutional violations, and we think Congress intended to require suppression where there is failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device. We have already determined that Congress intended not only to limit resort to wiretapping to certain crimes and situations where probable cause is present but also to condition the use of intercept procedures upon the judgment of a senior official in the Department of Justice that the situation is one of those warranting their use. It is reasonable to believe that such a precondition would inevitably foreclose resort to wiretapping in various situations where investigative personnel would otherwise seek intercept authority from the court and the court would very likely authorize its use. We are confident that the provision for pre-application approval was intended to play a central role in the statutory scheme and that suppression must follow when it is shown that this statutory requirement has been ignored.

The principal piece of legislative history relative to this question is S. Rep. No. 1097, 90th Cong., 2d Sess. (1968). The Government emphasizes that the report expressly states that § 2518(10)(a) "largely reflects existing law" and that there was no intention to "press the scope of the suppression role beyond present search and seizure law." *Id.*, at 96. But the report also states that the section provides for suppression of evidence directly or indirectly obtained "in violation of the chapter" and that the provision "should serve to guarantee that the standards of the new chapter will sharply curtail the unlawful interception of oral and wire communications." [17] Moreover, it would not extend existing search and seizure law for Congress to provide for the suppression of evidence obtained in violation of explicit statutory prohibitions. *Nardone* v. *United States*, 302 U. S. 379 (1937); *Nardone* v. *United States*, 308 U. S. 338 (1939).[18]

IV

Even though suppression of the wire communications intercepted under the October 16, 1970, order is required, the Government nevertheless contends that communications intercepted under the November 6 extension order are admissible because they are not "evidence derived" from the contents of communications intercepted under the October 16 order within the meaning of §§ 2515 and 2518(10)(a). This position is untenable.

Under § 2518, extension orders do not stand on the same footing as original authorizations but are provided for separately. "Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section." § 2518(5). Under subsection (1)(e), applications for extensions must reveal previous applications and orders, and under (1)(f) must contain "a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results." Based on the application, the court is required to make the same findings that are required in connection with the original order; that is, it must be found not only that there is probable cause in the traditional sense and that normal investigative procedures are unlikely to succeed but also that there is probable cause for believing that particular communications concerning the offense will be obtained through the interception and for believing that the facilities or place from which the wire or oral communications are to be intercepted are used or will be used in connection with the commission of such offense or are under lease to the suspect or commonly used by him. § 2518(3).

In its November 6 application, the Government sought authority to intercept the conversations of not only Giordano, who alone was expressly named in the initial application and order, but of nine other named persons who were alleged to be involved with Giordano in narcotics violations. Based on the attached affidavit, it was alleged that there was probable cause to believe that communications concerning the offense involved would be intercepted, particularly those between Giordano and the other named individuals, as well as those with others as yet unnamed, and that the telephone listed in the name of Giordano and whose monitoring was sought to be continued "has been used, and is being used and will be used, in connection with the commission of the offenses described." App. 62.

In the affidavit supporting the application, the United States set out the previous applications and orders, incorporated by reference and reasserted the "facts, details and conclusions contained in [the] affidavits" supporting the prior wiretap application, and set down in detail the relevant communications overheard under the existing order, as well as the physical movements of Giordano observed as the result of an around-the-clock surveillance that had been conducted by the authorities. App. 65–81. The Government concluded "[a]fter analyzing the intercepted conversations to and from [Giordano's telephone] and the results of BNDD surveillance" that nine listed individuals, some identified only by aliases, were associated with Giordano as suppliers or buyers in illegal narcotics trafficking and that certain other persons were perhaps connected with the operation in an as yet undisclosed fashion. *Id.*, at 79–80. It was also said that the full scope of Giordano's organization was not yet known. *Id.*, at 80. Assertedly, Giordano was extremely guarded in his telephone conversations, "any specific narcotics conversations he makes are from pay phones" and "[c]onventional surveillance would be completely ineffective except as an adjunct to electronic interception." *Id.*, at 81. The United States accordingly requested an extension of the interception order for no longer than a 15-day period.

It is apparent from the foregoing that the communications intercepted pursuant to the extension order were evidence derived from the communications invalidly intercepted pursuant to the initial order. In the first place, the application sought and the order granted authority to intercept the communications of various named individuals not mentioned in the initial order. It is plain from the affidavit submitted that information about most of these persons was obtained through the initial illegal interceptions. It is equally plain that the telephone monitoring and accompanying surveillance were coordinated operations, necessarily intertwined. As the Government asserted, the surveillance and conventional investigative techniques "would be completely ineffective except as an adjunct to electronic interception." That the extension order and the interceptions under it were not in fact the product of the earlier electronic surveillance is incredible.

Second, an extension order could validly be granted *only* upon an application complying with subsection (1) of § 2518. Subsection (1)(e) requires that the fact of prior applications and orders be revealed, and (1)(f) directs that the application set out either

Footnotes at end of article.

the results obtained under the prior order or an explanation for the absence of such results. Plainly the function of § 2518(1)(f) is to permit the court realistically to appraise the probability that relevant conversations will be overheard in the future. If during the initial period, no communications of the kind that had been anticipated had been overheard, the Act requires an adequate explanation for the failure before the necessary findings can be made as a predicate to an extension order. But here there were results, and they were set out in great detail. Had they been omitted no extension order at all could have been granted; but with them, there were sufficient facts to warrant the trial court's finding, in accordance with § 2518(3)(b), of probable cause to believe that wire communications concerning the offenses involved "will be obtained through the interception." App. 83, as well as the finding complying with § 2518(3)(d) that there was probable cause to believe that Giordano's telephone "has been used, is being used, and will be used, in connection with the commission of the offenses described above and is commonly used by Nicholas Giordano . . ." and nine other named persons. *Ibid.*

It is urged in dissent that the information obtained from the illegal October 16 interception order may be ignored and that the remaining evidence submitted in the extension application was sufficient to support the extension order. But whether or not the application, without the facts obtained from monitoring Giordano's telephone, would independently support original wiretap authority, the Act itself forbids extensions of prior authorizations without consideration of the results meanwhile obtained. Obviously, those results were presented, considered and relied on in this case. Moreover, as previously noted, the Government itself had stated that the wire interception was an indispensable factor in its investigation and that ordinary surveillance alone would have been insufficient. In our view, the results of the conversations overheard under the initial order were essential, both in fact and in law, to any extension of the intercept authority. Accordingly, communications intercepted under the extension order are derivative evidence and must be suppressed.[10] The judgment of the Court of Appeals is

*Affirmed.*

FOOTNOTES

[1] This and other relevant provisions of the statute are contained in the Appendix to this opinion.

[2] Evidence derived from the unlawful interceptions conducted pursuant to the October 16 wiretap order was held to include the evidence obtained under the November 6 wiretap extension order and also the evidence secured under court orders of October 22 and November 6 extending investigative authority to use a "pen register," *i.e.*, a device that records telephone numbers dialed from a particular phone, which had previously been used to monitor the numbers dialed from Giordano's phone pursuant to a court order of October 8. The applications presented to the District Court to extend wiretap and pen register authority each detailed at considerable length the contents of conversations intercepted pursuant to the October 16 order in support of the requests. We therefore agree with the Court of Appeals, for the reasons discussed in Part IV, *infra*, that evidence gathered under the wiretap and pen register extension orders is tainted by the use of unlawfully intercepted communications under the October 16 order to secure judicial approval for the extensions, and must be suppressed.

[3] The Second Circuit has held that approval of wiretap applications by the Attorney General's Executive Assistant complies with the dictates of § 2516(1). In *United States* v. *Pisacano*, 459 F. 2d 259 (CA2 1972), the court refused to permit withdrawal of guilty pleas on the basis of subsequent discovery that the Executive Assistant had authorized the first of three wiretap applications, declaring that it was "not at all convinced that if this case had gone to trail and the court had refused to suppress evidence obtained by the wiretaps, we would have reversed[,]" and that "the Justice Department's procedures were very likely consistent with the mandate of § 2516(1)." *Id.*, at 264 and n. 5. Shortly thereafter a different panel of that Circuit affirmed judgments of convictions in a case raising the same issue, out of "adherence to the law of the circuit" so recently decided and with the admonition that its decision should "not . . . be construed as an approval of the procedure followed by the Attorney General and his staff." *United States* v. *Becker*, 461 F. 2d 230, 236. In every other circuit which has considered the issue, suppression of evidence derived from court-approved wire interceptions based on an application authorized by the Attorney General's Executive Assistant has been held to be required by Title III. *United States* v. *Mantello*, 156 U.S. App. D.C. 2, 478 F. 2d 671 (1973); *United States* v. *Roberts*, 477 F. 2d 57 (CA7 1973); *United States* v. *King*, 478 F. 2d 494 (CA9 1973). See also *United States* v. *Robinson*, 468 F. 2d 189 (CA5 1972), remanded for an evidentiary heating to determine whether the applications were properly authorized under § 2516(1), 472 F. 2d 973 (en banc 1973).

[4] Because of our disposition of this case, we do not reach the grounds relied upon by the District Court. The issue resolved in the District Court, however, is the subject of the companion case, *United States* v. *Chavez*, *post*, p. —.

[5] In full, 28 U. S. C. § 509 provides:

"§ 509. Functions of the Attorney General.

"All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

"(1) vested by subchapter II of chapter 5 of title 5 in hearing examiners employed by the Department of Justice;

"(2) of the Federal Prison Industries, Inc.;

"(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.; and

"(4) of the Board of Parole."

[6] Criminal sanctions were provided in 18 U.S.C. § 2511, and a civil damage remedy was created by § 2520. See Appendix.

[7] In 1967, a draft statute prepared by Professor G. Robert Blakey of the University of Notre Dame Law School to regulate the interception of wire and oral communications was published in The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Organized Crime, Appendix C, at 106–113. In part, it would have added a provision to Title 18, United States Code, which empowered the "Attorney General, or any Assistant Attorney General of the Department of Justice specially designated by the Attorney General" to authorize an application to a federal judge for an order to intercept wire or oral communications. *Id.*, at 108. Senator McClellan introduced a proposed "Federal Wire Interception Act," S. 675, on January 25, 1967, 113 Cong. Rec. 1491, containing, in § 5 (a), the same designations of which federal prosecuting officials could authorize a wiretap application. Hearings before the Subcomm. on Criminal Laws and Procedures of the S. Comm. on the Judiciary, Controlling Crime Through More Effective Law Enforcement, 90th Cong., 1st Sess., March 7, 8, 9; April 18, 19, 20; May 9; July 10, 11, 12, 1967, at 76. Senator Hruska later introduced S. 2050 on June 29, 1967, 113 Cong. Rec. 18007, which would have provided for regulated use of electronic surveillance, as well as wiretapping, and which again made provision, in a new § 2516 to be added to Title 18, United States Code, for the same system of approval of applications for the interception of wire or oral communications as was present in the Blakey bill. *Id.*, at 1005. In the House of Representatives, the Blakey bill was introduced on October 3, 1967, in the form of H.R. 13275, 113 Cong. Rec. 27718. Ultimately, the same operative language was enacted in Title III.

[8] In the hearings on the McClellan bill, S. 675, see n. 7, *supra*, the limitation on the application authorization power was frequently brought to the fore. Thus, Chief Judge Lumbard of the United States Court of Appeals for the Second Circuit, who had earlier been United States Attorney for the Southern District of New York, noted in testimony on March 8, 1967, that the "application would require approval of the Attorney General or a designated assistant . . . ," and he urged, in support of his recommendation that it was unnecessary to limit the use of wiretapping to the investigation of a narrow group of serious crimes, the fact that there were other factors which would greatly limit the use of wiretapping, beginning with the observation that "the proposed statute, section 5a, provides that only the Attorney General, or any Assistant Attorney General specifically designated by him, may authorize the necessary application to a Federal judge for approval to wiretap. Thus the application will be carefully screened." Hearings on Controlling Crime Through Effective Law Enforcement, *supra*, n. 7, at 171–172. A letter urging adoption of legislation to govern the area of wiretapping and electronic eavesdropping was sent to the subcommittee on March 7 by all living former United States Attorneys of the Southern District of New York, who recommended that interception be prohibited "unless authorized by a Federal judge on application of the Attorney General, or any Assistant Attorney General of the Department of Justice specially designated by the Attorney General, when such authorized interception may provide evidence of an offense against the laws of the United States." *Id.*, at 511–512. And Senator McClellan himself commented to a judge testifying before the subcommittee:

"This legislation, as you know, requires rather thorough court supervision through the application for a court order made by the Attorney General or officials designated in the bill. A court, of course, would have to weigh the probable cause or the reasonable cause in support of such an application. I do not know how to tighten it up any more than we have in the bill. . . . Can you tell us how to tighten it up any more?" *Id.*, at 894–895.

[9] The Attorney General is appointed by the President, by and with the advice and consent of the Senate, 28 U.S.C. § 503, as are the nine Assistant Attorneys General provided for in 28 U.S.C. § 506. The position of Executive Assistant, on the other hand, is established by regulation, to assist the Attorney General, *inter alia*, in the review of "matters submitted for the Attorney General's action" and to "[p]erform such other duties and functions as may be specially assigned from time to time by the Attorney General." 28 CFR § 0.6. It would appear from the Government's brief that the Executive Assistant involved in this case served as Executive Assistant to at least four Attorneys General.

[10] In debate on the Senate floor the day before Title III was adopted, Senator McClellan responded to an inquiry of Senator Lausche in the following matter:

"Mr. LAUSCHE. Does the bill as now written give absolute, unconditional power to stop searches or tapping, or to authorize tapping?

"Mr. MCCLELLAN. No. We have to go first to the Attorney General in the case of the Federal Government, and to the chief law enforcement officers of a State . . . .

"Mr. LAUSCHE. There is, then, a prohibition

against tapping unless the application is filed with the chief law enforcement official. He approves it and then the application is filed with the court, is that not correct?

"Mr. MCCLELLAN. The chief law enforcement officer, like the Attorney General of the United States, must authorize the application. . . . A prosecuting attorney or a U.S. district attorney cannot, on his own motion, do it. He has to get the authority from the Attorney General of the United States first to submit the application to the court." 114 Cong. Rec. 14469 (May 22, 1968).

During the same debate, Senator Long read from a report of the Association of the Bar of the City of New York, Committee on Federal Legislation, Committee on Civil Rights, "Proposed Legislation on Wiretapping and Eavesdropping after *Berger* v. *New York* and *Katz* v. *United States*," which commented on the application provisions of Title III in the following manner: "Who May Apply."

"The Blakey Bill provides that applications for wiretapping or eavesdropping orders may be made by only a limited number of persons. At the Federal level these are the Attorney General of the United States or an Assistant Attorney General and at the State level they are the State Attorney General or the principal prosecuting attorney of a political subdivision (such as a county or city District Attorney).

"We agree that responsibility should be focused on those public officials who will be principally accountable to the courts and the public for their actions. Police and investigative agencies should not have the power to make such application on their own. On the other hand, it seems anomalous to permit only very high Federal officials to apply, excluding such officials as United States Attorneys for entire States or districts like the Southern District of New York, while permitting county district attorneys with substantially less responsibiliy to make applications. . . .

"We also would seek to reduce the anomaly referred to above by providing that the Attorney General may delegate to the United States Attorneys the power to initiate applications." 114 Cong. Rec. 14473–14474.

[11] The following comments concerning § 2516(2) are found in S. Rep. No. 1097, *supra*, at 98:

"Paragraph (2) provides that the principal prosecuting attorney of any State or the principal prosecuting attorney of any political subdivision of a State may authorize an application to a State judge of competent jurisdiction . . . for an order authorizing the interception of wire or oral communications. The issue of delegation by that officer would be a question of State law. In most States, the principal prosecuting attorney of the State would be the attorney general. The important question, however, is not name but function. The intent of the proposed provision is to provide for the centralization of policy relating to statewide law enforcement in the area of the use of electronic surveillance in the chief prosecuting officer of the State. . . . Where no such office exists, policymaking would not be possible on a statewide basis; it would have to move down to the next level of government. In most States, the principal prosecuting attorney at the next level of a State, usually the county, would be the district attorney, State's attorney, or a county solicitor. The intent . . . is to centralize areawide law enforcement in him. . . . Where there are both an attorney general and a district attorney, either could authorize applications, the attorney general anywhere in the State and the district attorney anywhere in his county. The proposed provision does not envision a further breakdown. Although city attorneys may have in some places limited criminal prosecuting jurisdiction, the proposed provision is not intended to include them."

[12] We also deem it clear that the authority must be exercised *before* the application is presented to a federal judge. The suggestion that it is acceptable practice under § 2516(1) for the Attorney General's Executive Assistant to approve wiretap applications in the Attorney General's absence if the Attorney General subsequently, after a court order has issued, ratifies the giving of approval in the particular instance, either directly or by personally approving the submission of a further application for an extension order, as in this case, is wide of the mark. As the Fifth Circuit Court of Appeals noted in the panel decision in *United States* v. *Robinson, supra*, n. 3, 468 F. 2d, at 193, the Attorney General's "authority from Congress was to initiate wiretap applications, not to seek to have those terminated he found should never have been requested in the first place." It would ill serve the congressional policy of having the Attorney General or one of his Assistants screening the applications prior to their submission to court to have the screening process occur after the application is made and after investigative officials have already begun to intercept wire or oral communications under a court order predicated on the assumption that proper authorization to apply for intercept authority had been given.

[13] No question is raised in this case concerning the manner of conducting the court-approved interceptions of Giordano's telephone and thus § 2518(10)(a)(iii) is inapplicable to the present situation.

[14] The Court of Appeals also held that suppression was required under subdivision (ii) on the theory that the absence of any valid authorization of the wiretap application was the equivalent of failing to identify at all in the interception order the person who authorized the application, rendering the order "insufficient on its face." Manifestly, however, the order, on its face, clearly, though erroneously, identified Assistant Attorney General Wilson as the Justice Department officer authorizing the application, pursuant to special designation by the Attorney General. As it stood, the intercept order was facially sufficient under § 2516(1), and despite what was subsequently discovered, the Court of Appeals was in error in justifying suppression under § 2518(10)(a)(ii).

[15] The Government suggested at oral argument that, in addition to constitutional violations, willful statutory violations might also fit within the terms of § 2518(10)(a)(i). Tr. of Oral Arg. 33.

[16] The draft statute prepared by Professor Blakey provided this fourth ground warranting suppression in cases where there was no probable cause for believing the existence of the grounds on which the interception order was issued. Task Force Report: Organized Crime, *supra*, n. 7, at 111, § 3803(k)(1)(C). So did the McClellan bill, S. 675, which was introduced prior to *Berger* v. *New York*, 388 U.S. 41 (1967). Hearings on Controlling Crime Through More Effective Law Enforcement, *supra*, n. 7, at 78, § 8(g)(3). But the bill proposed by Senator Hruska after *Berger* (S. 2050) omitted this ground in a provision the language of which is identical to § 2518(10)(a) as finally enacted. *Id.*, at 1008, § 2518(k)(1). An explanation for the omission is provided in an appendix comparing S. 675 with S. 2050, which was published by Senator Scott, a cosponsor of the latter bill, in an article in the Howard Law Journal, and which was reprinted in Senator Scott's remarks on the Senate floor concerning the Omnibus Crime Control and Safe Streets Act of 1968. 114 Cong. Rec. 13211 (May 14, 1968). It is there simply stated that "Senator Hruska's man says that the probable cause test is implied in (1)."

[17] In relevant part S. Rep. No. 1097, *supra*, at 96, 106, provides:

"Section 2515 of the new chapter imposes an evidentiary sanction to compel compliance with the other prohibitions of the chapter . . . The provision must, of course, be read in light of section 2518(10)(a) discussed below, which defines the class entitled to make a motion to suppress. It largely reflects existing law. It applies to suppress evidence directly (*Nardone* v. *United States*, 302 U.S. 379 (1937)) or indirectly obtained in violation of the chapter. (*Nardone* v. *United States*, 308 U.S. 338 (1939).) There is, however, no intention to change the attenuation rule. . . . Nor generally to press the scope of the suppression role beyond present search and seizure law. . . . But it does apply across the board in both Federal and State proceeding[s]. . . . And it is not limited to criminal proceedings. Such a suppression rule is necessary and proper to protect privacy. . . . The provision thus forms an integral part of the system of limitations designed to protect privacy. Along with the criminal and civil remedies, it should serve to guarantee that the standards of the new chapter will sharply curtail the unlawful interception of wire and oral communications.

"[Section 2518(10)(a)] must be read in connection with sections 2515 and 2517, discussed above, which it limits. It provides the remedy for the right created by section 2515. [Except for its inapplicability to grand jury proceedings and an absence of intent to grant jurisdiction to federal courts over Congress,] [o]therwise, the scope of the provision is intended to be comprehensive."

[18] We find without substance the Government's suggestion that since 18 U. S. C. § 2511(1)(c) makes criminal the "willful" disclosure of the contents of an intercepted communication, "knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection," and § 2515 ties the propriety of suppression of evidence to the impropriety of its "disclosure," to hold that statutory violations committed in the Justice Department's internal approval and submission procedures with respect to wiretap applications precludes disclosure in court would be to attribute to Congress an intent to impose substantial criminal penalties for "every defect in processing applications." Brief, p. 38. Apart from the fact that a majority of the Court in *United States* v. *Chavez*, *post*, p. —, has concluded that not every defect will warrant suppression, it is evident that § 2511 does not impose criminal liability unless disclosure is "willful" and unless the information was known to have been obtained in violation of § 2511(1). Clearly, the circumstances under which suppression of evidence would be required are not necessarily the same as those under which a criminal violation of Title III would be found.

[19] We are also of the view that the evidence obtained from the extended authorizations of October 23 and November 6 for the installation and use of the pen register device on Giordano's telephone was inadmissible because derived from the invalid wire interception that began on October 16. See n. 2, *supra*. The application for the October 23 extension attached the logs of telephone conversations monitored under the October 16 order and asserted that these logs revealed the "continued use of the telephone . . . for conversations regarding illegal trafficking in narcotics." App. 55. In these circumstances, it appears to us that the illegally monitored conversations should be considered a critical element in extending the pen register authority. We have been furnished with nothing to indicate that the pen register extension of November 6 should be accorded any different treatment.

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Mr. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST join, concurring in part and dissenting in part.

I agree with the majority that the authorization by the Executive Assistant to the Attorney General of the application for the October 16 interception order contravened 18 U.S.C. § 2516(1) and that the statutory remedy is suppression of all evidence derived from interceptions made under that order. I therefore join Parts I, II, and III of the opinion of the Court. For the reasons stated below, however, I dissent from the Court's conclusion, stated in Part IV of its opinion, that evidence obtained under the two "pen register"[1] extension orders and under the November 6 extension of the interception order must also be suppressed.

These are the pertinent facts. On October 8, 1970, the Chief Judge of the United States District Court for the District of Maryland authorized the use of a pen register device to monitor and record for a 14-day period all numbers dialed from a telephone listed to respondent Giordano. There is no dispute that the pen register order was based on probable cause and was therefore lawful under the Fourth Amendment. On October 16, 1970, the District Court issued an order authorizing the interception of wire communications to and from Giordano's telephone for a period not to exceed 21 days. There is likewise no dispute that the wiretap order was based on probable cause. The defect in the application for this order was not the strength of the Government's showing on the merits of its request but the authorization of the application by the Executive Assistant to the Attorney General rather than by one of the officials specifically designated in 18 U.S.C. § 2516(1). As a result of this procedural irregularity both the contents of communications intercepted under the October 16 wiretap order and any "evidence derived therefrom" must be suppressed. 18 U.S.C. §§ 2515 and 2518(10)(a).

The authorization for use of the pen register device was extended by orders dated October 22 and November 6, 1970. On the latter date the District Court also extended the intercept authority for a maximum additional period of 15 days. All three extension orders were based in part, *but only in part*, on evidence obtained under the invalid wiretap order of October 16. The wiretap extension order, unlike the original intercept order, was not marred by the defect of improper authorization.

The Government contends that, putting aside all evidence derived from the invalid original wiretap order, the independent and untainted evidence submitted to the District Court constituted probable cause for issuance of both pen register extension orders and the wiretap extension order, and in the latter case also satisfied the additional requirements imposed by 18 U.S.C. § 2518(3).[2] Preoccupied with the larger issues in the case, the District Court summarily dismissed this contention insofar as it related to the pen register extension orders:

"The subsequent extension orders are not supported by sufficient showings of probable cause, however, for the reason that information was used to obtain those extension orders from a Title III wiretap which, for reasons appearing later in this opinion, was defective. The 'fruit of the poisonous tree' doctrine requires suppression of all pen register information obtained under the subsequent orders. *Nardone* v. *United States*, 308 U.S. 338, 60 S. Ct. 266, 84 L. Ed. 307 (1939); 18 U.S.C. § 2518 (10) (a)." 340 F. Supp. 1033, 1041 (Md. 1972).

The Court of Appeals did not mention the point. 469 F. 2d 522 (CA4 1972).

With respect to the wiretap extension, neither the District Court nor the Court of Appeals addressed the Government's contention that communications intercepted under the extension were not derivatively tainted by the improper authorization defect in the original wiretap order, and neither court made any finding on this contention. The District Court simply found the wiretap extension order invalid on a different ground applicable both to the extension and to the original order. Specifically, the court concluded that the original wiretap order was unlawful because the application for it misidentified the approving officer and therefore failed to comply strictly with the provisions of 18 U.S.C. §§ 2518(1)(a) and (4)(d). The misidentification problem occurred in the application for the wiretap extension. The District Court held the extension order invalid on that basis alone and ordered the evidence pursuant thereto suppressed for that reason.[3] The Court of Appeals affrmed on a different ground entirely. It held the original order invalid because the application for it had been approved by the Executive Assistant to the Attorney General rather than by one of the officials designated in 18 U.S.C. § 2516(1). The defect of improper authorization, unlike the misidentification problem, arose *only* in connection with the original wiretap order. Perhaps through simple oversight, the Court of Appeals failed to consider the fate of the evidence obtained under the extension. Thus neither of the lower courts ruled on the derivative evidence question.

Today we affirm the suppression of evidence obtained under the original wiretap order for the same reason adopted by the Court of Appeals—the defect of improper authorization. As noted above, this defect did not occur in the application for the wiretap extension order. Today we also hold that misidentification of the approving authority does not render inadmissible evidence obtained pursuant to a resulting interception order. *United States* v. *Chavez*, *post*. This decision removes the sole basis advanced by the District Court for suppressing the telephone conversations intercepted under the wiretap extension order and requires us to consider whether that evidence should be suppressed by reason of the improper authorization of the application for the original order. In doing so it is important to note that we are the first court to consider this aspect of the case.

The majority holds that the invalidity of the original wiretap order requires suppression of all evidence obtained under the three extension orders. In my view the application to this case of well-established principles, principles developed by the courts to effectuate constitutional guarantees and adopted by Congress to effectuate the statutory guarantees of Title III, demonstrates that the majority's conclusion is error. As will appear, the same analysis governs all three extension orders, but it may clarify my position to deal with the two pen register extension orders in Part I, below, and to reserve discussion of the November 6 extension of the wiretap for Part II.

I

The installation of a pen register device to monitor and record the numbers dialed from a particular telephone line is not governed by Title III. This was the conclusion of the District Court in the instant case and of the courts in *United States* v. *King*, 335 F. Supp. 523, 548–549 (SD Calif. 1971), and in *United States* v. *Vega*, 52 F. R. D. 503 (EDNY 1971). This conclusion rests on the fact that the device does not hear sound and therefore does not accomplish any "interception" of wire communications as that term is defined by 18 U. S. C. § 2510 (4)—"the *aural* acquisition of the *contents* of any wire or oral communication through the use of any electronic, mechanical, or other device" (emphasis added). Any doubt of the correctness of this interpretation is allayed by reference to the legislative history of Title III. The Report of the Senate Committee on the Judiciary in discussing the scope of the statute explicitly states "[t]he use of a 'pen register' for example, would be permissible." S. Rep. No. 1097, 90th Cong., 2d Sess., at 90 (1968).

Because a pen register device is not subject to the provisions of Title III, the permissibility of its use by law enforcement authorities depends entirely on compliance with the constitutional requirements of the Fourth Amendment.[4] In this case the Government secured a court order, the equivalent for this purpose of a search warrant, for each of the two extensions of its authorization to use a pen register. The District Court seemed to assume that because these extension orders were based in part on tainted evidence, information obtained pursuant thereto must necessarily be suppresed under the "fruit of the poisonous tree" doctrine, 340 F. Supp., at 1041. That is not the law.

The District Court relied on *Nardone* v. *United States*, 308 U.S. 338 (1939). In that decision the court held that a statutory prohibition of unlawfully obtained evidence encompassed derivative evidence as well. But the Court also reaffirmed that the connection between unlawful activity and evidence offered at trial may become "so attenuated as to dissipate the taint," *id.*, at 341, and that facts improperly obtained may nevertheless be proved if knowledge of them is based on an independent source. *Ibid.* In its constitutional aspect, the principle is illustrated by *Wong Sun* v. *United States*, 371 U.S. 471 (1963). It is, in essence, that the derivative taint of illegal activity does not extend to the ends of the earth but only until it is dissipated by an intervening event. Of course, the presence of an independent source would always suffice.

The independent source rule has as much vitality in the context of a search warrant as in any other. Thus, for example, unlawfully discovered facts may serve as the basis for a valid search warrant if knowledge of them is obtained from an independent and lawful source. See, *e.g.*, *Anderson* v. *United States*, 344 F. 2d 792 (CA10 1965). The obvious and well-established corollary is that the inclusion in an affidavit of indisputably tainted allegations does not necessarily render the resulting warrant invalid. The ultimate inquiry on a motion to suppress evidence seized pursuant to a warrant is not whether the underlying affidavit contained allegations based on illegally obtained evidence, but whether, putting aside all tainted allegations, the independent and lawful information stated in the affidavit suffices to show probable cause. *James* v. *United States*, 135 U.S. App. D.C. 314, 315, 418 F. 2d 1150, 1151 (1969); *United States* v. *Sterling*, 369 F. 2d 799, 802 (CA3 1966); *United States* v. *Taggart*, 460 F. 2d 701, 703–704 (CA5 1972); *United States* v. *Koonce*, 485 F. 2d 374, 379 (CA8 1973); *Howell* v. *Cupp*, 427 F. 2d 36, 38 (CA9 1970); *Chin Kay* v. *United States*, 311 F. 2d 317, 321 (CA9 1962).[5] Judge Weinfield aptly stated the point in *United States* v. *Epstein*, 240 F. Supp. 80 (SDNY 1965):

"There is authority, and none to the contrary, that when a warrant issues upon an affidavit containing both proper and improper grounds, and the proper grounds—considered alone—are more than sufficient to support a finding of probable cause, inclusion of the improper grounds does not vitiate the entire affidavit and invalidate the warrant." *Id.*, at 82.

I know of no precedent holding to the contrary.[6]

The application of this principle to the pen register extension orders is clear beyond doubt. The original pen register order was based on a showing of probable cause made prior to, and therefore undeniably independent of, the invalid wiretap. The affidavit supporting the first extension of the pen register order incorporated the allegations contained in the affidavit submitted for the original order and provided the additional untainted information that Giordano had

Footnotes at end of article.

sold heroin to a narcotics agent on October 17, 1970. The affidavit for the second extension of the pen register order is not included in the record, but there is no reason to doubt that it made a similar incorporation by reference of the earlier, untainted allegations. I would hold the evidence obtained under the first pen register extension order admissible and remand the case for determination of whether evidence obtained under the second extension should be admitted as well.

The basis for the majority's conclusion to the contrary is far from apparent. In the final footnote to its opinion, the Court states that the evidence obtained under the defective original wiretap order "should be considered a critical element in extending the pen register authority fully incorporated the not suggest, however, that the original pen register order was based on anything less than probable cause. Nor does it deny that the affidavit supporting the extension of the pen register authority fully incoroprated the earlier untainted allegations. And, finally, the majority does not contradict the established principle that a warrant based on an affidavit containing tainted allegations may nevertheless be valid if the independent and lawful information stated in the affidavit shows probable cause. In light of these significant silences, the majority's bare assertion that the tainted evidence obtained under the original wiretap order was a "critical element" in the extension of the pen register authority is, to me, an unexplained conclusion—not a rationale.

II

Unlike the pen register extensions, the wiretap extension order of November 6 is governed by Title III. The provisions of that statute prescribe an elaborate procedure for the lawful interception of wire communications. To the extent that the statutory requirements for issuance of an intercept order are nonconstitutional in nature, the exclusionary rule adopted to effectuate the Fourth Amendment does not pertain to their violation. The statute, however, contains its own exclusionary rule, 18 U.S.C. § 2518(10)(a), and the scope of the suppression remedy is defined by 18 U.S.C. § 2515 to include derivative evidence:

"Whenever any wire or oral communication has been intercepted, no parts of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial . . . ."

The obvious and familiar model for the statutory ban on the use of derivative evidence was the constitutional doctrine of the "fruit of the poisonous tree," and the legislative history confirms that Congress intended the phrase "no evidence derived therefrom to incorporate that doctrine and render it applicable to certain statutory violations of nonconstitutional dimensions. The Senate Report makes the point explicitly:

"[Section 2515] largely reflects existing law. It applies to suppress evidence directly (*Nardone* v. *United States*, 302 U.S. 379 (1937)), or indirectly obtained in violation of the chapter (*Nardone* v. *United States*, 308 U.S. 338 (1939)). There is, however, no intention to change the attenuation rule. See *Nardone* v. *United States*. 127 F. 2d 521 (2d), cert. denied, 316 U.S. 698 (1942). *Wong Sun* v. *United States*, 371 U.S. 471, (1963)." S. Rept. No. 1097, 90th Cong., 2d Sess., p. 96.

Thus, although the validity of a wiretap order depends on the satisfaction of certain statutory conditions in addition to the constitutional requirement of probable cause, the principle developed in Part I of this opinion is fully applicable to the November 6 wiretap extension order. The question is not whether the application for that order relied in part on communications intercepted under the invalid original order but whether, putting aside that tainted evidence, the independent and lawful information stated in the supporting affidavit suffices to show both probable cause and satisfaction of the various additional requirements of Title III[7] *United States* v. *Iannelli*, 339 F. Supp. 171 (WD Pa. 1972); *United States* v. *Ceraso*, 335 F. Supp. 126 (MD Pa. 1973).

The application for the wiretap extension order was supported by the affidavit of a group supervisor from the Bureau of Narcotics and Dangerous Drugs. The same office had sworn to one of two affidavits submitted in support of the application for the original wiretap order. The other had been filed by a narcotics agent acting under his supervision and stated facts within their joint knowledge. In the affidavit for the extension order, the supervisor swore that he had reviewed both of the earlier affidavits, and he "reassert[ed] the facts, details, and conclusions contained in those affidavits." Appendix 66. Those allegations not only established probable cause to believe that Giordano was engaged in the illegal sale and distribution of narcotics on a fairly substantial scale, 18 U.S.C. § 2518(3)(a); they also satisfied the additional statutory criteria for issuance of an intercept order. They showed, for example, that Giordano had made numerous telephone calls to numbers listed to well-known narcotics violators and hence that there was probable cause to believe that communications concerning the illegal drug traffic were taking place on Giordano's telephone line. See 18 U.S.C. § 2518(3) (b) and (d). The affidavits also established the inadequacy of alternative investigative means and demonstrated that without a wiretap of Giorando's telephone the narcotics agents would be unable to discover his source of supply or method of distribution. See 18 U.S.C. § 2518(3)(c). All this was shown on the basis of wholly untained evidence incorporated and reaffirmed in the affidavit supporting the Government's request for the wiretap extension order.

The affidavit also provided additional untainted information to support the application for the extension order. It set forth, for example, the circumstances of Giordano's sale of $3,800 worth of heroin to an undercover agent on the day following issuance of the original wiretap order. Moreover, it recounted in great detail highly suspicious conduct observed by federal agents keeping Giordano under physical surveillance.[8] Like the allegations incorporated by reference from the earlier affidavits, this additional untainted information was relevant both to the constitutional requirement of probable cause and to the various statutory criteria for issuance of an intercept order. 18 U.S.C. § 2518(3).

In light of the substantiality and detail of the untainted allegations offered in support of the application for the wiretap extension order, I find no basis for the majority's rather summary conclusion that the communications intercepted under that extension order were derivatively tainted by the improper authorization of the application for the original wiretap order. Because neither the District Court nor the Court of Appeals has considered this question, I would remand the case with instructions that the issue be settled in accord with the principles set forth in this opinion.

FOOTNOTES

[1] A pen register is a mechanical device attached to a given telephone line and usually installed at a central telephone facility. It records on a paper tape all numbers dialed from that line. It does not identify the telephone numbers from which incoming calls originated, nor does it reveal whether any call, either incoming or outgoing, was completed. Its use does not involve any monitoring of telephone conversations. The mechanical complexities of a pen register are explicated in the opinion of the District Court. 340 F. Supp. 1033, 1038–1041 (Md. 1972).

[2] Under 18 U.S.C. § 2518(3), the court is required to make the following determinations:

"(a) there is probable cause for belief than an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

"(b) there is probable cause for belief that particular communications concerning that offense will be obtained through that interception;

"(c) normal investigative procedures have been tried or have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

"(d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person."

[3] Immediately after stating its conclusion that the misidentification problem suppression, the District Court made its sole reference to the November 6 extension order:

"The application and order relating to the extension of the wiretap are defective for the same reasons as the original application and order." *Id.*, at 1060.

Plainly, this reference to the "same reasons" concerns the failure to comply literally with § 2518(1)(a) and (4)(d) identification requirements and has nothing to do with any derivative evidence rule.

[4] The Government suggests that the use of a pen register may not constitute a search within the meaning of the Fourth Amendment. I need not address this question, for in my view the constitutional guarantee, assuming its applicability, was satisfied in this case.

[5] All of the cases cited are directly on point. There are a few additional decisions that indirectly support the general proposition stated above. *United States* v. *Cantor*, 470 F. 2d 890 (CA 1972), involved a defendant's claim that the Government violated his Fourth Amendment rights by refusing to disclose to him certain evidence that had been used to establish probable cause for issuance of a warrant. The court rejected that claim on the ground that there was adequate independent justification to find probable cause. *Id.*, at 893. The cases of *United States* v. *Jones*, 435 F. 2d 723 (CA5 1973), and *United States* v. *Upshaw*, 448 F. 2d 657 (CA5 1973), stand for the proposition that the validity of a search warrant based in part on erroneous statement is determined by evaluating the sufficiency of the other allegations. Finally, *United States* v. *Lucarz*, 430 F. 2d 1057 (CA9 1970), involved a search warrant based on an affidavit containing two paragraphs that invited the magistrate to find probable cause by drawing a negative inference from the defendant's exercise of his constitutional right to the assistance of counsel. The court held the validity of the warrant was to be determined on the basis of the other allegation in the affidavit.

[6] In fact, there are only two cases lending even colorable support to a contrary view. Both are from the Sixth Circuit, and neither can be said to contradict the general proposition stated above. In *United States* v. *Langley*, 466 F. 2d 27 (CA6 1972), the court considered the validity of a warrant issued on the basis of information obtained in a previous warrantless search. The court held the prior search valid in large part and affirmed the validity of the warrant for the second search despite the inclusion in the affidavit of allegations based on the unlawful aspects

of the first search. Although the case therefore illustrates the principle stated above, the court added the following comment: "It must be emphasized that where such tainted information comprises more than a *very minor portion* of that found in an affidavit supporting a warrant to search, the warrant must be held invalid." *Id.*, at 35 (emphasis original). The other case is *United States* v. *Nelson*, 459 F. 2d 884 (CA6 1972), where the affidavit for a search warrant relied on information derived from two prior warrantless searches. Although the court suggested several reasons for suppressing the evidence seized pursuant to the warrant, the principal basis seems to have been the finding that the untainted allegations did not constitute probable cause. Thus neither case contradicts the decisions of the District of Columbia, Third, Fifth, Eighth, and Ninth Circuits cited in the text.

[7] The majority seems to believe that this principle, while fully applicable to original wire tap orders is wholly inapplicable to extension orders. This, at least, is the most reasonable construction of the majority's discussion of § 2518(1)(e) and (f). *Ante*, at 25–27. Those provisions require that an application for an extension order include "a full and complete statement of the facts concerning all previous applications" and "a statement setting forth the results thus far obtained from the interception . . . ." According to the majority, the fact that law enforcement authorities complied with § 2518(1)(e) and (f) by including in the application for the extension order information regarding the earlier wire tap necessarily and automatically rendered the extension order invalid, *regardless* of whether the independent and untainted information in the application for the extension satisfied the requirements of the Fourth Amendment * * *.

With all respect, I find this a baffling interpretation of the statute. Basically there is nothing in the language or history of § 2518(1)(e) that suggests that Congress intended these provisions to except all extension orders from the independent source doctrine. Nor is there any suggestion in the language or history of § 2515, which is the statutory analogue to the constitutional doctrine of the fruit of the poisonous tree, that Congress intended to distinguish between original wiretap orders and extension orders in determining the extent of the suppression remedy. Finally, there is nothing in logic to indicate why Congress would have wanted to make such a distinction, and there is no basis in reason to suppose that Congress, if it had intended such a result, would have failed to leave any evidence of that intent.

[8] The detailed information lawfully obtained through surveillance and undercover work was aptly summarized in paragraph 77 of the affidavit supporting the extension order:

"Giordano exhibits the characteristics of a high-level narcotics trafficker—extreme caution. When travelling, he continually uses various counter-surveillance techniques. In his transactions, he limits his contacts to a small number of trusted individuals." App., et. 81.

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UNITED STATES, PETITIONER, v. UMBERTO JOSE CHAVEZ ET AL.

[No. 72–1319—On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.—May 13, 1974]

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACKMUN, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed an opinion concurring in part and dissenting in part, in which BRENNAN, STEWART, and MARSHALL, JJ., joined.

Mr. JUSTICE WHITE delivered the opinion of the Court.

This case, like *United States* v. *Giordano*, *ante*, p. —, concerns the validity of procedures followed by the Justice Department in obtaining judicial approval to intercept wire communications under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 197, 211–225, 18 U.S.C. §§ 2510–2520, and the propriety of suppressing evidence gathered from court-authorized wiretaps where the statutory application procedures have not been fully satisfied. As is more fully described in *Giordano*, Title III limits who, among federal officials, may approve submission of a wiretap application to the appropriate District Court, to the Attorney General or an Assistant Attorney General he specially designates, 18 U.S.C. § 2516(1), and delineates the information each application must contain, upon what findings an interception order may be granted, and what the order shall specify, 18 U.S.C. § 2518(1), (3), (4).[1] Within this general framework, two statutory requirements are of particular relevance to this case. Section 2518(1)(a) provides that each application for a court order authorizing or approving the interception of a wire or oral communication shall include, among other information, "the identity of the . . . officer authorizing the application." Similarly, § 2518(4)(d) provides that the order of authorization or approval itself shall specify, in part, "the identity of . . . the person authorizing the application." The specific question for adjudication here, which it was unnecessary to resolve in *Giordano*, is whether, when the Attorney General has in fact authorized the application to be made, but the application and the court order incorrectly identify an Assistant Attorney General as the authorizing official, evidence obtained under the order must be suppressed. We hold that Title III does not mandate suppression under these circumstances.

Respondents were all indicted for conspiracy to import and distribute heroin in violation of 21 U.S.C. §§ 173, 174. In addition, respondent Umberto Chavez was separately charged under 18 U.S.C. § 1952 with using and causing others to use a telephone between California and Mexico, and performing other acts, in order to facilitate unlawful narcotics activity, and respondent James Fernandez was charged under § 1952 with traveling between California and Mexico, and performing other acts, for the same purpose. Upon notification that the Government intended to introduce evidence obtained from wiretaps of Chavez' and Fernandez' phones at trial, respondents filed motions to suppress, challenging the legality of the Justice Department's application procedures leading to the issuance by the District Court of the two orders permitting the wire interceptions. Affidavits filed in opposition by the former Attorney General and his Executive Assistant represented that the application submitted for the February 18, 1971 order authorizing interception of wire communications to and from the Chavez phone had been personally approved by the Attorney General, whereas the application for the February 25, 1971 order to intercept communications to and from the Fernandez phone had been approved by his Executive Assistant at a time when the Attorney General was unavailable, and pursuant to an understanding that the Executive Assistant applying the Attorney General's standards as he understood them, could act for the Attorney General in such circumstances.

Each application to the court had recited, however, that the Attorney General, pursuant to 18 U.S.C. § 2516, had "specially designated" the Assistant Attorney General for the Criminal Division, Will Wilson, "to authorize [the applicant attorney] to make this application for an Order authorizing the interception of wire communications." Moreover, appended to each application was a form letter, addressed to the attorney making the application and purportedly signed by Will Wilson, stating that the signator had reviewed the attorney's request for authorization to apply for a wiretap order pursuant to 18 U.S.C. § 2518 and had made the requisite probable cause and other statutory determinations from the "facts and circumstances detailed" in the request, and that "you are hereby authorized under the power especially delegated to me in this proceeding by the Attorney General . . . , pursuant to the power conferred on him by Section 2516 . . . to make application" for a wire interception order. Correspondingly, the District Court's intercept order in each case declared that court approval was given "pursuant to the application authorized by . . . Will Wilson, who has been specially designated in this proceeding by the Attorney General . . . John N. Mitchell, to exercise the powers conferred on the Attorney General" by § 2516.

The discrepancy between who had actually authorized the respective applications to be made, and the information transmitted to the District Court clearly indicating that Assistant Attorney General Wilson was the authorizing official, was explained as the result of a standard procedure followed within the Justice Department. While the Attorney General had apparently refrained from designating any Assistant Attorney General to exercise the authorization power under § 2516(1), form memoranda were routinely sent from his office, over his initials, to Assistant Attorney General Wilson, stating that "with regard to your recommendation that authorization be given" to make application for a court order permitting wire interception, "you are hereby specially designated" to exercise the power conferred on the Attorney General by § 2516 "for the purpose of authorizing" the applicant attorney to apply for a wiretap order. Evidently, this form was intended to reflect notice of approval by the Attorney General, though on its face it suggested that the decision whether to authorize the particular wiretap application would be made by Assistant Attorney General Wilson. In fact, as revealed by the affidavits of Wilson's then Deputy Assistants filed in opposition to respondents suppression motions, "Wilson did not examine the files or expressly authorize the applications" for either the February 18 or February 25 interception orders, and they signed his name "in accordance with [his] authorization . . . and the standard procedures of the Criminal Division" to the respective letters of authorization to the applicant attorney, which were made exhibits to the applications. The signing of Wilson's name was regarded as a "ministerial act" because of Wilson's authorization to his Deputies "to sign his name to and dispatch such a letter of authorization in every instance in which the request had been favorably acted upon in the Office of the Attorney General."

The District Court held that the evidence secured through both wiretaps had to be suppressed for failure of either of the individuals who actually authorized the applications to be "identified to Chief Judge Carter, Congress or the public" in the application or orders, as mandated by §§ 2518, (1)(a) and (4)(d), respectively. Moreover, evidence obtained under the February 25 wiretap order on the Fernandez phone was separately suppressed, because the Government admitted that "neither the Attorney General nor a specially designated Assistant Attorney General ever authorized the application[,]" as § 2516(1) requires.

The Court of Appeals affirmed in all respects. 478 F. 2d 512. With respect to the Chavez tap, the Court of Appeals assumed,

Footnotes at end of article.

as had the District Court, that the Attorney General had personally approved the request for authority to apply for the interception order, as his affidavit stated. Nonetheless, the misidentification of Assistant Attorney General Wilson as the authorizing official was deemed to be a "misrepresentation" and an "apparently deliberate deception of the courts by the highest law officers in the land," *id.*, at 515, 517, which required suppression of evidence gathered from the tap for failure to comply with 18 U.S.C. §§ 2518 (1)(a) and (4)(d). Congress was held to have "intended to eliminate any possibility that the authorization of wiretap applications would be institutional decisions[.]" and the Court of Appeals was fearful that if the misidentification which occurred in this case were approved, "there would be nothing to prevent future Attorneys General from remaining silent, if a particular wiretap proved embarrassing." *Id.*, at 516.

We granted certiorari 412 U.S. 905, to resolve the conflict between the position taken by the Ninth Circuit in this case on the issue of suppression because of inaccurate identification of the officer authorizing the application and the position taken by every other circuit that has considered the question.[2] We agree with those other courts of appeals that misidentifying the Assistant Attorney General as the official authorizing the wiretap application to be made does not require suppression of wiretap evidence when the Attorney General himself has actually given the approval; hence, we reverse that portion of the judgment suppressing the Chavez wiretap evidence, and remand for further proceedings to permit the District Court to address other challenges to the Chavez wiretap evidence which respondents had made but the District Court did not find it necessary to consider.[3] Because the application for the interception order on the Fernandez phone was authorized by the Attorney General's Executive Assistant, rather than by the Attorney General or any specially designated Assistant Attorney General, on whom alone 18 U.S.C. § 2516(1) confers such power, evidence secured under that order was properly suppressed for the reasons stated in the opinion filed today in *United States* v. *Giordano, ante,* p. —. Accordingly, that portion of the judgment suppressing the Fernandez wiretap evidence is affirmed.

II

The application and order for the Chavez wiretap did not correctly identify the individual authorizing the application, as 18 U.S.C. §§ 2518(1)(a) and (4)(d) require. Of this there is no doubt. But it does not follow that because of this deficiency in reporting, evidence obtained pursuant to the order may not be used at a trial of respondents. There is no claim of any constitutional infirmity arising from this defect, nor would there be any merit to such a claim, and we must look to the statutory scheme to determine if Congress has provided that suppression is required for this particular procedural error.

Section 2515 of the Act provides that the contents of any intercepted wire or oral communication, and any derivative evidence, may not be used at a criminal trial, or in certain other proceedings, "if the disclosure of that information would be in violation of this chapter." Aggrieved persons may move, in a timely manner under § 2518(10)(a), to suppress the use of such evidence at trial on the grounds that:

"(i) the communication was unlawfully intercepted;

"(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

"(iii) the interception was not made in conformity with the order of authorization or approval."

Footnotes at end of article.

In *United States* v. *Giordano, supra,* we have concluded that Congress, in 18 U.S.C. § 2516(1), made preliminary approval of submission of wiretap applications a central safeguard in preventing abuse of this means of investigative surveillance, and intentionally restricted the category of federal officials who could give such approval to only the Attorney General himself or any Assistant Attorney General he might specially designate for that purpose. Hence, failure to secure approval of one of these specified individuals prior to making application for judicial authority to wiretap renders the court authority invalid and the interception of communications pursuant to that authority "unlawful" within the meaning of 18 U.S.C. § 2518(10)(a)(i). Failure to correctly report the identity of the person authorizing the application, however, when in fact the Attorney General has given the required preliminary approval to submit the application, does not represent a similar failure to follow Title III's precautions against the unwarranted use of wiretapping or electronic surveillance and does not warrant the suppression of evidence gathered pursuant to a court order resting upon the application.

There is little question that §§ 2518 (1)(a) and (4)(d) were intended to make clear who bore the responsibility for approval of the submission of a particular wiretap application. Thus, the Senate Report accompanying the favorable recommendation of Title III states that § 2518(1)(a) "requires the identity of the person who makes, and the person who authorized the application[,] to be set out. This fixes responsibility." S. Rep. No. 1097, 90th Cong., 2d Sess., 101 (1968). And § 2518(4)(d) "requires that the order note the agency authorized to make the interception and the person who authorized the application so that responsibility will be fixed." *Id.*, at 103. Where it is established that responsibility for approval of the application is fixed in the Attorney General, however, compliance with the screening requirements of Title III is assured, and there is no justification for suppression.

Respondents suggest that the misidentification of Assistant Attorney General Wilson as the authorizing official was calculated to mislead the District Court in considering the wire interception applications, and certainly had the effect of misleading him, since the interception order also misidentified the authorizing official in reliance on the statements made in the application. We do not perceive any purpose to be served by deliberate misrepresentation by the Government in these circumstances. To the contrary, we think it cannot be seriously contended that had the Attorney General been identified as the person authorizing the application, rather than his subordinate, Assistant Attorney General Wilson, the district judge would have had any greater hesitation in issuing the interception order. The same could not be said, of course, if, as in *Giordano,* the correct information had revealed that none of the individuals in whom Congress reposed the responsibility for authorizing interception applications had satisfied this preliminary step. The District Court undoubtedly thought that Wilson had approved the Chavez and Fernandez wiretap applications, and we do not condone the Justice Department's failure to comply in full with the reporting procedures Congress has established to assure that its more substantive safeguards are followed.[4] But we cannot say that misidentification was in any sense the omission of a requirement that must be satisfied if wiretapping or electronic surveillance is to be lawful under Title III.

Neither the District Court nor the Court of Appeals made clear which of the grounds set forth in § 2518 (10)(a) was relied upon to suppress the Chavez wiretap evidence. Respondents rely on each of the first two grounds, *i.e.,* that the communications were "unlawfully intercepted" and that the Chavez interception order is "insufficient on its face." Support for the latter claim is drawn from the District Court decision in *United States* v. *Focarile,* 340 F. Supp. 1033, 1057–1060 (Md.), aff'd on other grounds *sub nom. United States* v. *Giordano,* 469 F. 2d 522 (CA4 1972), aff'd, *ante,* p.—(1974), which concluded that an order incorrectly identifying who authorized the application is equivalent to an order failing to identify anyone at all as the authorizing official. We find neither of these contentions persuasive.

Here, the interception order clearly identified "on its face" Assistant Attorney General Wilson as the person who authorized the application to be made. Under § 2516(1), he properly could give such approval had he been specially designated to do so by the Attorney General, as the order recited. That this has subsequently been shown to be incorrect does not detract from the facial sufficiency of the order.[5] Moreover, even if we were to look behind the order despite the clear "on its face" language of § 2518(10)(a)(ii), it appears that the Attorney General authorized the application, as he also had the power to do under § 2516(1). In no realistic sense, therefore, can it be said that the order failed to identify an authorizing official who possessed statutory power to approve the making of the application.

The claim that communications to and from the Chavez phone were "unlawfully intercepted" is more plausible, but does not persuade us, given the purposes to be served by the identification requirements and their place in the statutory scheme of regulation. Though we rejected, in *Giordano,* the Government's claim that Congress intended "unlawfully intercepted" communications to mean only those intercepted in violation of constitutional requirements, we did not go so far as to suggest that every failure to comply fully with any requirement provided in Title III would render the interception of wire or oral communications "unlawful." To establish such a rule would be at odds with the statute itself. Under § 2515, suppression is not mandated for every violation of Title III, but only if "disclosure" of the contents of intercepted communications, or derivative evidence, would be in violation of Title III. Moreover, as we suggested in *Giordano,* it is apparent from the scheme of the section that paragraph (i) was not intended to reach every failure to follow statutory procedures, else paragraphs (ii) and (iii) would be drained of meaning. *Giordano* holds that paragraph (i) does include any "failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." *Ante,* p. —.

In the present case, the misidentification of the officer authorizing the wiretap application did not affect the fulfillment of any of the reviewing or approval functions required by Congress and is not within the reach of paragraphs (ii) and (iii). Requiring identification of the authorizing official in the application facilitates the court's ability to conclude that the application has been properly approved under § 2516; requiring identification in the court's order also serves to "fix responsibility" for the source of preliminary approval. This information contained in the application and order further aids the judge in making reports required under 18 U.S.C. § 2519.[6] That section requires the judge who issues or denies an interception order to report his action and certain information about the application, including the "identity of . . . the person authorizing the application," within 30 days, to the Administrative Office of the United States Courts, § 2519(1). An annual report of the

authorizing officials designated in § 2516 must also be filed with that body, and is to contain the same information with respect to each application made as is required of the issuing or denying judge, § 2519(2)(a). Finally, a summary of the information filed by the judges acting on applications and the prosecutors approving their submission is to be filed with Congress in April of each year by the Administrative Office, § 2519(3). The purpose of these reports is "to form the basis for a public evaluation" of the operation of Title III and to "assure the community that the system of court-order [sic] electronic surveillance . . . is properly administered . . . ." S. Rep. No. 1097, 90th Cong., 2d Sess., at 107. While adherence to the identification reporting requirements of §§ 2518(1)(a) and (4)(d) thus can simplify the assurance that those who Title III makes responsible for determining when and how wiretapping and electronic surveillance should be conducted have fulfilled their roles in each case, they do not establish a substantive role to be played in the regulatory system.

Nor is there any legislative history concerning these sections, as there is, for example, concerning § 2516(1), see *United States* v. *Giordano, supra,* at ——, to suggest that they were meant, by themselves, to occupy a central, or even functional, role in guarding against unwarranted use of wiretapping or electronic surveillance. Though legislation to regulate the interception of wire and oral communications had been considered by Congress earlier, the proposed statute drafted for the President's Commission on Law Enforcement and Administration of Justice appears to have been the first published proposal to contain a requirement that the application for interception authority should specify "who authorized the application." Task Force Report: Organized Crime, Appendix C. at 109, § 3803(a)(1) (1967). That proposed bill, which was substantially followed in Title III, also provided for reports like those now required by 18 U.S.C. § 2519, including information on "the identity of . . . who authorized the application." *Id.,* at 111, §§ 3804(a)(6) and (b)(1). It did not, however, require the order to contain this information. *Id.,* at 110, § 3803(e). S. 675, a bill introduced by Senator McClellan on January 25, 1967, as the "Federal Wire Interception Act," 113 Cong. Rec. 1491, did not contain any of these identification requirements. Hearings before the Subcomm. on Criminal Laws and Procedures of the S. Comm. on the Judiciary. Controlling Crime Through More Effective Law Enforcement, 90th Cong., 1st Sess., March 7, 8, 9; April 18, 19, 20; May 9; July 10, 11, 12, 1967, at 77–78, §§ 8(a), (d), 8(a). S. 2050, however, a proposal by Senator Hruska to regulate both wiretapping and electronic surveillance, did. Section 2518(a)(1) required an interception application to include "the identity of the person who authorized the application," and §§ 2519(a)(6) and (b)(1) provided that judges and authorizing prosecutors report "the identity of . . . who authorized the application," but did not require that the order contain this information, § 2518(e). *Id.,* at 1006–1008. The requirement that this information be contained in the order, as well as in the application and required reports, first appeared in § 2518(e)(4) of H.R. 13482, 90th Cong., 2d Sess. (1967). Though the House never reported out of committee any wiretapping bill, it was retained in S. 917, a combination of S. 675 and S. 2050, whose provisions ultimately were enacted as Title III. Despite the appearance and modification of the identification requirements during the legislative process, however, no real debate surrounded their adoption, and only the statements in S. Rep. No. 1097, *supra,* that they were designed to fix responsibility, give any indication of their purpose in the overall scheme of Title III. No role more significant than a reporting function designed to establish on paper that one of the major procedural protections of Title III had been properly accomplished is apparent.

When it is clearly established, therefore, that authorization of submission of a wiretap or electronic surveillance application has been given by the Attorney General himself, but the application, and, as a result, the interception order, incorrectly state that approval has instead been given by a specially designated Assistant Attorney General, the misidentification, by itself, will not render interceptions conducted under the order "unlawful" within the meaning of § 2518 (10)(a)(i) or the disclosure of the contents of intercepted communications, or derivative evidence, otherwise "in violation of" Title III within the meaning of § 2515. Hence, the suppression of the Chavez wiretap evidence on the basis of the misidentification of Assistant Attorney General Wilson as the authorizing official was in error. Though we deem this result to be the correct one under the suppression provisions of Title III, we also deem it appropriate to suggest that strict adherence by the Government to the provisions of Title III would nonetheless be more in keeping with the responsibilities Congress has imposed upon it when authority to engage in wiretapping or electronic surveillance is sought.

The judgment of the Court of Appeals is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

*It is so ordered.*

FOOTNOTES

[1] The relevant statutory provisions are set forth in the Appendix to *United States* v. *Giordano, supra.*

[2] In other instances where the Attorney General had personally authorized the application, but the application and order erroneously recited approval by Assistant Attorney General Wilson, suppression of wiretap evidence has been denied on the ground of substantial compliance with Title III requirements. *United States* v. *James,* —— U.S. App. D.C. ——, —— F. 2d —— (1974) (Slip op., at 15–16) ("immaterial variance"); *United States* v. *Pisacano,* 459 F. 2d 259, 264 n. 5 (CA2 1972) ("discrepancy did not meaningfully subvert the congressional scheme"); *United States* v. *Becker,* 461 F. 2d 230, 235 (CA2 1972) ("harmless error"); *United States* v. *Ceraso,* 467 F. 2d 647, 652 (CA3 1972) ("subsequent identification of the authorizing officer is satisfactory"), *United States* v. *Bobo,* 477 F. 2d 974, 985 (CA4 1973) ("sufficient compliance"), *United States* v. *Cox,* 462 F. 2d 1293, 1300 (CA8 1972) ("it is irrelevant that the application and order recited the authorizing officer as Mr. Wilson rather than Mr. Mitchell"). See also *United States* v. *Roberts,* 477 F. 2d 57, 59 (CA7 1973), holding the authorization improper because given by the Executive Assistant, not the Attorney General, but suggesting that with respect to the misidentification of Assistant Attorney General Wilson "we would not be inclined to elevate form over substance to find a violation of 18 U.S.C. § 2518(1)(a) and (4)(d). . . ."

[3] The record discloses that respondents also based their motions to suppress the Chavez wiretap evidence on the failure of the Government's affidavits in support of the wiretap application to demonstrate a need for wiretapping as opposed to less intrusive means of investigation, 18 U.S.C. § 2518 (1)(c), to particularly describe the communications sought to be intercepted, § 2518 (1)(b)(iii), to allege facts sufficient to justify the uncertainty of the termination date for the interception, § 2518(1)(d), or to adequately show probable cause to support the order, § 2518(3); moreover, the sufficiency of the order's directive to minimize the interception of innocent conversations and compliance by the agents who conducted the wiretap with the order of minimization, § 2518(5), were also challenged. R. 159–197. None of these questions is before us now, as neither the District Court nor the Court of Appeals passed on any of them.

[4] The Government advises that in the spring of 1972 it revised the form memoranda by which the Attorney General had approved applications for wiretapping or electronic surveillance authority, and the form language in the letters sent to the applying attorneys, which are appended to the applications filed in the district courts, to accurately reflect that approval was obtained from the Attorney General, rather than a specially designated Assistant, unless the latter happens to be the case. Brief for the United States in *United States* v. *Giordano, ante,* p. —, at 9.

[5] Respondents' attempt to analogize the facial insufficiency of a search warrant supported by an affidavit submitted under a false name of the affiant, a deficiency which has been held by some courts to require suppression under Fed. Rule Crim. Proc. 41, *King* v. *United States,* 282 F. 2d 398 (CA4 1960), or under the Fourth Amendment, *United States ex rel. Pugh* v. *Pate,* 401 F. 2d 6 (CA7 1968), cert. denied, 394 U.S. 999 (1969), the asserted facial insufficiency of a wire interception order which incorrectly identifies who authorized the application for the order, must fail. Without passing on the soundness of these cases, it must be recalled that the misidentification of the officer authorizing a wiretap application is irrelevant to the issue of probable cause, which is supported by the separate affidavits of investigative officials. See 18 U.S.C. §§ 2518 (1) and (3). Moreover, no basis is provided in Title III for challenging the validity of the interception order depending on whether the application was approved by the Attorney General rather than a specially designated Assistant.

[6] Section 2519 provides in full:

"§ 2519. Reports concerning intercepted wire or oral communications.

"(1) Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts—

"(a) the fact that an order or extension was applied for;

"(b) the kind of order or extension applied for;

"(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

"(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

"(e) the offense specified in the order or application, or extension of an order;

"(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

"(g) the nature of the facilities from which or the place where communications were to be intercepted.

"(2) In January of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

"(a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

"(b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, and (iv) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

"(c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

"(d) the number of trials resulting from such interceptions,

"(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

"(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

"(g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

"(3) In April of each year the Director of the Administrative Office of the United States Court shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire or oral communications and the number of orders and extensions granted or denied during the preceding calendar year. Such reports shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section."

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MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL concur, concurring in part and dissenting in part in 72–1319, *United States* v. *Chavez*, and joining in 72–1057, *United States* v. *Giordano*.

The Court deals with two different Justice Department violations of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which imposes express limitations on the use of electronic surveillance. In *United States* v. *Giordano*, 72–1057, the Court correctly finds that the violation of 18 U.S.C. § 2516(1) is a violation of a statutory requirement which "directly and substantially implement[s] the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." The Court also properly finds that a violation of such a statutory requirement mandates suppression of the evidence seized by the unlawful interception. I join the opinion of the Court in *Giordano*. The same violation of § 2516(1) is also involved in the Fernandez wiretap in *United States* v. *Chavez*, 72–1319, and I therefore concur in the Court's suppression of the evidence seized in that wiretap. In *Chavez*, however, the Court finds that suppression is not warranted for the violations of 18 U.S.C. §§ 2518(1)(a) and 2518(4)(d) which the Court admits occurred in the Chavez wiretap itself. I dissent from this conclusion, hereinafter referred to as the holding of *Chavez*.

I

Title III permits electronic surveillance to be employed only pursuant to a court order. It requires, *inter alia*, that a federal trial attorney desiring to apply to the District Court for such a wiretap order must first secure authorization from one of a group of specified officials in the Justice Department. *Giordano* represents a class of cases in which authorization for electronic surveillance was given by Sol Lindenbaum, the Executive Assistant to Attorney General John Mitchell, in violation of the "authorization requirement" of § 2516(1) of Title III. This section provides that a wiretap order may be applied for only after authorization by "[t]he Attorney General, or any Assistant Attorney General specially designated by the Attorney General." 18 U.S.C. § 2516(1). *Chavez*, on the other hand, represents a class of cases where the Justice Department violated the "identification requirement" of § 2518(1)(a) of Title III, which requires that each application made to the District Court for a wiretap order "shall include . . . the identity of . . . the officer authorizing the application." *Id.*, § 2518(1)(a). Because the District Courts in this class of cases were supplied with misinformation as to the identity of the person who authorized the applications made to them, the orders they entered approving the use of electronic surveillance violated § 2518(4)(d) of Title III, which provides that *such orders "shall specify . . . the identity of . . . the person authorizing the application."*

In the Justice Department between 1969 and 1972, a request from a federal trial attorney for authorization to apply for a wiretap order was reviewed in the Criminal Division before being sent to Attorney General Mitchell. According to the Solicitor General, in *Chavez* Attorney General Mitchell made the operative decision to authorize the wiretap application and signified this by sending a memorandum to Assistant Attorney General Will Wilson directing Wilson to authorize the trial attorney to submit the application to the District Court. The memorandum,[1] the Solicitor General admits, does not make clear that the operative decision was made in the Attorney General's Office; rather, it indicates that Wilson himself was designated to review and authorize the application.

At this point, a letter of authorization was sent to the trial attorney, which clearly identified Assistant Attorney General Wilson, and not Mitchell, as the person who had made the operative decision to authorize the wiretap.[2] Wilson, however, neither saw nor authorized the Chavez wiretap application or any others; his signature was affixed to the authorization letters by a Deputy Assistant Attorney General, either Harold P. Shapiro or Henry E. Petersen.[3]

When the trial attorney applied for a wiretap order in the District Court, he attached the letter of authorization purportedly signed by Wilson, and naturally misidentified Wilson as the person who had authorized the application to be made,[4] in violation of the identification requirement of § 2518(1)(a), *supra*. As a result, the District Court's order identified Wilson, and not Mitchell, as the Justice Department official who had authorized the trial attorney to apply for the Chavez wiretap order,[5] in violation of the identification requirement of § 2518(4)(d), *supra*.

In *Chavez*, Mitchell first acknowledged responsibility for authorizing the wiretap application in an affidavit filed with the District Court only after respondents had made a motion to suppress the evidence in the tap. Similar affidavits stating that Mitchell had authorized the application, rather than Wilson, were filed by Lindenbaum and Petersen. The courts below, on the strength of these affidavits, have held that Mitchell did in fact authorize the application to be made. Both, however, ordered the evidence which was seized by the surveillance to be suppressed, since the application misidentified Wilson as the responsible official. This Court reverses the Court of Appeals.

Deciding a question not reached in *Giordano*, the Court in *Chavez* holds that suppression is not dictated when there has been a violation of a provision of Title III which does not, in the view of the courts, "directly and substantially implement the congressional intention to limit the use of intercept procedures" to cases clearly calling for electronic surveillance. I cannot agree that Title III, fairly read, authorizes the courts to pick and choose among various statutory provisions, suppressing evidence only when they determine that a provision is "substantive," "central," or "directly and substantially" related to the congressional scheme.

Section 2515 of Title III unambiguously provides that no evidence derived from any intercepted communication may be received "in any trial . . . in or before any court . . . if the disclosure of that information would be in violation of this chapter." The Court acknowledges this provision in *Chavez*, *ante*, at 12, but disregards two sections of Title III explicitly dealing with disclosure in determining when disclosure is in fact "in violation of" Title III. Section 2511(1), which provides criminal penalties for willful violations of Title III, prohibits in § 2511(1)(c) knowing disclosure of communications intercepted in violation of the subsection, and the subsection prohibits interception "[e]xcept as otherwise specifically provided in this chapter." 18 U.S.C. § 2511(1)(a). Section 2517(3) authorizes the disclosure in a criminal proceeding of information received "by any means authorized by this chapter" or of evidence derived from a communication "intercepted in accordance with the provisions of this chapter." The statute does not distinguish between the various provisions of the Title, and it seems evident that disclosure is "in violation of" Title III when there has not been compliance with any of its requirements.

The Court fixes on § 2518(10)(a), which defines the class of persons who may move to suppress the admission of evidence. This section provides that any aggrieved person may move to suppress evidence on the grounds that:

"(i) the communication was unlawfully intercepted;

"(ii) the order of authorization or approval under which it was intercepted is insufficient on its face;

"(iii) the interception was not made in conformity with the order of authorization or approval."

Since (ii) and (iii) reach some statutory violations, reasons the Court, (i) cannot reach all statutory violations or else (ii) and (iii) would be "drained of meaning."

The choice seems to be between attributing to Congress a degree of excessive cautiousness which led to some redundancy in drafting the protective provisions of § 2518(10)(a), or foolishness which led Congress to enact statutory provisions for law enforcement officials to scurry about satisfying when it did not consider the provisions significant enough to enforce by suppression. In view of the express prohibition by § 2515 of disclosure of information "in violation of" the chapter, I would opt for the conclusion that Congress was excessively cautious, and that "unlawfully intercepted" means what it says.

Congress could easily have given the judiciary discretion to apply the suppression remedy only for violations of "central" statutory provisions by using language such as "unlawfully intercepted in violation of important requirements of this chapter" in § 2518(10)(a). But no such limitation appears. Further, the legislative history of Title III emphasizes Congress' intent to en-

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Footnotes at end of article.

force every provisions of the Title with the remedy provided in §§ 2515 and 2518(10)(a). The Senate Report which accompanied Title III to the Congress states that "Section 2515 . . . imposes an evidentiary sanction to compel compliance with the other prohibitions of the chapter," and that § 2518 (10)(a) together with § 2515 "applies to suppress evidence directly . . . or indirectly obtained in violation of the chapter." S. Rep. No. 1097, 90th Cong., 1st Sess., 96 (1968).

Again, no distinction supports the conclusion that Congress considered any provision of Title III more important than any other in the applications of the suppression remedy. Congress at no point indicated that it intended to give the courts the discretion to distinguish various provisions of Title III, never suppressing evidence for violations of some—such as §§ 2518(1)(a) and (4)(d)—deemed not "directly and substantially" related to the congressional intent to limit the use of electronic surveillance. No matter how egregious or willful the violation of these provisions, it seems that suppression will not follow, and the Court opens the door to the creation of other non-"central" statutory requirements. This breadth of discretion is not part of the congressional scheme, and the Court oversteps its judicial role when it arrogates such discretion to itself.

III

Moreover, even under the test the Court defines in *Chavez*, that violations of only those statutory provisions "directly and substantially" limiting the use of electronic surveillance will warrant suppression, the violation of the identification requirements of §§ 2518(1)(a) and (4)(d) mandates suppression in *Chavez*. For the requirement of § 2518(1)(a) that the application for a wiretap "shall include . . . the identity of . . . the officer authorizing the application" together with that of § 2518(4)(d) that the wiretap order contain the same information sigificantly implement the congressional intention to limit the use of electronic surveillance procedures.

In support of its conclusion that suppression is not mandated by the §§ 2518(1)(a) and 2518(4)(d) violations in *Chavez*, the Court states that while Congress expressed the intent that these provisions "fix responsibility" on the person who authorized the enployment of electronic surveillance, "[w]here it is established that responsibility for approval of the application is fixed in the Attorney General, however, compliance with the screening requirements of Title III [§ 2516] is assured, and there is no justification for suppression." *Ante*, p. 9. To the Court, the provisions "do not establish a substantive role to be played in the regulatory system. . . . No role more significant than a reporting function designed to establish on paper that one of the major procedural protections of Title III [the authorization requirement of § 2516] had been properly accomplished is apparent." *Ante*, pp. 15, 16.

The Court reduces the statement of Congress that the identification provisions were created to "fix responsibility" for a wiretap authorization to meaning only that the provisions were drafted to assure the courts that there had been compliance with the authorization requirement of § 2516. And the Court finds it satisfactory that this responsibility is established by an *ex post facto* affidavit of the Attorney General, stating that he in fact authorized the Chavez surveillance.

It seems to me a complete misreading of Congress' attempt to "fix responsibility" in the application and order to reach these conclusions. Sections 2518(1)(a) and 2518(4)(d) are not part of the detailed and stringent guidelines of Title III through legislative inadvertence. They were not present in early proposals to regulate wiretapping, but were carefully inserted in later proposals, culminating in the draft which became Title III. A 1961 proposal to allow wiretapping under regulated conditions did not contain any identification requirement, although it contained provisions designating those who could authorze surveillance.[6] S. 675, introduced to the 90th Congress by Senator McClellan on January 25, 1967, 113 Cong. Rec. 1491, did not require either the application or the court order to identify the person who authorized the surveillance application.[7] S. 2050, introduced five months later by Senator Hruska, 113 Cong. Rec. 18007, expressly required that the application to the court set forth "the identity of the person who authorized the application," but did not require the court order to contain this information.[8] H.R. 13482, introduced in the House on October 12, 1967, 113 Cong. Rec. 28792, not only required that the application identify the person authorizing it, but also that the court order contain this information. Six months later on April 29, 1968, the Senate Judiciary Committee reported S. 917, whose provisions ultimately were enacted as Title III, accompanying the bill with an extended report explaining every provision.[9] Though it noted that Title III is "essentially a combination" of S. 675 and S. 2050,[10] the Judiciary Committee went beyond either of those bills as to the identification requirements, mandating that both the application and the order identify the person who authorized the application.

In its discussion of the authorization requirement of § 2516, the Senate Report states:

"This provision centralizes in a publicly responsible official subject to the political process the formulation of law enforcement policy on the use of electronic surveillance techniques. Centralization will avoid the possibility that divergent practices might develop. Should abuses occur, the lines of responsibility lead to an identifiable person. This provision in itself should go a long way toward guaranteeing that no abuses will happen." S. Rep. No. 1097, 90th Cong., 1st Sess., 97.

But this alone was not sufficient. The Report continues:

"The application must be made to a Federal judge of competent jurisdiction, as defined in section 2510 (9), discussed above. *The application must conform to section 2518, discussed below.*" *Ibid.* (Emphasis added).

The Committee's discussion of § 2518 states:

"Section 2518 of the new chapter sets out in detail the procedure to be followed in the interception of wire or oral communications.

"Subparagraph [2518(1)(a)] *requires* the identity of the person who makes, and the person who authorized the application to be set out. *This fixes responsibility.*

". . . Subparagraph [2518(4)(d)] *requires* that the order note the agency authorized to make the interception and the person who authorized the application *so that responsibility will be fixed.*" *Id.*, at 100, 101, 103. (Emphasis added.)

The crucial concept is Congress' expression of intention that §§ 2518(1)(a) and (4)(d) should be complied with, so that the application and order would fix responsibility.

Clearly, no such responsibility was fixed on Mitchell, the authorizing figure, in *Chavez*. As the Court of Appeals noted, *United States* v. *Chavez*, 478 F.2d 512, 515, 516, there

"was a misrepresentation, in circumstantial and carefully phrased detail, all pointing to Wilson as the official authorizing the application, when in fact he did no such thing. . . . The Wilson letter and the Mitchell memorandum . . . create the illusion of compliance with the Act. Without Mitchell's affidavit, the lines of responsibility lead to Wilson, not to Mitchell."

Yet Wilson never saw the application for which Mitchell now accepts responsibility. Before the affidavits submitted to the District Court in response to the motion to suppress, about one year after the application was initially authorized, responsibility pointed directly at Wilson, and no document implicated Mitchell.

It is simply not enough that Mitchell's responsibility is established only after a prosecution is underway and a motion to suppress filed. After-the-fact acceptance for the Chavez surveillance was made at no cost. The surveillance was productive and was directed against an alleged drug trafficker, a pariah of society. Accepting responsibility at this point, further, helped Mitchell and the Justice Department avoid the acute embarrasment of losing this prosecution. But this was not the scheme created by the Congress. By creating the identification provisions, which required the authorizing official to be made known at the time of an application, it established a mechanism by which a person's responsibility was to be acknowledged immediately, not a device by which the identity of the person authorizing the application would remain hidden until it was discovered that an instance of electronic surveillance had been productive and not offensive to public sensibilities.

Immediate acknowledgment of responsibility for authorizing electronic surveillance is not an idle gesture. It lessens or eliminates the ability of officials to later disavow their responsibility for surveillance. By adding the identification provisions of § 2518, Congress took a step toward stripping from responsible officials the ability to choose after the fact whether to accept or deny that responsibility by coming forward and filing an affidavit. "Fixing" of responsibility in the application and order can have no other meaning; it simply does not comprehend a situation where responsibility is concealed or unsettled. Had Congress been content with compliance with § 2516 being proven and responsibility for surveillance being established by later testimony and affidavits, it could easily have left the legislation in its early form without adding the express requirements of § 2518(1)(a) and (4)(d) to the Act.[11]

The Court's treatment of the identification requirements trivializes Congress' efforts in adding them to Title III. In *Giordano*, the Court relies on Congress' clearly expressed desire that an official, responsible to the political process, should make the decision authorizing electronic surveillance and bear the scrutiny of Congress and the public for that decision. As noted, the Senate Report which accompanied Title III to Congress stated that § 2516 "centrallizes in a publicly responsible official subject to the political process" the formulation of electronic surveillance policy so that "[s]hould abuses occur, the lines of responsibility lead to an identifiable person. This provision in itself should go a long way toward guaranteeing that no abuses will happen." S. Rept. No. 1097 90th Cong., 1st Sess., 97 (1968). Similarly, Senator Long, in support of the bill read from a report which stated "We agree that responsibility should be focused on those public officials who will be principally accountable to the courts and the public for their actions."[12] Speaking to a related provision requiring that politically responsible state prosecuting officials authorize state applications, Professor Blakely of Notre Dame, instrumental in the drafting of Title III, stated:

"Now, the reason [for this requirement] is that unless we involve someone in the process of using this equipment who is politically responsible, that is, someone who must return to the people periodically and be reelected, it seems to me we miss a significant check on possible abuse. As a practical matter, if there is police abouse, the remedies we can take against them are limited. If we involve the responsible judgment of a political official in the use of this equipment, and

Footnotes at end of article.

it is then abused, the people have a very quick and effective remedy at the next election." [13]

But it is clear that this personal responsibility and political accountability, relied on by Congress to check the reckless use of electronic surveillance, is rendered a mere chimera when the official actually authorizing a wiretap application is not identified until years after the tap has occurred, when he might already be out of office, when the usefulness of the tap is already established, when it is celar that the surveillance was not abusive, and then only through voluntary admissions or the sifting of potentially contradictory affidavits. Responsibility is hardly "focused," and the "lines of responsibility" are gossamer at best. This is why Congress added the demand that responsibility be immediately *fixed*. The procedures which the Court sanctions in *Chavez* stretch the unequivocally expressed desire of Congress to *fix responsibility* in the application and order well beyond the breaking point.

In eviscerating Congress' intent to fix responsibility in the application and order, the Court destroys a significant deterrent to reckless or needless electronic surveillance. It allows the official authorizing a wiretap to remain out of the harsh light of public scrutiny at the crucial beginning of the wiretap process, only to emerge later when he chooses to identify himself. Knowledge that personal responsibility would be immediately focused and immutably fixed, whatever the outcome of surveillance, be it profitable or profligate, successful or embarrassing, forces an official to be circumspect in initally authorizing an electronic invasion of privacy. This is why Title III requires more than a judicial determination of probable cause; it also requires an accountable political official to exercise political judgment, and it requires that the political official be immediately identified and his responsibility fixed when an application is filed. The identification procedures, by fixing responsibility, obviously serve to "limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device," thereby requiring suppression even under the test the Court adopts in *Chavez*.

IV

The Court mentions in passing the reporting requirements of Title III, noting the information furnished the judge pursuant to § 2518(1)(a) is useful in making the reports required of him under § 2519. This section requires the judge to report, *inter alia*, the name of the party who authorized each wiretap application made to him to the Administrative Office of the United States Courts within 30 days after surveillance has been completed. 18 U.S.C. § 2519(1)(f). At the same time, 18 U.S.C. 2519(2) requires the authorizing prosecuting officials designated in § 2516 to file a report in January of each year, which also must include the name of the person who authorized applications made during the previous calendar year. In reliance on this information, the Administrative Office is to report such information to the Congress for public scrutiny. *Id.*, § 2519(3). Like the applications and wiretap orders themselves, this report is to include the names of those persons responsible for authorizing electronic surveillance.

In the set of cases represented by *Chavez*, of course, the person actually authorizing the applications, Mitchell, was not made known to the courts which approved them, and so the reports filed with the Administrative Office by the judiciary did not identify him as the responsible official. The potential for public accountability through this channel was foreclosed by the misinformation given the courts. While the report filed by the office of the Attorney General in January 1970 did state that the 1969 applications filed in Wilson's name had been personally approved by Mitchell, the Solicitor General informs us that the reports filed by the Attorney General regarding instances of electronic surveillance for 1970 and after, including the Giordano wiretap (1970) and the Chavez tap (1971), did not acknowledge that Mitchell had personally authorized the surveillance attributed to his subordinates.[14] The failure of the Attorney General's office to document the actual personal responsibility of Mitchell for surveillance authorizations occurred as those authorizations proliferated: there were only 34 instances of federal surveillance reported under Title III for 1969, but that number rose to 183 in 1970 and 238 in 1971.[15] *Ex post facto* acknowledgment of responsibility by Mitchell in the annual reports filed pursuant to § 2519(2) could not of course cure the violation of the express congressional mandate of § 2518(1)(a), any more than did Mitchell's filing of an affidavit. Nevertheless, not even these reports for years after 1969 provided documentation that Mitchell was the Justice Department official actually responsible for authorizing electronic surveillance. While Congress demanded the openness of political accountability, Justice Department documents drew a veil of secrecy, and no personal responsibility was attributed in any documents to Mitchell, the person actually responsible for atuhorizing the electronic surveillance.

As the Court recognized in *Gelbard* v. *United States*, 408 U.S. 41, 48, the protection of privacy was an overriding concern of Congress when it established the requirements of Title III in 1968:

"The need for comprehensive, fair, and effective reform setting uniform standards is obvious. New protections for privacy must be enacted." S. Rep. No. 1097, 90th Cong., 1st Sess., 69.

Electronic surveillance was a serious political issue, and these detailed and comprehensive requirements are not portions of a hastily conceived piece of legislation. As noted above, electronic surveillance legislation was introduced long before 1968, and the provisions of Title III are the culmination of a long evolutionary process. The Title was accompanied by an exhaustive and studied report in which the Senate Judiciary Committee offered an explanation and justification for each clause of the bill. I cannot believe that Congress perversely required law enforcement officials to jump through statutory hoops it considered unnecessary to the goal of protecting individual privacy from unwarranted electronic invasions.

On the contrary, the history of Title III reflects a desire that its provisions be strictly construed. Senator McClellan, sponsor of S. 675, one of the bases for Title III, and chairman of the committee which reported Title III to Congress, stated during hearings on his bill:

". . . I would not want any loose administration of this law.

* * *

"But have it very strictly observed. It is not to become a catchall for promiscuous use. I want to see this law strictly observed with the courts adhering to the spirit and intent of it in granting the orders.

* * *

"I think it ought to be tight, very definitely as free from loopholes as it can possibly be made . . ." [16]

Subsequently, McClellan's committee closed yet another loophole in the law by inserting the identification requirements of Title III, attempting thereby to fix responsibility at the time of the application for a wiretap order, requirements which this Court now nullifies.

Mr. Justice Holmes observed in dissent 70 years ago that:

"Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exert a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend." *Northern Securities Co.* v. *United States*, 193 U.S. 197, 400–401.

The Solicitor General reminds us that substantial effort on the part of the Organized Crime Section of the Criminal Division of the Department of Justice is implicated, for the violations of Title III reflected in these two cases are not isolated occurrences. The failure of Attorney General Mitchell properly to authorize applications involves 60 cases and 626 defendants. The failure of surveillance applications to fix responsibility on Mitchell, when he did in fact authorize the applications, involves an additional 99 cases and 807 defendants. Yet the magnitude of the effect of suppression of unlawfully obtained evidence for these violations of Title III does not vitiate our duty to enforce the congressional scheme as written. The failure of a prosecution in a particular case pales in comparison with the duty of this Court to nourish and enhance respect for the even-handed application of the law. I accordingly dissent in part in *Chavez*.

FOOTNOTES

[1] The form memorandum employed by Mitchell stated in part:

"This is with regard to your recommendation that authorization be given to [the particular trial attorney] to make application for an Order of the Court under Title 18, United States Code, Section 2518 permitting the interception of wire communications for a [particular] period to and from telephone number [the listed telephone numbers of the particular criminal investigation]. . . .

"Pursuant to the powers conferred on me by Section 2516 of Title 18, United States Code, *you are hereby specially designated to exercise those powers for the purpose of authorizing* [the particular trial attorney] to make the above-described application." (Emphasis added.)

[2] The letter sent over Wilson's signature in *Chavez* read:

"This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an Order of the Court authorizing the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs [to intercept wire communications at the particular number involved]. . . .

*"I have reviewed your request and the facts and circumstances detailed therein and have determined that there exists probable cause to believe that* [named individuals were committing certain offenses] . . . *I have further determined* that there exists probable cause to believe that the above persons make use of the described facility in connection with those offenses, that wire communications concerning the offenses will be intercepted, and that normal investigative procedures reasonably appear unlikely to succeed if tried.

"Accordingly, *you are hereby authorized under the power specially delegated to me* in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an Order of the Court pursuant to Section 2518 of Title 18, United States Code [to intercept the described wire communications] . . ." (Emphasis added.)

[3] In *Chavez*, the letter was signed by Petersen.

[4] The application stated:

". . . [T]he Honorable John N. Mitchell, has specially designated in the proceeding

the Assistant Attorney General for the Criminal Division of the United States Department of Justice, The Honorable Will Wilson, to authorize affiant to make this application for an Order authorizing the interception of wire communications. This letter of authorization signed by the Assistant Attorney General is attached to this application as Exhibit A."

[5] The order read in part:

"Special Agents . . . are authorized, pursuant to the application authorized by the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, [to intercept wire communications] . . ."

[6] S. 1495, 87th Cong., 1st Sess., § 4(b), printed in Hearings on Wiretapping and Eavesdropping Legislation before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 87th Cong., 1st Sess., 4, 5 (1961).

[7] Printed in Hearings on Controlling Crime Through More Effective Law Enforcement before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess., 75 (1967).

[8] Printed in *id.*, 1006.

[9] S. Rep. No. 1097, 90th Cong., 1st Sess. (1968).

[10] *Id.*, at 66.

[11] The Court in *Chavez* finds some guidance in the fact that "no real debate surrounded" the adoption of the identification requirements. This is not surprising, in that the provisions were added to wiretapping legislation in committee, and justified in the Judiciary Committee's report.

[12] 113 Cong. Rec. 14474. The Report was by the Association of the Bar of the City of New York, Committee on Federal Legislation, Committee on Civil Rights, entitled "Proposed Legislation on Wiretapping and Eavesdropping after *Berger* v. *New York* and *Katz v. United States*."

[13] Hearings on the Anti-Crime Program before Subcomm. No. 5 of the House Committee on the Judiciary, 90th Cong., 1st. Sess., 1380 (1967).

[14] The Administrative Office, nonetheless, repeated the statement made for 1969 that Mitchell had "personally" authorized the applications.

[15] See Administrative Office of the United States Courts, Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications, 1969, 1970, 1971.

[16] Hearings on Controlling Crime Through More Effective Law Enforcement, before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary, 90th *Cong. 1st Sess.*, 508, 869. In addition, in reporting to the Senate in 1969 on the operation of Title III during its first year, Senator McClellan stated:

"I do, however, want to admonish every law enforcement officer, prosecutor, and judge involved in this area that the only way this legislation will be effective in combatting crime is by strict adherence to the standards it contains.

". . . This is an invaluable and powerful tool that must not be subjected to abuse. Those who violate the standards can and must either be punished and if they cannot learn to follow the law they must face loss of this enforcement tool. . . .

* * * * *

"Mr. President, my purpose in making these remarks has been to help assure that this legislation will be, in fact, followed to the strictest letter of the law—both bringing criminals to book and protecting citizens' privacy. That is the only way in which it can be utilized as an effective tool in reducing crime . . . . Let us make sure that none of those who may be convicted can ask for a reversal because the law was not strictly followed." 115 Cong. Rec. 23241–23242.

[From the New York Times, May 14, 1974]

HIGH COURT VOIDS DRUG WIRETAPS; 600 MAY BE FREED

(By Warren Weaver, Jr.)

WASHINGTON, May 13.—The Supreme Court ruled today that a group of narcotics sellers were illegally convicted in 1970 because the Department of Justice had obtained evidence against them with invalid wiretapping orders.

Although the decision directly involved only one case and a few defendants, it appeared almost certain to wipe out convictions of more than 600 other Federal offenders against whom the same kind of evidence was used.

The high court agreed unanimously that evidence could not be used against a Federal suspect if it was obtained through a wiretap based on an application signed by the Attorney General's executive assistant rather than by the Attorney General himself, then John N. Mitchell.

SOME TAPS SUPPORTED

In a parallel case, however, the Court voted 5 to 4 in support of wiretap applications that were in fact authorized by the Attorney General but appeared to be signed by an Assistant Attorney General who had actually not played any part in their preparation.

The effect of this ruling will be to preserve the convictions of 807 Federal convicts for whom Mr. Mitchell authorized surveillance but whose papers incorrectly indicated that the authorization had come from Assistant Attorney General Will R. Wilson.

In the first case, all nine justices agreed that an initial authorization signed by Sol Lindenbaum, executive assistant to Mr. Mitchell had not met the requirements for a wiretap order set by the Organized Crime Control Act of 1968.

Four Justices, however, did not agree with the majority that an extension of this order and two related orders to record numbers dialed from a given telephone were also improper. They were Chief Justice Warren E. Burger and Associate Justices Lewis F. Powell Jr., Harry A. Blackmun and William H. Rehnquist.

DISSENTERS IN 2D CASE

Dissenting from the decision that the Wilson-signed authorizations did not result in tainted evidence were Associate Justices William O. Douglas, William J. Brennan, Jr., Potter Stewart and Thurgood Marshall.

The decision may cost the Justice Department a substantial amount of money, as well as embarrassment at having mishandled 60 cases. Federal law provides that anyone whose telephone is illegally tapped can recover $100 a day in damages plus unspecified punitive damages and legal expenses.

The principal case involved Dominic N. Giordiano, whose telephone was tapped for a month in the fall of 1970 after he had sold narcotics to an undercover agent. The application for the wiretap order was signed by Mr. Lindenbaum rather than by Mr. Mitchell or an Assistant Attorney General designated by Mr. Mitchell.

Writing for the majority, Associate Justice Byron R. White rejected the Government's argument that the Attorney General has broad power to delegate his authority. Justice White maintained instead that Congress had clearly specified that wiretap requests could be signed only by the Attorney General or a designated Assistant Attorney General.

In the second case, Mr. White wrote for the narrow majority that in misidentifying Assistant Attorney General Wilson as the official who authorized the wiretaps, when it was actually Mr. Mitchell, the Justice Department had not made the seizure of evidence unlawful.

[From the Washington Post, May 14, 1974]

COURT VOIDS WIRETAP DATA ON HUNDREDS

(By John P. MacKenzie)

The Supreme Court ruled unanimously yesterday that evidence against several hundred defendants cannot be used because of the way former Attorney General John N. Mitchell administered the 1968 federal wiretapping law.

Mitchell's failure to approve dozens of wire tap requests personally or to designate a high-ranking Justice Department official for the task, was a serious violation of the legal rights safeguarded by the law, the high court held.

The decision brushed aside government arguments that the defective procedures were mere technicalities.

The 9-to-0 ruling upheld the dismissal of a narcotics indictment against Dominic N. Giordano of Baltimore, and it is expected to have the same result in at least 60 cases involving 626 defendants.

In a companion case involving a somewhat different Justice Department procedure, a 5-to-4 majority said it did not "condone" Mitchell's practices but declared their defects were more of a bookkeeping nature. This ruling kept alive prosecutions in 99 cases involving 807 defendants.

Even in declining to suppress evidence in the 99 cases, however, the court said it is "appropriate to suggest that strict adherence by the government to the provisions of [the 1968 law] would nonetheless be more in keeping with the responsibilities Congress has imposed upon it when authority to engage in wiretapping or electronic surveillance is sought."

The two decisions were expected to bring further embarrassment to the Nixon administration, which suffered numerous similar reversals in lower courts on the same issues.

Both during and after the 1968 campaign, Mr. Nixon and Mitchell frequently criticized former Attorney General Ramsey Clark for failing to use the court-ordered wiretap authority Congress provided over Clark's protest. Mr. Nixon and Mitchell pledged a vigorous wiretapping program that would bring drug peddlers, gamblers and organized crime figures to justice.

The wiretap law provides for criminal and civil penalties for violations. But the court noted that the criminal sanctions apply only to the use of a wiretap order knowing that it was unlawful—a hard charge to prove.

Nor are courts expected to award civil damages to the wiretap targets, most of whom were charged with serious crimes.

Yesterday's action enforced a section of the controversial wiretap law that was little noticed in the debates that preceded its passage. It called for suppression of evidence obtained during an "unlawful" wiretap and spelled out procedures for seeking a lawful tap order.

The law said that a judge must be satisfied that there was probable cause to suspect that a specific telephone tap would help solve a crime. It also provided that requests for such orders at the federal level must be approved by the Attorney General or a specially designated assistant attorney general.

Justice Byron R. White, writing for the unanimous court, traced the history of the provision and found that it was not a formality. It was designed, he said, "to make doubly sure that the statutory authority be used with restraint," adding an executive branch check to the judicial safeguard.

"The mature judgment of a particular, responsible Department of Justice official is interposed as a critical precondition to any judicial order," White said.

White, a deputy attorney general under the late Attorney General Robert F. Kennedy, said Justice Department supporters of wiretap laws began asking Congress in 1961 to

impose this special safeguard in any wiretap law that might pass. Congress agreed that the authorizing official should be one who was "responsive to the political process" and not merely a staff prosecutor.

Rather than designate a specific assistant attorney general as his alternate, Mitchell delegated to his executive assistant the power to approve wiretap requests from the criminal division in accordance with the aide's understanding of Mitchell's policies.

This "alter ego" theory was specifically rejected by the court as violating the law.

The 5-to-4 decision preserving the prosecutions against 807 defendants was based on affidavits filed by Mitchell that in those cases he did authorize the wiretap requests in person.

The wiretap warrants incorrectly identified former Assistant Attorney General Will Wilson as the requesting official, the court said.

Dissenting Justices William O. Douglas, William J. Brennan Jr., Potter Stewart and Thurgood Marshall argued that the court should not accept at face value Mitchell's version of how these orders were handled. They said Mitchell's version was offered belatedly and was not borne out by the Justice Department's own documentation.

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[From the New York Times, May 15, 1974]

WIRETAP RULING DISMAYS PROSECUTORS

WASHINGTON, May 14.—Federal Prosecutors throughout the country reacted with dismay—and, in some cases, anger—to yesterday's Supreme Court decision that could result in the dismissal of hundreds of cases based on illegal wiretaps.

"It's just too bad," one Prosecutor said in a telephone survey. "Someone up there must like them."

The Court ruled that 60 cases, involving 626 persons, were based on wiretaps that were illegal because they were not authorized by Attorney General John N. Mitchell but by Sol Lindenbaum, his executive assistant.

The ruling will probably have its greatest impact in Detroit. Lawrence Less, head of the organized crime and racketeering strike force there, said the high court decision might affect 20 indictments covering 234 persons.

CASE HELD IN ABEYANCE

The principal Detroit case affected by the decision is one in which 16 policemen and 18 alleged gamblers are accused of obstruction of justice. Mr. Less said that case, and others in which they thought a problem involving wiretap might be raised, had been held in abeyance awaiting the Supreme Court decision.

Gerard T. McGuire, head of the strike force in Newark, said the Court's decision was "just bad news." He added that he and other prosecutors would probably spend the next several weeks studying cases to see how they would be affected by the decision.

In some cases, he said, a properly authorized wiretap was followed by an improper extension. In other cases, the reverse occurred. In each case, he said, a decision will have to be made on whether the improper tap "tainted" the rest of the case.

RELEASE PREDICTED

In Chicago, Douglas Roller, assistant to the head of the strike force, said six cases involving about 40 persons were being reviewed.

Thomas E. Kotoske, head of the strike force in San Francisco, said he had asked that the Court's complex opinion be sent to him by air freight. While awaiting the decision, he said, he has pulled out about eight cases involving about 50 persons for study.

Mr. Lindenbaum, who has served in the Justice Department since 1946 and has been executive assistant to the Attorney General since 1967, when he served under Ramsey Clark, predicted that many of the cases built on wiretap authorizations he signed for Mr. Mitchell would be dropped.

Ironically, the practice at the Justice Department that led to the invalidation of many of the wiretaps apparently resulted from Mr. Mitchell's desire to give the impression that he was personally responsible for each wiretap order.

In the last year of the Johnson Administration, Mr. Clark refused to use the wiretap authority granted by the Omnibus Crime Control and Safe Streets Act of 1968. That was one of the issues in the 1968 campaign.

When Mr. Mitchell assumed office as President Nixon's first Attorney General, the law permitted him to designate one of his assistants as a person responsible for authorizing wiretaps. But Mr. Mitchell, apparently intent on giving the impression that he was personally passing on each decision, never designated anyone else to issue wiretap authority. Instead, he fell into a habit where Mr. Lindenbaum did the paper work and asked for his initials, and later initialed them for Mr. Mitchell when the Attorney General was out of town.

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[From the Washington Star-News, May 15, 1974]

WIRETAP RULING KILLS GAMING CASE

(By Winston Groom)

The U.S. Attorney's Office here says that because of Monday's Supreme Court wiretap ruling it will have to drop charges in what has been described as the largest gambling case ever brought in the District.

The wiretap, used to gather evidence in the gambling arrests here, ultimately led to the arrest of more than 1,000 other persons in at least seven states and those cases, too, may have to be dropped or re-tried.

The High Court held Monday that many government wiretaps during 1970 and 1971 were illegal because they were not authorized by then U.S. Att. Gen. John Mitchell, but by his executive assistant, Sol Lindenbaum.

According to law, all government wiretaps must be authorized by the attorney general or by an assistant attorney general. Lindenbaum was Mitchell's assistant but was not an assistant attorney general.

It was Lindenbaum who signed the request for a wiretap on the Northwest Washington home of Louis Mantello in the fall of 1970.

FBI agents, who monitored the tap for more than six months, staged raids on alleged gambling premises here, in New York, in Florida, Oregon, New Jersey, Maryland, Virginia and Pennsylvania on Feb. 6, 1971.

Twenty-seven persons, including Mantello, were arrested here. The government charged that the Mantello operation "laid off" some $60,000 in football, horse racing and basketball bets to bookies in New York during a single hour.

In terms of money handled, it was the largest operation ever cracked in the District and the then director of the FBI, J. Edgar Hoover, estimated the combined raided gambling operations handled more than $60 million in bets annually.

Numbers and lottery books also were involved, Hoover said.

Those arrested were charged either with violations of the Interstate Transportation in Aid of Racketeering Statute, the Illegal Gambling Business Statute, the Interstate Transportation of Wagering Information Statute or conspiracy to violate those laws.

Possible penalties ranged to $20,000 in fines and up to 5 years in jail.

The major operation, according to government sources, was the connection between the Washington bookmakers and so-called "big guys" in New York.

Mantello, the government alleged, had connections with New York organized crime and was financing the Washington operation with money from the Mafia in the New York-New Jersey area.

But at pre-trial hearings, lawyers for Mantello and the other defendants raised the issue of the Lindenbaum wiretaps, saying they were improperly signed.

In April 1972 U.S. District Court Judge Howard Corcoran agreed, ruling that the U.S. Attorney's Office could not use evidence gained by the wiretaps.

The government immediately appealed, but Corcoran was upheld by the U.S. Court of Appeals here and the case joined some 60 others in the Supreme Court.

None of the 27 charged in the case here has been tried pending the decision on the wiretap evidence.

Meanwhile, U.S. District Judge Albert V. Bryan of the federal court in Alexandria had held that a wiretap placed on Mantello's phone in Norfolk was legal, even though Lindenbaum had signed that order. Mantello was subsequently convicted of violating federal gambling laws.

Using information spawned by the Mantello wiretap, FBI agents continued a nationwide gambling crackdown for nearly a year, rounding up more than 1,000 defendants both here and in seven other states.

It is not clear at this point what will happen in those cases, but there is a legal doctrine sometimes referred to as "fruit of the poisonous tree" which holds in effect that if the original information was gained illegally a conviction cannot stand.

But it is clear that the original Mantello arrests will not hold up.

"That's it. There is no more case," Asst. U.S. Att. Donald Campbell said yesterday.

"Everything we had was from the wiretap—except the stuff that was seized. There is no way we can proceed with Mantello now."

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[From New York Times, May 15, 1974]

LAW, ORDER, AND JUSTICE

President Nixon came to office promising "law and order" and a new Attorney General who would put to aggressive use the wiretap authority contained in the 1968 Omnibus Crime Control Act. This week the Supreme Court overturned a conviction obtained on the basis of wiretap information which the Government had gathered illegally because of Mr. Mitchell's carelessness with the law. The Court's ruling makes it virtually certain that convictions obtained in at least sixty similar cases, involving over 600 defendants, will also be overturned.

The statute provided that a Federal wiretap application had to be approved by the Attorney General or by a designated Assistant Attorney General—also a senior political official—before its presentation to a court. Instead of approving the applications himself or having an Assistant Attorney General do it for him, Mr. Mitchell in the cases at issue left the task to a senior career civil servant on whom approval authority had not been conferred by the statute. It might be argued that the overturn of some 600 convictions for such a technical misfeasance by the Attorney General is a high price to pay for legal niceties.

Such a conclusion is wrong. The simple fact is that in pursuing lawbreakers, the Attorney General failed to observe the law. Such official looseness with the law concerning wiretape is of a piece with Mr. Mitchell's now discredited assertion that the Government had authority to wiretap suspected domestic radicals with no authorization from a court whatsoever. The prevailing view in the Mitchell "law and order" Justice Department seemed to be that laws could be bent or broken by those in authority so long as they were pursuing their own vision of justice.

The Supreme Court quite appropriately rejected actions based on that philosophy. Official lawlessness in pursuit of order ultimately produces tyranny, not justice.

## SENATE PROCEDURE—DR. RIDDICK'S FINE WORK

Mr. JAVITS. Mr. President, I recently received my edition of Dr. Floyd Riddick's work "Senate Procedure" which updates and revises the previous edition published in 1964.

As one who is interested in our parliamentary procedure and fully realizes its value to all Senators as we pursue our work, I would like to highly commend Dr. Riddick for his outstanding work in preparation of the new edition. It is extremely important that the Senate has a clear and precise listing of the applicable precedents which have been gathered through the years. Dr. Riddick's work makes this available and is a handy guide for all who wish to use it.

Dr. Riddick's work as Parliamentarian has always been characterized by a fair and helpful attitude and his prodigious knowledge of our rules and precedents is of indispensable help to the Senate. This new work carries on his fine tradition and I feel is much appreciated by all of us.

## MRS. BONNIE L. GENTRY—DISTINGUISHED EDUCATOR

Mr. TOWER. Mr. President, I would like at this time to bring to the attention of my colleagues in the Senate the distinguished record of educational achievement of Mrs. Bonnie Lucille Gentry of Mesquite, Tex. Mrs. Gentry is presently the principal of B. F. Tisinger Elementary School in Mesquite, culminating a teaching career in the Texas school system which has spanned over half a century. Mrs. Gentry is retiring this month and is being honored by the citizens of Mesquite, and I think it fitting that we recognize her here.

Mrs. Gentry's dedication to children and young people has been quite evident since her career began over 54 years ago in a two-teacher school in Prairie View, Tex., in a position which no one else would take. She, like so many teachers of the day, arose before dawn, rode to school on horseback, and lit the old wood stove. From Prairie View, Mrs. Gentry became the only teacher in a school elsewhere in Rockwall County. She later went to three other rural schools in the area, finally joining the Mesquite Independent School District in 1951. In 1957 Mrs. Gentry became the first principal of the Ben F. Tisinger Elementary School.

Education has always been close to the heart of Mrs. Bonnie L. Gentry. Her dedicated work in the field of education is evidence of her great concern for children and their intellectual growth. Through her service and her dedication Mrs. Gentry has rendered an outstanding and long-lasting contribution to education, to her State, and to the Nation as a whole.

The Senate is now considering a very important education bill, and I think it important, therefore, that we pay tribute to individual educators such as Mrs. Gentry. Without this kind of individual leadership and personal attention given to the Nation's schoolchildren, education in the United States would not be the success it is, regardless of the quality and quantity of programs which have been undertaken. As a U.S. Senator from Texas and a former college professor, I congratulate Mrs. Gentry on her successes, and I am exceedingly proud of her good efforts.

## THE ATROCITIES AT MAALOT

Mr. WILLIAMS. Mr. President, every human being with even a modicum of compassion in his character could not possibly feel anything but deep shock and overwhelming revulsion at the atrocities committed yesterday in Maalot, Israel. My own feelings of anger and disgust are so overwhelming that they are difficult to put into words.

The acts of the three Arab gunmen cannot be pictured as anything but brutal, premeditated murder of innocent children. They should certainly not be dignified as any kind of political or quasi-military actions. They were atrocities conceived, directed, and carried out by cold-blooded murderers.

The U.S. Government has rightly condemned these murders, and those who would seek political gain through such tactics. Every government in the world that claims to be guided by principles of justice and humanity must join in such condemnations, or else prove itself to be no more than a hypocritical sham.

Also to be condemned and made to take responsibility for these murders is any nation that allows such plots to be made and launched from its soil. Those who, through inaction, would allow such acts to occur, are not much better than the murderers themselves.

Mr. President, it is the obligation of the world community to make clear to those whose warped minds would seize on such tactics, that the murder of innocents will never advance a political cause. Individual governments must do so, and our world organization, the United Nations, must certaily do so.

If the United Nations is to maintain its credibility as a world organization committed to the search for peace, it must quickly and strongly condemn these murders, those individuals who directed them and carried them out, and any nation that would harbor such criminals.

## COMPUTER BIDDING

Mr. ROTH. Mr. President, for purposes of the RECORD I am enclosing a copy of the release issued by the General Services Administration on amending the joint computer and data communications procurement underway for the GSA and the Department of Agriculture.

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

GSA/USDA AMEND COMPUTER BIDDING

The head of the U.S. General Services Administration said today that GSA and the U.S. Department of Agriculture are amending the joint computer and data communications procurement underway for the two agencies. The Request for Proposals for the procurement was issued on February 28.

Arthur F. Sampson, GSA Administrator, noted that the most important change will be to delete the data communications network from this solicitation and procure it separately.

"In our original Request for Proposals," Sampson said, "we specified a data network to support only a portion of the USDA/GSA communications requirements. Since we did not at that time have enough detail on the remaining communications requirements, we planned to meet them by separate action when they became better defined."

Sampson continued, "Recently, however, it has become apparent that the remaining communications needs will be better defined in the near future, so the decision has been made to delete the data communications requirements specified in the RFP from this particular solicitation, and meet the total communications requirement by separate actions."

Sampson also noted that this approach would allow GSA time to study the feasibility of contracting for full service data communications support, and ensure that security/privacy safeguards associated with the network reflect the results of the studies currently underway by the Domestic Council Committee on the Right to Privacy and several Congressional committees.

GSA sent notices to all prospective bidders today, also noting that three of the four optional systems called for in the original solicitation, would be dropped, and that one of the five firm systems would become optional.

The GSA notice to bidders cautioned that "These modifications will have only minimum impact on the ADP systems mandatory requirements presently stated in the RFP (Request for Proposals)." Bidders, therefore, Sampson urged, should continue working on the preparation of the computer portion of the procurement.

## ARAB TERRORIST ATTACKS

Mr. GURNEY. Mr. President: I rise today in a state of shock and outrage over the inhumane, brutal, and senseless actions of Arab terrorists who have taken the lives of more than 20 Israeli students, and wounded some 70 others, at least 9 of them seriously.

What a sickening birthday present for the State of Israel. Yesterday's action, one of the bloodiest terrorist incidents in the long-troubled history of that area, came on the 26th anniversary of Israel's independence.

In the 26 years of that nation's independence, a proud and resourceful people have turned a wilderness and a wasteland into a green growing and productive nation. Out of the bloody carnage of Hitler's Germany and the evil war that it spawned. Jews the world over turned to their historic homeland in a reaffirmation of faith and determination. As if to emphasize the hostility which would shroud its early years of growth, the Arab States which surround Israel greeted its birth as an independent nation by attacking before it was even hours old. And now, 26 years later, terrorists from those same Arab States have given the Israelis, as a birthday present, a war against her children. Almost like candles on a macabre birthday cake,

these terrorists have snuffed out the lives of almost 26 children; as if to symbolize one child for each year of its independence. This is a price that no nation should have to pay.

I believe that it was the noted poetess and pacifist Edna St. Vincent Millay who said that "peace is only the time between, it takes the unhorsed rider to remount." But today, the nation of Israel is faced with the stark reality that as a result of terrorist attacks, while there is no war, there is correspondingly no peace.

As I indicated yesterday, in cosponsoring the resolution by the Senator from Minnesota condemning the acts of terrorism in the Middle East, the Senate Internal Securities Subcommittee is actively pursuing the question of terrorism. This fall, with the permission of the distinguished chairman of the committee, I will be holding hearings into the question of terrorism. It will be the general aim of those hearings to explore the overall question of terrorist activities; activities in the Far East, South America, and here in our own Nation, as well as in the Middle East.

I think it would be appropriate at this point to turn our attention to those acts of terrorism which have taken place in our recent memory in and against the nation of Israel. At this point, I would like to submit a list of major Arab terrorist activities which have taken place since February 10, 1970, when an attack by an Egyptian and two Jordanian terrorists occurred against an El Al Airlines plane at the Munich Airport. At that time, one passenger was killed and eight injured. The attackers were arrested but they were later set free.

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

ARAB TERRORIST ATTACKS

July 22, 1970—Six Palestinians hijacked an Olympic Airways plane. None was brought to justice.

Sept. 6, 1970—Pan American, Trans World Airlines and Swissair planes were hijacked by Arabs. All were eventually blown up. None of the terrorists was arrested.

Sept. 6, 1970—A woman terrorist was wounded and her male companion killed in an attempt to hijack an El Al plane. The woman was later released.

July 28, 1971—An attempt to blow up an El Al plane with booby-trapped luggage given to a woman by a male Arab friend did not succeed.

Sept. 20, 1970—A similar attempt to blow up another El Al plane failed.

Nov. 29, 1971—Wasfi Tal, Premier of Jordan, was assassinated by four Palestinian guerrillas while entering his hotel in Cairo. Suspects were taken into custody but no prosecutions have been reported.

Feb. 22, 1972—A Lifthansa airliner was hijacked to Aden where hijackers were paid $5 million for its release. The hijackers went free.

May 8, 1972—Terrorists hijacked a Belgian Sabena airliner to Lydda, where two men were killed by Israeli security guards. Two women were subsequently sentenced to life imprisonment.

May 30, 1972—Three Japanese gunmen belonging to the Popular Front for the Liberation of Palestine killed 26 persons at Lydda Airport.

August 16, 1972—A booby-trapped tape-recorder exploded in the luggage compartment of an El Al plane, causing slight damage. Two Arabs were released by Italian authorities after a short detention.

Sept. 5, 1972—Members of an Arab guerrilla organization attacked the quarters of Israeli athletes in the Olympic Village in Munich. Eleven members of the Israeli Olympic Team were slain. Five of the terrorists were killed. Three others were later freed.

Oct. 29, 1972—A Lufthansa plane was hijacked to Zagreb, Yugoslavia, where it was released after Arab terrorists responsible for the attack on the Israeli athletes at Munich had been set free. The hijackers were never brought to justice.

March 2, 1973—Eight guerrillas invaded the Saudi Arabian Embassy in Khartoum, the Sudan, and killed three diplomats. The terrorists were taken into custody and are reportedly awaiting trial.

April 4, 1973—Two Arabs made an unsuccessful attempt to attack passengers of an El Al plane in Rome. They were arrested but later released and sent to Lebanon.

April 9, 1973—Arab terrorists attempted to attack an Israeli plane at Nicosia, Cyprus. Eight were arrested and sentenced to seven years' imprisonment. They were quickly released later.

April 27, 1973—An Italian was killed in the Rome office of El Al by a Palestinian Arab who was later placed under psychiatric observation.

July 24, 1973—A Japan Air Lines jumbo jet was hijacked and blown up in Tripoli, Libya. None of the five terrorists was brought to trial.

Aug. 4, 1973—Two Arab terrorists killed five persons and wounded 45 in a machine-gun attack on passengers in the Athens airport lounge. Last week the terrorists were freed by the Greek government and given safe passage to Libya.

Sept. 28, 1973—Three Jewish immigrants from the Soviet Union were taken hostage aboard a train for Vienna. Austrian authorities arrested two Palestinians who were then freed and flown to an Arab country.

Nov. 25, 1973—Three Arabs hijacked a KLM jumbo jet and flew it to Abu Dhabi. There is no record of an arrest by Abu Dhabi authorities.

April 11, 1974—Three Arab guerrillas killed a total of 18 men, women and children in the northern Israeli border town of Qiryat Shemona before dying themselves in the explosion of their dynamite charges while under siege by Israeli security forces.

Mr. GURNEY. Mr. President, how long can these activities continue to go on? How long can these terrorists continue to function with the sanctions of the Governments of that area? I deplore the situation, and suggest to this Chamber that it should be aware of the possibility of taking action against terrorism within the near future. I further suggest that in spite of the fact that I plan to hold hearings this fall, we must be prepared for the possible necessity of taking immediate, decisive action at an earlier date.

I might suggest, that when this Chamber examines our foreign aid program, we should examine it in light of the situation in the Middle East. Let me present some statistics which I think would be beneficial to consider. These figures deal with aid to the Arab nations of Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, South Yemen, Sudan, Syria, Tunisia, and Yemen. This aid covers the period from 1946 through 1972.

Outright economic grants: $2,332,700,000.

Outright military grants: $318,300,000.

To this add $125,300,000 in outright grants during fiscal year 1973.

On the other hand, during the corresponding period, Israel has received:

Economic grants: $420,600,000.

Military grants: No funds whatsoever.

In analyzing the requests for the current year's foreign assistance, I am shocked to discover that this administration has requested absolute giveaways of $430 million in military and economic grants, to Arab nations, including Lebanon and Morocco, and, in addition to this $430 million giveaway, there may be an additional $100 million in supporting assistance to Syria. On the other hand, it proposed that Israel will only get $50 million worth of grants this year.

I would suggest, that when the legislation for the giveaway program comes before this body, the Senate should take a keen and discerning look at what Arab nations are receiving what amounts.

I have requested that my staff contact the appropriate agencies of our Government and prepare a full study of the situation in the Middle East, giving particular emphasis to the question of terrorist activities. This report will have a careful analysis of the aid we give to those nations which harbor, and by so harboring, protect and promote terrorist actions such as those which took place yesterday in Maalot. There is absolutely no excuse for giving foreign aid to these nations.

Mr. President, while we are discussing incidents against helples people, I think it would be well to mention the recent harassment of American tourists within the Soviet Union. I would only hope that these actions are not indicative of a spreading disregard for the rights of Jews worldwide.

From a report by Dr. Lawrence Brant, a Floridian, confirmed by the Department of State, I understand that Dr. Brant had arranged, along with the Broward County Dental Society, for a trip to the Soviet Union. It was their intention to visit Moscow and Leningrad for a period of 8 days and while there, to meet with Russian dental groups to discuss problems with their industry. While on this trip, Dr. Brant and several of his colleagues, members of the South Florida Council on Soviety Jewry, attempted to meet with several Soviet Jews who had requested exit visas to Israel but had had their requests denied.

Mr. Vladmir Slepak, a Soviet Jewish leader, who had applied for permission to emigrate to Israel, met with Dr. Brant. Mr. Slepak, a former electronic engineer and architect, had lost his job after requesting an exit visa. For the past 4 or 5 years, he has not only not been permitted to work, but has been constantly harassed by Soviet officials. At the meeting, Mr. Slepak invited Dr. Brant and his party to join with about 75 Soviet Jews and celebate the festival of Lag Baomer. It is a Jewish holiday commemorating the spring.

To celebrate this religious occasion, a picnic was organized for a place within the area around Moscow where foreign visitors are permitted to travel. The group was on a public Moscow city bus

bound for a picnic site near the city. The bus was stopped by Soviet militia on the outskirts of Moscow, and all the passengers were asked to produce their identity documents. Militiamen reportedly told the Americans and their Soviet guests that the bus was headed for an area off limits to foreigners, but allowed them to continue. The group started walking toward the picnic area but was again stopped by military men who repeated the request for their identity documents. The group then went to a nearby field and held a picnic of celebration for their religious holiday.

Dr. Brant tells me that the group was then surrounded by plainclothes policemen, some of whom took photographs. In addition, residents of the area suddently appeared and began cursing the group using anti-Semitic epitaphs. The group departed peacefully after finishing their meeting and there were no arrests at that time.

What troubles me about this entire incident is that in an age where we seek a form of détente with the Soviet Union, while they represent theirselves to be peaceful, they are in fact, aggressively hostile to those ideas which they cannot understand and refuse to tolerate.

Mr. President, I bring this matter to your attention at this time to reiterate my support for the Jewish people and free men everywhere. I further wish to remind you that it is my hope that when the Trade Reform Act of 1973 (H.R. 10710), is reported out of the Finance Committee, the amendment by the Senator from Washington (Mr. JACKSON) calling for free emigration for all citizens is still attached to that measure.

Mr. President, I ask unanimous consent that at the end of my statement, the editorial from today's New York Times entitled "Crime Against Peace," dealing with the massacre at Maalot, be inserted in the RECORD and that a complete listing of my position with respect to the state of Israel be inserted to demonstrate for all who care to examine it, my long history of support for those people. I call upon my colleagues to prepare and insert similar statements of support.

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

CRIME AGAINST PEACE

The Palestinian lunatic fringe has committed the most abominable yet of its long series of cowardly murderous outrages. The purpose of yesterday's attack at Maalot, the holding of scores of schoolchildren as hostages, was as obvious as it was heinous: so to inflame passions and suspicions that the negotiations for disengagement between Israel and Syria would collapse.

Now, more than ever, such an accord is vital to the peoples of the Middle East. The criminal fanatics guilty of this unspeakable atrocity committed against children would only receive a posthumous reward if the dialogue, progressing through Secretary of State Kissinger's mediation, were now allowed totally to lapse.

The weapon of terror is a heavy burden upon the Middle East and the world. Beyond the specific terrorist organizations themselves, which proudly proclaim their inhuman tactics, various Arab governments—including Syria—cannot avoid a large share of responsibility. Arab capitals have consistently provided financial, political, military and moral support for the guerrillas. If authorities in Damascus may claim that frustrated Palestinians are beyond their control, they still have to answer for the open encouragement these extremists have received in the Arab world.

Just sixteen days after last month's terrorist attack at the Israeli town of Qiryat Shemona, President Assad of Syria formally received the commander of the Palestinian group that launched the raid. The leader of another Palestinian faction heralded Qiryat Shemona as "marking the beginning of a new era for the Palestinian Revolution"—and this group, the Saiqa, operates under open Syrian sponsorship.

Nor can other, non-Arab, governments point with pride to their record of dealing with the scourge of terrorism. Just last week the Government of Greece pardoned two guerillas who had been sentenced to death for the machine-gun attack at Athens airport last August. More than 150 Arab terrorists have been arrested in Europe over the past five years and *all but nine* have been quietly set free, with or without trials.

Against this dismal and self-defeating record, the Israeli responses of self-defense cannot be faulted. At Maalot, Israeli army action may have compounded the tragedy for some hapless innocent victims, and yet it succeeded in freeing the rest. There seems to be no humane way of countering the brute barbarity as repeatedly demonstrated by one terrorist group after another.

Amid the anger of the moment it was hardly surprising that Secretary Kissinger chose to delay his scheduled return to Damascus in pursuit of the still-elusive accord. But it is in no one's interests—neither the Governments' nor the Maalot victims'—that his meditation, on which the prospects for peaceful co-existence in the Middle East still hang, be suspended for long.

If disengagement between Israel and Syria was in the two Governments' interests before the Maalot raid, as both sides indicated it was, it is even more so now. The essence of an accord, similar in concept to the disengagement already achieved between Israel and Egypt, is the nurturing of mutual confidence between long-time belligerents.

If that process is to make any headway, it is up to the Government of Syria to make a conciliatory move, to give Israel some signal now that the subhuman raid on Maalot does not reflect Arab government purpose or designs. If Syria's leaders have any interest at all in reaching an accommodation, in making their professions of peaceful intent convincing, this is the moment for them to show it.

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LIST OF POSITION WITH RESPECT TO THE STATE OF ISRAEL

REPRESENTATIVE GURNEY: 1963–68

October 10, 1967.—Opposes resumption of aid to Jordan because of its aggression against Israel, refusal to negotiate direct peace talks with Israel, and its "flirtations with Moscow." (C.R. H. 13159)

October 24, 1967.—Regarding the sinking of Elath, "It greatly disturbs me . . . it is inconceivable that the Johnson administration, with evidence of Arab-Soviet ties of the strongest kind, is reneging on its commitment to Israel." (CR H 13903)

January 18, 1968.—Press Release. Pleased to see announcement by State Department that cash aid to Jordan has been cut off. "I am definitely opposed to rearming a nation (Jordan) which has helped start this war against Israel . . . When will the Johnson Administration learn who is its friend and who is its foe? Warns against sending arms to Jordan and cites terrorism and Soviet buildup in Arab states. Calls for suspension of arms shipments to Jordan and sale of Phantoms to Israel."

March 1968.—News Release. Criticizes resumption of United States arms to Jordan. Reviews Jordan's participation in June war and his earlier warning to President Johnson concerning terrorist attacks from Jordan into Israel. "Why is President Johnson deferring action on sale of Phantom Jets needed by Israel to meet Communist military buildup?"

March 21, 1968.—Statement concerning Arab terrorism: "I can see no real distinction between the Viet Cong tactics and those of . . . El Fatah. It seems to me that Israel has a basic right to protect the integrity of her citizens." Notes that it had been determined prior to Israel operations that Arab terrorists were planning a massive escalation of commando squad penetration throughout Israel." After citing acts of terrorism he adds, "I again urge that the administration respond to the new situation by suspending any U.S. arms shipments destined for Jordan. It is obvious that the government of King Hussein has failed to restrain terrorist activities against Israel."

February 25, 1968.—Introduces sense of House Resolution (H. Res. 1227) urging U.S. to sell Phantom jet fighters to Israel. (C.R. H. 5605)

SENATOR GURNEY

April 1969.—Signs Scott-Ribicoff statement on Israel's 21st birthday which calls for direct Arab-Israel negotiations and opposes "any attempt to impose halfway measures not conducive to a permanent peace." Statement condemns Arab terrorism and deplores U.N. resolutions censuring Israel for counter-action.

November 20, 1969.—Inserts *New York Times* article concerning Soviet Jewry. (C.R. S 14751)

January 26, 1970.—Signs Case-Tydings resolution calling for direct negotiations between Arab states and Israel and arms for Israel. "We adhere to the principle that the deterrent strength of Israel must not be impaired." (C.R. S 529)

January 31, 1970.—In remarks to United Jewish Appeal dinner in Orlando Florida states that the Nixon administration will focus attention on the issue of persecution of Soviet Jews at the next meeting of the U.N. Commission on Human Rights, Feb. 23rd–March 27th 1970. Continues that our policy should be to encourage face to face negotiations without territorial preconditions. Would like to see "area neutralized with a multi-lateral agreement to enforce peace, that means to assure that the new boundaries are honored by all states."

February 1, 1970.—In *Orlando Florida Sentinel* states that Israel should not give up any territory as a pre-condition to negotiations. The Soviet Union "is playing on the Arab's mindless and homicidal hatred of Jews to further its own stated and long-standing goal of world wide domination." The United States "should work towards direct negotiations . . . and should not become a party to any Big Power imposed settlement in the Middle East."

May 1970.—One of 79 senators to sign letter to Secretary of State Rogers calling for jets for Israel.

August 7, 1970.—One of the original signers of bipartisan letter to Nixon, signed by 72 senators, supporting his July 1st TV statement with respect to the Middle East, which noted Israel's need for jets and the need to maintain balance to avoid all out war. The letter endorsed U.S. peace efforts "so that the integrity of every country in the area within mutually recognized and secure borders may be realized." Letter strongly supports clear expression of U.S. policy to "protect and defend its interests in the Middle East and Southern Europe as the best deterrent to direct U.S.–U.S.S.R. confrontation. (C.R. S 12950)

May 1971.—Speech in Miami for Federation and Emergency Fund stated that Israel

should not rely on guarantees because of past experience. U.S. political and military commitment to Israel—supplying Israel with arms to maintain balance—must be continued. "It is in the interest of the United States to see that Israel remains a viable force for democracy. . ."

October 15, 1971.—Cosponsored resolution urging "affirmative action" on Israel's request for Phantom jets "without further delay." Resolution also called for assistance "to maintain Israel's deterrent capability and appealed for U.S. reaffirmation of the "importance of secure and defensible borders as a vital element in a peace settlement to be negotiated by the parties themselves." (CR S 16289)

November 23, 1971.—Voted for Jackson Amendment to Defense Appropriations Bill for military sales credits for Israel (CR S 19490)

February 1972.—Cosponsors Soviet Jewish Refugee Assistance Act—$85 million to aid in their resettlement.

September 6, 1972.—In speech on the Senate floor, mourns the Munich 11 and condemns terrorism stating, ". . . eight Arab lunatics have shown themselves to be no less barbaric. . . than those who gave the orders at places like Dachau." He concludes, "Peace between Arabs and Israelis can only come when such tactics are discarded and both parties sit down and negotiate face to face. . ." (CR S 14119)

October 1972.—Cosponsors amendment introduced by Senator Jackson which would deny most-favored-nation treatment, credits or investment guarantees to a nation which, like the Soviet Union, denies its citizens the right or opportunity to emigrate and which imposes more than nominal exist fees.

March 15, 1973.—Principal cosponsor of Jackson amendment and cites cases of several imprisoned Soviet Jews to illustrate the need to support and pass the Jackson amendment. Inserts open letter from friends of the Soviet Kerbel family to the Government of the USSR in support of efforts to aid in their emigration from the Soviet Union (CR S 4829–30)

March 1973.—Cosponsors the Jackson amendment, which like the original, would deny most-favored-nation treatment, credits or investment guarantees to a nation which denies its citizens the right or opportunity to emigrate and which imposes more than nominal exit fees.

May 7, 1973.—At Miami celebration of Israel's 25th birthday delivers speech. Discusses Israel's history, cites need for secure borders, and perceives crucial U.S. role in keeping Israel alive. States that Congress will not bow to Arab attempts to use oil to change U.S. outlook. Advocates continued delivery of planes to Israel and strongly supports efforts on behalf of Soviet Jewry."

May 26, 1973.—Voted "Yea" on the Jackson-Allen amendment to the 1973 Military Sales Act to restore the Administration's request for an authorization of $525 million for military credit sales with a credit ceiling of $700 million.

June 8, 1973.—Inserts Dr. Korey's AIPAC speech on Soviet Jewry. (CR S 10712)

June 8, 1973.—Inserts statement of Synagogue Council of America endorsing Jackson-Mills-Vanik amendment. (CR S 10712)

October 17, 1973.—Signs "Dear Colleague letter" sent to all senators urging their cosponsorship of the Humphrey-Jackson Phantom Jet Resolution (Sen. Res 189)

October 1973.—Cosponsors Humphrey-Jackson Phantom jet resolution.

December 1973.—Voted "Yea" on the Fong amendment restoring $36.5 million for Soviet Refugee Assistance to the Foreign Aid Bill of 1973.

December 1973.—Voted Yea on the Foreign Assistance Appropriations Bill of 1973 which included the $2.2 billion emergency security assistance for Israel.

December 1973.—Voted Yea on the Emergency Security Assistance Act of 1973 authorizing $2.2 billion in miiltary grants and credits for Israel.

## ECONOMIC FREEDOM

Mr. FANNIN. Mr. President, political liberty can be maintained only as long as we have economic freedom. Government dictatorship over the economy is detrimental not only to business and industry, but to everyone in the Nation.

This point was made very dramatically recently in a speech by Walter B. Wriston, chairman of the First National City Corporation and First National City Bank. Excerpts from the speech were reprinted this morning in the New York Times.

In the article, Mr. Wriston notes that some newspapers such as the New York Times are strongly advocating more and more Government control of American business and industry. He very appropriately suggests that the ultimate course of this argument is Government control of the news media itself.

Mr. President, this article makes a number of excellent points and I ask unanimous consent that it be printed in the RECORD.

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

NO ONE HOLDS A MONOPOLY ON AMERICA

(By Walter B. Wriston)

You do not have to pay too much attention to the din in the media to gain the impression that all of our American institutions are in jeopardy. If you are tempted to reflect on the fact that America is at peace with its neighbors, and that never in history have more people been employed at higher wages in a free society, a poll can be produced to show you how wrong you are. Armed with multiple-choice questions, pollsters knock on doors to inquire about the timetable to doomsday. According to the pollsters, very little about American life has our approval. Congress, the Presidency, business, the media, universities are all held in low esteem.

What we somehow fail to perceive is that all these institutions, which are said to be in trouble, are made up of people like you and me. The American system has been built not upon the worship of institutions but upon a belief in the worth of the individual.

A long time ago Walt Whitman put it this way:

O I see flashing that this America is only you and me,
Its power, weapons, testimony, are you and me,
Its crimes, lies, thefts, defections, are you and me,
Its Congress is you and me, the officers, capitols, armies, ships, are you and me.

Whitman did not say that America was a collection of groups or institutions. He said it was you and me. We do not educate groups; we educate individuals. Part of our education must be that you and I have an obligation to pass on to our children our hard-won individual liberty, which must be reasserted if our freedom is to endure.

Still, there is an idea abroad in the land that a businessman does not enjoy the protection of the First Amendment and if he wishes to make his views known to a congressman, or a senator, or a governor, or a mayor or the President of the United States, he is somehow doing something evil. But a reading of the Constitution shows that freedom of speech precedes even freedom of the press in the wording of the First Amendment.

Increasingly, small groups of men and women, elected by no one, announce that they alone are privy to the secret of what constitutes the public interest. The men who drafted our Constitution were unaware that such wisdom resided in any group. Rather, they were at pains to see that no one sector arrogated too much power to itself. They rejected the view that a man's occupation made him either wise or foolish, for they came from all kinds of backgrounds. The business of publishing a newspaper or running a TV station does not in and of itself make one either more or less discerning about the public interest than any other business. Walt Whitman made no exceptions when he said America was "you and me."

No matter what business we are in, we should speak out on issues as we perceive them with all the clarity at our command. If, for example, you believe in free markets, it is a formidable task to be heard in our town because The New York Times editorials almost daily advance the thesis in one way or another that all of our economic activity should be regulated by the Government except, of course, those corporations which own the press or the media.

After three years of price and wage controls and 2,000 years of history which recorded only their failure, one would think that experience would have overwhelmed the editors' theory. Instead, only recently The Times called for "a more sensible price control policy" for what it characterized as an "inflation-racked, monopoly-dominated economy." It seems unable to grasp one of the central lessons of history which is that you cannot preserve political liberty, which includes a free press, if the economic system is run by a government dictatorship.

A former Italian journalist writing in 1932 explained it with great clarity: "The Fascist State has drawn into itself even the economic activities of the nation . . . its influence reaches every aspect of the national life . . . all the political, economic and spiritual forces of the nation." The journalist's name was Mussolini who, you recall, went on to prove his point. Surely, that was not so long ago that we have forgotten the lesson that freedom is indivisible.

And so we return to Whitman's "you and me" and the obligation to preserve a governmental system based on a belief in the worth of the individual. This means that you and I, not somebody else, must speak out and say that if we wish to preserve our political liberty, we must also preserve our economic freedom.

## FLORIDA DENTISTS HARASSED IN THE SOVIET UNION

Mr. CHILES. Mr. President, I have just received word that a group of dentists from south Florida visiting the Soviet Union in a group of 100 dentists from the United States were harassed while going on a picnic with Russian Jews outside Moscow. This was not only a frightening experience for those involved, but also a profoundly disagreeable incident at a time when there is so much concern for the plight of Jewish people in the Soviet Union. I am shocked and disappointed that such an incident would occur not only for the threat that it obviously reveals to Soviet Jews celebrating the Lag Baomer festival, but also for im-

pact on Americans going to the Soviet Union.

Tourists are a vital link between concerned Americans and Soviet Jews. I only hope that this incident will strengthen the determination of Americans traveling to the Soviet Union to make contact with Soviet Jews which can only deepen the bonds of friendship and concern which are necessary to sustain human rights.

I call this incident to the attention of my colleagues and ask unanimous consent that the article from the Miami Herald be printed in the RECORD.

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

RUSSIANS HARASS MIAMIANS—ORDERED OFF BUS BY POLICE

Soviet police turned a holiday picnic excursion into an ordeal in mud Friday for a party of Southeast Florida dentists and Russian Jews, the Americans told newsmen in Moscow.

They said the security men—eventually numbering more than 100—not only forced the 10 Americans off a bus bound for a picnic site but physically barred the Russian-American group from continuing its trip on foot.

"We went down some side roads covered with mud and forced our way through," said Dr. Michael M. Krop of 2001 NE 195th Dr. "The police surrounded us and kept asking for our papers. I saw them grab a woman by the arm and pull her off the bus. It was really unbelievable."

"They were very forceful," said Dr. Lawrence I. Brant of 1971 NE 191st Dr. "One of them grabbed my wife's arm and forced her to show her passport. They made it very unpleasant. We were kind of frightened."

The dentists and their wives, most of them Greater Miamians, were part of a group of 100 U.S. dentists who went to a Moscow convention Monday in a Soviet Aeroflot jet airliner that flew to the Soviet Union from Miami via New York.

The Russian Jews said police told the Americans they could not proceed on the public bus because it was going to an area barred to foreigners. They said police stopped the bus 18 miles down the Kalgua Highway. The off-limits area starts 25 miles from Moscow.

Brant said the group held its picnic anyway, in a field near where the security force blocked their way with vehicles and men.

The Americans said they had gotten in touch with Soviet Jews whose names had been given by Jews in the Miami area.

The Russians invited them to go on a picnic, they said. The Americans and Russians took a public bus to the picnic site.

"We all brought food for the (Lag Baomer) festival," he said. "People had children and were carrying guitars. It was supposed to have been a happy occasion and no one was planning to have a demonstration. When we were having our picnic, police took pictures of us all."

The Americans said that, despite the harassment, they picnicked, sang and danced for more than two hours.

Mrs. Robert Blank, wife of a Hollywood dentist, said the Americans were followed all over Moscow as they prepared for the picnic.

"We expected that," she said, "but when our bus got out of town we were stopped. Police came aboard and looked at our passports, then told us to get off the bus. The Russian Jews got off with us.

"No matter which way we turned (the police) said we couldn't go there. We finally went down a muddy road to a field and had our picnic. The police kept stopping us to look at our passports and tried to take our cameras. It was frightening."

One of the Russian Jews said that villagers in the area came out of their houses and shouted insults, including "Hitler should have killed you all."

Aeroflot recently began Miami-to-Moscow charter service, using four-engine Ilyushin 62 jets that are in the luxury class compared to airliners used in the Soviet Union.

The first flight, April 28, took off under a cover of secrecy at Miami International Airport. The operation was kept quiet to avoid antagonizing Miami's Cuban refugees, who have picketed visiting Soviet ships in the past.

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## INCOME TAX PAYMENTS, NET WORTH DISCLOSURE, AND 1974 INCOME PROJECTION OF SENATOR BOB DOLE

Mr. DOLE. Mr. President, I have indicated to inquiring reporters that I would disclose the amount of taxes I have paid since coming to the Senate, as well as my overall financial status. To some, this information may be meaningful. To others, it may satisfy a curiosity. In any event, those of us in public office expect close scrutiny, perhaps now more than at any previous time. I submit the following information in the hope that it is responsive to the legitimate concerns of Kansas residents.

A brief word of additional explanation may be helpful. I entered Congress in 1961. Since then, I have not engaged in any private law practice, nor have I been associated with any law firm. I have no interest in any other private business.

Since becoming a Member of the U.S. Senate in January 1969, my principal source of income has been my Senate salary—$42,500 annually. This salary has been supplemented by lecture fees, which have averaged $24,318 in the 5 years I have served in the Senate. Fees received for lectures or speeches delivered on college campuses have, in part, been returned to those colleges to establish scholarships for handicapped students. In each of these years, I have also fully complied with the rules of the Senate requiring confidential disclosure of personal finances and public reporting of the amounts and sources of my fees for public speaking engagements. This information is on the public record and has been available to the press and interested citizens.

Concerning my net worth, I wish it were possible to provide an accurate and detailed accounting of my finances when I came to Washington in 1961. Unfortunately, my records for that period are incomplete, so only a rough estimate can be constructed. After 9 years of practice following graduation from law school, my principal asset was equity in a residence in Russell, Kans. The home was secured by a mortgage; and although I had no other major debts or obligations, a generous estimate of my net worth at that time would not exceed $20,000. A comparison of this estimate with the calculation of my present net worth will, I believe, provide a sufficiently clear indication of my financial position.

I would also point out that each year while serving in the Senate my tax returns have been prepared in consultation either with one of the Internal Revenue Service professionals who provide this assistance to Members and employees of the Senate, or with an individual who had previously served in this capacity and is now a Senate committee staff member.

Mr. President, I ask unanimous consent that the material be printed in the RECORD.

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

CURRENT NET WORTH OF SENATOR DOLE, MAY 16, 1974

| | |
|---|---|
| *Assets:* | |
| Equity in residence, Watergate South Apartment, Washington, D.C.[1] | $58,206.32 |
| Contributions to Civil Service Retirement Fund[2] | 33,502.00 |
| Automobile (1973 Chevrolet)[3] | 2,688.74 |
| Household furnishings (approximate value) | 10,000.00 |
| Balance in checking accounts (Russell, Kansas, and Washington, D.C | 16,395.56 |
| Miscellaneous office equipment political memorabilia and personal effects | 10,000.00 |
| Income-producing securities | None |
| Interests in land or real property (other than residence) | None |
| Interests in oil and gas leases | None |
| Other income-producing property[4] | None |
| Total | 130,792.62 |
| LIABILITIES | |
| Mortgage on residence, Washington, D.C. | $44,488.68 |
| Current obligations owed and payable | 2,226.00 |
| Tax obligations outstanding | None |
| Other | None |
| Total | 46,714.68 |
| Net worth | 84,077.94 |

[1] Includes proceeds from 1973 sale of previous residence in Falls Church, Va.
[2] As of Apr. 30, 1974.
[3] Value as of Dec. 31, 1973.
[4] Four life insurance policies of which the Senator's daughter is the sole beneficiary are in force (face value, $84,259.00).

INCOME TAXES PAID BY SENATOR BOB DOLE

| | |
|---|---|
| 1969: | |
| Paid to State of Kansas | $1,115.80 |
| Paid to United States | 10,614.95 |
| 1970: | |
| Paid to State of Kansas | 1,324.95 |
| Paid to United States | 11,892.32 |
| 1971: | |
| Paid to State of Kansas | 2,652.70 |
| Paid to United States | 20,044.91 |
| 1972: | |
| Paid to State of Kansas | 1,386.00 |
| Paid to United States | 18,526.09 |
| 1973: | |
| Paid to State of Kansas | 1,767.67 |
| Paid to United States | 20,367.56 |
| 1969–73: | |
| Total paid to State of Kansas | 8,247.12 |
| Total paid to United States | 81,445.83 |
| Total—all incomes taxes paid | 89,692.95 |

THE 1969 TAX SUMMARY

| | |
|---|---|
| U.S. taxes: | |
| Total income | $47,010.55 |
| Employee business expense | 3,837.37 |
| Itemized deductions* | 7,672.56 |
| Table incomes | 33,700.62 |
| U.S. taxes paid | 10,614.95 |
| *Itemized deductions: | |
| Medical and dental expenses | 150.00 |
| Taxes | 2,410.61 |

THE 1969 TAX SUMMARY

| | |
|---|---|
| U.S. taxes—Continued | |
| Interest expense (home mortgage) | $1,824.50 |
| Contributions | 912.85 |
| Casualty or theft losses | 0 |
| Miscellaneous deductions—these include entertainment of constituents, depreciation of office equipment, dues and office expenses | 2,374.60 |

Kansas taxes paid, $1,115.80.

THE 1970 TAX SUMMARY

| | |
|---|---|
| U.S. taxes: | |
| Total income | $52,476.05 |
| Employee business expense | 3,217.72 |
| Itemized deductions* | 9,073.09 |
| Taxable income | 38,310.24 |
| U.S. taxes paid | 11,892.32 |
| *Itemized deductions: | |
| Medical and dental expenses | 150.00 |
| Taxes | 2,714.73 |
| Interest expense (home mortgage) | 1,773.68 |
| Contributions | 1,339.75 |
| Casualty or theft losses | 0 |
| Miscelleanous deductions—these include entertainment of constituents, depreciation of office equipment, dues and office expenses | 3,094.93 |

Kansas taxes paid $1,324.95.

THE 1971 TAX SUMMARY

| | |
|---|---|
| U.S. taxes: | |
| Total income | $79,935.10 |
| Employee business expense | 9,411.73 |
| Itemized deductions* | 11,453.15 |
| Taxable income | 57,045.22 |
| U.S. taxes paid | 20,044.91 |
| *Itemized deductions: | |
| Medical and dental expenses | 150.00 |
| Taxes | 3,337.45 |
| Interest expense (home mortgage) | 2,019.81 |
| Contributions | 3,054.63 |
| Casualty or theft losses | 0 |
| Miscellaneous deductions—these include entertainment of constituents, dues and subscriptions, office expenses and depreciation of office equipment | 2,891.26 |

Kansas taxes paid, $2,652.70.

THE 1972 TAX SUMMARY

| | |
|---|---|
| U.S. taxes: | |
| Total income | $82,927,26 |
| Employee business expense | 2,678.25 |
| Itemized deductions* | 33,397.19 |
| Taxable income | 46,101.82 |
| U.S. taxes paid | 18,526.09 |
| * Itemized deductions: | |
| Medical and dental expenses | 150.00 |
| Taxes | 4,637.56 |
| Interest expense (home mortgage) | 1,789.11 |
| Contributions | 2,268.00 |
| Casualty or theft losses | 0 |
| Miscellaneous deductions—these include entertainment of constituents, office expenses, alimony and insurance premiums paid and depreciation of office equipment | 24,552.52 |

Kansas taxes paid, $1,386.

THE 1973 TAX SUMMARY

| | |
|---|---|
| U.S. taxes: | |
| Total income | $88,713.58 |
| Employee business expense | 6,987.34 |
| Itemized deductions* | 30,120.31 |
| Taxable income | 48,855.93 |
| U.S. taxes paid | 20,367.56 |
| *Itemized deductions: | |
| Medical and dental expenses | 150.00 |
| Taxes | 2,407.60 |
| Interest expense (home mortgage) | 1,779.50 |
| Contributions | 3,195.44 |
| Casualty or theft losses | 0 |
| Miscellaneous deductions—these include entertainment of constituents, office expenses, alimony paid, legal fees, political contributions and depreciation of office equipment | $22,587.77 |

Kansas taxes paid, $1,767.67.

PROJECTED SOURCES OF INCOME FOR 1974

Senate salary. $42,500.

Lecture fees: Vary annually.

Retirement pay (disability retirement for wounds received in World War II): $5,435.72 per year—not subject to tax.

Veterans' Administration insurance dividend: $148.00—not subject to tax.

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## DISCRIMINATION IN THE MIDDLE AND UPPER LEVELS OF MANAGEMENT

Mr. MONDALE. Mr. President. More than a year ago the Department of Labor's Office of Federal Contract Compliance issued the following guidelines:

> Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

In this country today, there are precious few women and minority group members at the middle and upper levels of management—the executive suite—in business and industry. Less obvious but no less true, there are discouragingly few representatives of these Southern and Eastern European ethnic groups at these same management levels.

Polish, Italian and other Slavic ethnic groups are beginning to take a hard look at their own participation in the American dream. They are finding that they are a long way from "having made it." They are asking questions and looking for data relating to their condition.

The Federal policy toward their condition consists only of the Department of Labor guidelines. But the guidelines are merely guidelines. They are not a regulation in the sense that specific requirements are spelled out with sanctions for violations. The guidelines exhort business and industry to look at their executive suite personnel practices. They apply to those doing business as contractors or subcontractors with the Federal Government. No affirmative action plans are required.

Issued more than a year ago (41 C.F.R. part 60–50), the guidelines require "affirmative action" in areas dealing with upgrading, layoff, termination training, recruitment, transfer, and demotion of all ethnic employees. Special attention is to be given job opportunities at the middle and executive management job levels.

I have not made a formal inquiry of the Department of Labor to inquire what progress its Office of Federal Contract Compliance has made in implementing the guidelines. Informally, I have learned that OFCC has no statistical data for evaluative purposes, notwithstanding the fact that more than a year has passed since the guidelines were promulgated. I have been told that OFCC is asking the various Federal compliance agencies to report on activities under 60–50. Mr. President, I would very much be interested in the results of this survey. I have also made inquiries that suggest there is some evidence to doubt the sincerity of the Government in carrying out this policy—a policy which, by the way, I heartily endorse.

Evidence also is mounting that the record of America's business and industry in sharing internally positions of power with all groups is a sorry one. An ethnic-sponsored study recently documented ethnic participation—or lack of it—in some of Chicago's large corporations. The study looked at the executive suites of 106 of Chicago's largest corporations to see how many Italians, Poles, blacks, and Latins were members of the boards of directors or corporation officers. These 4 groups represent nearly 34 percent of the 7 million Greater Chicago Metropolitan area. Less than 3 percent—36 directors of a total of 1,341—and less than 4 percent—52 officers of a total of 1,355—were black, Latin, Polish or Italian. Indeed, more than half—55—of the corporations had no one from these groups as directors or officers.

The study was undertaken by the Institute of Urban Life, a Chicago firm headed by Edward Marciniak. It was prepared for the National Center for Urban Ethnic Affairs, a Washington-based nonprofit organization founded and headed by Msgr. Geno Baroni.

A journalist, Charles N. Conconi, heard about the results and decided to take a look behind the statistics. He interviewed a number of people including Anthony J. Fornelli, a well-known and successful Chicago attorney, son of Italian immigrant parents. Said Fornelli when he saw the study results:

> If we are such a large percentage of the national population, why do we have such a small percentage of the top jobs. Either we are a minority in numbers or a minority in thought. Either business is ignoring an untapped vast resource or there is a conscious effort to exclude. The statistics say something is wrong. I think the decision is conscious. I feel there is a consious effort to exclude at hiring. Can you believe that the four groups have been excluded without a conscious effort? . . .

Conconi looked behind the Italian representation figures, for they were the greatest. He found that one Italian was a member of nine boards, thus skewing the figures. Also the Admiral Corp. is owned by Italian Americans.

Conconi's article appeared in an excellent Italian-American newspaper, Fra Noi, published in Chicago and edited by Rev. Paul Asciolla, S.C.

Mr. President, I ask permission that the executive suite study and the Conconi article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibits 1 and 2.)

Mr. MONDALE. Mr. President, generally, this pattern of exclusion exists and persists. But there are bright spots. William Carmell, manager of equal em-

ployment opportunities programs for Union Carbide Corp., has written a magazine article on the executive suite. Carmell's perception of the rising aspirations of ethnic groups is surely on target. Writing in the winter issue of Business and Society Review (No. 8), he titles his article "White Ethnics: Here Comes the New Minority."

Carmell says ethnics have been satisfied in the past at the lower echelons of corporate management. Today, however, they are insisting that the corporate world must "recognize that ethnics too have experienced some difficult problems in adjusting to life and business in the United States," and the discrimination they have suffered must also be rectified. If they are ignored, ethnics will go on believing—

That their past and present difficulties have been totally neglected while the problems of others have at least begun to be addressed. This resentment and frustration can well lead to the same kinds of confrontations that minorities and women have sometimes felt compelled to initiate in order to gain equal employment opportunity.

Carmell wonders if the Federal Government is really very serious about enforcing its own guidelines. At the corporate end of Federal compliance, he detects little emphasis on the guidelines from Washington. But, then, he believes that many corporate managers also do not perceive the problem with regard to ethnics. Some are hostile, determined to accept no responsibility, particularly equal opportunity managers. The irony, he says, is that the success of programs for women and minorities depends in part on the cooperation of the ethnics already on the work force of business organizations. The article details some positive actions that corporations can pursue in making way for the upward mobility of ethnics in their organizations.

Mr. President, I ask permission that the article be printed at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. MONDALE. Mr. President, there are in America today more than 40 million people who identify themselves as ethnic—people of southern, middle and eastern European ancestry and cultural heritage. They are integral to the fabric of American life and culture. They are good citizens. They are hard working, frugal, patriotic, and the representatives of rich and varied cultures and lifeways that add so much to our pluralistic national life. But they have been long suffering too.

They are asking today with increasing frequency and articulateness what their stake in the American dream is. The promise of equal opportunity for all is the heart of the American dream. The pursuit of equal justice for every American—black, brown, Indian, or ethnic—is essential to the preservation of our national character.

That is why I am intensely interested in sharing the information I have gathered. I know that management positions in this country are largely determined at two points: recruitment or selection and promotion. Who gets recruited? Who gets promoted? Corporate America hopefully will begin reviewing its practices in this regard.

I intend to return again to this subject, and to watch carefully Federal efforts in carrying out stated policies. Perhaps, tougher regulations may be in order.

I ask permission that the guidelines be printed at the end of my remarks.

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

(See exhibit 4.)

EXHIBIT 1

MINORITY REPORT: THE REPRESENTATION OF POLES, ITALIANS, LATINS AND BLACKS IN THE EXECUTIVE SUITES OF CHICAGO'S LARGEST CORPORATIONS

The question "How many are there?" has become one of the most provocative and unsettling questions being raised on all levels of American society. It reflects the national preoccupation with evaluating the success or failure of various ethnic groups in gaining their share in the American system for distributing income and power. Thus, in just a matter of a few years questions regarding a person's race or ethnic background, once felt to have no public relevance and even considered illegitimate, now not only are being asked but even require answers by law. Companies with government contracts are now required to file reports indicating their utilization rate of Blacks, Latins, American Indians, Eskimos, and women. In January, 1973, the U.S. Department of Labor, Office of Federal Contract Compliance, issued new guidelines to cover discrimination against persons because of religion or ethnic origin. These guidelines said:

"Members of varous religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups continue to be excluded from executive middle management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.[1]

What the guidelines in effect recognize is that, despite the powerful American rhetoric which emphasizes individual achievement, power and affluence in reality still flow along group lines, and that an individual's religious or ethnic affiliation may in fact still be an obstacle to his advancement.

The purpose of this study was to investigate the extent to which members of the Polish, Italian, Latin, and Black communities have penetrated the centers of power and influence in Chicago-based corporations. This was done by determining how many Poles, Italians, Latins, and Blacks either serve on the board of directors or occupy the highest executive positions in Chicago's largest corporations.

In focusing on Poles, Italians, Latins, and Blacks, this study selected a combination of minority groups which at this point in time is historically signficant. The 1960's saw the rise of group consciousness among Blacks and Latins, and their relentless pursuit of parity with other groups in the U.S. This process released the latent consciousness of other groups, such as Poles and Italians, who are becoming increasingly aware that like Blacks and Latins, they may not be sharing equally in the affluence of American society.

Thus, although this study originated at the request of leaders of the Polish American Congress, Illinois Division, and the Joint Civic Committee of Italian-Americans in Chicago, they were more than willing to see the study expanded to include Blacks and Latins. In the Chicago metropolitan area, where nearly 35 percent of the seven million population is either Polish, Italian, Latin, or Black, such a perception of mutual concerns could have a positive influence on the future of group relations and thus on the very shape and tone of life in the city and suburbs.

The corporations reviewed in this study were identified by combining the *Chicago Daily News* and *Chicago Tribune* lists of the Chicago area's largest corporations in 1972. Among the thousands of corporations based in the Chicago area, 106 were identified as the largest industrial firms, retailers, utilities, transportation companies, banks, and savings and loan institutions. More than half of them (66 per cent) were included in *Fortune* magazine's 1972 list of the largest 500 industrial corporations or *Fortune's* lists of the largest non-industrial firms in the U.S. These 106 corporations, therefore, comprise the top layers of the economic and financial power structure of Chicago and of the nation. It was the top management of these corporate giants and their boards of directors who were scrutinized in order to determine the representation of Poles, Italians, Latins, and Blacks.

Information about directors and officers was taken directly from the 1972 annual report of each corporation. The number of directors of all 106 corporations totaled 1341; the number of officers, 1355. For the purposes of this study, honorary board members were not included, nor were officers of less than vice-presidential rank such as assistant vice-presidents, assistant secretaries, or assistant treasurers. Where a firm was controlled by a holding company, only the directors and officers of the holding company were counted. An officer who also was a member of the board of directors of the same firm was counted twice, once as a director, again as officer.

FINDINGS AND CONCLUSIONS

Thirty-six, or less than three per cent, of the 1341 directors were Polish,[2] Italian, Latin, or Black. Fifty-two, or less than four per cent, of the 1355 officers were Polish, Italian, Latin, or Black. These four groups make up approximately 34 per cent of the metropolitan area's population. When translated into individual percentages, the findings indicate that 0.3 per cent of all directors were Polish, 1.9 per cent Italian,[2] 0.1 per cent Latin, and 0.4 per cent Black. Out of all officers, 0.1 per cent were Polish, 2.9 per cent Italian, 0.1 per cent Latin, and 0.1 per cent Black. (See Table I.)

TABLE I.—REPRESENTATION OF SELECT ETHNIC GROUPS IN THE CHICAGO METROPOLITAN AREA[1] POPULATION AND ON THE BOARDS OF DIRECTORS AND AMONG THE OFFICERS OF THE 106 LARGEST CHICAGO AREA CORPORATIONS.

| | Percent of area population[2] | Directors | | Officers | |
|---|---|---|---|---|---|
| | | Number | Percent | Number | Percent |
| Poles | 6.9 | 4 | 0.3 | 10 | 0.7 |
| Italians | 4.8 | 26 | 1.9 | 39 | 2.9 |
| Latins | 4.4 | 1 | .1 | 2 | .1 |
| Blacks[3] | 17.6 | 5 | .4 | 1 | .1 |
| All other | 66.3 | 1,305 | 97.3 | 1,303 | 96.2 |
| Total | 100.0 | 1,341 | 100.0 | 1,355 | 100.0 |

[1] The "area population" refers to the Chicago metropolitan area: the 6 counties of Cook, Kane, Will, DuPage, Lake and McHenry, whose population in 1970 was 6,979,000.

[2] The percentages of area population was prepared by Michael E. Schiltz, director of Loyola University's Graduate Program in Urban Studies. For Poles, Italians, and Latins, the estimates include 1st, 2d, and 3d generations, based on U.S. Bureau of Census data.

[3] The black population is based on 1970 data from the U.S. Census Bureau.

How does one make a judgment about such information? How can it be used to

Footnotes at end of article.

evaluate the extent to which Poles, Italians, Latins, and Blacks have entered the executive suites of Chicago's major corporations? Are Poles, Italians, Latins and Blacks equitably represented there?

To answer such questions the executive suite data was compared to the population of each of the four groups in the Chicago metropolitan area. This comparison provides a rough but fair guide for determining whether each group has achieved parity or whether it is underrepresented.[4]

If one compares (Table I) the percentage of officers and directors whose backgrounds are Polish, Italian, Latin, or Black to the percentage distribution of these four groups in the population, it becomes clear that all four groups were grossly underrepresented on the boards of directors and in the executive positions of Chicago's major corporations. Thus, although Poles make up 6.9 per cent of the metropolitan population, only 0.3 per cent of the directors are Polish. Italians make up 4.8 per cent of the population, but only 1.9 percent of the directors are Italian. Blacks comprise 17.6 per cent of the population yet only 0.4 per cent of the directors are Black. Latins are 4.4 per cent of the population yet only 0.1 per cent of the directors are Latin. The same general pattern holds if one compares the percentages of officers who are Polish, Italian, Latin, or Black to the percentage distribution of these four groups in the population.

As a matter of fact, Poles, Latins, and Blacks were virtually absent from the upper echelons of Chicago's largest corporations. 102 out of the 106 corporations had no directors who were Polish; 97 had no officers who were Polish. Only one corporation had a Black officer and only two had Latin officers. While the Italians were more numerous in the executive suite than the other three groups, 84 corporations out of 106 still had no directors who were Italian and 75 had no officers who were Italian. Finally, 55 out of the 106 corporations had no Poles, Italians, Latins, or Blacks, either as directors or as officers. (See Table II).

TABLE II.—NUMBER OF CORPORATIONS, OF THE 106 EXAMINED, WHICH HAD NO DIRECTORS OR OFFICERS WHO WERE POLES, ITALIANS, LATINS, OR BLACKS [1]

| | Number of corporations without director | Number of corporations without officer |
|---|---|---|
| Poles | 102 | 97 |
| Italians | 84 | 75 |
| Latins | 105 | 104 |
| Blacks | 101 | 105 |

[1] 55 of the 106 corporations had no Poles, Italians, Latins, or blacks either as directors or as officers.

Other significant patterns emerge from the data. Poles and Italians do better in their representation in executive positions than they do as board members. The opposite is true of Blacks, whose major source of representation comes from appointments to boards of directors rather than from holding top executive positions. No Poles were located among the public utilities and banks reviewed in this study, either as directors or as officers. As for Italians, 16 were associated with banks or savings and loan institutions. However, there were no Italians in the executive suites of the utilities.[5] On the other hand, three out of the five corporations with Black directors were public utilities. The number of Latins was not large enough to yield any significant pattern.

Hopefully, this study of four ethnic groups in the corporate structure of metropolitan Chicago will be extended to include their representation in major civic groups such as public boards and commissions, influential private agencies and associations, foundations, and social clubs. Similar studies of other ethnic groups such as Czechs, Greeks, Lithuanians, etc, should be conducted in the Chicago area. Given the lack of adequate research on American ethnic groups, similar surveys should be undertaken in other large cities.

As such studies accumulate, the result may be a national profile for each of America's ethnic groups showing precisely the extent to which each of them share in the power and affluence of the nation. In the process the nation will learn to what extent the American corporation is a "truly public institution bound to the same criteria of selection that today affect government service—freedom from bias, and the requirement at the same time to represent and reflect all parts of the American population." [6]

A NOTE ON METHOD

Trying to determine ethnic origin is a hazardous enterprise. In order to make this study as accurate as possible, knowledgeable leaders from the Polish, Italian, and Latin communities were asked to identify ethnic names by studying the lists of directors and officers in each annual report. In cases of doubtful ethnic origin the individual's office was contacted directly. Each corporation having no apparent representation from any of the four ethnic communities was informally contacted to double check the preliminary findings. In regard to Blacks, all available studies were utilized and persons familiar with the Black community were consulted. Also helpful were several lawyers and business leaders who were generally knowledgeable about many of the corporations studied. If there are any errors in the final tally for each group, the margin of error would not be sufficiently great to invalidate the findings of this study.

A manual describing in full the method used is being prepared by the author and will be distributed through the National Center for Urban Ethnic Affairs in Washington and the Institute of Urban Life in Chicago.

FOOTNOTES

[1] 60–50.1 of Chapter 60, Title 41, Code of Federal Regulations.

[2] In referring to Poles, Italians, Latins, or Blacks, the author means Americans who are of Polish, Italian, Latin (Spanish-speaking background), or Black ancestry.

[3] One person of Italian background serves on nine different boards. If he were to be counted only once, the percentage of directors who are Italian would be reduced from 1.9 per cent to 1.3 per cent.

[4] What should serve as an equitable norm, and how to apply it, is, of course, open to discussion. One can anticipate increasing public discussion of the matter as more groups pursue group gains.

[5] An Italian, however, does serve as an officer of the two subsidiaries of one of the utilities.

[6] Nathan Glazer and Daniel P. Moynihan, *Beyond the Melting Pot*, 1963, p. 208.

THE 106 CHICAGO-BASED CORPORATIONS

Abbott Laboratories, Admiral, Allied Mills, Allied Van Lines, American Bakeries, American Hospital Supply, American National, Amsted Industries, Baxter Laboratories, Beatrice Foods, Bell Federal, Bell & Howell.

Borg-Warner, Brunswick, Bunker Ramo, Carson Pirie Scott, CECO, CENCO, Central National Bank, CFS Continental, Chemetron, Citizens Bank Park Ridge, Chicago Bridge and Iron, Chicago-Milwaukee.

Chicago and North Western, Chicago, Rock Island and Pacific, Combined Insurance, Commonwealth Edison, Consolidated Foods, Continental Illinois Corporation, CNA Financial, De Soto, Donnelley (R.R.) & Sons, Drovers National Bank, Exchange National Bank.

First Chicago, First Federal, FMC, General American Transportation, Goldblatt Brothers, Gould, Harris Bankcorp, Hart, Schaffner & Marx, Heller (Walter E.) International, Hilton Hotels.

Home Federal, Household Finance, Illinois Bell Telephone, Illinois Central Industries, Illinois Tool Works, Interlake, Inland Steel, International Harvester, International Minerals & Chemical, Jewel, Kemperco.

Kraftco, Lakeview Trust, LaSalle National Bank, Libby, McNeill and Libby, Marcor, Maremont, Marleman, Marshall Field, Masonite, McDonald's, McGraw-Edison, Morton-Norwich Products, Motorola, Nalco Chemical.

National Boulevard Bank, National Can, National Tea, Northern Illinois Gas, Northern Indiana Public Service, Nortrust, Northwest Industries, Northwestern National Bank, Outboard Marine, People's Gas.

Pioneer Trust, Pullman, Quaker Oats, St. Paul Federal, Santa Fe Industries, Searle (G. D.), Sears Bank & Trust, Sears, Roebuck, Signode, Spector Industries, Square D, Standard Oil (Indiana).

Sunbeam, Swift, Talman Federal, Trans Union, UAL, U.S. Gypsum, UNICOA, Universal Oil Products, Walgreen, Ward Foods, Washington National, Wieboldt Stores, Wrigley (William) Jr., Zenith Radio.

EXHIBIT 2

[From Fra Noi, January 1974]

ETHNIC MINORITIES STILL HAVEN'T MADE IT!

(By C. N. Conconi)

Little did the black militants of the 1960s realize that their calls for "Black Power" and "Black Is Beautiful" would awaken the more established ethnic groups into wistful thoughts of "Italian Power" or "Polish Is Beautiful."

But no one but campaigning politicians paid much attention to the white urban ethnic minorities and only then to call up fears about "crime in the streets" or "busing."

When Martin Luther King Jr. brought the Civil Rights Movement to always-volatile Chicago in 1966 to march for open housing, he walked into a white ethnic wall of rage that staggered his previously steady momentum.

Blacks faced an unexpected new enemy. It wasn't the racist "Mississippi Rednick" or the "Georgia Cracker."

It was, instead, the Northern Urban Ethnic who couldn't understand why they weren't leaving him and his neighborhoods alone.

While the Chicago ethnics sounded the first angry protest, their frustration and rage was soon echoed in other northern cities. Real or imagined, it was the urban white ethnic who was feeling the brunt of social change—it was his neighborhoods that were being threatened and his children who were being bussed.

"It was these urban ethnics," argued Msgr. Geno Baroni, president of the National Center for Urban Ethnic Affairs in Washington, "who became the whipping boys. The ethnics objected and were unfairly labeled the enemy, the racist."

Baroni said the "ethnics were objecting that 'you liberals are beating up on us, but your kid isn't in a lousy school like ours is. You help the blacks and call us racists, but we need help too!' "

With all the programs for social change in the 1960s, Baroni points out, there wasn't one program for urban ethnics, who "are still a significant percentage of the cities. They live the problems of the city every day and are still there and don't go home to the suburbs when the demonstrations are over."

The answer to depolarization, Baroni said, is not asking the white ethnic:

"What's wrong with you, you dumb racist hard hat?" but in the convergent issues and common concerns that all minorities share. Many ethnics believe that blacks are being

moved ahead at their expense. The truth is that neither are in the power structure."

While neither Baroni nor any of the Chicago white urban leaders would ever argue that the ethnics are worse off than blacks, the Polish and Italian groups in Chicago have presented evidence that they believe will shatter the myth that they have made it.

An alliance of Poles and Italians, two large Chicago ethnic minorities, financed a study of the executive suites of 106 of the major corporations headquartered in the city and found, in essence, that any black or ethnic one meets in the executive suite is probably there as part of the clerical or cleaning crews.

What he isn't likely to be is a member of the Board of Directors or a corporate officer. The executive suite is clearly still the domain of the WASP.

In Chicago, where the political parties often ethnically balance the election slates, the impact of the Executive Suite Study—conducted by a Mundelein College of Chicago professor for the Institute of Urban Life—is expected to fall on corporate desks with a menacing thud.

The study, conducted by Dr. Russell Barta, looked into the executive suites of 106 of Chicago's largest corporations to see how many Italians, Poles, Blacks and Latins were members of the boards of directors or corporation officers.

More than half of the firms, or 66 per cent, had been included in Fortune Magazine's 1972 list of the 500 largest firms in the United States.

Although the study was financed by a Polish Italian coalition and was designed for only those groups, Barta requested that Latins and Blacks be included.

"If this country is going to hold together it is because of some understanding between black and ethnic groups that make up the bulk of the city's population," Barta explained. "It is more necessary now than ever before to bring blacks and ethnics together. There was no argument when I suggested including Blacks and Spanish."

An intense, concerned man who talks with the carefulness of a professor accustomed to lecturing to note-taking students, Barta said the results of his study were far worse than he expected.

Barta found that while the four groups studied represented nearly 34 per cent of the seven million Greater Chicago Metropolitan Area population, only 36 directors—less than three per cent of the total of 1,341 directors—and 52 officers—less than 4 per cent of the total of 1,355 officers—were Polish, Italian, Black, or Latin.

A more dramatic fact was that 55 of the 106 corporations had no Poles, Italians, Latins or Blacks as either directors or officers.

In fact, Poles, Latins, and Blacks were virtually absent from the upper echelons of Chicago's largest corporations—102 of the 106 firms had no Polish director and 97 had no Polish officers. Only one corporation had a black officer and two had Latin officers.

While Italians had better representation in the executive suite, 84 corporations had no directors and 75 had no officers. The Italian statistics were misleading because the Admiral Corporation, one of the firms studied, is Italian American owned and operated; and because of Dr. John Rettaliata, the former president of the Illinois Institute of Technology, who is a member of 9 of the 103 boards.

Barta pointed out that if Rettaliata were to be counted once, the percentage of Italian directors would be reduced from 1.9 per cent to 1.3 per cent.

"On the average, of course," Barta adds, "ethnics are better off than blacks, but they still haven't made it. These figures are hard to accept. The top layers of society are still closed."

A careful man, Barta frets over the probabilities. He explains how he double checked firms with no representation by calling directly to ask.

He is aware that he may have missed a few ethnics hiding behind innocuous Anglo-Saxon names, but feels they wouldn't change the percentages enough to make any difference.

The question of what is an ethnic and how many generations are required before an ethnic is no longer a hyphenated American bothers some of the people involved with the study and some corporate executives. The question also is raised about the ethnic Italian or Pole who does not consider himself an ethnic.

Barta realizes those questions will cause some controversy, but counters:

"We are tracing the mobility of groups. It makes no difference if they are third or fourth generation or have given up their ethnic identity. The measure of the progress they have made is still valid.

"What we have is a de facto class system where young people perceive that the top is closed to them and don't go into industry looking to go to the top."

Barta argues that it is good to be aware of imbalances and that ethnics, like blacks, have to go through the counting stage and ask: "How come?"

He believes the Executive Suite Study will raise hell because it emphasizes that "white" is a false, misleading category. "Who are the whites? Where in the hell are the Poles?" Barta asks. "We know more about tribes in Nigeria than we know about American ethnic groups and their economic patterns."

Why the ethnics are not better represented at the top brings responses that range from conscious discrimination to company tradition and the clubbishness of the executive suite where, boards especially, look for people with the same backgrounds.

It is generally agreed that Latins are too recent immigrants to have any impact yet and quietly admitted that some boards simply are not ready for blacks. When asked about the Poles and the Italians, the answers are more confused.

Barta's study went after the executive suite because it was felt the results would be significant, and for the obvious reason that it is easier to get such information since it is published in annual reports.

The tougher questions about hiring and promotion practices or learning how many blacks and ethnics are on the second management levels haven't been attempted because—while it is felt the key to the problem is there—no corporation is expected to cooperate with such an investigation.

That minority groups tend to go into the professions rather than into the corporate structure has been generally documented and even offered as an excuse as to why more blacks and ethnics are not seen at higher levels.

David Roth, Midwest director of the American Jewish Committee, said the Executive Suite Study didn't surprise him at all. The Jews in Chicago have conducted earlier studies with results showing that Jews are also not in the executive suite.

"The Poles and the Italians are groups that attempted to homogenize into the 'society,'" Roth said, "but the second and third generations are discovering that it takes more than time to become part of the mainstream."

Roth explained that the studies of the American Jewish Committee were prototypes for the Executive Suite Study and welcomed the decision of the ethnic minorities to publicly begin recognizing their ethnicity and demanding their share.

"Any pressure on the corporate structure to open up new jobs for ethnics, which may not be new jobs for seventh generation Presbyterians, helps everyone," Roth added.

"Jews and Blacks complaining are not enough alone. It is hard for government and the corporations to resist if a lot of groups are yelling for the jobs we have to have to survive—we are in the process of building a big enough umbrella that is tolerant of differences so no one has to change his name or join the same club."

Roth's arguments were echoed by Anthony J. Fornelli and Mitchell P. Kobelinski, the leaders of Chicago Polish Italian Conference who, after conducting studies of their own, decided to work together and finance an independent study that would have a broader impact.

Fornelli, a successful Chicago lawyer and the son of Italian immigrants, talks rapidly and in the style of a man who likes speech rhetoric:

"If we are such a large percentage of the national population, why do we have such a small percentage of the top jobs? Either we are a minority in numbers or a minority in thought. Either business is ignoring an untapped vast resource or there is a conscious effort to exclude. The statistics say something is wrong. I think the decision is conscious. I feel there is a conscious effort to exclude at hiring. Can you believe the four groups have been excluded without a conscious effort?"

Fornelli argues Italians need representation in the executive suites as examples for younger ethnics. "I am on my own because of a deep-rooted feeling I'd never make it in one of the corporations," he added.

The same problem, he said, continues over to politics. "With more than one million Italians in Illinois, Italians have never held a state executive elected position, never even had a candidate nominated by a major political party. With more than 600,000 Italians in the Chicago area, an Italian has never been elected to a county-wide office and never mayor.

"Chicago Democratic Congressman Frank Annunzio," he pointed out, "is the only Italian congressman between the Appalachians and the Rockies."

Mitchell P. Kobelinski, who had been president of the Illinois Polish National Alliance before President Nixon recently appointed him to become one of the three directors of the Export-Import Bank in Washington, added the dimension of religious prejudice to the problems facing Poles and Italians.

Kobelinski, in his subcabinet post, has the highest job any Polish American holds in this Administration.

A vice chairman and a president of a Chicago community bank he helped organize Kobelinski, also the son of immigrants, is aware he received his present appointment because he is an ethnic.

Sitting in his spacious government-issue furnished office across Lafayette Square from the White House, Kobelinski pointed out that if someone has an Italian or Polish name it is obvious that he "is one of those Roman collar boys."

He said that religious prejudices against Catholics are more deeply seated than most people realize. "If I were a Presbyterian or Baptist or a Shriner with the same name it wouldn't bother them (corporate executives) nearly as much."

Poles are also very heavy in the professions, Kobelinski added, because there hasn't been much reason to go into the corporations. "Young Poles who don't change their names know that the name makes them somehow not quite American," he said.

Although Kobelinski believes the old prejudices are breaking down, he feels that a Polish American working in the corporate structure is in an unfair competitve position.

"Before he can get a break, he must not be just better, he must be outstanding," he said.

Kobelinski said the Executive Suite Study speaks for itself and shifts the burden of

proof to the corporations. With the existing population percentages of the four minority groups represented in the study, he added, "It couldn't be coincidence. It must be design. You (corporations) prove to us you haven't been discriminating."

He believes his children will have the opportunity to reach the executive suite, but feels they are already aware that it won't be as easy for them as for someone with a non-ethnic name.

Most corporation executives, while surprised that the figures for Poles and Italians are so low, contend that situation is more the result of tradition rather than discrimination.

They point to firms like the Johnson Wax Corporation in Racine, Wisconsin, which at one time was made up primarily of Yale University alumni, or the Gillette Corporation, which was known in the 1950s as a corporation where most officers and board members were Shriners.

John M. Coulter, an official with the Chicago Association of Commerce and Industry, said that the boards and executives of Chicago-based corporations represent a significant number of members who are from outside the area, the bulk from the East.

Quite often, he added, they come from Ivy League and other Eastern schools.

Coulter, who is director of Merit Employment, Manpower and Development Training and Commercial Development for the Association, with a 5,000 firm membership, making it the largest Chamber of Commerce in the country and second largest in the world, said he doesn't believe there has been any conscious decision to keep ethnic minorities off any of the corporate boards in the city.

The Chicago Association of Commerce and Industry, ironically, with an 85 man board, has four blacks and no Poles, Italians or Latins; of the 16 officers, none are from the four groups.

"Most major corporations had some fairly rigid and strict identification in the past—a lodge, university, specific denomination, possibly an ethnic group," he said. "Boards tend to seek out people with like backgrounds even while trying to find the best men they can."

John Rettaliata, the successful exception, who is most frequently cited as an example of an ethnic who has made it, is one such man who gets around. The former president of the Illinois Institute of Technology is a member of 16 boards of directors, 9 of which were in the Executive Suite Study.

A third generation Italian from Baltimore with degrees from Johns Hopkins University, the 62-year-old Rettaliata was appointed to the first board in 1952.

"I have been on more boards than most people and longer than most people," Rettaliata argued. "I have never heard any discussions that 'we don't want him because of his ethnic background.' There is also no conscious effort to place minorities. We simply try to get the best man we can. There is no reason to get any other kind."

Sitting in his ultra-modern Banco di Roma office, where every item is decorator designed, purchased and positioned. Rettaliata said he was appointed to the boards on which he sits because he was qualified—ethnicity had nothing to do with it.

"I am an American. I don't look at myself as an American with an Italian name. My mother was Irish," Rettaliata explained. "It just happens that I carry my father's name."

Although Rettaliata reluctantly admitted that he found the number of ethnics on boards and as officers surprisingly low, he believes that anyone who is qualified "and is no crusader who will embarrass the company can become an officer or a board member. There is no reason why an ethnic can't go as far as anyone else."

On the Far South Side of the City of Chicago, Millard Robbins, a black owner of an insurance and mortgage business and the first and only black board member of People's Gas, points out that all the utilities now have a black board member.

"I was appointed to that board because they needed a black face somewhere," he explained. "I was fourth or fifth choice for the board job. They were scrambling looking for a black. I was fortunate to be standing in the right place when the others weren't available."

Expressing surprise that "Nixon's silent majority"—the Poles and Italians weren't better represented, Robbins said that everyone else's problem is still a little different from the black who has had zero quota.

"Poles or Italians can change their names and assimilate," he added.

Like most other ethnics, Robbins believes that the absence of ethnics in the executive suite discourages young people who don't believe they can make it to the top because they don't see anyone there.

Walter H. Clark, the only black officer in the 106 corporations studied, is a vice president of the First Federal Savings and Loan Association of Chicago and is the first member of his race ever to advance so high in the firm. In fact, he was the first black hired in 1955.

Clark believes he earned his vice presidency even though he is aware being black may have helped. He does believe that being black held him back.

"There was never any complaint about my work here, but it was 10 years before I ever became an officer," he explained. "I am sure I was held back because of race. We had a change in top management in 1962 or 1963 that developed a different viewpoint. The new president was looking for people who could do the job and race didn't matter."

The results of the Executive Suite Study, Clark said, show that minority groups haven't been given the opportunity to advance. "It doesn't surprise me," he added. "We are seeing the results of years of discrimination."

Talking about his son, Clark said that because of his success at the bank his 15-year-old son doesn't have the attitude that he won't go to the top. "For the average black kid," he added, "the statistics don't show any bright spots."

In the expensive western suburb of Oak Brook, where many of the major corporations are building offices, Frank C. Casillas, a Mexican immigrant who couldn't speak English when his family moved to Gary, Indiana, is a vice president of the Bunker Ramo Corporation—with ambitions to someday become the president of a major firm.

He doesn't believe his ethnic background worked against him and feels that his engineering and computer programming and analyst skills and the successes he had with such major corporations as Standard Oil of Indiana, the Rand Corporation and General Electric prove that he earned his vice presidency.

The 47-year-old Casillas, whose mother couldn't speak English and whose father was a railroad laborer, won a scholarship to Purdue University and became a citizen during the Korean War, when he served as an Army Corps of Engineers Officer.

Every one of his six children, he explains, will go to college because that is the atmosphere that has been established in his home. Other young Latins, he fears, believe it is not possible to get to the top and are not trying. He feels the alternative is for young Latins to become successful in their own businesses.

As vice chairman of the executive committee of the President's Advisory Council for Minority business and through his work with the National Economic Development Corporation, Casillas works to help get minority members started in small businesses.

At the other end of the success picture is the hidden ethnic with the Americanized name.

Thirty-year-old Anthony Winfield Summers, whose Italian great grandfather changed the name from Summa upon coming to this country, believes that ethnicity is amusing but useful at times.

"I am a very practical guy," he explained. "I like to live well and make a good living. I see no reason to consider myself Italian. I never use it except for effect. If I am dealing with someone Italian like a clerk of court or some businessman and it is useful to me, I tell them I am Italian."

As a lawyer with the Chicago, Milwaukee Company, Summers believes that a name like Summers is helpful in front of a jury who can't guess what he is. "It's better not sticking out in front of a jury. It is the same as I never wear a vest, a flashy ring or watch when going before a jury. I like an innocuous name for the same reason."

Summers reflects an attitude that most ethnics oppose. They argue there should be no reason to either exploit or hide a foreign name.

The Executive Suite Study, which promises to spread to other cities and to take in other groups, is expected to offer blacks and other ethnic minorities a converging issue that will break the key economic barriers in an ethnic power movement that respects differences while recognizing mutual problems and goals.

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EXHIBIT 3

[From the Business and Society Review/Innovation, Winter 1973–74]

WHITE ETHNICS: HERE COMES THE NEW MINORITY

(By William A. Carmell, Jr.)

(NOTE.—William Carmell is the Manager, Equal Employment Opportunity Programs for Union Carbide Corporation. He is a former staff associate of the late Robert Kennedy and is presently on the Advisory Committee of the New York Center for Ethnic Affairs.)

Much has been written in the last few years regarding equal employment opportunity as it pertains to minority groups and women. Federal statutes and regulations, particularly Title VII of the Civil Rights Act and Revised Order No. 4 issued by the Office of Federal Contract Compliance, Department of Labor, have done much to bring this issue to the forefront in the corporate community by enabling the government to both intervene in and monitor employment activities.

However, there is another side to this issue which has been little understood and gone relatively unnoticed while conscientious efforts on behalf of minority groups and women have been made. That is, equal employment opportunity (EEO) for ethnics has remained until now largely quiescent. It is unlikely that this will continue. Based on past experience with minority groups and women, it can be expected that during the 1970s this whole question will gain in importance as the result of pressure brought to bear by ethnics themselves on both government and business.

Some rumblings have already begun. The Office of Federal Contract Compliance (OFCC) has issued a new regulation effective February 20, 1973 entitled "Guidelines on Discrimination Because of Religion or National Origin." (Part 60–50, Title 41, Code of Federal Regulations.) These guidelines are applicable to government contractors and subcontractors and to contractors and subcontractors performing under federally assisted construction contracts. As a practical matter, most major corporations are affected, since almost all do business in one form or another with the federal government.

The guidelines cover "members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavik groups." In this article, the term "ethnics" refers to all of these groups.

To analyze the potential impact of these particular guidelines, it is important to study them in terms of what is required and what is not required. They do require that employers take affirmative action to insure that applicants are employed and that existing employees are treated without regard to religion or national origin. This affirmative action encompasses all aspects of the employment relationship including upgrading, demotion, transfer, recruitment, layoff or termination, compensation, and selection for training.

Further, employers must review their employment practices to determine whether members of various ethnic groups are receiving fair consideration for job opportunities. Special attention must be paid to executive and middle management jobs, although all job levels are within the scope of the guidelines. Based upon the findings of these employment practice reviews, employers also required to undertake some positive steps to remedy deficiencies. Finally, an employer must allow for the religious observances and practices of an employee or prospective employee unless the employer can show that it is unable to "reasonably accommodate" without "undue hardship in the conduct of the employer's business."

Those employers who do not comply with these requirements could be precluded from bidding on future government contracts and could have their present government contracts terminated or cancelled. This, then, is the first overt step by the federal government to potentially affect the profits of a corporation which discriminates on the basis of religion or national origin.

However, it is noteworthy that these guidelines omit certain features contained in earlier EEO regulations. Unlike Revised Order No. 4 covering minority groups and women, these guidelines do not require that ethnics be mentioned in current affirmative action plans. More importantly, they do not require the establishment of goals and timetables to remedy any underutilization of ethnics. The use of such goals with regard to minority people and women is, of course, a key requisite of Revised Order No. 4 and it has been this goal system which has gotten results.

There is then some confusion. On the one hand, the federal government appears finally to have recognized the problem of ethnics in employment, but on the other, it raises some doubts about the seriousness with which it intends to enforce its guidelines. At present, enforcement is occurring only within the context of individual complaints brought before the courts or with the Equal Employment Opportunity Commission. Although it is still early to make a definitive judgment, the OFCC, through the various federal compliance agencies, does not yet seem to be placing any great emphasis on the guidelines. That situation, of course, can change.

It should be mentioned in passing that enforcement of state and municipal statutes banning discrimination on the basis of religion or national origin also appears to be negligible outside the context of individual complaints. Nonetheless, the New York State Division of Human Rights has privately and informally expressed some greater interest in the problem of the ethnic and equal employment opportunity. As of this writing, however, nothing formal has yet crystallized.

AN ETHNIC REVOLT?

While the mere publication of these new guidelines has begun to stir some interest inside the corporations, this has been and will likely continue to be a slow process for several reasons.

First, corporate managements generally do not perceive that there is a problem. In fact, they seem to feel that ethnics clearly have been given job opportunities in this country and that their overall success is evidence of America's greatness and the fulfillment of her promise.

Unfortunately, some corporate urban affairs and EEO officers are themselves either oblivious to the problems of ethnics or hostile to the idea of including these groups as part of their job responsibility. While this is understandable in some cases, it retards the opening up of EEO to ethnics, since it deprives ethnics of a spokesman who can sensitize management to their plight.

Also, it is ironic because the success of "traditional" EEO programs on behalf of minorities and women depends in part on the cooperation of ethnics already in the work force. In many instances, these ethnics are able to advance or hinder this traditional EEO effort. The chances of their supporting it will obviously increase if they feel their own needs are being simultaneously recognized. Thus, these two separate but related EEO efforts become intertwined. Success on behalf of minorities and women will be greater and will occur more quickly where ethnics are also afforded an equal opportunity.

Having said this, the issue then becomes deciding what the emerging ethnic wants. I am limiting this article to a strictly business context. While not presuming to be a spokesman for ethnic people, my conversations with ethnic leaders over the last two years have given me a good idea of their position.

When they immigrated into the United States, many ethnics did not understand the language, customs, laws, or mores of their new country. Frequently, there was no one to help them. While they generally were able to find jobs, and through hard work could earn a respectable livelihood, they did not easily rise above the lower echelons of corporate management. Of those who did, many changed their names and/or life styles in order to accomplish this objective.

Generally, most ethnics accepted this situation, and having heard of or experienced worse situations in the "old country," were initially quite satisfied with their lot. The recent social "revolution" initiated by minority groups and subsequently joined by women began to change this acceptance. This revolution created and then accelerated an emerging awareness in the ethnic communities of their own plight and their own need to develop an identity and to gain acceptance from other Americans on that basis.

With regard to business, ethnics are beginning to raise two major issues. First, the corporate world must recognize that ethnics too have experienced some difficult problems in adjusting to life and business in the United States. Second, ethnics too have suffered discrimination, though perhaps in more subtle and milder ways than minorities and women, and this must be rectified.

If no action is forthcoming, ethnics will continue to believe that their past and present difficulties have been totally neglected while the problems of others have at least begun to be addressed. This resentment and frustration can well lead to the same kinds of confrontations that minorities and women have sometimes felt compelled to initiate in order to gain equal employment opportunity.

Because of the new OFCC guidelines, because discrimination on the basis of religion and national origin may produce the kind of frustration which will result in confrontation, and because ethnic support is important for implementing a positive EEO program for minorities and women (something which is a "now" problem for companies), the business community is well advised to take some EEO action soon on behalf of ethnics.

LEARNING FROM PAST MISTAKES

There are a number of actions which corporations can undertake to ameliorate the frustrations of ethnics and help insure that they receive an equal opportunity in both employment and upward mobility.

First, corporations should identify and develop contacts with national ethnic leaders. In this way, a dialogue can begin which can hopefully lead to a better understanding between these two groups. It is important, of course, for corporations to learn firsthand of the everyday difficulties which still afflict ethnic communities. However, it is equally important that the ethnic communities understand some of the very real problems confronting the business community which affect its ability to act. Without this kind of understanding, unrealistic expectations can develop in terms of what business can accomplish and how quickly. This has been a pervasive problem where minorities and women have been involved.

I hasten to add that the identification of responsible national ethnic leadership is not a simple task. The ethnic movement is just becoming organized and is less developed than that of most minority groups and women's organizations.

The next step is the identification and development of contacts with local ethnic leaders in communities where the corporation has a business facility and where there are significant numbers of ethnics. In some cases national ethnic leadership may provide guidance in this regard. However, because the ethnic movement is in an early stage, this may not be satisfactory. In that case, community leaders, local clergymen, or ethnic employees themselves may identify those with whom to begin a dialogue. It is best to contact both national and local leadership whenever possible and to work on both levels. National ethnic leadership will be helpful in providing an overall view, while local ethnic leadership will have a better understanding of specific problems, aspirations, and frustrations of particular local ethnic communities, all of which might vary according to geography.

In order to facilitate equal employment opportunity for ethnics, corporations should develop and implement a formal program aimed at raising management awareness of the problems and frustrations existing in ethnic communities generally. This approach has been successful for OEO programs designed to aid minorities and women. Minorities and women, however, have often drawn attention to their problems through demonstrations and similar tactics—ethnics have not. Thus, the need to heighten management awareness, in terms of ethnic problems, makes a formal awareness program even more vital.

The budget for furthering equal employment opportunity for minorities and women must at least remain constant, if not be increased, at the same time that funding for ethnic programs occurs. The ethnic EEO program must be financed separately and not at the expense of other EEO programs. Corporate management must not inadvertently cause a confrontation between these groups over available corporate funds. In most instances, the discrimination problems of

minorities and women have been greater than those of ethnics. This must be taken into account when corporations allocate funds to the various EEO programs.

A thorough analysis should be made of both the workforce of each corporate plant and the surrounding area in terms of ethnic mix. This is necessary to determine whether a reasonable proportion of the plant workforce is in fact made up of ethnics. Further, such an analysis should be made at all job levels. If there is a disproportionately small number of ethnics at middle- and upper-management levels, the company should identify those who are either presently promotable or who have the potential for promotion when openings do occur. Those who have the potential for promotion should be counselled and trained accordingly.

This presents the business community with a difficult problem: No records are kept about the ethnicity of an employee. Frequently, names have been changed, and direct inquiry to an employee about his or her ethnic background might be misunderstood and result in serious employee relations problems. Still, the use of names as indicators is the only practical, if incomplete, way to identify ethnics. As ethnics themselves see the advantages of an accurate survey, it is conceivable that they may make such information available themselves.

Special in-house training programs for English, especially business English, should be developed and introduced in plants located in heavily ethnic communities. This may help some of those already employed whose job progress has been limited by their inability to read or communicate effectively as well as potential employees.

Finally, the corporation should clearly communicate its EEO goals to all employees. It should be emphasized that the EEO effort on behalf of ethnics is not going to be at the expense of EEO programs for minorities and women. Corporate priorities should be indicated, and the serious problem of discrimination against minorities and women reacknowledged. The ethnic EEO program should be characterized as an edition, not a change in direction, to the overall corporate EEO effort.

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EXHIBIT 4

CUEANJ—CENTER FOR URBAN ETHNIC AFFAIRS OF NEW JERSEY

NWECC—NORTH WARD EDUCATIONAL AND CULTURAL CENTER, INC.

Did you hear the latest joke about the ethnic worker who was denied a job?

The Government did . . . and it's not laughing.

Federal guidelines for equal employment opportunity now apply to white ethnics: Italians, Poles, Greeks, Slavic groups.

Discrimination against white ethnic minorities in recruitment, hiring, training, and promotion is no laughing matter; its illegal. To comply with EEO affirmative action guidelines, an employer must:

Analyze the ethnic composition of employee groups in all areas and at all levels of the company to determine the degree of white ethnic underutilization;

Design and implement specific and result-oriented goals, timetables, and affirmative action commitments to remedy any identifiable deficiencies in the company's equal employment opportunity objectives;

Communicate and make available to all employees and applicants the company's written affirmative action program; and

Comply in good faith with affirmative action requirements by applying every effort to recruit, hire, train, and promote qualified white ethnic and other minority group members.

[From the Federal Register, Jan. 19, 1973]

U.S. DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE, WASHINGTON, D.C. (CHAPTER 60, OFFICE OF FEDERAL CONTRACT COMPLIANCE, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR)

PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

On December 29, 1971, notice of proposed rule making was published in the FEDERAL REGISTER (36 FR 25165) with regard to amending Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60–30, establishing guidelines and interpretations of the Office of Federal Contract Compliance as to the requirements of Executive Order 11246, as amended, for promoting and insuring equal employment opportunity for members of various religious and ethnic groups who continue to encounter employment discrimination because of their religion and/or national origin. Interested persons were given 30 days in which to submit written comments regarding the proposal.

After consideration of all comments received, Chapter 60 of Title 41 of the Code of Federal Regulations is amended by adding a new Part 60–50, set forth below. The final version of the Office of Federal Contract Compliance's guidelines regarding religious and national origin discrimination is now issued as 41 CFR Part 60–50, rather than as 41 CFR Part 60–30, as formerly proposed, since the latter part has been reserved for other regulations.

Sec.

60–50.1 Purpose and scope.
60–50.2 Equal employment policy.
60–50.3 Accommodations to religious observance and practice.
60–50.4 Enforcement.
60–50.5 Nondiscrimination.

AUTHORITY: Sec. 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303.

§ 60–50.1 Purpose and scope.

(a) The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11246, as amended, for promoting and insuring equal employment opportunities for all persons employed or seeking employment with Government contractors and subcontractors or with contractors and subcontractors performing under federally assisted construction contracts, without regard to religion or national origin.

(b) Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

(c) These guidelines are also intended to clarify the obligations of employers with respect to accommodating to the religious observances and practices of employees and prospective employees.

(d) The employment problems of blacks, Spanish-surnamed Americans, orientals, and American Indians are treated under Part 60–2 of this chapter and under other regulations and procedures implementing the requirements of Executive Order 11246, as amended. Accordingly, the remedial provisions of § 60–50.2(b) shall not be applicable to the employment problems of these groups.

§ 60–50.2 Equal employment policy.

(a) *General requirements.* Under the equal opportunity clause contained in section 202 of Executive Order 11246, as amended, employers are prohibited from discriminating against employees or applicants for employment because of religion or national origin, and must take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their religion or national origin. Such action includes, but is not limited to the following: Employment, upgrading, demotion, or transfer: recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) *Outreach and positive recruitment.* Employers shall review their employment practices to determine whether members of the various religious and/or ethnic groups are receiving fair consideration for job opportunities. Special attention shall be directed toward executive and middle-management levels, where employment problems relating to religion and national origin are most likely to occur. Based upon the findings of such reviews, employers shall undertake appropriate outreach and positive recruitment activities, such as those listed below, in order to remedy existing deficiencies. It is not contemplated that employers necessarily will undertake all of the listed activities. The scope of the employer's efforts shall depend upon all the circumstances, including the nature and extent of the employer's deficiencies and the employer's size and resources.

(1) Internal communication of the employer's obligation to provide equal employment opportunity without regard to religion or national origin in such a manner as to foster understanding, acceptance, and support among the employer's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the employer in meeting this obligation.

(2) Development of reasonable internal procedures to insure that the employer's obligation to provide equal employment opportunity without regard to religion or national origin is being fully implemented.

(3) Periodically informing all employees of the employer's commitment to equal employment opportunity for all persons, without regard to religion or national origin.

(4) Enlisting the assistance and support of all recruitment sources (including employment agencies, college placement directors, and business associates) for the employer's commitment to provide equal employment opportunity without regard to religion or national origin.

(5) Reviewing employment records to determine the availability of promotable and transferable members of various religious and ethnic groups.

(6) Establishment of meaningful contacts with religious and ethnic organizations and leaders for such purposes as advice, education, technical assistance, and referral of potential employees.

(7) Engaging in significant recruitment activities at educational institutions with substantial enrollments of students from various religious and ethnic groups.

(8) Use of the religious and ethnic media for institutional and employment advertising.

§ 60–50.3 Accommodations to religious observance and practice.

An employer must accommodate to the religious observances and practices of an employee or prospective employee unless the employer demonstrates that it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. As part of this obligation, an employer must make

reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as his Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommodations can be made without undue hardship on the conduct of the employer's business. In determining the extent of an employer's obligations under this section, at least the following factors shall be considered: (a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

§ 60–50.4 Enforcement.

The provisions of this part are subject to the general enforcement, compliance review, and complaint procedures set forth in Subpart B of Part 60–1 of this chapter.

§ 60–50.5 Nondiscrimination.

The provisions of this part are not intended and shall not be used to discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, or national origin.

*Effective date.* This part shall become effective on February 20, 1973.

Signed at Washington, D.C., this 17th day of January 1973.

J. D. HODGSON,
*Secretary of Labor.*
R. J. GRUNEWALD,
*Assistant Secretary for Employment Standards.*
PHILIP J. DAVIS,
*Acting Director, Office of Federal Contract Compliance.*

[FR Doc.73–1288 Filed 1–18–73;8:45 am]

## UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I am authorized by the distinguished majority leader to propound the following unanimous-consent request:

I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 o'clock a.m. on Monday;

That a vote occur on the final passage of the education bill at 6 o'clock p.m. on Monday, with paragraph 3 of rule XII being waived; that there be a time limitation of 2 hours for debate on the education bill on Monday, to be equally divided between the distinguished majority and minority leaders or their designees; that the House substitute not be in order; that no so-called busing amendments be in order; that immediately after the two leaders or their designees have been recognized under the standing order on Monday, the Senate resume the consideration of the unfinished business, and that at that time the Senator from Maryland (Mr. MATHIAS) be recognized to call up his amendment with a time limitation thereon of 1½ hours; that upon the running of the time, the distinguished Senators KENNEDY, JAVITS, BROOKE, and HART be recognized to call up their amendment, and that there be a time limitation thereon of 1½ hours, with 1 hour under the control of the Senator from Arkansas (Mr. MCCLELLAN); that the Senator from New Mexico (Mr. DOMENICI) then be recognized to call up his amendment on which there be a time limitation of 15 minutes; that the Senator from Illinois (Mr. PERCY) be recognized to call up his amendment on which there be a time limitation of 20 minutes; that the Senator from Virginia (Mr. WILLIAM L. SCOTT) be recognized at that time to call up his amendment on which there be a time limitation of 1 hour; that the Senator from Connecticut (Mr. WEICKER) then be recognized to call up his amendment on which there be a time limitation of 1 hour; that the Senator from North Carolina (Mr. HELMS) then be recognized to call up three amendments on which there be a total time limitation of 1 hour, to be utilized as Senator HELMS would seek to utilize his time; that the Senator from Florida (Mr. CHILES) then be recognized to call up his amendment on which there be a 30-minute time limitation; that at some point following the hour of 3:30 p.m., the Senator from Texas (Mr. BENTSEN) be recognized to call up his amendment with a time limitation on it of 20 minutes; that time on any other amendment, debatable motion, or appeal be limited to 20 minutes; that the remainder of the agreement be in the usual form with respect to germaneness and the control of the division of time; provided further that no rollcall votes occur before the hour of 4:15 p.m.; provided further that at the hour of 6 p.m., unless pending accumulated amendments are awaiting rollcall votes and with no debate thereon, the Senate bill be advanced to third reading, the House bill automatically be called up and the Senate bill substituted in lieu of the text of the House bill; and that a vote then occur on the House bill as amended by the Senate bill.

Mr. JAVITS. Mr. President——

The PRESIDING OFFICER (Mr. BURDICK). The Chair would inquire, is that without further amendments being in order at that point?

Mr. JAVITS. Mr. President, this time on S. 1539—when the text is substituted for H.R. 69—within H.R. 69—there will be no further amendments; is that not correct?

The PRESIDING OFFICER. That is what the Chair is asking.

Mr. ROBERT C. BYRD. That is correct, with this further understanding, and I am sure the Senator from New York will agree, that even though the accumulation of the rollcall votes will begin at 4:15 p.m. and the votes on that accumulation of amendments has not been completed at 6 p.m., the Senate would complete the rollcall votes which had accumulated at that point, even though such votes went beyond 6 o'clock.

Mr. JAVITS. The Chair was asking about one matter, that is, when we came to third reading and the text of the substitute that at that point there would be no further amendments.

Mr. ROBERT C. BYRD. Exactly.

The PRESIDING OFFICER. To H.R. 69.

Mr. ROBERT C. BYRD. Precisely.

Mr. JAVITS. I just want to clarify one other point, because at one point the Senator from West Virginia might not have mentioned it specifically, and I apologize if I am wrong, but the Senator mentioned how the various times were to be divided except in the case of the Kennedy-Brooke-Javits-Hart amendment where the Senator set an hour and a half and 1 hour to Senator MCCLELLAN.

I gather it is understood that on all the other amendments the time will be divided.

Mr. ROBERT C. BYRD. Yes, in accordance with the usual form.

Mr. JAVITS. Right. I understand also there is provisio for other amendments of 20 minutes, and provision for amendments to amendments?

Mr. ROBERT C. BYRD. Yes, on other amendments in the first and second degrees. Other Senators may have amendments, that have not been specified here and we do not want them to be shut out, simply because they were not specified.

Mr. JAVITS. That is very sensible. Lastly, as to the germaneness rule, that applies, as the other one did, that is, to either the bill or the amendment pending. Finally, there is no waiver of the right to table except as to the final vote on the bill.

Mr. ROBERT C. BYRD. As the agreement was presented, the right to table would be in order with the exception of the final vote on the bill, as the Senator has stated.

Mr. JAVITS. One other thing, which I am sure the Senator has in mind. We had 20 hours on the bill and I do not think that has been used but that is, I gather, displaced by the new provisions.

Mr. ROBERT C. BYRD. It is displaced, yes.

Mr. BAYH. Mr. President, reserving the right to object, I want to express my gratitude to the distinguished Senator from West Virginia for his patience and his perseverance in pursuing this unanimous-consent request.

For the purposes of clarification, I would like to ask, as to the total impact of the amendments, so far as the time of action is concerned, no votes shall start prior to 4:15 p.m., but that at 4:15 all business but voting will be disposed of and we will start voting at 4:15 at 10-minute intervals, and we will dispose of all business until we are through.

Mr. ROBERT C. BYRD. I am glad the Senator reminded me of that. I ask unanimous consent that time on all rollcall votes on Monday next be limited to 10 minutes, or less, with the warning bells to be sounded after the first 2½ minutes.

The PRESIDING OFFICER. Is this part of the unanimous-consent request?

Mr. ROBERT C. BYRD. Yes.

Mr. PELL. Mr. President, I have been doing a little arithmetic, and its does not work out if we divide the 10 minutes into that period of time. I wonder could not the rollcall votes be 5-minute votes?

Mr. ROBERT C. BYRD. No. I have checked with the desk, and I am told that if Senators stay in their seats after the first vote, it is possible to call the roll perhaps in 7 or 8 minutes. So that is why I

worded my request to be 10 minutes or less, so that if all Senators on both sides answer the rollcall, a rollcall vote would be finished in under 10 minutes.

Mr. BAYH. Continuing my reservation, did the Senator from Indiana correctly understand that the proposal—was my interpretation correct that voting shall start at 4:15 p.m.?

Mr. ROBERT C. BYRD. The Senator from Indiana is correct. He is also correct in indicating that once the votes have started, they may continue until 6 p.m. I believe he interrogated me as to whether any other amendments could be called in. Only under this situation. We would anticipate probably, and very likely, there would be enough rollcall votes to consume the entire 1 hour and 45 minutes, beginning at 4:15 p.m. But on the supposition—that, for example, one rollcall vote had been ordered up until the hour of 4:15 p.m. Then in that unlikely situation, Senators could call up other amendemnts if they had them, before 6 p.m.

Mr. BROOKE. Mr. President, I have never heard of a 10-minute or less rollcall vote. I wonder whether this would be a precedent. I think we do not want to start that, with some Senators who may be coming in at the last minutes. So that I think we should say at least 10 minutes and hold it at 10 minutes and not say 10 minutes or less, because someone may come in for a particular vote and they will not know about the "or less."

I believe this would be bad precedent unless the distinguished majority whip has a precedent in mind.

Mr. ROBERT C. BYRD. I thank the Senator from Massachusetts. I think it would be better if I left out the words "or less." If it works out that we have completed a rollcall vote in 8 or 9 minutes, say, and all Senators are accounted for, the Chair can announce the vote, save the time, and go on to the next vote.

Mr. BAKER. Mr. President, I reserve the right to object but will not object. I, too, commend the distinguished assistant majority whip for his perseverance and note that we have, as I counted it, 11 amendments, not accounting for those which may be offered by Senators who have not made their views known to the leadership. The time allocation, as I gather it from quick addition, is some 7½ hours, not taking count of the other amendment that may be offered, and roughly 2 hours for 11 rollcall votes, if in fact there are 11 rollcall votes. That would make 9½ hours.

I think we ought to go forward with this unanimous-consent request, and I will not object to it. But I think that we are going to have to be very careful or we are going to run in a pattern where there is the opportunity for many, many amendments of consequence to be offered at the last minute, on which rollcall votes could be requested and about which we know nothing.

I do not object to this order, and I commend the leadership for making the request; but I caution that in future situations we are asking for trouble, so to speak.

Mr. ROBERT C. BYRD. The distinguished majority leader has suggested that I revise the request to provide for convening at 8 a.m. on Monday, and I now do so.

The Senator from Tennessee is correct. I am fearful that once we reach the voting stage, we may not be able to get all the votes in by 6 o'clock, and we may overlap beyond 6 o'clock a little. But some Senators may be willing during the day to have voice votes, rather than rollcalls and thus save time. I am sure that the leadership will be working throughout the day to encourage Senators, where they can be encouraged to do so, to cut the time on the amendments.

I think we will be able to handle everything up to 4:15. I believe that at that point is where we may have the time crunch in getting all the amendments voted on by 6 p.m.

Mr. BAKER. In any event, for one point of clarification, if amendments are pending that have not been voted on, the 6 o'clock hour would advance as required in order to dispose of all the amendments.

Mr. ROBERT C. BYRD. Yes. The able Senator is correct.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. HART. Mr. President, reserving the right to object—and I shall not object—I express the hope that we will not dedicate ourselves to finding reasons for rollcall votes on Monday. The agreement is fine. I speak as one who agreed to it even though I knew I could not be here on Monday. But as I listened to the talk about 11 rollcall votes, at a minimum, my hair curled, and I will not enjoy my day on Monday.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I wish to express appreciation to the distinguished Senator from Michigan (Mr. HART). He had indicated earlier today that if this agreement were adopted, he would miss a great number of rollcall votes, but that he would not interpose an objection. I am sure that I express to him the gratitude on the part of the joint leadership for his consideration and cooperation. It is typical of him.

Second, I want to say for the RECORD—and I will say it again tomorrow in the whip notice—that there is every likelihood that an accumulation of rollcall votes beginning at 4:15 p.m. will be such that we will not be able to start on the vote on final passage at 6 o'clock.

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

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. I just wanted to commend the Senator from West Virginia. I think he has shown extraordinary patience. I know how tired he is and how tired I am. I am pleased that he was able to work this out.

Mr. ROBERT C. BYRD. I thank the Senator from New York, and I thank all Senators.

Mr. MANSFIELD. The Senator from West Virginia has done a superb job once again, and I want to thank him.

Mr. ROBERT C. BYRD. I thank the distinguished majority leader.

The text of the unanimous-consent agreement is as follows:

*Ordered*, That on Monday, May 20, 1974, during the further consideration of S. 1539, a bill to amend and extend certain acts relating to elementary and secondary education programs, and for other purposes, debate on any amendment, debatable motion or appeal (except those amendments listed in tabular form below) shall be limited to 20 minutes, to be equally divided and controlled by the mover of any such amendment (including those listed below) or motion and the manager of the bill. *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee. *Provided further*, That amendments must be germane to the question pending before the Senate at the time it is offered.

When the bill, S. 1539, is laid down on Monday, May 20, 1974, the following Senators are to be recognized in the order listed for the purpose of calling up their amendments which shall have the debate limitation specified:

1. Mathias—90 minutes
2. Kennedy et al.—90 minutes (60 McClellan, 30 Kennedy)
3. Domenici—15 minutes
4. Percy—20 minutes
5. Scott (Va.)—60 minutes
6. Weicker—60 minutes
7. Helms—3 amendments—60 minutes total—time to be used on the amendments as Sen. Helms desires
8. Chiles—30 minutes
9. Bentsen—20 minutes—sometime after 3:30 P.M.

*Ordered further*, That it will not be in order to offer the text of H.R. 69 as an amendment in the nature of a substitute for S. 1539 and that it will not be in order to offer further "busing" amendments.

*Ordered further*, That no roll call vote shall occur before 4:15 P.M., and that at 6:00 P.M. the bill have it's third reading, at which time the Senate shall then proceed to vote on the question of substituting the text of S. 1539 for H.R. 69 without further amendment of the substitute or H.R. 69 being in order.

*Ordered further*, That on the question of the final passage of the said bill debate shall be limited to 2 hours, to be equally divided and controlled, respectively, by the majority and minority Leaders or their designees: *Provided*, That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion, or appeal. (May 16, 1974)

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

### ADJOURNMENT UNTIL 8 A.M. MONDAY, MAY 20, 1974

Mr. ROBERT C. BYRD. Mr. President, in accordance with the previous order, I move that the Senate stand in adjournment until 8 a.m. on Monday next.

The motion was agreed to; and at 7:20 p.m., the Senate adjourned until Monday, May 20, 1974, at 8 a.m.

### WITHDRAWAL

Executive nomination withdrawn from the Senate May 16, 1974:

IN THE ARMY

The nomination of Col. Dana G. Meade, [redacted] U.S. Army, for appointment to the position of permanent professor at the U.S. Military Academy under the provisions of title 10, United States Code, section 4333, which was sent to the Senate on May 13, 1974.

### NOMINATION

Executive nomination received by the Senate May 16, 1974:

IN THE ARMY

Col. Dana G. Mead [redacted] U.S. Army, for appointment to the position of permanent professor at the U.S. Military Academy under the provisions of title 10, United States Code, section 4333.

### CONFIRMATIONS

Executive nominations confirmed by the Senate May 16, 1974:

BOARD FOR INTERNATIONAL BROADCASTING

Foy D. Kohler, of Florida, to be a member of the Board for International Broadcasting for a term of 3 years.

DEPARTMENT OF JUSTICE

James L. Browning, Jr., of California, to be U.S. attorney for the northern district of California for the term of 4 years.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

THE JUDICIARY

D. Dortch Warriner, of Virginia, to be U.S. district judge for the eastern district of Virginia.

IN THE DEPARTMENT OF STATE

Diplomatic and Foreign Service nominations beginning Helen J. Terranova, to be a Foreign Service officer of class 3, a consular officer, and a secretary in the Diplomatic Service of the United States of America, and ending John E. Witt, to be a consular officer of the United States of America, which nominations were received by the Senate and appeared in the Congressional Record on April 11, 1974.

# EXTENSIONS OF REMARKS

## ARABS MAKE WAR ON CHILDREN

### HON. ANGELO D. RONCALLO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, May 16, 1974*

Mr. RONCALLO of New York. Mr. Speaker, under leave to extend my remarks in the RECORD, I must express my shock, dismay, and utter revulsion at yesterday's killing of 18 Israeli schoolchildren and 12 others at the hands of Arab terrorists. The incident at Maalot will go down in history as one of the most barbaric and cowardly that the world has known.

I question whether the Arab fanatics ever had any intention of releasing their hostages unharmed. As I piece together news reports, the Israelis had agreed to accede to demands of the terrorist organization and negotiate with the guerrillas through the French and then the Romanian ambassadors as requested. The password which would have set the negotiations into motion was never transmitted, and the bloodbath ensued. I can only surmise that the parent organization intended from the start to throw their own operatives and the innocent children to the wolves.

The terrorists had set a deadline of 6 p.m. after which they would blow up the schoolhouse in which they barricaded. When only a few minutes remained, the decision was made to attempt to rescue the children. The brutality of the Arabs is revealed by eyewitness reports that the terrorists began shooting their captives even before the Israeli army charged. There appears to be no doubt that the original guerrilla threat was genuine, as an explosion occurred within the building during the battle.

Tragically, the United States must bear at least part of the shame for the deaths of these children. There is no doubt in my mind that the terrorists were emboldened by our recent vote in the United Nations to condemn Israel for retaliatory raids into areas of Lebanon containing guerrilla sanctuaries without likewise condemning the Arab terrorist attacks which prompted the Israel actions. I have today joined a majority of my colleagues in the House in cosponsoring a resolution urging the President to instruct our Ambassador to the U.N. to introduce a Security Council resolution condemning the Arab terrorism at Maalot. The incident further points out the need for Secretary of State Kissinger to bring the full weight of U.S. pressure to bear for the swift completion of a settlement in the Middle East.

As Prime Minister Golda Meir declared:

You don't conduct wars on the backs of children.

## CAMPAIGN REFORM AND "BIG LABOR"

### HON. DAVID W. DENNIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, May 16, 1974*

Mr. DENNIS. Mr. Speaker, campaign reform is in the air. I am for it. A little noticed need in this regard is the need for some attention to and control of contributions in kind by big labor especially. Let us have even-handed reform. I refer my colleagues to a recent letter to the Washington Post:

CAMPAIGN REFORM AND "BIG LABOR"

The campaign "reform" bill recently enacted by the Senate supposedly is designed to eliminate the corrupting influence of special interests during and after election campaigns. Unfortunately, the bill in its present form would leave untouched, the partisan political activities of one of our biggest spending special interest groups—Big Labor.

The fact is that both the plan adopted by the Senate and the plan now being considered in the House, would give union officials even more political clout than they enjoy today—and that, according to the vast majority of Americans, is already too much. It would do this by tipping the political balance in favor of candidates who can attract cash-equivalent support from the special interests who supply "in kind" support. In short, Big Labor and its political favorites. Washington Post columnist David Broder is one of the few serious political analysts to recognize this point. "If access to large sums (of cash) is eliminated as a potential advantage for one candidate or party by the provision of equal public subsidies for all," he wrote, "then the election outcome will likely be determined by the ability to mobilize other forces. The most important of these factors are probably manpower and publicity. Legislation that eliminates the dollar influence on politics automatically enhances the influence of those who can provide manpower or publicity for the campaign."

Paid "volunteer" manpower, telephone banks, printing, paid advertisements, propaganda, these are all specialties of top union officials. And they're all paid for with union funds which are taken from American citizens as a condition of employment under compulsory "union shop" and "agency shop" arrangements.

We're not surprised that few people have questioned Common Cause's objectivity in insisting on the Senate plan, since few people know that the chief staff executive of the self-proclaimed "People's Lobby" is Jack Conway, long-time top aide to the late Walter Reuther. We are astounded, however, that with very few exceptions, nobody is asking why top AFL–CIO officials, including George Meany and lobbyist Andrew Beimiller, are feverishly lobbying for the Senate's so-called "public financing" bill.

It is still not too late for meaningful campaign reform legislation. But this means Congress will have to face up to the fact that elections often are bought, not with direct cash donations to a candidate, but with cash-equivalent services provided by union officials and paid for, unwillingly, by forced members.

We urge all Americans who share our belief that money forced from workers as a condition of employment should not be used for political purposes to ask their congressmen to support an amendment to the campaign "reform" bill to end this abuse.

REED LARSON,
*Executive Vice President, National Right to Work Committee.*
WASHINGTON.