By Mr. HELSTOSKI:

H.R. 16066. A bill to amend the Federal Reserve Act to permit the Federal Reserve Board to allocate credit to national priority needs; to the Committee on Banking and Currency.

H.R. 16067. A bill to establish a national policy and nationwide machinery for guaranteeing to all adult Americans able and willing to work the availability of equal opportunities for useful and rewarding employment; to the Committee on Education and Labor.

By Mr. LANDGREBE (for himself, Mr. ADDABBO, Mr. ABDNOR, Mr. ANDREWS of North Dakota, Mr. BEVILL, Mr. BUCHANAN, Mr. BROYHILL of Virginia, Mr. CAMP, Mr. COLLIER, Mr. COLLINS of Texas, Mr. CONLAN, Mr. DENHOLM, Mr. DUNCAN, Mr. ESCH, Mr. FISHER, Mr. FROEHLICH, Mr. GAYDOS, Mr. GUNTER, Mr. HUBER, Mr. HUNT, and Mr. ICHORD):

H.R. 16068. A bill to amend the Federal Meat Inspection Act to require that imported meat and meat food products made in whole or in part of imported meat be labeled "imported" at all stages of distribution until delivery to the ultimate consumer; to the Committee on Agriculture.

By Mr. LANDGREBE (for himself, Mr. KETCHUM, Mr. LAGOMARSINO, Mr. LONG of Maryland, Mr. LOTT, Mr. MADDEN, Mr. MONTGOMERY, Mr. NICHOLS, Mr. NIX, Mr. RAILSBACK, Mr. RARICK, Mr. SHOUP, Mr. SHUSTER, Mr. STEIGER of Arizona, Mr. TIERNAN, Mr. TREEN, Mr. WAGGONNER, Mr. WINN, and Mr. YOUNG of Florida):

H.R. 16069. A bill to amend the Federal Meat Inspection Act to require that imported meat and meat food products made in whole or in part of imported meat be labeled "imported" at all stages of distribution until delivery to the ultimate consumer; to the Committee on Agriculture.

By Mr. McEWEN:

H.R. 16070. A bill to authorize the Secretary of Agriculture to regulate the transportation of horses in commerce, and for other purposes; to the Committee on Agriculture.

By Mr. MILLER:

H.R. 16071. A bill to amend the National Flood Insurance Act of 1968 to continue the present federally subsidized flood insurance program in any locality where construction of an adequate flood protection system has begun, and to eliminate the compulsory features added to such program by the Flood Disaster Protection Act of 1973; to the Committee on Banking and Currency.

By Mr. MILLER (for himself, Mr. HAMMERSCHMIDT, Mr. FISHER, Mr. LITTON, Mr. HOSMER, Mr. WHITE, Mr. COLLIER, Mr. MILFORD, Mr. FOUNTAIN, and Mr. SHOUP):

H.R. 16072. A bill to authorize the provision of assistance to foreign countries in exchange for strategic or critical raw materials; to the Committee on Foreign Affairs.

By Mr. MILLER:

H.R. 16073. A bill to amend section 20 of the Federal Property and Administrative Services Act of 1948 by repealing the authority of the Administrator of General Services and of certain executive agencies to charge an occupant of a Federal building for the use of such building; to the Committee on Government Operations.

By Mr. PRICE of Illinois:

H.R. 16074. A bill to provide available nuclear information to committees and Members of Congress; to the Joint Committee on Atomic Energy.

By Mr. QUIE:

H.R. 16075. A bill to amend the Intergovernmental Personnel Act of 1970 to provide more effective means to improve personnel administration in State and local governments; to correct certain inequities in the law; and to extend coverage under the law to Indian tribes and the Trust Territory of the Pacific Islands; to the Committee on Education and Labor.

By Mr. REGULA (for himself, Mr. BUCHANAN, Mr. BRINKLEY, Mr. PETTIS, Mr. GOLDWATER, Mr. MANN, Mr. KEMP, Mr. MOAKLEY, Mr. YOUNG of Georgia, and Mrs. BURKE of California):

H.R. 16076. A bill to provide for the more equitable administration of revenues derived from certain Federal lands, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. ROGERS (for himself, Mr. SATTERFIELD, Mr. KYROS, Mr. PREYER, Mr. SYMINGTON, Mr. ROY, Mr. NELSEN, Mr. CARTER, Mr. HASTINGS, Mr. HEINZ, and Mr. HUDNUT):

H.R. 16077. A bill to amend the Public Health Service Act to extend through fiscal year 1975 the scholarship program for the National Health Service Corps and the loan program for health professions students; to the Committee on Interstate and Foreign Commerce.

By Mr. ST GERMAIN:

H.R. 16078. A bill to amend the Internal Revenue Code of 1954 to allow for a temporary period a tax credit equal to one-half of the increase in residential electricity expenses occurring after January 1, 1973; to the Committee on Ways and Means.

By Mr. STUDDS:

H.R. 16079. A bill to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972; to the Committee on Merchant Marine and Fisheries.

By Mr. TALCOTT:

H.R. 16080. A bill to amend the Internal Revenue Code of 1954 to provide equitable tax relief to America's small businesses; to the Committee on Ways and Means.

By Mr. CLANCY:

H.R. 16081. A bill to amend title XVI of the Social Security Act to provide that supplemental security income benefits may be paid thereunder to any individual who is outside the United States for the sole purpose of obtaining medical or remedial treatment; to the Committee on Ways and Means.

By Mr. DELLENBACK:

H.R. 16082. A bill to amend the Land and Water Conservation Fund Act of 1965 to increase the authorization of appropriation for the Land and Water Conservation Fund; to the Committee on Interior and Insular Affairs.

By Mr. FINDLEY:

H.R. 16083. A bill to provide a penalty for the robbery or theft of any narcotic drug or controlled substance from any pharmacy or other licensed repository; to the Committee on the Judiciary.

By Mr. RANDALL:

H.R. 16084. A bill to extend the Emergency Petroleum Allocation Act of 1973 until June 30, 1976, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. VANIK (for himself, Mrs. CHISHOLM, Mr. GUDE, and Mr. RODINO):

H.R. 16085. A bill to amend the Internal Revenue Code of 1954 to terminate special tax treatment for domestic international sales corporations; to the Committee on Ways and Means.

By Mr. WON PAT (for himself, Mr. DE LUGO, Mr. JOHNSON of California, Mr. KETCHUM, Mr. MARTIN of North Carolina, Mr. RONCALIO of Wyoming, Mr. SEBELIUS, Mr. SEIBERLING, Mr. STEELMAN, and Mr. WHITE):

H.R. 16086. A bill to provide for the establishment of a national historic park on the island of Guam, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. O'HARA:

H.J. Res. 1096. Joint resolution proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. TALCOTT:

H.J. Res. 1097. Joint resolution to amend title 5 of the United States Code to provide for the designation of the 11th day of November of each year as Veterans Day; to the Committee on the Judiciary.

By Mrs. HANSEN of Washington (for herself, Mr. HAYS, Mr. LANDRUM, Mr. THOMPSON of New Jersey, Mr. O'HARA, Mr. SMITH of Iowa, Mr. WAGGONNER, Mr. PHILLIP BURTON, Mr. ANNUNZIO, Mr. JONES of Tennessee, and Miss JORDAN):

H. Res. 1248. Resolution to reform the structure, jurisdiction, and procedures of the committees of the House of Representatives; to the Committee on Rules.

By Mr. MOORHEAD of Pennsylvania:

H. Res. 1249. Resolution expressing the sense of Congress regarding the reclassification of servicemen listed as missing in action in Southeast Asia to presumptive finding of death status; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of rule XXII,

515. The SPEAKER presented a memorial of the Legislature of the State of Louisiana, relative to Professional Standards Review Organizations; to the Committee on Ways and Means.

SENATE—*Tuesday, July 23, 1974*

The Senate met at 10 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:

Eternal Father, in whom we live and move and have our being, from whom we come and to whom we go at last, in this quiet moment we remember with thanksgiving Thy servant Wayne Morse. We thank Thee for the magnitude of his service to the Nation and especially his labors in this body.

We thank Thee for the integrity of his manhood, the uniqueness of his witness, and the power of his speech. We remember with gratitude his virile intellect, his moral earnestness, his tenacious convictions, his forensic skills, his fidelity to high ideals, his loyalties transcending faction and party, and his faithfulness as a servant of the common good. May his unique mantle be worn worthily in all generations.

Teach us once more that underneath life and death are the everlasting arms of the Eternal Shepherd who with goodness and mercy will follow us all the days of this life until we dwell in the house of the Lord forever.

Through Him who is the Resurrection and the Life. Amen.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, July 22, 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.

SPEEDY TRIAL ACT OF 1974

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 980.

The PRESIDENT pro tempore. The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (S. 754) to give effect to the sixth amendment right to a speedy trial for persons charged with criminal offenses and to reduce the danger of recidivism by strengthening the supervision over persons released pending trial, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendments:

On page 2, in line 5, after the number "3165." strike out "District plans." and insert in lieu thereof "Planning process."

On page 2, in line 5, after the number "3166." strike out "Definitions." and insert in lieu thereof "District plans—generally."

On page 2, in line 5, after the number "3167." strike out "Sixth amendment rights." and insert in lieu thereof "District plans—contents."

On page 2, at the end of line 5, insert the following four new lines:

"3168. Speedy trial reports.
"3169. Pilot districts.
"3170. Definitions.
"3171. Sixth amendment rights.

On page 2, beginning at line 12, strike out the following language:

"(b) The trial of a defendant charged with an offense shall be commenced as follows:

"(1)(A) Within sixty days from the date the defendant is arrested or served with a summons, except that if the prosecution is initiated by filing an information or indictment prior to arrest or summons (and made public) then within sixty days from the date of such filing;

"(B) Notwithstanding the provisions of subclause (A) of this clause, for the first twelve-calendar-month period following the effective date of this chapter as set forth in section 3163 of this chapter, the time limits imposed by such subclause (A) shall be one hundred and eighty days, and for the second such twelve-month period, such time limits shall be one hundred and twenty days.

"(2) If the indictment or information is dismissed upon motion of the defendant for reasons other than those provided in section 3162(a) and thereafter the defendant is charged with the same offense or an offense based on the same conduct or arising from the same criminal episode, within sixty days from the date the defendant is arrested or served with a summons with respect to such charge, except that if the prosecution is initiated by filing an information or indictment prior to arrest or summons (and made public), then within sixty days from the date of such filing; or

and insert in lieu thereof the following language:

"(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.

"(c) The trial of a defendant charged in an information or indictment with the commission of an offense shall be commenced within sixty days from the date on which the information or indictment containing such charge is filed (and made public).

"(d) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, for reasons other than those provided in section 3162(a) and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

On page 4, in line 19, strike out "(3)" and insert in lieu thereof "(e)".

On page 5, beginning at line 5, insert the following new language:

"(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter the time limit imposed by subsection (b) of this section shall be sixty days, and for the second and third such twelve-month periods such time limit shall be forty-five days.

"(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(c) of this chapter, the time limit imposed by subsection (c) of this section shall be one hundred and eighty days, and for the second and third such twelve-month periods such time limit shall be one hundred and twenty days.

On page 5, in line 19, strike out "(e)" and insert in lieu thereof "(h)".

On page 5, in line 20, after the word "excluded" insert the words "in computing the time within which an information or an indictment must be filed, or".

On page 5, in line 23, strike out "(A)".

On page 6, in line 9, strike out the word "and".

On page 6, beginning at line 12, insert the following new language:

"(vi) delay resulting from proceedings under Rule 20 of the Federal Rules of Criminal Procedure; and

"(vii) delay reasonably attributable to any period during which any proceeding concerning the defendant is actually under advisement.

On page 6, beginning at line 17, strike out the following language:

"(B) With respect to any delay referred to in clause (1)(A) of this subsection, only such court days as are actually consumed in connection with any pretrial motion or other hearing, examination, presentation of an interlocutory appeal, or a trial with respect to another charge shall be excluded, and in no event shall any period of delay which occurs while any of the aforementioned matters under clause (1)(A) are under advisement or are awaiting decision be so excluded.

On page 7, in line 7, after the word "defendant" insert "or an essential witness".

On page 7, in line 10, after the word "defendant" insert "or an essential witness".

On page 7, in line 14, after the word "defendant" insert "or an essential witness".

On page 8, in line 15, strike out the word "and" and insert in lieu thereof "served by taking such action outweigh".

On page 8, in line 16, strike out "as well as" and insert in lieu thereof "and".

On page 8, in line 16, strike out "would be served thereby" and insert in lieu thereof "in a speedy trial".

On page 8, in line 22, strike out the word "and" and insert in lieu thereof "served by the granting of such continuance outweigh".

On page 8, in line 23, after the word "defendant" strike out "were served by" and insert in lieu thereof "in a speedy trial."

On page 8, in line 24, strike out "the granting of such continuance."

On page 8, beginning at line 25, insert the following new language:

"(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

"(i) whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice;

"(ii) whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable

to expect adequate preparation within the periods of time established by this section; or

"(iii) whether delay after the grand-jury proceedings have commenced, in a case where arrrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

On page 9, in line 19, strike out "(d)" and insert in lieu thereof "(i)".

On page 9, beginning in line 23, strike out "arraigned on the information or indictment" and insert in lieu thereof "indicted".

On page 10, beginning at line 4, strike out the following:

"(a) If a defendant is not brought to trial as required by section 3161, the information or indictment shall be

and insert in lieu thereof the following:

"(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed as required by section 3161(b) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. The dismissing or dropping of such charge shall not bar a subsequent prosecution.

"(2) If a defendant is not brought to trial as required by section 3161(c), the information or indictment shall be

On page 10, beginning at the end of line 16, strike out "except that the Government shall have the burden of proof of establishing" and insert in lieu thereof "but the Government shall have the burden of going forward with the evidence in connection with".

On page 10, in line 20, strike out "(e)(3)" and insert in lieu thereof "(h)(3)".

On page 10, in line 21, strike out "forever" and insert in lieu thereof "not".

On page 10, in line 21, after the word "bar" insert "a subsequent".

On page 10, beginning at line 22, strike out "for the offense charged, any offense based on the same conduct or arising from the same criminal episode, and any other offense required to be joined with the offense."

On page 11, beginning at line 3, insert the following new language:

"(b) After a dismissal pursuant to subsection (a)(1) or (a)(2) a prosecution can be reinstituted for the offense charged, any offense based on the same conduct or arising from the same criminal episode, and any other offense required to be joined with the offense. Such prosecution can only be reinstituted if the court in which the original action was pending finds that the attorney for the government has presented compelling evidence that the delay was caused by exceptional circumstances which the government and the court could not have foreseen or avoided. Exceptional circumstances shall not mean general congestion of the court's docket, lack of diligent preparation or failure to obtain available witnesses.

"(c) Notwithstanding the provisions of subsection (b) of this section, for the first and second twelve-calendar-month periods following the effective date of this section as set forth in section 3163(c) of this chapter, a prosecution can be reinstituted subsequent to dismissal made pursuant to section 3163(a) without the requirement of a finding of exceptional circumstances.

On page 11, in line 23, strike out "(b)" and insert in lieu thereof "(d)".

On page 13, in line 6, strike out "(C)" and insert in lieu thereof "(e)".

On page 13, beginning at line 10, strike the following language:

"The time limitation in section 3161—

"(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1973; and

"(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

and insert in lieu thereof the following language:

"(a) The time limitation in section 3161(b) of this chapter—

"(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1974; and

"(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration.

"(b) The time limitation in section 3161(c) of this chapter—

"(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1974; and

"(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

"(c) Section 3162 of this chapter shall become effective after the date of expiration of the third twelve-calendar-month period following the enactment of the Speedy Trial Act of 1974.

On page 15, in line 2, strike out "(1)(A)" and insert in lieu thereof "and section 3161(c)".

On page 16, beginning at line 10, insert the following new language:

"§ 3165. Planning process

"(a) Within sixty days of enactment of this Act, each United States district court and the Superior Court for the District of Columbia shall convene a planning group consisting at minimum of the Chief Judge, the United States Attorney, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research and planning to act as reporter for the group. The group shall be responsible for the initial formulation of all district plans and of the reports required by the Act.

"(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of the Act and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatry enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

"(c) The planning group shall address itself to the need for reforms in the criminal justice system, including but not limited to changes in the grand jury system, the finality of criminal judgments, habeas corpus and collateral attacks, pretrial diversion, pretrial detention, excessive reach of federal criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay.

"(d) The planning group shall submit recommendations to the District Court for each of the District plans it must adopt pursuant to section 3166.

On page 17, at line 17, strike out "§ 3165. District plans" and insert in lieu thereof "§ 3166. District plans—generally".

On page 18, beginning in line 2, strike out "the period that the one hundred and twenty day trial limitation required by section 3161(b)(1)(B) 3161(f) of this chapter is in effect." and insert in lieu thereof "the second and third twelve-calendar-month periods following the section 3161(c)."

On page 18, in line 7, strike out "twenty-four" and insert in lieu thereof "thirty-six".

On page 18, beginning in line 12, strike out "on and after the expiration of the thirty-six calendar month period following the date of the enactment of the Speedy Trial Act of 1973." and insert in lieu thereof the following language:

during the fourth and fifth twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c). Prior to the expiration of the sixty-calendar-month period following such date of enactment, each such court, with the approval of such council, shall prepare and submit to the Administrative Office of the United States Court a plan for the trial or other disposition of offenses under this chapter (within the jurisdiction of such court) during the sixth twelve-calendar-month period following the effective date of section 3161(b) and section 3161(c).

On page 19, beginning in line 2, strike out the following language:

the United States attorney, and attorneys experienced in the defense of criminal cases in the district, including the Federal Public Defender, if any. Such plan shall include all such recommendations and shall further include a description of the procedural techniques, innovations, systems, and other methods by which the district court has expedited or intends to expedite the trial or other disposition of criminal cases. The plan shall make special provision for the speedy trial of cases at places of holding court where there is no judge continuously resident

and insert in lieu thereof "and the criminal justice planning group established for that district pursuant to section 3165."

On page 20, beginning in line 2, strike out "the period that the one hundred and twenty day trial limitation required by section 3161(b)(1)(B) of this chapter is in effect." and insert in lieu thereof "the second and third twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c)."

On page 20, in line 7, strike out "twenty-four" and insert in lieu thereof "thirty-six".

On page 20, beginning in line 13, strike out "on and after the expiration of the thirty-six-calendar-month period following the date of the enactment of the Speedy Trial Act of 1973." and insert in lieu thereof the following language:

during the fourth and fifth twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c). Prior to the expiration of the sixty-calendar-month period following such date of enactment, the chief judge of such court, with the approval of such Joint Committee, shall prepare and submit to the Administrative Office of the United States Court a plan for the trial or other disposition of offenses under this chapter, within the jurisdiction of such court, during the sixth twelve-calendar-month period following the effective date of section 3161(b) and section 3161(c).

On page 21, beginning in line 3, strike out the following language:

the Corporation Counsel, United States attorney, the Public Defender Service and attorneys experienced in the defense of criminal cases in the District of Columbia. Such plan shall include all such recommendations and shall further include a description of the procedural techniques, innovations, systems, and other methods by which the district court has expedited or intends to expedite the trial or other disposition of criminal cases.

and insert in lieu thereof "and the criminal justice planning group established pursuant to section 3165."

On page 21, in line 22, strike out "3165 (a) (1) and insert in lieu thereof "3166 (a) (1)".

On page 21, in line 23, strike out "3165 (b) (1)" and insert in lieu thereof "the first sentence of section 3166(b) (1)".

On page 22, in line 2, strike out "twenty-seven" and insert in lieu thereof "thirty-nine".

On page 22, in line 7, strike out "3165 (a) (1)" and insert in lieu thereof "3166 (a) (1)".

On page 22, in line 7, strike out "3165 (b) (1)" and insert in lieu thereof "the first sentence of section 3166(b) (1)".

On page 22, beginning at the end of line 8, insert the following new language:

Within sixty-three calendar months following such date of enactment, the Administrative Office of the United States Courts, with such approval, shall submit such a report to the Congress covering plans submitted to such Office pursuant to the third sentence of section 3166(a) (1) and the third sentence of section 3166(b) (1) of this chapter.

"(d) District plans adopted pursuant to this section shall, upon adoption, and recommendations of the District planning group shall, upon completion, become public documents. They shall be available (1) to the bar and the press in each district, (2) to the Department of Justice, (3) to the General Accounting Office, (4) to the Judiciary Committees and Appropriations Committees of the Senate and House of Representatives, and (5) at reasonable cost, to others who request them.

On page 22, in line 23, strike out "(d)" and insert in lieu thereof "(e)".

On page 22, in line 24, after the word "section," insert the words "and section 3165".

On page 23, beginning at line 1, insert the following new language:

"§ 3167. District plans—contents

"(a) Each District plan required by section 3166 shall include a description of the norms prevailing at the time of its submission as to characteristics of criminal justice administration in the district, including but not limited to: the time span between arrest and indictment, and indictment and trial; the numbers of matters presented to the United States Attorney for prosecution; acceptance and rejection rates of prosecutions, and transfers to other districts and to state prosecution; the comparative number of cases disposed of by trial and by plea; the rates of conviction, dismissal, acquittal, nolle prosequi, diversion and other types of disposition; and the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

"(b) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States Attorney, the Federal Public Defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives set forth in section 3165(b) and section 3165(c).

"(c) Each plan shall prescribe reporting forms, procedures and time requirements, consistent with section 3168, for assembling information concerning (1) the incidence of and reasons for extensions of time beyond the statutory or district standards, (2) the invocation of sanctions for noncompliance with time standards, and (3) the incidence and length of, reasons for, and remedies for, detention prior to trial. These forms shall include the pretrial custody information required by Rule 46(g) of the Federal Rules of Criminal Procedure.

"(d) Each plan shall further specify the rule changes, statutory amendments and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

"§ 3168. Speedy trial reports

"(a) Reports shall be filed for purposes defined in this section by—

"(1) each prosecutor and defense attorney who needs in an individual case an extension of time, or to avoid a sanction for noncompliance, in respect to a time limit prescribed in the Act or in a district plan,

"(2) each judge who grants or denies such a request in a case,

"(3) each planning group, district court, United States Attorney, and Federal Public Defender in a district, on an annual basis at the end of each twelve-calendar-month period beginning two years after the date of enactment, and

"(4) the Administrative Office of the United States Courts, the United States Department of Justice, and the General Accounting Office, on an annual basis beginning six months after the first reporting date referred to in subsection (a) (3) of this section. The reports referred to under (1) and (2) may consist of the memoranda and briefs of parties, and the written or transcribed opinions of judges, and shall be available to each organization designated in subsection (a) (3). A planning group or district court report referred to under subsection (a) (3) may be satisfied by a recommendation submitted for the same year under section 3165 or a plan submitted for the same year under section 3166 and shall be transmitted to the judicial council of the circuit and each organization designated in subsection (a) (4) of this section.

"(b) The contents of a report shall, to the extent applicable to a person or agency designated in subsection (a) (1), (2), and (3) of this section, include in individual cases or in cumulative profiles:

"(1) reasons for requesting or granting an extension of statutory limits, or for invoking or failing to invoke an applicable sanction,

"(2) the new timetable set, or requested to be set, for an extension, and the nature of the sanction, if any, invoked for noncompliance,

"(3) the effect on criminal justice administration of the prevailing time limits and sanctions, including effects on prosecution, defense, the judicial function, corrections, costs, transfers, appeals,

"(4) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classification, and

"(5) other information pertinent to the operation and implications of the district's plan.

"(c) District reports filed under subsection (a) (3) of this section shall be received, compiled and analyzed by the national agencies designated in subsection (a) (4) of this section for the purpose of distilling national summaries, and recommendations as to changes in rules, statutes, institutions, appropriations, reporting procedures, or other ingredients of the criminal process. All such reports shall be filed with the Judiciary and Appropriations Committees of the Senate and the House.

"§ 3169. Pilot districts

"(a) There are hereby authorized to be appropriated $5,000,000 to carry out the initial phases of planning and implementation of speedy trial plans under this Act in five pilot Federal judicial districts. The funds shall remain available until expended, and requests to renew the appropriation shall receive priority if endorsed by the planning groups in each of such districts, and their parent agencies.

"(b) The pilot districts shall be designated jointly by the Chief Justice and the Attorney General on the basis of applications received by them from planning groups established under section 3165. Each such application shall describe in detail the process by which the district proposes to carry out the provisions of this Act. To be eligible, applications shall be submitted on or before one hundred and eighty days from the date of enactment, and the designation of pilot districts, and the amount of funds awarded, shall be made public no later than two hundred and seventy days after enactment. All applications shall be public documents.

"(c) No funds appropriated under this section may be expended in any pilot district except by two-thirds vote of the planning group. Funds may be expended for personnel, facilities, and any other purpose permitted by law. Where an expenditure requires further action by Congress, as in the creation of an additional judgeship, such recommendation shall receive priority if endorsed by the national agencies designated in section 3166(d).

On page 28, in line 1, strike out "3166." and insert in lieu thereof "3170."

On page 28, in line 13, strike out "3167." and insert in lieu thereof "3171."

On page 31, in line 13, after "(1)" insert "(A)".

On page 31, beginning at line 18, insert the following new language:

"(B) such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential. The Board of Trustees shall issue regulations establishing policy on the release of agency files. Such regulations shall create an exception to the confidentiality requirement so that such information shall be available to members of the agency's staff and to qualified persons for purposes of research related to the administration of criminal justice. Such regulations may create an exception to the confidentiality requirement so that access to agency files will be permitted by agencies under contract pursuant to subsection (4)

of this section; to probation officers for the purpose of compiling a presentence report and in certain limited cases to law enforcement agencies for law enforcement purposes. In no case shall such information be admissible on the issue of guilt in any judicial proceeding: *Provided, however,* That the Board of Trustees may permit such information to be used on the issue of guilt for a crime committed in the course of obtaining pretrial release.

Mr. ERVIN. Mr. President, this is a bill on which I have worked for many years, with the help of the Subcommittee on Constitutional Rights of the Committee on the Judiciary. It is a very important bill; and in order that there might be a full explanation of it, I ask unanimous consent to have printed in the RECORD an excerpt from the report, commencing with "Purpose" on page 1 to the section-by-section summary on page 25.

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

I. PURPOSE

The purpose of the bill is to make effective the sixth amendment right to a speedy trial in Federal criminal cases by requiring that each Federal district court, in cooperation with the United States Attorney and attorneys active in the defense of criminal cases in that district, establish a plan for trying criminal cases within 90 days of arrest or receipt of summons. The bill takes effect over a seven year period so that the goals of a 30-day limit on the period between arrest and indictment and a 60-day limit on the period between indictment and commencement of trial will not be in force until the seventh year after enactment.

For a period beginning 90 days after enactment until the end of the fifth year after enactment interim time limits will be in effect and detained defendants must be tried within 90 days or released. The phase-in of the general time limits provided by the bill begin in the second year. During that year, a 60-day arrest to indictment time limit and a 180-day indictment to trial time will be in effect and failure to comply with the time limits will be reported to the Administrative Office of the United States Courts. During the third and fourth year, the arrest to indictment time limit will be 45 days, the indictment to trial time limit will be 120 days, and failure to comply with the time limits also be reported to the Administrative Office. During the fifth and sixth year, the arrest to indictment time limit will be 30 days, the indictment to trial time limit will be 60 days, and failure to comply with the time limits will result in dismissal of the case. Starting in the seventh year after enactment the 30-day arrest to indictment and the 60-day indictment to trial time limits will be enforced by a dismissal without prejudice but with a burden on the Government to demonstrate "exceptional circumstances" prior to reprosecution. A planning process for the district courts will be established to enable the districts to determine what additional resources, personnel and facilities will be required to comply with the progressive time limitations. District plans which will detail these needs will be required at specified times during the seven year phasing in of time limits. (See Calendar of Implementation, Chart 1, p. 55.) This, in turn, will enable Congress to consider the needs of each individual district, and of the whole Federal criminal justice system.

Along with its provision for speedy trials, S. 754 also authorizes the creation of demonstration "Pretrial Services Agencies" in 10 Federal districts, excluding the District of Columbia which is already served by the District of Columbia Bail Agency, performing many of the same functions. These agencies will make bail recommendations, supervise persons on bail and assist them with employment, medical, and other services designed to reduce crime on bail. This provision will greatly enhance the operations of the Bail Reform Act of 1966.

II. COMMITTEE AMENDMENTS

Several amendments to S. 754 have been incorporated into the bill as reported by the Committee. These amendments reflect the careful consideration of several different viewpoints concerning the best solution to the speedy trial problem. Among those who have had the greatest impact on these most recent amendments were the representatives of the Justice Department, Senators McClellan and Hruska, the various witnesses who appeared at hearings conducted by the Subcommittee on Constitutional Rights, and Professor Dan Freed of Yale Law School who during the past three years has provided invaluable advice to the Subcommittee on this legislation. The Subcommittee reported S. 754 with amendments in March of 1974. The major changes incorporated by these amendments are as follows:

1. SEGMENTED TIME LIMITS.—As introduced, S. 754 provided a single 60-day time limit between arrest or return of indictment and commencement of trial. The committee has amended Section 3161 to establish two separate sets of time limits, one between arrest and indictment and one between indictment and commencement of trial. The arrest-to-indictment time limit would eventually be 30 days and the indictment-to-trial time limit would eventually be 60 days.

2. DISMISSAL WITH PREJUDICE.—The bill as introduced contained a provision requiring dismissal with prejudice if a case extended beyond the time limits. At the suggestion of Senators Hruska and McClellan this provision has been replaced with a dismissal without prejudice sanction. However, beginning the 7th year after enactment a prosecution can only be recommenced following a dismissal without prejudice if the Government can show "exceptional circumstances." (See sec. 3162(b) and pp. 42–44)

3. ELONGATED PHASE-IN OF TIME LIMITS AND SANCTIONS.—The original bill provided that the time limits be phased-in over a three year period. The Committee has amended the bill to allow the time limits and the sanctions for non-compliance with the time limits to be phased-in over a seven year period. (See Calendar of Implementation, Chart 1, p. 55.)

4. EXPANDED PLANNING PROCESS.—The Committee has amended the old Section 3165 of the bill which deals with the planning process for implementing speedy trial in the district courts, and has renumbered it as a new section 3166. In addition, new Sections 3166, 3167, 3168, and 3169 have been created. The effect of these new sections is to further define what is expected from the district courts, the United States Attorneys and defense counsel in terms of planning for the implementation of speedy trials and to provide reporting requirements so that the progress of implementation and its resource needs can be easily monitored. (For further explanation see pp. 45–49.)

5. BALANCING TEST FOR DETERMINATION OF ALLOWABLE EXCLUSIONS FROM THE SPEEDY TRIAL TIME LIMITS.—At the suggestion of Senators McClellan and Hruska section 3161(h)(8) has been amended in order to specify the factors which a judge should consider when determining whether to grant an exclusion from the speedy trial time limits. This section now specifies that a judge should use a balancing test in order to make this determination. The judge must find that the "ends of justice" outweigh the interest of the defendant and society in a speedy trial.

6. TECHNICAL AMENDMENTS.—The Committee made several technical amendments to the bill to remedy problems of practical application which were brought out in testimony at the hearings.

III. LEGISLATIVE HISTORY

Speedy trial legislation has been introduced in almost every session since the 88th Congress. One of the first such pieces of legislation was introduced by former Senator Morse and cosponsored by Senator Fong, a member of the Subcommittee on Constitutional Rights.

S. 754 is based upon a similar bill, S. 3936, introduced by Senators Ervin, Hart, Bayh, Hughes, and former Senator Young in the 91st Congress and upon S. 895, introduced on February 22, 1971. S. 895 differed from S. 3936 in that the former did not provide for specific additional penalties for crimes committeed while a defendant was released awaiting trial. That provision, title II of S. 3936, was dropped in light of considerable unfavorable comment by Members of the Senate and from experts whose opinions were obtained during hearings held before the Subcommittee on Constitutional Rights in the fall of 1971. S. 895 and S. 3936 were designed to be vehicles for hearings and legislative study of the problem of speedy trial, a foundation upon which effective speedy trial legislation could be based. Senator Ervin introduced S. 754 along with 46 cosponsors on February 5, 1973. S. 754, as now amended represents the culmination of over three years of work by the Subcommittee on S. 3936 and S. 895 and contains many of the suggestions made by experts during the course of comment and criticism on the two earlier bills.

On July 8, 1970, the Constitutional Rights Subcommittee transmitted a copy of S. 3936 to over 300 prominent members of the bench and bar around the country. The subcommittee received responses from 225 of these experts. Their views, as well as those of the 20 witnesses who appeared before the Constitutional Rights Subcommittee in hearings held in July and September of 1971, are reflected in S. 754. Testimony was received from several of the bill's cosponsors and a number of others submitted statements for the record. In addition, the subcommittee heard from a Federal and a State judge, both from busy districts, who told the subcommittee how they achieved the goal of speedy trial in their own jurisdictions. Also testifying were interested and knowledgeable witnesses with etxensive experience in prosecution, defense, and pretrial rehabilitation services.

On September 14, 1971, then Assistant Attorney General William H. Rehnquist, accompanied by Donald E. Santarelli, then Associate Deputy Attorney General for Criminal Justice, presented the Justice Department's position. The Justice Department while supporting the bill, proposed some changes in the language of S. 895. The subcommittee did, in the course of its deliberations on S. 895 and S. 754, adopt a majority of the 29 specific language changes proposed by the Department.

Also testifying on September 14 were former Congressman Abner J. Mikva, author of H.R. 7107, speedy trial legislation similar to S. 895; and Professor Daniel Freed, former Director of the Justice Department's Office of Criminal Justice. Commenting on the hearings Senator Ervin said:

"I was most encouraged to find two common threads extending throughout the testimony and statements presented to the subcommittee at that time. First, there was general agreement that speedy trial is not an unattainable goal—that it is a realistic objective within our grasp. Second, I found that a sincere desire to find a practical means to reach that goal speedily pervaded the entire record—everyone has offered constructive comment aimed at realizing our goal just as soon as practically possible."

On October 12, 1972, the Subcommittee on Constitutional Rights adopted an amendment in the nature of a substitute for S. 895 and reported the bill as amended out of the Subcommittee to the full Committee for

consideration. In the October 1972 redraft the Subcommittee made six important changes in S. 895 as introduced most of which have been retained in S. 754 as adopted by the full committee:

First, although the basic provision requiring that defendants be tried within 60 days or have their charges dismissed was retained by the Subcommittee in its first redraft of speedy trial legislation, the 60-day requirement would not have become operative until 3 years after enactment. In the meantime, beginning one year after enactment, trials would have had to be held within 180 days and, beginning 2 years after enactment, trials would have had to be held within 120 days. There was considerable sentiment among witnesses at the Subcommittee's 1971 hearings that it was unrealistic to expect Federal courts to be able to conduct 60-day trials within 3 months of enactment as provided in S. 895 as introduced. The amendment adopted by the Subcommittee in October 1972 was based upon a suggestion by Senator Percy and others that the time limits be phased-in over a number of years. The Committee's recent amendment to S. 754 lengthens that phase-in from three years to six years.

Second, the Subcommittee in its October 1972 revision of S. 895 added a new section 3164 which would provide that beginning three months after enactment and continuing until the 60-day provision would have been effective 3 years after enactment, detained defendants be tried within 90 days or be released from pretrial detention until trial. There was consensus among the witnesses that although immediate implementation of 60-day trials was impractical, it was important and would be feasible to provide speedy trials for detained defendants. This change is based in part upon a similar provision adopted by the United States Court of Appeals for the Second Circuit. The Committee has retained this provision of S. 754.

Third, the Justice Department suggested that section 3162 of S. 895 be amended to authorize sanctions against defense counsel responsible for unwarranted delay. The Department argued that section 3162 sanctioned government delay by providing for mandatory dismissal if trials were not commenced within the prescribed time limits and that to create a balanced bill, defense attorneys who cause unnecessary delay should be subject to some type of penalty. The provision is based upon language proposed by Senator Thurmond and in many respects is simply a codification of existing law. The Committee has also retained this provision in S. 754.

Fourth, many witnesses contended that the categorization of crimes and effective dates contained in section 3163 of S. 895 which had been derived from an Administration preventive detention bill was artificial and should be eliminated. The bill, as amended by the Subcommittee in October 1972, applied to all offenses except petty offenses. Of course, this section which has been retained in S. 754 is also subject to the phase-in of the time limits contained in section 3161.

Fifth, S. 895 would have allowed the districts considerably more time to prepare their speedy trial plans. While S. 895 as introduced allowed only 3 months to prepare for speedy trials for certain classes of crimes, S. 895 as amended by Subcommittee in October 1972, would have provided at least one year to prepare for 180-day trials and three years to prepare for 60-day trials. The Committee's most recent amendments further lengthen the planning process, in recognition of the need for new resources and the time needed to speed up the entire system without prejudicing important prosecution and defense interests.

Sixth, Section 3163 of S. 895 as introduced had provided a blanket exemption from the time limits for certain complex cases such as antitrust cases and organized crime conspiracy cases. The Subcommittee dropped that provision as a result of criticism by several witnesses who suggested that the provision would remove the impetus to speed up those cases at all. However, complicated cases would still be subject to much more lenient time limits because unusual complexity would be the grounds for a continuance under subsection 3161(h)(8). Therefore, under the new provision adopted in October 1972 and retained in S. 754 complicated cases would be exempted from the standard time limits and given special individualized limits in lieu thereof by court order on a case-by-case basis.

S. 754 as introduced on February 5, 1973, is identical to S. 895 as it was amended by the Subcommittee on October 12, 1972. For a more detailed discussion of the six major changes and the numerous technical changes in S. 895 made by the Subcommittee see Section VI of this report where S. 754 is compared to S. 895 as introduced.

On April 17, 1973, the Subcommittee conducted one day of hearings so that the Department of Justice might have an opportunity to clarify its position on S. 754. Speaking for the Department, Joseph Sneed, then Deputy Attorney General, set out three major areas of concern. First, the Department would have preferred that the Congress defer to the Supreme Court on the whole matter and await the impact on court delay of its recently promulgated Rule 50(b) which requires district courts to adopt speedy trial plans. Second, the Department was concerned about the flexibility of the time limits and the sanction of dismissal for failure to comply with the time limits, and third, the speed with which S. 754 would implement these time limits. These and other issues are discussed in Sections IV and VI of this report.

In response to the Department's concerns the Subcommittee adopted a number of amendments to S. 754 and reported the measure to the full Committee in April of 1974. On July 10th, the full committee reported the measure to the floor with several additional amendments, including a replacement of the dismissal with prejudice with dismissal without prejudice. (See p. 2 *supra* for a summary of the most recent amendments to S. 754.)

IV. DISCUSSION

TITLE I—SPEEDY TRIAL

President Nixon summarized the debilitating effect of court delay upon our criminal justice system in a speech to the National Conference on the Judiciary in Williamsburg in March of 1971:

"In case after case, the appeal process is misused—to obstruct rather than to advance the cause of justice. Throughout the State systems, the average time it takes to process an appeal is estimated to be as long as a year and a half. The greater the delay in commencing a trial, or retrial resulting from an appeal, the greater the likelihood that witnesses will be unavailable and other evidence difficult to preserve and present. This means the failure of the process of justice.

"The law's delay creates bail problems, as well as overcrowded jails; it forces judges to accept pleas of guilty to lesser offenses just to process the caseload—in other words, as some have said, to 'give away the courthouse for the sake of the calendar.' Without proper safeguards, this can turn a court of justice into a mill of injustice.

"In his perceptive message on 'The State of the Federal Judiciary,' Chief Justice Burger makes the point that speedier trials would be a deterrent to crime. I am certain that this hold true in the courts of all jurisdictions, not just the Federal courts.

"Justice delayed is not only justice denied, it is justice circumvented, justice mocked, and the ssytem of justice undermined."

The committee shares the President's view of the crisis in the criminal justice system. Congress must recognize that delay in the Federal criminal justice system occurs at two levels, between arrest and trial and also post trial in the appellate process. However, the Committee has concluded that from the point of view of crime control and the constitutional rights of defendants, the most serious aspect of delay in the Federal criminal justice system has to do with the period between arrest and the Commencement of trial or retrial resulting from appeal. Therefore, S. 754 is addressed to the problem of delay in commencing trial rather than delay related to the trial itself, sentencing or even the appellate process. A study by the Federal Judicial Center on delay in Federal criminal cases found that 84 percent of the delay between indictment and sentencing in the criminal cases it studied occurred between indictment and the commencement of trial. Appellate delay is a serious problem but the number of retrials resulting from successful appeals is not large because the rate of success on criminal appeals is still relatively small. Furthermore Congress has already addressed the question of delay in the Federal appellate process with the creation in 1972 of the Commission on Revision of the Federal court appellate system. Therefore, it is trial delay, not appellate delay, which has most seriously undermined the deterrent value of the criminal process, created the crisis in pretrial crime, and which must command the primary attention of Congress at this time.

In a speech in April 1973 former Attorney General Richard Kleindienst summarized very forcefully the discouraging situation on State and Federal criminal courts:

"We in the Federal system believe we are in the forefront of improvement, yet the Administrative Office for U.S. Courts shows in its latest report that the median time for disposition of a criminal case in a jury trial is 6.3 months. In some districts it runs up to 12 and 15 months. My information is that the situation is at least as bad in many state courts. In one Eastern metropolis the average time from arrest to disposition of a felony case is 6½ months, while many cases run much longer. Other studies show an average lapse of more than eight months in two different populous counties in the Midwest. I understand that in many state courts a disposition time of two years or more is not uncommon."

The Federal Judicial Center study mentioned earlier confirms the Attorney General's conclusion that there is a speedy trial crisis in the Federal courts. It found that the average delay between arrest and indictment in the busier Federal courts was over 100 days and between indictment and trial over 250 days. This suggests that delay between arrest and trial may be as long as 350 days. Another study by the Center involving many of these same Federal courts suggests that the situation has not improved over the past two years. While during fiscal year 1970, fifty-seven percent of all cases were over 3 months old at disposition, in fiscal year 1972 fifty-nine percent of all cases were over 3 months old at disposition. Unfortunately, the study only measured the time between indictment and disposition and did not include the time between arrest and disposition. If those figures were included, the situation would look much worse.

Judged by any standard the approximate one-year delay in commencing trial in Federal criminal cases reflected in the Center's statistics is a disturbing revelation. Judged by its impact upon the deterrent value of the criminal justice system, a hiatus of 10 to 12 months between arrest and trial is unacceptable. Although it is difficult to measure the deterrent effect of the criminal justice system, one important indicator is the relationship between delay in commencing trial and the likelihood that a defendant released prior to trial as required by the Constitution will commit a subsequent crime during

that period because he feels that he will never be held accountable for his first crime. The only study on this subject was conducted by the National Bureau of Standards in 1970 and indicates that if a defendant is released pretrial the likelihood he will commit a subsequent crime increases significantly if he is not brought to trial within 60 days of arrest. This suggests that if the criminal justice system is to have deterrent effect it should try defendants within two or three months, not one year, after arrest.

A second standard by which to judge these figures is the length of time within which experts feel it is feasible to commence trial in the typical Federal criminal case. Federal prosecutors, former Federal prosecutors, defense attorneys, the American Civil Liberties Union, District of Columbia judges and United States district court judges have testified before the subcommittee that in the typical Federal criminal prosecution trial can—and should—occur within approximately 2 months of arrest. As Judge George L. Hart, Jr. of the United States District Court for the District of Columbia told the Constitutional Rights Subcommittee in 1970:

"Every criminal trial except for extraordinary circumstances, should be tried within 6 weeks to 2 months, and if this were done, I would seriously doubt that you would need to amend the Bail Reform Act to provide for preventive detention.

"While it would be true that some crime would no doubt be committed in this 6-week to 2-month period, I think in most cases it would be at an absolute minimum."

According to Whitney North Seymour, Jr., former United States Attorney for the Southern District of New York, perhaps the busiest United States district in the country, prosecutors in his office are ready for trial within 60 days of arrest in all "short trial" cases. These cases comprising "the overwhelming bulk of cases" in his district, are defined as cases which can be tried within 3 court days. Because of this and other evidence, the committee has reached the conclusion that the goal of speedy trial should be to reduce the period between arrest and the commencement of trial to 90 days in the typical Federal criminal prosecution. The purpose of S. 754 is to achieve that goal within 7 years of enactment.

A. Causes of delay

While there seems to be considerable consensus that the goal of achieving trials within 90 days in the typical criminal prosecution is desirable and necessary in a well-working criminal justice system, there is great controversy over how this goal should be achieved. At the heart of this controversy is a fundamental disagreement over the causes for delay.

Every expert on criminal justice delay has his own explanation. Frequently each theory reflects experience associated with a particular perspective of the observer. Defense counsel often blame delay on the prosecutors—prosecution may blame the courts and defense counsel—and the judges often blame both sides. This was reflected in hearings held before the Subcommittee on April 17, 1973 when the Justice Department representatives blamed unnecessary defense motions as a primary cause of delay, while Gilbert Rosenthal, past President of the National Association of Criminal Defense Lawyers, rejected that argument and accused the United States Attorney's Office in the Southern District of New York of judge-shopping.

The Subcommittee on Constitutional Rights in its three years of study of delay in the Federal criminal justice system has concluded that the causes of delay are as complex as the system itself. It recognized that the litany of blame described above will never result in a comprehensive explanation of the causes of delay because discussions among prosecutors, defense counsel and judges which accomplish no more than pointing out the failures of the others are fruitless. The major reason for this nondialogue is that delay has become an integral part of criminal justice administration. Judges, prosecutors, and defense counsel in many jurisdictions have come to depend upon delay to cope with their workloads. As is discussed in greater detail in subsection B below, no effective statutory or constitutional incentive currently requires judges, defense attorneys and prosecutors to come to grips with their own inefficiency. Until speedy trial is statutorily mandated upon the system from the outside, along with resources where necessary to make it possible, many participants in the criminal justice process will not—and probably cannot—discipline themselves to discover the real causes for delay and to take effective steps to end delay.

Without a mandate requiring speedy trial the Subcommittee discovered that comprehensive analysis and action toward speedy trial was impossible among components of the criminal justice system. Therefore, the Subcommittee concluded that Congress could not at the present time resolve the delay problem by adopting specific criminal procedure reform proposals, an alternative discussed in greater detail in Subsection B below.[1]

A more immediately fruitful avenue of reducing delay is to eliminate the wasteful loss of time involved in moving from one stage or procedure of the pretrial process to the next. For example, in most Federal prosecutions almost half of the delay between arrest and trial is consumed awaiting indictment. This is not because the grand jury hearing itself takes weeks or months—in most cases presentation of evidence and deliberation combined is a matter of hours. However, weeks and months of delay are consumed simply waiting for a grand jury to hear the case. Similarly great and unnecessary delays are involved once the grand jury votes a bill until the papers are completed and the formal indictment is issued.

Another example of lengthy delay between proceedings was reflected in the Federal Judicial Center's speedy trial study which measured the delay between pretrial and the commencement of trial. Pretrial was defined as the point after the last substantive motion in a criminal case had been decided. Therefore, the period between that point and the commencement of trial represents delay simply awaiting a judge to hear the case or prosecutor or defense counsel prepared to begin trial. By definition neither the judge, prosecutor nor defense counsel could point to a pending pretrial proceeding as the cause of delay between pretrial and commencement of trial. The Federal Judicial Center found that on the average that period was 75 days. Furthermore, the Federal Judicial Center found that it took on the average 387 days simply to dismiss a case. On the whole these extraordinary delays can be blamed on two basic causes: (1) inefficient use of existing resources and (2) inadequacy of resources for courts, prosecutors and public defenders.

However, as the President said in his Williamsburg address, more prosecutors, judges, clerks, United States Marshals is not the total answer. That would simply mean more of the same. Rather, modern management techniques must be utilized by courts, prosecutors and defense counsel to control more efficiently the flow of cases from one pretrial stage to the next.

It is common knowledge that the technology for more efficient management of caseload not only exists but is presently being utilized in the Federal system. In his annual report on the state of the Federal judiciary on August 14, 1972, the Chief Justice summarized many of the important developments in this area in the past few years. First, the Institute of Court Management has been established at the University of Denver Law School. The Institute has been providing two vital services: research into court management problems and training of court personnel in the use of modern management techniques. Second, the Federal Judicial Center has been serving much the same purpose with a special emphasis on the problems faced by the Federal judiciary. A third development was the creation by Congress of the position of court executive for each of the 11 circuits to bring, in the Chief Justice's words, "modern concepts of private business and public administration into the Federal courts."

Two major contributions by the Federal Judicial Center to the cause of speedy trial in the Federal courts include the speedy trial studies and statistics mentioned earlier in this report and the development of a management information system for use in the Federal courts called COURTRAN. This system which has been placed in operation in the District Court for the District of Columbia and in the Northern District of Illinois monitors the flow of cases through the court, pointing out problem cases and helping judges and court personnel analyze and remedy causes of delay. The system was specifically designed to help courts comply with statutory time limits provisions such as those contained in S. 754.

This new research and training has already resulted in the development and application of important, new procedural techniques in the Federal judiciary. In his speech the Chief Justice mentions two innovations. The individual calendar has been adopted in a number of districts. Under this calendaring system, cases are assigned to a particular judge who is responsible for every phase of the case through post-trial motions. Therefore, responsibility for pretrial delay is clearly associated with that judge. And secondly, the omnibus hearing procedure deals with the problem of successive pretrial motions being filed on a "one-at-a-time basis" thereby delaying the commencement of trial. Under the omnibus proceeding all pretrial motions must be consolidated, filed by a certain date and heard together.

Prosecutors have also begun to use sophisticated management techniques to deal more efficiently and intelligently with their staggering caseload. A leader in this respect is the United States Attorney's Office in the District of Columbia. That office, with only about 100 assistant United States Attorneys, handles between 30,000 and 40,000 criminal cases a year. With the help of a grant from the Law Enforcement Assistance Administration that office established an automated information system called PROMIS (Prosecutor's Management Information System).

In a recent article describing PROMIS in the *American Criminal Law Quarterly* the two assistant United States attorneys who developed the system, Fred Watts and Charles Work, listed four basic pieces of information that the system is able to supply the prosecutor:

(1) Reports and statistical information on cases processed, method of disposition and attorney performance;

(2) A method of tracking defendants through the criminal justice system in order to minimize delays, crime on bail, and miscarriages of justice;

(3) A daily list of cases which would rank cases in order of urgency for conviction and identify potential problem areas, and

(4) Automated notification of witnesses concerning court appearance dates, change of trial dates, and cancellation of trials.

The Justice Department credits this new

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[1] Without a comprehensive understanding of the "underlying causes of delay" the Subcommittee concluded that it would be irresponsible to recommend habeas corpus reform, modification of the exclusionary rule, abolition of the grand jury, enactment of an omnibus hearing procedure or more liberal pretrial discovery as a panacea for delay in criminal justice administration.

management system with being one of the major reasons for reducing the delay between indictment and disposition in the District of Columbia from 9.5 months in 1968 to 2 months in 1972.

Such management technology would be of immense value to United States Attorneys' offices elsewhere in the Federal system. There are only about 1,250 staff attorneys working in United States Attorneys' offices around the country, yet over 185,000 matters were brought to their attention by the Federal Bureau of Investigation and other Federal investigative agencies in fiscal year 1972. Of these 185,000 matters the United States Attorneys declined to prosecute in almost 120,000 or well over 60 percent of the cases. Obviously enormous amounts of time and energy are spent on that screening process, not to mention the management nightmare of bringing the remaining 60 thousand cases to disposition. A management information system like PROMIS would be invaluable to United States Attorneys' offices in making these critical decisions and managing this staggering caseload.

The Justice Department is now encouraging United States Attorneys' offices to adopt management information systems like PROMIS. But even if that technology is made available, the United States Attorneys must have the incentive to use it, just as the courts must have the incentive to use the new technology being made available to them. Furthermore, assuming that the technology were made available and Congress created the incentive to use it, the resources expended on prosecution of Federal criminal cases would still probably be inadequate.

Although the Federal government spends approximately $85 million on the United States Attorneys' program, that amount is disproportionately small when compared to the amount it spends investigating cases. For example, the total budget of the Federal Bureau of Investigation is almost three times that amount. There are over 7800 FBI agents but only 1200 United States Attorneys to process the cases investigated by the Bureau. It is no small wonder that the United States Attorneys' offices around the country are swamped with work and must turn down over 60 percent of the cases brought to them by the Bureau.

Of course, the same case can be made for the inadequacy of resources for courts and defense services. Even with the implementation of every conceivable innovation, most Federal courts would possibly not be able to try criminal cases within 90 days of arrest unless there is a considerable increase in available resources. Even a three- or four-fold increase in the appropriation for the Federal judiciary would seem a small price to pay for speedy trial and an efficient criminal justice system. The whole Federal judiciary costs the taxpayer approximately $200 million annually, which is less than the total estimated cost of one nuclear-powered guided missile frigate. In view of the pressing need to improve justice and increase "law and order," quite clearly some of the resources even now allocated to improving the criminal justice system should be and can be directed toward achieving the goal of 90-day speedy trial.

In summary, the Committee has found no comprehensive analysis of the causes of delay in processing criminal cases in the Federal system. This is in part because all of those involved in the administration of criminal justice, judges, prosecutors, and defense counsel alike have come to depend on delay. Therefore, no incentive exists to find the causes of delay because there is no institutional requirement for speedy trial which applies equally to judges, prosecutors, and defense counsel. The Committee has also found that the technology has been developed for moving cases more rapidly from one pretrial procedure to the other, but without the institutional incentive for speedy trial this technology is only being used erratically and not system-wide. Finally, even if the incentive existed to find the underlying causes of delay and to utilize new technology and procedures to attack these underlying causes, additional resources would still be required for courts, prosecutors and defense services.

B. Alternative approaches

The committee has examined four different approaches under active consideration or presently being used on both the State and Federal level to achieve speedy trial. The committee judged each alternative by one general standard—whether it could serve as a vehicle in the Federal system for the achievement of trials within 90 days of arrest for the typical criminal prosecution. More specifically the committee was searching for a scheme which would eliminate court and calendar congestion prior to trial, (1) by encouraging the Federal criminal justice system, courts, prosecutors and defense attorneys alike to search for the specific causes of delay in their own jurisdictions, (2) by encouraging those same people and agencies to agree upon a strategy for alleviating the delay problem, including the application of new management technology and other innovative procedures and (3) by providing sufficient resources to the system.

1. Simplifying pretrial procedures

The first suggested alternative for dealing with pretrial calendar congestion and delay is the proposal that certain pretrial proceedings be revised, simplified, or eliminated. For example, as early as 1931 a national crime commission suggested that the grand jury itself is an unnecessary appendage and should be abolished. Of course, at least in the Federal system, a formal abolition of the grand jury would probably require a constitutional amendment and such a proposal provokes considerable controversy.

It has also been suggested that a large amount of the pretrial delay occurring in Federal criminal cases results from pretrial motions based upon recent Supreme Court rulings. The *Miranda* opinion, the various search and seizure cases, the *Wade-Stoval* line of cases on identification, and other rulings during the past decade have no doubt made the prosecution of Federal cases more complex. Therefore, some reformers advocate Federal legislation which would restrict or modify these requirements as a means of reducing pretrial delay.

Despite years of controversy, however, the actual impact of these Supreme Court decisions upon pretrial delay in Federal cases is unclear. For example, there are no statistics indicating how frequently motions based upon these cases are actually filed in Federal criminal cases. A forthcoming study by the Federal Judicial Center on this subject should shed some light upon whether defense attorneys are actually filing more pretrial motions as a result of these court decisions or whether defense attorneys rarely have grounds for such motions. It stands to reason that the latter might be the case because of the professionalism of the Federal Bureau of Investigation which only very infrequently subjects a defendant to a search, identification, or confession in violation of the Supreme Court's rulings.

Until these questions are resolved, it would be unwise to consider legislation which would modify or restrict these procedures. Furthermore less controversial alternatives exist. As in the case with grand jury delay, hearings on these matters are usually rather summary. Delay caused by the motions result from the time waiting for a judge to hear the motion and is not usually caused by the hearing itself. At this time the more fruitful course is to encourage the courts and United States Attorneys to adopt innovations such as the omnibus hearing and modern management techniques which are designed to reduce delay in procuring a hearing rather than attempt to eliminate the hearing altogether.

The Justice Department has made a proposal along the same lines in regard to habeas corpus petitions. In testimony on S. 895 before the Subcommittee on Constitutional Rights in September 1971, the Department pointed to the alarming increase in the number of petitions filed by State and Federal prisoners for collateral relief in the Federal courts. The Department proposed legislation restricting the jurisdiction of the Federal courts to entertain the petitions. In 1950 there were 672 such petitions filed in the Federal courts, while in 1971 the number had grown to over 9,000. While the alarming increase in prisoner petitions has had an important impact upon the workload of the Federal courts, its impact on delay in commencing criminal trial may not be as significant as one might suspect. This is because a habeas petition only contributes to the speedy trial problem if it actually results in a hearing or is successful. However, the number of hearings resulting from habeas petitions is not significant and according to the Administrative Office of the United States Courts, the success rate on petitions is less than 5 percent.

Furthermore the amount of time actually spent by judges on these petitions is minimal. A time study conducted by the Federal Judicial Center indicates that the average district judge actually spends less than 5 percent of his time on prisoner petitions. Furthermore, reform of the Federal habeas corpus statute probably should be considered in the context of the friction it causes between State and Federal courts, and the necessity for improving post-conviction review procedures, rather than in the context of reducing court burdens.

Elimination of certain pretrial procedures no doubt will reduce some of the time it takes to bring a case to trial. But all such proposals including these of the Justice Department to reform habeas corpus procedures and to alter the exclusionary rule, produce great debate and controversy. In terms of reducing delay, the time it would take to effectuate such changes through Congress may be far greater than the savings in time eventually achieved. And most important for our purposes here, none of these proposals touch upon the most immediate and least justified cause of delay—inefficient management of resources. No matter how many pretrial procedures are challenged, certainly a minimal number are constitutionally required and would have to be retained. As long as there are such procedures, there will be congested calendars associated with the procedures and therefore substantial pretrial delay. The committee sees greater immediate gain by applying good management techniques to the congested calendars associated with the pretrial procedures first, and leaving the question of which procedures should be eliminated until later.

2. Judicial interpretation of constitutional speedy trial provisions

Although few jurisdictions have relied upon the first alternative—eliminating certain pretrial procedures—the second approach has been tried in most States. This traditional approach to the speedy trial problem involves interpretation of a State constitutional provision requiring speedy trial usually based upon language similar to that contained in the sixth amendment to the United States Constitution. The evidence of the failure of this approach is overwhelming, especially on the Federal level where in over two-thirds of the criminal cases there is a more than 90 day lag between indictment and disposition.

The reason for the failure of the courts to achieve speedy trial through case-by-case interpretation of constitutional speedy trial provisions is quite simple. Both State and Federal judges who interpret these provisions usually do not act unless called upon by the defendant. Only very rarely is it in the defendant's interest to seek speedy trial, for in

most cases it is the last thing he wants. Most defendants realize that delay inures to their benefit while speedy trial may mean speedy incarceration of the guilty.

Furthermore, State and Federal courts interpreting constitutional speedy trial provisions have placed so many burdens upon the rare defendant who seeks a speedy trial that such motions rarely succeed. In a recent case, a North Carolina court summarized very succinctly the prevailing rules applied to the constitutional concept of speedy trial as viewed by the courts:

"[U]ndue delay cannot be defined in terms of days, months, or even years. The length of the delay, the cause of the delay, prejudice to the defendant and waiver by the defendant are interrelated factors to be considered in determining whether a trial has been unduly delayed. The burden is on the accused who asserts the denial of his right to a speedy trial to show that the delay was due to the neglect or willfulness of the prosecution." [*State* v. *Ball* 277 N.C. 714, 717, 178 S.E. 2d 377, 380 (1971)]

A speedy trial motion usually succeeds only after all of the following requirements are met: First, the defendant cannot simply rely upon a showing of lengthy delay. The courts have held that the sixth amendment right is relative and that no precise time limit is constitutionally required. Therefore lengthy delay between indictment and trial by itself is not determinative. Second, the defendant must not be the cause of delay. Even if the prosecution is the cause, the defendant must prove that delay was "purposeful or oppressive." Third, in most cases, a defendant must also prove that he was prejudiced by delay. To show prejudice, a defendant must demonstrate that his ability to prepare his defense has been undermined in particular, and not merely in general terms. Fourth, under traditional constitutional doctrine, an accused impliedly waives his right to a speedy trial if he does not assert it during the period of delay.

In addition to these factors which have prevented an effective court-developed rule for insuring speedy trials, there are other more general reasons why case-by-case adjudication is not satisfactory. First, the sixth amendment is a right of the community as well as of any particular defendant. There are reasons for enforcing speedy trial which go far beyond the particular interest of any one individual. The administration of justice is the most sacred function of government, and the failures of our criminal justice system which are reflected in intolerable criminal justice delay are a responsibility of Congress, not of individual litigants.

Second, the factors which cause delay are endemic to the criminal justice system, and are not susceptible to remedy by decisions in individual cases. While the sixth amendment remains to protect against isolated abuses, general legislation such as S. 754 is required to attack the problem in its entirety.

Third, trial delay as already suggested, is not simply a matter of "purposeful" delay by the prosecution or defense counsel. Rather it is a product of the joint failure of court administration, judges, the prosecution, the defendant, defense attorneys, and Congress as well, and remedies must be designed with this in mind.

Quite clearly, the case-by-case approach cannot, and should not be expected to solve the problem of court delays.

3. Statutory time limits plus dismissal sanction

In the face of the failure of the case-by-case approach, some States have recognized that the criminal justice system itself has an affirmative duty to the defendant and to society in general to assure speedy trial in criminal cases. Instead of predicating speedy trial upon the rare defendant who seeks it by motion, these States have established strict time limits within which criminal trials must commence.

In these States, a statute sets a maximum number of days within which certain events in the criminal process must take place. For example, in California, trial must occur within 60 days of filing of information; in Illinois, within 120 days of arrest; in Iowa, within 60 days of indictment. The statutes also exclude certain periods of time from the time limits—for example, time consumed by certain pretrial proceedings and most of the statutes allow exclusions for "good cause".

Many of the statutory schemes require that the criminal charge against the defendant be dismissed if trial does not commence within the time limits. Indeed the English Habeas Corpus Act of 1679 required that trials be commenced within a time certain on the pain of dismissal, although the dismissal was not with prejudice. Most of the older speedy trial statutes modeled after the Habeas Corpus Act also provide for dismissal, but without prejudice.

The American Bar Association Minimum Standards on Speedy Trial recommend that if a defendant has not been brought to trial within the time limits, the charges be dismissed with prejudice. Many of the more recent State speedy trial statutes take the same position (e.g. Florida, New Mexico, Illinois, and New York). The necessity of a mandatory dismissal with prejudice provision was stated quite succinctly in the commentary to section 4.1 of the American Bar Association's Speedy Trial Standards:

"The position taken here is that the only effective remedy for denial of speedy trial is absolute and complete discharge. If, following undue delay in going to trial, the prosecution is free to commence prosecution again for the same offense, subject only to the running of the statute of limitations, the right to speedy trial is largely meaningless. Prosecutors who are free to commence another prosecution later have not been deterred from undue delay."

The committee agrees in principle with the ABA's conclusion. Although, a mandatory dismissal with prejudice sanction is not included in S. 754 the bill provides for dismissal with a subsequent prosecution only in the most "exceptional circumstances" (see section 3162).

Of course, the dismissal sanction is not only a deterrent for unwarranted prosecutorial delay. It also works as a powerful sanction against inefficient use of judicial resources. Professor Lewis Katz of Case Western Reserve Law School in his book *Justice Is the Crime—Pretrial Delay in Felony Cases* describes the effect that the dismissal sanction will have upon prosecutors and judges:

"Dismissals for failure to comply with the statute will require explanations to the public from judges and prosecutors; if a significant number of dismissals occur, demands for explanation will not be long coming."

Furthermore, the dismissal sanction also creates an incentive in the defendant and his counsel to seek speedy trial. The prosecutor and judge know that they must move cases within the time limits or face the consequence of dismissal.

However, if the judge and prosecutor have agreed upon effective speedy trial procedures and are adequately funded, then few defendants will succeed on their dismissal motions. In California, which has had a statute providing speedy trial time limits plus dismissal sanction for over 100 years, there are very few dismissals.[2] For example, in San Diego there are only about three or four speedy trial dismissals out of approximately 17,000 criminal filings in one year. The time limits plus dismissal sanction provision has been very effective in encouraging judges, defense attorneys and prosecutors to work together in good faith to achieve speedy trial. Most importantly, it has encouraged the state legislature to make sufficient resources available to the California criminal justice system to avoid the embarrassment of mass dismissals under the speedy trial statute.

4. Judicially imposed time limits plus dismissal sanction

In recent years a number of State court systems and the Federal court system itself have promulgated their own set of speedy trial rules including time limits and, in several cases, the sanction of dismissal with prejudice for failure to meet the limits. In some cases, like Florida, the State legislature specifically delegated to the State court system the authority to promulgate such rules. In other States, like New York, the court acted on their own, adopting tough rules which forced the State legislature either to appropriate enough money for the criminal justice system so that it might comply with the rules, repeal the rules, or replace them with a more moderate alternative.

On Januay 5, 1971, the Judicial Council for the United States Court of Appeals for the Second Circuit announced its intention to place into operation six months hence a set of rules requiring the prompt disposition of criminal cases. In essence, the rules require the Government to be ready for trial within six months of arrest if the defendant is not detained, and within 90 days if he is detained. The rules also allow a number of the traditional exclusions (i.e. for certain pretrial proceedings), suggested by the American Bar Association Standards, and contained in many of the modern speedy trial statutes. The rules also contain a mandatory dismissal sanction if the United States Attorney is not ready for trial within the prescribed time limits.

Although the Federal Rules of Criminal Procedure at that time contained general speedy trial admonitions in Rule 48, the Second Circuit rules represent the first effort to apply time defined limits plus a mandatory dismissal sanction in Federal criminal cases. Within a few months of the promulgation of the Second Circuit rules, the Chief Justice announced his intention to propose an addition to the Federal Rules which would encourage district courts to promulgate similar rules. On April 25, 1972, the Supreme Court sent to Congress its proposed amendments to the rules which contained a new rule, Rule 50 (b), which reads as follows:

"Rule 50. Calendars; plan for prompt disposition"

* * * * *

"(b) Plan for achieving prompt disposition of criminal cases.—To minimize undue delay and to further prompt disposition of criminal cases, each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare a plan for the prompt disposition of criminal cases which shall include rules relating to time limits within which procedures prior to trial, the trial itself, and sentencing must take place, means of reporting the status of cases, and such other matters as are necessary or proper to minimize delay and facilitate the prompt disposition of such cases. The district plan shall include special provision for the prompt disposition of any case in which it appears to the court that there is reason to believe that the pretrial liberty of a particular defendant who is in custody or released pursuant to Rule 46, poses a danger to himself, to any other person, or to the community. The district plan shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of the district court may designate. If approved the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually

[2] According to a memorandum submitted to the Subcommittee by Judge Winslow Christian, then Director of the National Center for State Courts.

on the operation of such plans to the Judicial Conference of the United States. The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Each district court shall submit its plan to the reviewing panel not later than 90 days from the effective date of this rule."

Before adopting Rule 50(b) the Judicial Conference considered a more substantive alternative. In March 1971 the Conference circulated a draft amendment to Rule 45 which would have set specific time limits for various stages in the criminal process—for example, a 90-day limit between arraignment and trial for detained defendants and 180 days for released defendants. Failure to meet these time limits would not however, have required dismissal with prejudice. Evidently, the Judicial Conference chose the district plans approach embodied in Rule 50(b) because it provided greater freedom of choice for the individual district courts and because of a proper reluctance to adopt a substantive speedy trial rule through amendment of the Criminal Rules of Procedure. Understandably, the Judicial Conference left the consideration of such changes to the Congress where it properly belongs.

The new rule was inspired by the Second Circuit's action and is based, in part, on a provision of S. 754, which requires district courts to develop their own speedy trial plans. The Federal Judicial Center, the research arm of the Federal courts, has developed a model plan and a number of district courts have submitted plans which are even stricter than the model plan. For example, while neither Rule 50(b) nor the model plan require or even suggest, a mandatory dismissal sanction as is contained in the Second Circuit rule, the Northern District of Illinois has submitted a plan pursuant to Rule 50(b) which is very similar to the Second Circuit rules and which also contains a mandatory dismissal provision.

Rule 50(b), the Second Circuit rules, and the various responses to both in the district courts and courts of appeal elsewhere in the Federal system are significant contributions to the cause of speedy trial. However, at the same time, their effect upon the separation of powers between coordinate branches of government should not be a subject of rejoicing by Members of Congress. For, in effect, the Supreme Court and the Second Circuit are doing what, under the Constitution, the Congress should be doing—legislating a solution to the problem of court delay. As Justice Douglas said in his dissent to the promulgation of Rule 50(b):

"There may be several better ways of achieving the desired result (speedy trial). This Court is not able to make discerning judgments between various policy choices where the relative advantage of the several alternatives depends on extensive fact-finding. That is a "legislative" determination. Under our constitutional system that function is left to the Congress with approval or veto by the President. (406 U.S. 981)"

In the past Justice Black refused to concur in the promulgation of Federal Rules of Prodecure which went beyond what he termed "housekeeping details." In 1962 he dissented from the promulgation of procedural rules because they, "determine matters so substantially affecting the rights of litigants in lawsuits that in practical effect they are the equivalent of new legislation which, in our judgment, the Constitution requires to be initiated in and enacted by the Congress and approved by the President."

In the past few months Congress has become increasingly wary about the Supreme Court's promulgation of rules which go beyond "housekeeping details." For example, in the first few months of the first session, Congress enacted legislation which required affirmative Congressional ratification of the Rules of Evidence promulgated by the Supreme Court under the Rules Enabling Act, on November 20, 1972. By overwhelming votes both the Senate and the House warned the Supreme Court to exercise greater care in promulgating rules of procedure.

The Court, in adopting Rule 50(b), has not imposed tough constraints upon the district courts, prosecutors or defense attorneys. The model rules prepared by the Judicial Conference and adopted by most district courts in response to Rule 50(b) recognize that the courts have limited power under the Rules Enabling Act. They also confirm the fact that judges will not force themselves and cannot force their overworked colleagues in the United States Attorneys Office or the Public Defenders Office to move cases more rapidly without an explicit mandate from Congress. The model rules promulgated under Rule 50(b) generally give to the prosecutor considerable discretion to set his own time limits for preparation of the government's case.

Furthermore, the courts have not imposed strict time limits upon themselves in Rule 50(b). The model rules would require trial within approximately six months for released defendants. That is hardly "speedy trial" in the Committee's view. What is more, that 180 day period is measured from indictment and not from arrest. The Federal Judicial Center statistics mentioned earlier show that there may be months additional delay between arrest and indictment in a majority of Federal criminal cases. Thus the 50(b) model plan promises little improvement in overall delay. The model plan does provide for much shorter time limits for defendants in custody. But in the Federal system, most defendants are required to be released prior to trial pursuant to the Bail Reform Act in any case.

A report prepared for the Administrative Office of the United States Courts in a Criminal Justice System Workshop paper at Yale Law School by Mr. Andrew H. Cohn and made available to the Subcommittee on Constitutional Rights has analyzed the initial Rule 50(b) plans submitted by 92 district courts (see p. 220 of the subcommittee's 1973 hearings). This study shows that while the average time limits adopted by the district courts are somewhat shorter, most of the districts adopted the time limits proposed in the Model Plan. Most of the districts surveyed included provisions granting broad discretion with regard to granting extensions of the time limits. The report's comparison of the submitted plans for 20 districts and the current actual court-processing time in those districts shows that district plan arraignment time limits are strongly correlated with the time currently used for this process. In addition, the comparison shows that the district time limits for the period between arraignment and trial for defendants not in custody corresponded to the delay presently experienced in these districts. The arraignment to the trial time limits for defendants in custody were found to vary proportionately with the case load of the particular court. Thus, the effect of the plans submitted under Rule 50(b) has not been to substantially decrease the delays currently experienced in the district courts but to tend to preserve the status quo.

The explanation for the failure of the rule-making approach to achieve speed in trials is obvious. The courts do not have the authority to impose speedy trial upon the other components of the criminal justice system and cannot provide additional resources to understaffed courts, prosecutors and public defender agencies by adopting rules.

C. Approach adopted by the committee in S. 754

Of the four alternatives, the Committee has decided that a statutory approach has the most promise of affecting a significant improvement in speedy trial. Trial delays provide the impetus for those who urge simplification of procedural rules, but it is not persuasive to argue that such rule changes will by themselves eliminate delay. The failure of a "common-law" approach should be obvious since case-by-case adjudication cannot affect major institutional reform even if the courts were willing to impose the requirements on themselves. Judicial caution, plus the unsuitability of the rule-making process for deciding substantive policy issues, makes reliance on the Rules Enabling Act not only inappropriate but inadequate. Quite clearly there is no reason for Congress to avoid exercising what is unquestionably a legislative function and duty to secure the Sixth Amendment right.

Congress has the power under the "Necessary and Proper" Clause of Article I, Section 8, as well as Article III of the Constitution to enact legislation which implements the speedy trial requirement contained in the Sixth Amendment. Congress has on many occasions enacted legislation which implemented other constitutional provisions, for example, the Criminal Justice Act (right to counsel) and the Bail Reform Act (right to reasonable bail). The fact that the Supreme Court in a number of recent cases has not been willing to go quite as far as S. 754 in interpreting the speedy trial provision should not deter Congress from legislating in the area. Indeed, the Court should exercise considerable restraint in interpreting the Sixth Amendment as long as it has little guidance from Congress. None of the Supreme Court's rulings in the speedy trial area go to the question of Congress' power to enact S. 754. They only address the question of a defendant's constitutional right to speedy trial in the absence of legislation such as S. 754.

Many of the substantive features included in the court rule schemes, the Second Circuit rules, Rule 50(b), the New York and Florida State court rules, have been incorporated in S. 754. The most attractive feature in these schemes is that they place upon the criminal justice system an affirmative duty to provide speedy trial for the benefit of society and the defendant. The first step in encouraging the criminal justice system to learn to use existing resources more efficiently and to commit more resources to the system is to enunciate that affirmative duty by statute. Enactment of S. 754 would represent Congress' judgment that the Sixth Amendment requirement of speedy trial is to be defined as trial within 90 days of arrest for the average non-complex criminal case.

S. 754 provides that in the seventh year after enactment of the bill all Federal criminal trials will be subject to a 30-day time limit between arrest and indictment and a 60-day time limit between indictment and commencement of trial. Failure to meet these time restrictions would result in the dismissal of the case. It is important to note that the dismissal sanction and the 90-day combined time limit will not be effective until the seventh year after enactment of the bill. The impact of mandatory time limits and sanctions for noncompliance is cushioned by allowing a six year phasing-in period during which less stringent sanctions and time limits will apply.

The bill does more, of course, than merely impose prosecution limits on the Federal criminal trial. It has carefully constructed exclusions and exceptions which permit normal pre-trial preparation in the ordinary noncomplex cases which represent the bulk of business in the Federal courts. The bill also accommodates complex cases which require long periods of preparation by prosecutors and defense counsel. While the bill does not automatically exclude certain criminal trials by type, it does set forth a method by which the complex case can be identified.

The bill also provides for unusual circumstances which may demand exceptions to the normal time limits. In order to avoid the pitfalls of unnecessary rigidity on the one hand, and a loop-hole which would nullify the intent of the legislation on the other, a balancing test is established in order to enable the judge to determine when the "ends of justice" require an extraordinary suspension of the time limits.

A key aspect of the legislation is the imposition of sanctions, primarily that of dismissal, for failure to meet the limits specified. The mere existence of the technology necessary to unclog the court calendars and even the existence of court personnel trained in that technology will not by themselves result in speedy trial. Only when the system is committed to the goal of speedy trial will these techniques and personnel be put to work. That will not happen unless judges, prosecutors and defense counsel are held accountable for the failure to achieve speedy trial. The most effective means is through the use of sanctions. The dismissal sanction has the effect of compelling judges and prosecutors to choose between speedy trial or no prosecution whatsoever. The sanctions in S. 754 for defense counsel are designed to remind them that there is no "constitutional right" to delay trials for the purpose of frustrating justice.

Sanctions alone are not necessarily sufficient. There will not be dramatic movement toward speedy trial unless both the courts and the prosecutor's office are covered by the time limits. This is not the case in most of the schemes which the Committee has examined. Cases in point are the Second Circuit rule and the statute recently adopted in New York. In both, time limits plus a dismissal sanction have been adopted, but the sanction applies only where the prosecutor is not ready for trial within the time limits. The "ready rule" means that even if the prosecution is prepared to go to trial the sanction cannot be applied if the court is so congested that it cannot provide a judge to hear the pretrial motions or conduct the trial. The effect of this provision is to allow court congestion to nullify the speedy trial rules. Other speedy trial plans allow for suspension of the time limits and exclusions for "good cause" which has been interpreted to include court congestion. S. 754 is drafted in such a way as to avoid these pitfalls. Under the bill the dismissal sanction applies even if there is court congestion, for that is the very problem the bill is designed to address.

Of course, it would be grossly unjust to legislate a scheme of time limits without exceptions for congestion, if there were no method for providing resources for the courts to deal with their overloaded dockets. Where there is no link between a speedy trial requirement and the appropriation process, the courts and the prosecutors are faced with the option of fierce public reaction resulting from wholesale dismissals for failure to meet the time limits or simply ignoring the rule.

S. 754 provides the vital link with the appropriations process through an elaborate planning and reporting process by the district courts. Each district court devises a speedy trial plan. The plans required by the bill would also summarize any additional resources necessary in the court, the United States Attorney's Office, and the Public Defender Office. These reports are summarized and approved by the Judicial Conference which submits a nation-wide master plan to the Congress.

This is the mechanism which will enable the Federal criminal justice system to prepare for the achievement of 90-day trials and for Congress to provide the necessary resources for additional judges, prosecutors, public defenders and management technology. Furthermore, S. 754 does not impose the time limits immediately upon the Federal system but delays their effective date until seven years after enactment. The bill requires the Chief Judge in each District to sit down with the United States Attorney, the Public Defender, or attorneys active in the defense in criminal cases if there is no Public Defender, and agree upon a seven-year strategy to comply with the 90-day trial requirement. Faced with the inevitability of Congress' mandate, the parties will have to work in good faith to formulate a plan—agreeing upon what innovative procedural rules and new management systems to adopt and itemizing the essential new resources necessary to meet the Congress' mandate. The plan would require a careful study of the causes of delay in that court, the adoption of those innovations which will meet the peculiar needs of the court, and a budget requesting the necessary additional resources. These plans will help the system to allocate existing resources more efficiently and to present Congress with a precise statement of what more is needed and how it will be used.

At that point the courts, the prosecutors and the public defenders will have done all in their power to achieve speedy trial. They will have agreed to a 7-year plan during which 90-day trials in the average simple Federal prosecution would be phased-in. Then the reponsibility will be on Congress, where it ultimately must reside.

The Congress will have two alternatives. It can appropriate to the criminal justice system those additional resources which are proved to be necessary to achieve the goal set by law in this bill. If the criminal justice system has fulfilled its responsibilities to the statute, to the Sixth Amendment, and to justice, any failure of Congress to do its part will be evident. Congress would then have to bear the burden of imposing obligations on others, while failing to meet its own.

The advantage of this approach is evident. In the past, each of the parties—the courts, the prosecution, the defense, and the Congress—have been able to avoid the problem of court delay by pointing out the failures, real or imagined, of the others. Judges have not improved procedures in the courts. Rather, they have repeatedly asked for more judicial appointments as the easy solution. Congress, reluctantly, has granted some of these requests always seeking vainly some solution other than the unending request for more judges. Courts, failing to get all they wish from Congress, point to this as a reason for trial delay. This litany of blame is duplicated in disputes between prosecutors and defense counsel. The simple answer is that trial delay is not to be laid at one door, but at all. S. 754, by imposing responsibilities on all parties, and sanctions on them as well, seeks to break through this fruitless circle of fingerpointing and waste of resources.

The approach adopted in S. 754 has been carefully tailored to remedy the failures of past efforts. The time limits provisions plus the phase-in and planning process will encourage courts, prosecutors and defense attorneys to search for specific causes of delay in their own jurisdictions and to agree upon a strategy for alleviating the delay problem. Hopefully it will result in the application of new management technology and other innovative procedures. Finally, and perhaps most importantly, this planning process should provide Congress with a mechanism for adopting an intelligent and economical budget and strategy for speedy trial—providing courts, prosecutors and defense services with the additional resources necessary to make the strategy work.

D. Conclusion

The approach adopted by the Committee in Title I of S. 754 has been carefully tailored to meet the criteria is set out for analysis of speedy trial schemes at the beginning of Subsection B above. The time limits provisions plus the phase-in and planning process will encourage courts, prosecutors, and defense attorneys to search for specific causes of delay in their own jurisdictions and to agree upon a strategy for alleviating the delay problem and hopefully will result in the application of new management technology and other innovative procedures. Finally, and perhaps most importantly, this planning process should provide Congress with a mechanism for adopting an intelligent and economical budget and strategy for speedy trial—providing courts, prosecutors and defense services with the additional resources necessary to make the strategy work.

If title I of S. 754 is enacted, it will represent a commitment on the part of the Government to the proposition that the efficient administration of criminal justice is worth any reasonable cost. As has already been suggested, the committee would not find even a three- or four-fold increase in the expenditures on the Federal judiciary extravagant on condition that the resources are efficiently used. However, speedy trial is not likely to be that expensive. The subcommittee heard testimony that in the busy Central District of California the average criminal case is disposed of within 60 days of indictment without the expenditure of any additional resources. In the Southern District of New York, also one of the six or seven busiest Federal districts, the United States prosecutor is ready for trial within 60 days of arrest in the typical criminal case—the type intended to be covered by S. 754.

The "resource" which appears to be lacking until now, and which has been supplied in these court systems, is simply that of will. When there is a desire to achieve speedy trial, the necessary ingredients are apparently easy to find. Absent a genuine desire for speedy trial, there are no incentives on any of the participants to improve the situation. Speedy trial is not self-enforcing. S. 754 will provide the incentive by announcing a clear and definite national policy that trials are to be commenced within 90 days of arrest or receipt of summons. With that national policy announced, as only congressionally enacted law can declare it, the committee is confident that relatively little in additional funds will prove necessary.

TITLE II—PRETRIAL SERVICES AGENCIES

The second title of S. 754 like the first, is designed to improve the efficiency and deterrent of the criminal justice system. More specifically it is designed to reduce the likelihood that defendants released pretrial will commit a subsequent crime before trial commences. While trials within 90 days would be the surest means of reducing pretrial crime, the committee is of the view that more careful selection of pretrial release options for defendants and closer supervision of released defendans would also reduce pretrial crime.

Defendants in the Federal system are released prior to trial pursuant to the Bail Reform Act of 1966. Although there are no statistics on the operation of the Bail Reform Act outside the District of Columbia, it is common knowledge that many Federal judges are reluctant to release defendants pursuant to the act and all too often when they do, defendants either commit subsequent crimes or become fugitives. This situation exists because district courts do not have personnel to conduct interviews of arrested defendants, so that judges can make informed decisions as to whether to release defendants. Furthermore, outside the District of Columbia, there is no agency charged with supervising bail conditions for defendants released prior to trial. Therefore, even if a defandant is released on his own recognizance prior to trial on a condition set by the judge, for example that the defandant refrain from associating with certain persons or that he not use narcotic drugs, there is no agency charged with assuring compliance with the judge's order.

Judges without sufficient information on a defendant's eligibility for pretrial release either detain the defendant until trial or guess at the defendant's likelihood to remain in the jurisdiction. When the court takes the former course, it, in effect, ignores both Federal law and constitutional requirements that a defendant be released prior to trial. Furthermore, pretrial detention is an enormous fiscal burden upon the judicial system. It costs approximately $7 to $10 a day for the Government to detain a defendant. If a defendant is detained for 6 months prior to trial, which is not unusual in the Federal system, the total cost to the Government is between $1,250 and $1,800 for just one defendant.

If the court takes the latter course, and guesses at the defendant's likelihood of flight, it risks releasing a defendant who will flee the jurisdiction. Indeed, recent statistics compiled by the Administrative Office of the United States Courts suggests that the number of fugitives has increased dramatically in recent years and that fugitive defendants may be one of the most significant causes of delay in the Federal courts. According to the report, "Nationally, 57 percent of the criminal cases pending one year or more involved a fugitive defendant." The trend in the number of fugitives in the Federal courts is reflected in the report's finding that in 1968 there were only 1,495 cases pending for more than a year involving a fugitive defendant while in 1971 there were 4,124 such cases.

Title II of S. 754 would attempt to alleviate the fugitive problem by providing 10 Federal districts on a demonstration basis with sufficient resources to both conduct bail interviews and supervise conditions of release. A pretrial services agency, similar to the District of Columbia Bail Agency, would be established in each of these districts. This approach, which has been applauded by almost everyone testifying or commenting on S. 754, is based upon the experience of the Bail Agency in enhancing the operation of the Bail Reform Act in the District of Columbia.

The amendments were agreed to.

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

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

TITLE I—SPEEDY TRIAL

SEC. 101. Title 18, United States Code, is amended by adding immediately after chapter 207 a new chapter 208, as follows:

"Chapter 208.—SPEEDY TRIAL

"Sec.
"3161. Time limits and exclusions.
"3162. Sanctions.
"3163. Effective dates.
"3164. Interim limits.
"3165. Planning process.
"3166. District plans—generally.
"3167. District plans—contents.
"3168. Speedy trial reports.
"3169. Pilot districts.
"3170. Definitions.
"3171. Sixth amendment rights.

"§ 3161. Time limits and exclusions.

"(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set a day certain for trial.

"(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.

"(c) The trial of a defendant charged in an information or indictment with the commission of an offense shall be commenced within sixty days from the date on which the information or indictment containing such charge is filed (and made public).

"(d) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, for reasons other than those provided in section 3162(a) and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

"(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, within sixty days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, within sixty days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical.

"(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter the time limit imposed by subsection (b) of this section shall be sixty days, and for the second and third such twelve-month periods such time limit shall be forty-five days.

"(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(c) of this chapter, the time limit imposed by subsection (c) of this section shall be one hundred and eighty days, and for the second and third such twelve-month periods such time limit shall be one hundred and twenty days.

"(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

"(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

"(i) delay resulting from any examination and hearing on competency;

"(ii) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

"(iii) delay resulting from trials with respect to other charges against the defendant;

"(iv) delay resulting from interlocutory appeals;

"(v) delay resulting from hearings on pretrial motions;

"(iv) delay resulting from proceedings under Rule 20 of the Federal Rules of Criminal Procedure; and

"(vii) delay reasonably attributable to any period during which any proceeding concerning the defendant is actually under advisement.

"(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

"(3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

"(B) For purposes of subclause (A) of this clause, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subclause, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists being returned for trial.

"(4) Any period of delay resulting from the fact that the defendant is incompetent to stand trial.

"(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

"(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

"(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

"(8)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interest of the public and the defendant in a speedy trial.

"(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

"(i) whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice;

"(ii) whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section; or

"(iii) whether delay after the grand-jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

"(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed *indicted* with respect to all charges

therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea of guilty becomes final.

"§ 3162. Sanctions

"(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed as required by section 3161(b) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. The dismissing or dropping of such charge shall not bar a subsequent prosecution.

"(2) If a defendant is not brought to trial as required by section 3161(c), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). Such dismissal shall not bar a subsequent prosection. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

"(b) After a dismissal pursuant to subsection (a)(1) or (a)(2) a prosecution can be reinstituted for the offense charged, any offense based on the same conduct or arising from the same criminal episode, and any other offense required to be joined with the offense. Such prosecution can only be reinstituted if the court in which the original action was pending finds that the attorney for the government has presented compelling evidence that the delay was caused by exceptional circumstances which the government and the court could not have foreseen or avoided. Exceptional circumstances shall not mean general congestion of the court's docket, lack of diligent preparation or failure to obtain available witnesses.

"(c) Notwithstanding the provisions of subsection (b) of this section, for the first and second twelve-calendar month periods following the effective date of this section as set forth in section 3163(c) of this chapter, a prosecution can be reinstituted subsequent to dismissal made pursuant to section 3163(a) without the requirement of a finding of exceptional circumstances.

"(d) In any case in which counsel for the defendant or the attorney for the government (1) knowingly allows a date certain for trial to be set without disclosing the fact that a necessary witness would be unavailable for trial on such date; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial on the date set for trial without justification consistent with section 3161 of this chapter, the court may punish any counsel or attorney, as the case may be, as follows:

"(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

"(B) in the case of a counsel retained in connection with the defense of a defandant, by imposing on such counsel a fine not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

"(C) by imposing on any attorney for the Government a fine of not to exceed $250;

"(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

"(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

"(e) The court shall follow Rule 42 of the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

"§ 3163. Effective dates

"(a) The time limitation in section 3161(b) of this chapter—

"(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1974; and

"(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration.

"(b) The time limitation in section 3161(c) of this chapter—

"(1) shall apply to all offenses charged in information or indictments filed on or after the date of expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1974; and

"(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

"(c) Section 3162 of this chapter shall become effective after the date of expiration of the third twelve-calendar-month period following the enactment of the Speedy Trial Act of 1974.

"§ 3164. Interim limits

"(a) During an interim period commencing ninety days following the date of the enactment of the Speedy Trial Act of 1974 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and section 3161(c) of this chapter become effective, each district (and the Superior Court for the District of Columbia) shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving—

"(1) detained persons who are being held in detention solely because they are awaiting trial, and

"(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

"(b) During the period such plan is in effect, the trial of any person who falls within subparagraph (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

"(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

"§ 3165. Planning process

"(a) Within sixty days of enactment of this Act, each United States district court and the Superior Court for the District of Columbia shall convene a planning group consisting at minimum of the Chief Judge, the United States Attorney, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research and planning to act as reporter for the group. The group shall be responsible for the initial formulation of all district plans and of the reports required by the Act.

"(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of the Act and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

"(c) The planning group shall address itself to the need for reforms in the criminal justice system, including but not limited to changes in the grand jury system, the finality of criminal judgments, habeas corpus and collateral attacks, pretrial diversion, pretrial detention, excessive reach of federal criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay.

"(d) The planning group shall submit recommendations to the District Court for each of the District plans it must adopt pursuant to section 3166.

"§ 3166. District plans—generally

"(a)(1) Prior to the expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1974, each United States district court, with the approval of the judicial council of the circuit, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter (within the jurisdiction of such court) during the second and third twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c). Prior to the expiration of the thirty-six calendar month period following such date of enactment, each such court, with the approval of such council, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter (within the jurisdiction of such court) during the fourth and fifth twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c). Prior to the expiration of the sixty-calendar-month period following such date of enactment, each such court, with the approval of such council, shall prepare and submit to the Administrative Office of the United States Court a plan for the trial or other disposition of offenses under this chapter (within the jurisdiction of such court) during the sixth twelve-calendar-month period following the effective date of section 3161(b) and section 3161(c).

"(2) Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center, and the criminal justice planning group established for that district pursuant to section 3165. The district court may modify such plan at any time with the approval of the judicial council of the circuit and shall modify the plan when directed by such council. The district court shall notify the Administrative Office of the United States Court of any modification of such plan.

"(b)(1) Prior to the expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1974, the chief judge for the Superior Court of the District of Columbia, with the approval of the Joint Committee on Judicial Administration in the District of Columbia, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter within the jurisdiction of the Superior Court during the second and third twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c). Prior to the expiration of the thirty-six-calendar-month period following such date of enactment, the chief judge of such court, with the approval of such Joint Committee, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter, within the jurisdiction of such court, during the fourth and fifth twelve-calendar-month periods following the effective date of section 3161(b) and section 3161(c). Prior to the expiration of the sixty-calendar-month period following such date of enactment, the chief judge of such court, with the approval of such Joint Committee, shall prepare and submit to the Administrative Office of the United States Court a plan for the trial or other disposition of offenses under this chapter, within the jurisdiction of such court, during the sixth twelve-calendar-month period following the effective date of section 3161(b) and section 3161(c).

"(2) Such plan shall be formulated after consultation with, and after considering the recommendations of, the Joint Committee and the criminal justice planning group established pursuant to section 3165. The chief judge may modify such plan at any time with the approval of the Joint Committee and shall modify the plan when directed by such Committee. The chief judge shall notify the Administrative Office of the United States Courts of any modification of such plan.

"(c) Within fifteen calendar months after the date of the enactment of the Speedy Trial Act of 1974, the Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit a report to the Congress detailing the plans submitted to it pursuant to the first sentence of section 3166(a)(1) and the first sentence of section 3166(b)(1) of this chapter, including any legislative proposals and appropriations necessary to achieve compliance with the time limitations provided in section 3161. Within thirty-nine calendar months following such date of enactment, the Administrative Office of the United States Courts, with such approval, shall submit such a report to the Congress covering plans submitted to such Office pursuant to the second sentence of section 3166(a)(1) and the first sentence of section 3166(b)(1) of this chapter. Within sixty-three calendar months following such date of enactment, the Administrative Office of the United States Courts, with such approval, shall submit such a report to the Congress covering plans submitted to such Office pursuant to the third sentence of section 3166(a)(1) and the third sentence of section 3166(b)(1) of this chapter.

"(d) District plans adopted pursuant to this section shall, upon adoption, and recommendations of the District planning group shall, upon completion, become public documents. They shall be available (1) to the bar and the press in each district, (2) to the Department of Justice, (3) to the General Accounting Office, (4) to the Judiciary Committees and Appropriations Committees of the Senate and House of Representatives, and (5) at reasonable cost, to others who request them.

"(e) For the purpose of carrying out the provisions of this section, and section 3165 there is hereby authorized to be appropriated such sums as Congress may find necessary.

"§ 3167. District plans—contents

"(a) Each District plan required by section 3166 shall include a description of the norms prevailing at the time of its submission as to characteristics of criminal justice administration in the district, including but not limited to: the time span between arrest and indictment, and indictment and trial; the number of matters presented to the United States Attorney for prosecution; acceptance and rejection rates of prosecutions, and transfers to other districts and to state prosecution; the comparative number of cases disposed of by trial and by plea; the rates of conviction, dismissal, acquittal, nolle prosequi, diversion and other types of disposition; and the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

"(b) Each plan shall include a description of the time limits, procedure techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States Attorney, the Federal Public Defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives set forth in section 3165(b) and section 3165(c).

"(c) Each plan shall prescribe reporting forms, procedures and time requirements, consistent with section 3168, for assembling information concerning (1) the incidence of and reasons for extensions of time beyond the statutory or district standards, (2) the invocation of sanctions for noncompliance with time standards, and (3) the incidence and length of, reasons for, and remedies for, detention prior to trial. These forms shall include the pretrial custody information required by Rule 46(g) of the Federal Rules of Criminal Procedure.

"(d) Each plan shall further specify the rule changes, statutory amendments and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

"§ 3168. Speedy trial reports

"(a) Reports shall be filed for purposes defined in this section by—

"(1) each prosecutor and defense attorney who seeks in an individual case an extension of time, or to avoid a sanction for noncompliance, in respect to a time limit prescribed in the Act or in a district plan,

"(2) each judge who grants or denies such a request in a case,

"(3) each planning group, district court, United States Attorney, and Federal Public Defender in a district, on an annual basis at the end of each twelve-calendar-month period beginning two years after the date of enactment, and

"(4) the Administrative Office of the United States Courts, the United States Department of Justice, and the General Accounting Office, on an annual basis beginning six months after the first reporting date referred to in subsection (a)(3) of this section. The reports referred to under (1) and (2) may consist of the memoranda and briefs of parties, and the written or transcribed opinions of judges, and shall be available to each organization designated in subsection (a)(3). A planning group or district court report referred to under subsection (a)(3) may be satisfied by a recommendation submitted for the same year under section 3165 or a plan submitted for the same year under section 3166 and shall be transmitted to the judicial council of the circuit and each organization designated in subsection (a)(4) of this section.

"(b) The contents of a report shall, to the extent applicable to a person or agency designated in subsection (a)(1), (2), and (3) of this section, include in individual cases or in cumulative profiles:

"(1) reasons for requesting or granting an extension of statutory limits, or for invoking or failing to invoke an applicable sanction,

"(2) the new timetable set, or requested to be set, for an extension, and the nature of the sanction, if any, invoked for noncompliance,

"(3) the effect on criminal justice administration of the prevailing time limits and sanctions, including effects on prosecution, defense, the judicial function, corrections, costs, transfers, appeals,

"(4) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classification, and

"(5) other information pertinent to the operation and implications of the district's plan.

"(c) District reports filed under subsection (a)(3) of this section shall be received, compiled and analyzed by the national agencies designated in subsection (a)(4) of this section for the purpose of distilling national summaries, and recommendations as to changes in rules, statutes, institutions, appropriations, reporting procedures, or other ingredients of the criminal process. All such reports shall be filed with the Judiciary and Appropriations Committees of the Senate and the House.

"§ 3169. Pilot districts

"(a) There are hereby authorized to be appropriated $5,000,000 to carry out the initial phases of planning and implementation of speedy trial plans under this Act in five pilot Federal judicial districts. The funds shall remain available until expended, and requests to renew the appropriation shall receive priority if endorsed by the planning groups in each of such districts, and their parent agencies.

"(b) The pilot districts shall be designated jointly by the Chief Justice and the Attorney General on the basis of applications received by them from planning groups established under section 3165. Each such application shall describe in detail the process by which the district proposes to carry out the provisions of this Act. To be eligible, applications shall be submitted on or before one hundred and eighty days from the date of enactment, and the designation of pilot districts, and the amount of funds awarded, shall be made public no later than two hundred and seventy days after enactment. All applications shall be public documents.

"(c) No funds appropriated under this section may be expended in any pilot district except by two-thirds vote of the planning group. Funds may be expended for personnel, facilities, and any other purpose permitted by law. Where an expenditure requires further action by Congress, as in the creation of an additional judgeship, such

recommendation shall receive priority if endorsed by the national agencies designated in section 3166(d).

"§ 3170. Definitions

"As used in this chapter—

"(1) the terms 'judge' or 'judicial officer' mean, unless otherwise indicated, any United States magistrate, Federal district judge, or judge of the Superior Court for the District of Columbia, and

"(2) the term 'offense' means any criminal offense, other than a petty offense (as defined in section 1(3) of this title) or an offense triable by courtmartial, military commission, provost court, or other military tribunal, which is in violation of any Act of Congress and is triable by any court established by Act of Congress.

"§ 3171. Sixth amendment rights

"No provision of this title shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution".

TITLE II—PRETRIAL SERVICE AGENCIES

SEC. 201. Chapter 207 of title 18, United States Code, is amended by striking section 3152 and adding the following new sections:

"§ 3152. Establishment of pretrial services agencies

"The Director of the Administrative Office of the United States Courts shall establish, on a demonstration basis, in each of ten judicial districts (other than the District of Columbia) a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

"§ 3153. Organization of pretrial services agencies

"(a) The powers of each pretrial services agency shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency.

"(b) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows:

"(1) one member, who shall be a United States district court judge;

"(2) one member, who shall be the United States attorney;

"(3) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

"(4) one member, who shall be the chief probation officer; and

"(5) two members, who shall be representatives of community organizations.

"(c) The term of office of a member of the Board of Trustees appointed pursuant to clauses (3) (other than a public defender) and (5) of subsection (b) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (3) (other than a public defender) or (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

"(d) After reviewing the recommendations of the judges of the district court to be served by the agency, the Board of Trustees shall appoint a chief pretrial service officer who shall be a member of the bar of that court. Such officer shall receive compensation at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS–16 by section 5332 of title 5, United States Code. The chief pretrial service officer, subject to the general policy established by the Board of Trustees shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established in chapter 53 of title 5, United States Code.

"§ 3154. Functions and powers of pretrial services agencies

"Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

"(1)(A) collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person;

(B) such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential. The Board of Trustees shall issue regulations establishing policy on the release of agency files. Such regulations shall create an exception to the confidentiality requirement so that such information shall be available to members of the agency's staff and to qualified persons for purposes of research related to the administration of criminal justice. Such regulations may create an exception to the confidentiality requirement so that access to agency files will be permitted by agencies under contract pursuant to subsection (4) of this section; to probation officers for the purpose of compiling a presentence report and in certain limited cases to law enforcement agencies for law enforcement purposes. In no case shall such information be admissible on the issue of guilt in any judicial proceeding: Provided, however, That the Board of Trustees may permit such information to be used on the issue of guilt for a crime committed in the course of obtaining pretrial release.

"(2) review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147;

"(3) supervise persons released into its custody under this chapter;

"(4) with the approval of the Administrative Office of the United States Courts, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services;

"(5) inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions;

"(6) serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and of such agencies;

"(7) assist persons released under this chapter in securing any necessary employment, medical, legal, or social services;

"(8) prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by rule 46(g) of the Federal Rules of Criminal Procedure; and

"(9) perform such other functions as the court may, from time to time, assign.

"§ 3155. Report to Congress

"(a) The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of thi chapter or expansion to other districts. Such report shall also compare the accomplishments of the pretrial services agencies with monetary bail or any other program generally used in State and Federal courts to guarant e presence at tr l.

"(b) On or before the expiration of the seventy-two-month period following the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall file a comprehensive report with the Congress concerning the administration and operation of the Speedy Trial Act of 1974, including his views and recommendations with respect thereto.

"§ 3156. Definitions

"As used in sections 3146 through 3155 of this chapter—

"(1) the term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court for the District of Columbia, and

"(2) the term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable by any court established by Act of Congress."

SEC. 302. The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3512. Establishment of Pretrial Services Agencies.
"3153. Organization of Pretrial Services Agencies.
"3154. Functions and Powers of Pretrial Services Agencies.
"3155. Report to Congress.
"3156. Definitions."

SEC. 303. For the purpose of carrying out the provisions of this title, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1974, the sum of $10,000,000, and for each fiscal year thereafter, such sum as Congress may appropriate.

SEC. 304. Section 604 of title 28, United States Code, is amended by striking paragraphs (9) through (12) of subsection (a) and substituting in lieu thereof:

"(9) Establish pretrial services agencies pursuant to section 3152 of title 18, United States Code;

"(10) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, and supplies needed for the maintenance and operation of the courts, the Federal Judicial Center, the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies;

"(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the pretrial service agencies, and their clerical and administrative personnel;

"(12) Provide accommodations for the courts, the Federal Judicial Center, the pretrial services agencies, and their clerical and administrative personnel;

"(13) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States."

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

Mr. ERVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD subsequently said: Mr. President, S. 754 was passed earlier today, and there are some technical and clerical errors in the bill as it passed.

I ask unanimous consent that the Secretary of the Senate be authorized to correct technical and clerical errors in the engrossment of the bill, and I point to one error specifically. The word "third" on line 19 of page 14 should be deleted, and in lieu thereof, the word "fourth" should be substituted.

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

EMERGENCY HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 982.

The PRESIDENT pro tempore. The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (S. 3782) to amend the Public Health Service Act to extend for 1 year the authorization of appropriations for Federal Capital contributions into the student loan funds of health professions education schools.

Mr. JAVITS. Mr. President, I urge the passage of S. 3782, the Emergency Health Professions Educational Assistance Act. This bill cosponsored by 14 members of the committee on Labor and Public Welfare will help avert a financial crisis among entering freshmen in nursing and health professions schools. Without this legislation there will be no loans to new health students and as my colleague, Senator TAFT, pointed out on introduction of the bill last week, other financial assistance programs will be unavailable to these students.

This bill would make no substantive changes in the law. It would simply extend the previous authorization for health professions and nursing loan programs for 1 year.

Senator TAFT and I detailed the impact of this legislation on students at various institutions when the bill was introduced and I have since received other letters and telegrams which I ask unanimous consent to enter in the RECORD at this time.

Mr. President, with the passage of this legislation, the Senate has today helped to avert serious hardships for many deserving students. I look forward to passage of similar legislation in the other body to resolve this crisis.

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

STATE UNIVERSITY OF NEW YORK,
Washington, D.C., July 22, 1974.

Senator JACOB K. JAVITS,
Old Senate Office Bldg.,
Washington, D.C.

DEAR SENATOR JAVITS: On behalf of the 72 institutions of the State University of New York, we applaud your introduction of legislation to extend the nursing and health professions loan programs. Without this legislation many deserving students would be denied financial aid this fall. In the State University alone Martin Lefkovitz, Student Financial Aid Director, estimates that over 1800 students will be affected in some manner.

Your prompt action on this measure has helped to avert a financial crisis for these students and we greatly appreciate your continuing efforts in behalf of higher education in New York.

Sincerely,

WILLIAM F. CLAIRE,
Director, Washington Office.

BUFFALO, N.Y.,
July 19, 1974.

Senator JACOB JAVITS,
Washington, D.C.:

Your support for S 3782 Emergency House Professions Assistance Act is urgently solicited. This legislation will have a direct influence on the 2,594 students enrolled Suny Health Sciences Center at Buffalo.

F. C. PANNILL,
Vice President, Health Sciences.

MORRISVILLE, N.Y.
July 19, 1974.

Senator JACOB JAVITS,
Capitol One, D.C.:

Urgently request your support of Senate bill 3782 Emergency Health Professions Educational Assistance Act. This past year 25 nursing students $15,870 in loans 9 received $4,160 in scholarships at this college. Most of our nursing students come from poor, rural, medically underserved central New York State, and returned to their communities to work. Without Federal aid many now in the program would be unable to continue their study, and future enrollement of needy students will fall short. Further, this college plans an innovative career ladder program in Oswego, beginning summer 1975 to turn licensed practical nurses into registered nurses. Oswego County is critically short of registered nurses. Without Federal loans and scholarships, this programs future will be in doubt.

JOHN W. STEWART,
Vice President, Suny Agricultural and Technical College at Morrisville, Morrisville, N.Y.

ITHACA, N.Y.,
July 19, 1974.

Senator JACOB K. JAVITS,
U.S. Senate Bldg.,
Washington, D.C.:

Urge you to push for passage of S 3782 bill to extend authorization of the Emergency Health Professions Educational Assistance Act. Our students will be in jeopardy if this is not done.

GEORGE C. POPPENSIEK,
Dean, New York State Veterinary College, Cornell University, Ithaca, N.Y.

BUFFALO, N.Y.,
July 23, 1974.

Hon. JACOB JAVITS,
Capitol One, D.C.:

Strongly support your bill S3782 to extend for one year authorization for health profession and nursing student loan program. More than 178 students enrolled in program here. Passage of your bill urgent for at least one-fifth of entering students. Further information available from Washington office State University of New York.

JAMES E. SHENTON,
President.
GENEVIEVE MCQUILLIN.

JOHNSTOWN, N.Y.,
July 23, 1974.

Hon. JACOB JAVITS,
Old Senate Office Bldg.,
Washington, D.C.:

Strongly support bill S3782 to extend for one year authorization for health professions and nursing student loan program. More than fifteen students enrolled in such program here. Urge passage of the bill for at least one-fifth of entering students. Further information available from Washington office SUNY.

HADLEY S. DEPUY,
President, Fulton Montgomery Community College.

POUGHKEEPSIE, N.Y.,
July 23, 1974.

Hon. JACOB JAVITS,
Capitol One, D.C.:

Strongly support your bill S3782 to students for one year authorization for health provisions and nursing student loan program. More than 150 students enrolled in such a program here. Passage of your bill urgent for at least one-fifth of interning students.

JOHN DEMENKOFF,
Dept. Head, Dept. of Health Technologies, Dutchess Community College, Poughkeepsie, N.Y.

SUFFERN, N.Y.,
July 23, 1974.

Sen. JACOB JAVITS,
Senate Office Bldg.,
Washington, D.C.:

Strongly favor your S–3782 health professions etc. authorization. Expect 500 students or more here this fall.

JOHN CAFFREY,
Executive Vice President, Rockland Community College, Suffern, N.Y.

ALFRED, N.Y.,
July 22, 1974.

Senator JACOB JAVITS,
Capitol One, D.C.:

Request support of S–3782, essential to students this college.

DAVID HUNTINGTON,
President, Alfred State College, Alfred, N.Y.

SELDEN, N.Y.,
July 23, 1974.

Hon. JACOB JAVITS,
Old Senate Office Bldg.,
Washington, D.C.:

Strongly support your bill S3782 to extend for one year authorization for health profession and nursing student loan programs. Passage of your bill urgent for at least one-fifth of entering students. Further information available from Washington Office State University of New York.

ALBERT M. AMMERMAN,
President, Suffolk Community College.

CANTON, N.Y.,
July 23, 1974.

Hon. JACOB K. JAVITS,
Capitol One, D.C.:

I urge you to support the continuation of S–3782 which will continue the Emergency Health Professional Educational Assistance Act. Defeat of this bill will affect 33 nursing students who anticipate financial aid support which will total $33,000.00.

DR. EARL MCARTHUR,
President, Canton Agricultural and Technical College State, University of New York, Canton, N.Y.

JOHNSTOWN, N.Y.,

Hon. JACOB JAVITS,
Old Senate Office Bldg.,
Washington, D.C.:

Strongly support your bill S 3782 to extend for one year authorization for health professions and nursing student loan program. More than fifteen students enrolled in such program here. Urge passage of your bill for at least ⅕ of entering students. Further information available from Washington office SUNY.

HADLEY S. DEPUY,
President Fulton Montgomery Community College.

COLUMBUS, OHIO,
July 22, 1974.

Senator JACOB K. JAVITS,
Capitol Two, D.C.:

Thanks and congratulations for your support of nursing through S. 3782. Your leadership is appreciated.

ROBERT E. DOHERTY,
Ohio Nurses Assoc.

FARMINGDALE, N.Y.,
July 22, 1974.

Senator JACOB JAVITS,
Capitol One, D.C.:

Regarding the Senate bill #3782 "Emergency Health Professional Assistance Act." We at Farmingdale College urge that this bill be passed because of the value it will be to our students at this college. 217 students in nursing and dental hygiene along with others will not receive financial aid if this bill is not passed. The entire college community urge support of this bill and are depending upon your backing.

CHARLES W. LAFFIN, Jr.,
President, State University Agricultural and Technical College, Farmingdale, N.Y.

BROOKLYN, N.Y.,
July 22, 1974.

Senator JACOB JAVITS,
Capitol One, D.C.:

Strongly urge you vote favorably for S–3782, failure of passage would deprive a significant number (860 medical students, 176 nursing students, 230 allied health professional students) of students at Downstate Medical Center, State University of New York, Brooklyn, of vitally needed financial aid and could impair their careers in health services.

CALVIN H. PLIMPTON M.D.,
President.

BROCKPORT, N.Y.,
July 22, 1974.

Senator JACOB K. JAVITS,
U.S. Senate Chambers,
Washington, D.C.

DEAR SENATOR JAVITS: This communication is to urge your support for the passage of bill 3782, Emergency Health Profession Educational Assistance Act.

210 students would be affected by this bill at the State University College at Brockport.

The college community at Brockport strongly supports the passage of the bill. Your consideration is greatly appreciated.

Cordially,

ALBERT W. BROWN,
President.

SYRACUSE, N.Y.,
July 22, 1974.

Hon. JACOB JAVITS,
Capitol 1, D.C.:

Strongly support your bill S3782 to extend for one year authorization for health professions and nursing student loan program. More than 287 students enrolled in such programs here. Passage of your bill urgent for at least 1/5 of entering students. Further information available from Washington office SUNY.

Dr. ROY A. PRICE,
Interim President, Onondaga Community College, Syracuse, N.Y.

TROY, N.Y.,
July 22, 1974.

Senator JACOB JAVITS,
Capitol 1, D.C.:

Strongly support bill S3782 to extend for 1 year authorization for the health professions and nursing student loan program. More than 1,000 students enrolled in these programs at this college. Passage of bill urgent for further information contact SUNY, Washington Office, 1730 Rhode Island Avenue Northwest, Washington.

JAMES J. FITZGIBBONS,
Hudson Valley Community College.

ALBANY, N.Y.,
July 22, 1974.

Hon. JACOB JAVITS,
Capitol One, D.C.:

Strongly support your bill S3782 to extend for one year authorization for health professions and nursing student loan programs. More than 10,000 students are engaged in nursing programs alone in New York's community colleges. Passage of Bill urgent for at least 1,000 first year students, further information available from Washington Office, State University of New York.

HENRICK N. DULLEA,
Assistant Deputy to the Chancellor for Community Colleges.

AUBURN, N.Y.,
July 22, 1974.

Hon. JACOB JAVITS,
Capitol One, D.C.:

Strongly support your bill S3782 to extend for one year authorization of health program and nursing student loan program. More than 180 students enrolled in such programs here. Passage of your bill urged for at least 1/5 of entering students. Further information available State University of New York, Washington, D.C.

SHIRLEY H. VARGASON,
Chairman, Dept. Health Careers Technologies.

PLATTSBURG, N.Y.,
July 22, 1974.

Senator JACOB JAVITS,
Old Senate Office Building,
Capitol One, D.C.:

Strongly support your bill to extend for 1 year authorization for health professions and student loan programs. Over 65 nursing students are enrolled here each year. Passage of your bill is urgent.

JAMES FLETCHER,
Dean, Clinton Community College.

AUBURN, N.Y.,
July 22, 1974.

Hon. JACOB JAVITS,
Capitol One, D.C.:

Strongly support your bill S. 3782 to extend for 1 year authorization of health program and nursing student loan program. More than 180 students enrolled in such programs here. Passage of your bill urged for at least one-fifth of entering students. Further information available, State University of New York, Washington, D.C.

ALBERT T. SKINNER,
President, Auburn Community College.

ALBUQUERQUE, N. MEX.,
July 23, 1974.

Senator JACOB JAVITS,
Capitol Two, D.C.:

The following message has today been sent to New Mexico Congressmen: It is imperative for both State and national health needs that emergency authorization bills S. 3782 and H.R. 15995 be passed and that the respective Appropriation Committees of Congress provide funding for the program immediately.

CHESTER C. TRAVELSTEAD,
Vice President for Academic Affairs, University of New Mexico.

HARRISBURG, PA.,
July 22, 1974.

Senator JACOB JAVITS,
Capitol Hill, D.C.:

Appreciate your support of S. 3782. Loan provisions for first-year nursing students are important.

KATHRYN GROVE,
Executive Director, Pennsylvania Nursing Association.

Mr. KENNEDY. Mr. President, I am pleased to support the emergency legislation to extend the present health professions and nursing loan programs for 1 year. Last week I joined my friend and colleague from New York, Senator JAVITS, in introducing this legislation. I want him to know how much I value his leadership, dedication, and cooperation on vital health legislation. His sustained effort of excellence in this area is magnificent. Without such legislation thousands of new health professions students just beginning their education will be denied the opportunity to receive financial assistance and many may be compelled to drop out. While the committees in both bodies are currently working on new health manpower legislation revising the expired loan programs, it is now apparent that action cannot be completed in time to provide support to this year's entering students. Over one-half of the entering classes in medical school, a total of 14,500 students, will require loans and over one-half of the loans to be made would have come from the health professions loan program. Of the total 96,000 nursing students entering school this year, from 15 to 20 percent were expected to receive the special nursing student loans in addition to the other grants and loans for which they, as undergraduate students, qualify.

The current situation in which HEW would provide the loan funds only to students who had received loans in the past is creating chaos and will cause great hardship to students just entering very demanding courses of study. Further, this action comes so late that other financial aid funds are already allocated on the expectation that health loan funds would have been available. This is truly a national problem affecting students in institutions throughout the country.

Mr. President, I submit that this is an emergency situation. There are no satisfactory alternatives. While new legislation will soon be passed, it cannot aid this class of nursing and health professional students, and I urge speedy approval of the legislation.

Finally, I want to point out that the Senate is about to take in adopting this legislation is similar to action the Congress took in June of 1971 when it was also necessary to enact emergency legislation to reauthorize the student assistance programs of titles VII and VIII of the Public Health Service Act.

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

There being no objection, the bill was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Health Professions Educational Assistance Act".

AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

SEC. 2. (a) Section 742(a)(3) of the Public Health Service Act is amended by deleting the period after "1974" the first time it appears and inserting in lieu thereof a comma and "and a like amount for the fiscal year ending June 30, 1975.".

(b) Section 824 of the Public Health Service Act is amended by inserting after "June 30, 1974," the following: "and a like amount for the fiscal year ending June 30, 1975,".

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

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INFLATION

Mr. MANSFIELD. Mr. President, a very worthwhile series of editorials and articles on inflation, the No. 1 question confronting the Nation today, appeared in the Boston Globe, beginning on Thursday morning, July 18, and ending on Monday morning, July 22.

Because of the significance of this issue to the people of this Nation at this time, I ask unanimous consent that this series of articles on inflation be printed in the RECORD at this point.

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

INFLATION: A NEW PLAGUE ON US ALL—I

Every consumer knows that inflation means higher prices for nearly every product and service gotten through the marketplace. For the past two years it has been a cruel disease, doubly frightening because it is widespread, afflicting every industrial nation around the world, and because it has resisted strong medicine as well as weak.

Our own inflation has been extremely conspicuous because two major consumer categories—food and fuel—have seemed to soar out of sight. Food prices have increased about 20 percent on average in the past year. But this leap has had unequal impact on our population. Poorer persons have to devote a third or more of their income to food alone and surveys of their buying habits show they have no luxuries in their menus to eliminate for the sake of economizing. And no one need be reminded of the spectacular rise in petroleum prices triggered by the Arab oil embargo last winter.

Food prices are a chilling case study of the complexity of the inflation problem. Public policy could, given the legislative will, at least soften the blow to the poorest members of our society. This is being done to some extent through the food stamp program which allows low-income families to purchase groceries at discount prices. But the discounts have failed to keep up with the rise in prices and only a third of those eligible have made use of the program.

Even if all those who are poor did take advantage of the opportunity, there would still be an implicitly lower standard of living for the remainder of the population, forced to pay higher prices for food presumably at the expense of other portions of the family budget, or to curtail some aspect of their food budget. While one might contend that a large segment of our population eats too much, no one can advocate inflation as the means for solving that problem.

Meanwhile, the food price problem does not exist in a vacuum. Perhaps too much attention has been focused on commodities like wheat and soybeans and meat. Each of these is important in its own right but other sectors are now also on the run. Truck crops, fresh fruit and canned goods are the latest candidates for the spotlight, driven up partly by short supply that is the result of increased demand for housing. If this sounds strange, it is not. Thousands of acres of truck farms and orchards in California, New Jersey, Long Island, Florida and even New England have been sold off to real estate developers, cutting into agricultural productive capacity. The developers were able to bid successfully for the land because the price of residential real estate has risen virtually everywhere to levels that make it uneconomic to farm surburban land. Thus, urban sprawl has not only desecrated the rural landscape, it has contributed to higher food prices as well.

If household demands for food and housing have contributed to the inflationary spiral in an unintentional way, corporate decisions have been consciously undertaken. Rising labor costs have encouraged increased automation, a process that sometimes means lower product costs for consumers. But sometimes in the helter-skelter rush to complete capital projects, corporations bid vigorously against each other for manpower and materials to get the job done. General Motors' plant in Lordstown, Ohio, has won fame for the automation battles with its work force. Less well known outside the construction industry are the complaints from contractors who lost manpower to hurry-at-all-costs demands to finish other plants. GM may well have acted rationally in speeding a plant to build small cars but its decisions did nothing to ease the heavy, inflationary pressure under which construction has been functioning for years.

At the same time, corporations have been borrowing heavily to finance expansion. In the process they have contributed, along with other borrowers, of course, to escalating interest rates. This escalation in the price of borrowing has pulled funds out of the traditional source of money for financing housing, and starts have fallen to an annual rate of about 1.4 million from last year's 2.4 million. That may reduce urban sprawl but it cannot really be seen as an improvement in the general quality of life.

A third major contributor to inflation has been government. There is no easy, comprehensive explanation for the inflation we are now enduring but the fact is that it started in about 1965 after five years of nearly stable prices. And it coincided almost exactly with the escalation of hostilities in Vietnam—hostilities that were a heavy drain on the Federal budget at a time when there was considerable reluctance to increase taxes. President Johnson refused to ask Congress for an increase and the Treasury experienced a combined deficit of almost $34 billion in fiscal years 1967 and 1968.

Congress finally enacted a surtax in 1968 and the deficits temporarily vanished for two years. But in 1970, with the country headed for a recession, the surtax was repealed while the war boiled on. In the following three years a total deficit of more than $60 billion pumped printing press money into the economy—and the inflation, which had held in the neighborhood of 5 percent a year, began its steepest rise.

At the same time other Federal policies, often with sound elements from other points of view, tended to exacerbate the problem, culminating in the encouragement of extensive wheat purchases by the Soviet Union in 1972—purchases in which the U.S. Government made no attempt to stand between buyers and sellers. While that story has never been told in full, there is some reason to believe that the Administration totally underestimated the effect the purchases would have in the wheat market. At the time of the initial negotiations wheat was selling for about $1.30 a bushel. An increase to about $1.75 would have made American farmers, headed for the polls that November quite happy and would not have had much impact on consumer prices. Instead, wheat soared to $6 and took virtually all foods with it.

The explanations for inflation may be difficult to find in satisfactory form. But even a cursory look at the past shows clearly that three major sectors—the consumer himself, business, including farm business, and government—have made visible contributions to the process. Unwinding inflation is not going to be the job of any single group—or even any single nation. Developing policies to achieve an end to inflation will be no easier than defining its causes.

INFLATION: EVERYONE IS A LOSER—2

In our cowboys-and-Indians, cops-and-robbers society there are only good guys and bad guys, winners and losers. Or so it seems most of the time.

That tendency to categorize emerges vividly as we grope for explanations of and solutions for the inflation that has us so firmly in its grip. Each of us has his own set of villains for our inflation—the Arab oil countries and the multinational companies that operate there. The farmers who grow our food. President Nixon once singled out the "middle men." Apartment owners. The banks for pushing up interest rates. The managers of supermarkets who change prices of goods while they are on the shelves, just pasting new price labels over the old ones.

Some accusations are more esoteric. A group of economists, headed by Milton Friedman of the University of Chicago, contends that international inflation is solely the result of excessive creation of money by central banks—that if only they would restrict it to a steady rate of growth of about 6 percent a year there would be no inflation.

And it is "standard" wisdom that government deficits are to blame for inflation.

The villain theory is easy to subscribe to in an assortment of ways. It conforms, first of all, to our commonly held winners-and-losers picture of society.

In the second place, each inflationary event taken separately does have a mini-villain, at the least. A corporation protects its interests by passing along its own higher costs for labor, credit and materials in the form of higher prices. In the short run, American corporations have done reasonably well. Oil corporations, the most notorious group for the past years, had much higher profits in 1973 than in 1972—sometimes as much as double. But they counter-complain that their rate of return on capital, even after the one-year leap, still runs behind the rest of industry and that the 1973 increase looks large only because it comes after depressed earnings in 1972.

Corporations as a group have done well. Last year corporate profits after taxes rose to $70 billion from $55 billion in 1972—a rise of 27 percent. But even with that whopping increase in one year, corporate profits were only 51 percent above the $46.5 billion netted in 1965—the year from which most persons date the beginning of the current inflation. During the same interval gross national product rose 88 percent to $1289.1 billion in 1973 from $668.9 billion in 1965.

Individuals don't have to be told they have not done well in the current inflation but a few statistics will show them just how costly it has been. Measured in "constant" dollars—adjusted to take into ac-

count loss in value through increased prices—average weekly earnings for all manufacturing stood at $113.79 in 1965. They reached a peak at $124.97 last September and then tumbled to a low of $115.42 in April—less than $2 a week higher in real terms than they had been nine years ago. Even the rebound to $119.57 since April represents a trivial gain for such a long period when there is an uneasy presumption of improving general affluence.

Investors have had little reason to rejoice, taken as a group. Common stocks have been touted for years as a "hedge against inflation" on the theory that as the prices of goods and services rose, stock prices would rise with them. During the years since 1965 stocks have had their ups and downs but the Standard & Poor's index of 500 stocks, a widely followed indicator, is just about where it started.

And interest rates have risen to record levels. A top-rated Bell System subsidiary offered $175 million bonds at 9.65 percent—and found investors slow to buy. The investors are no doubt asking themselves if that is enough at a time when consumer prices are rising at 10 percent a year.

Worse, those high interest rates for many corporate offerings mean the managements of the borrowing companies have to charge consumers prices that will pay for their cost of money for the lift of the issue. At 10 percent interest—a common rate, give or take a quarter of a percent or so—a 20-year bond issue for $100 million will wind up costing consumers $300 million in cash outlay for whatever physical property the loan financed. That, friends, is inflation.

Some people and some sectors of the economy are less ravaged than others by the effects of rising prices. The stronger corporations have passed along their higher costs and the stronger labor unions have had cost-of-living clauses written into their wage contracts. But the political process keeps pressure on them, too. The oil industry is facing probable repeal of the depletion allowance, the process being accelerated by widespread frustration and anger over prices in general and oil prices in particular. And Congress, though stalled right now in a broad reexamination of all tax loopholes, can be counted on to take a much closer look once the Watergate case has worked its way through to a conclusion.

The message from the nominal winners is clear: in inflation, there is no safe place to hide, no perfect hedge. Gold, too, has failed. While it soared to $177 an ounce last winter, it has now fallen to $130. That's a steeper decline than the stock market. Inflation makes sure that there are plenty of losers.

INFLATION: IT WON'T END SOON

The worst part about the inflation with which we are now living is that it will not vanish overnight. Nor will it disappear, however that may ultimately be accomplished, without discomfort.

A look at the past may not prove too much about our current experience since this inflation is more severe, more pervasive and more deeply embedded than any other to grip this country. But several key points do emerge.

In the past 20 years there have been three previous bursts of inflation—the first two of which seem like child's play in comparison with the present problem. The first accompanied the Korean war when the Consumer Price Index rose at an annual rate of more than 2 percent in 1951–52. That rate of increase dropped away in the following two years and in 1954–55 the CPI actually fell slightly—the only time in the past two decades it registered a decline. But in the process of that decline, the country went through the recession of 1953–54 when unemployment rose to 6 percent.

The second spurt followed quickly. By 1957 prices were rising at more than 3 percent when the Eisenhower Administration and the Federal Reserve moved quickly to regain control through tight fiscal and monetary policies. They also put the country back into recession, and unemployment reached its highest level at any time since the Depression—more than 7 percent.

A milder repeat was staged in 1960 after price increases had rebounded to about 1½ percent and tight financial policies led to the recession that many felt played a role in the narrow defeat of Richard Nixon by John F. Kennedy in that year's presidential election.

Because those inflationary surges were so much slighter than our present hemorrhage, there is no reason to think a cure can be effected rapidly. Even the most optimistic forecasters speak in terms of prices rising at a rate of 6 or 7 percent by the end of this year.

The past suggests that recessions are associated with declines in the rate of price increases. We are so close to it, and the sequel came so quickly, that we tend to forget that increases peaked briefly in 1969–70 at 6 percent, were followed by a "mini-recession," and dropped back to little more than 3 percent before taking off again.

Once again we are in a mini-recession, at least in the narrow definition of the term. The second consecutive quarter of decline in gross national product (GNP) has just been reported by the Commerce Department, which satisfies the technical requirement for identifying a recession. This slackening of demand and of production ought, if the past is a guide, to lead to lower prices.

But the Administration is in a dilemma, brought about partly by Mr. Nixon's obvious need to adopt popular programs in the light of his Watergate problems. He doesn't really need a recession right now. That perhaps explains why Commerce Secretary Frederick Dent declines to describe this as a genuine recession, preferring to emphasize the connection of this slump with the energy shortages of last winter that led to a sharp drop in auto sales and production. He asserts that basic demand is really strong—that we have simply been through an "energy crisis spasm."

Mr. Dent's analysis, however, seems to ignore the other leg on the recession beast—the slump in the housing industry brought about by high interest rates and by the Federal Reserve's tight money policy. This problem, like the inflation underlying it, will not change as suddenly as the fuel supply crisis did. And housing starts produce a whole range of economic activity associated with the equipping and furnishing of homes—activity that will inevitably stay slow as long as that part of the construction business is depressed.

There is a liberal school of thought that sees a thread of inflationary hope in the Dent assertion that the economy is basically strong. Leon Keyserling, an economic architect from the Truman Administration who has been closely associated with the concept of public policy that guarantees full employment, reminded a recent Washington conference on inflation that the way to reduce unit costs of goods is to increase their production—that autos cost more now at least partly because they are being produced less efficiently.

And Charles Schultze, director of the Bureau of the Budget under President Johnson, agreed by indirection with the Dent position that the recent slump has been the result of isolated causes, especially food and fuel, that are not likely to repeat their horrendous recent performance.

A resurgent economy will be welcomed by all who are concerned about the danger of sustained 5 percent unemployment. But a strong economy also carries with it the danger of a continued price-wage spiral as strong corporations and strong unions cooperate with each other in the struggle to protect themselves against the effects of past price increases.

It has been suggested that tax reform—reform that would ease some of the load from those at the low end of the income spectrum—would take pressure off the labor contract negotiation process. The difficulty with this view—as perhaps with the call for higher taxes by men like Harvard economist John Kenneth Galbraith—is that there is no sign Congress is willing or able to move at all on any tax matter.

And the Administration has absolutely repudiated any intention to recommend a tax increase as an inflation control measure. Herbert Stein, about to retire as chairman of the President's Council of Economic Advisers, defended this posture on the laconic grounds of "general agreement (among) politicians that a serious proposal by the Administration for a tax increase would certainly result in a tax reduction." So much for the power to lead.

INFLATION: WHAT TO DO—4

Inflation is penalizing this country and the rest of the industrial world severely. It is doing so in the immediate sense by cutting into the standard of living of millions of persons whose incomes cannot keep pace with rises in consumer prices.

More dangerously, in the long run, it is interfering with public policies that have been designed to improve conditions for persons caught in the lower end of our income scale. And it is reducing the availability of housing by disturbing the financial system through sharply higher interest rates.

Policy makers in the US and other countries have long thought that prices could be driven down by increasing unemployment. As the number of persons out of work rose, their buying power would decline and goods, services and property would tend to decline in price because there would be less money competing to buy them.

The public is clearly disturbed enough about inflation to deserve to know just what would be involved in a tradeoff between more unemployment and less inflation. Otto Eckstein, Harvard economist and president of Data Resources, Inc., a private forecasting organization has put the dilemma in precise and politically realistic terms:

"If unemployment were quickly raised to 8 percent and kept at that level for two years, the rate of inflation would . . . be brought down to 4 percent. But this would be a recession worse than the 1958 experience, and would require a willingness on the part of the country to suffer a near depression, which seems quite implausible."

While it seems utterly improbable that we could agree to a fight against inflation on such a basis, it is important to keep in mind the mechanism for bringing about unemployment at a level like 8 percent. It could be achieved by drying up funds in the banking system through tight money policies of the Federal Reserve system.

The Federal Reserve is in a position to set its policies without formally consulting other branches of government. In practice, of course, it does consult and the current chairman of the Federal Reserve, Arthur Burns, is a man in constant contact with the Administration and Congress.

But the fact remains that Burns is more worried about inflation than any other single problem faced today. He is in no sense oblivious to his power and he has no desire to create a major recession. Just last Monday he appeared before the House Ways and Means Committe to urge a $10 billion cut in Federal spending as a device for reducing the nation's rate of growth. Even then, he told the committee, he could not promise the Federal Reserve would ease up on its tight money, high interest rate policies.

The difficulty is that we have very little in the way of suitable machinery, once we decide to restrain growth, for choosing which

things we will encourage and which we will hold back. Tight money and high interest rates, as we have pointed out, have worked to crimp housing severely, cutting the rate of new starts to about 60 percent of their level a year ago. But even so, our credit system does little to differentiate between family housing and recreational housing. And our tax system does even less, offering each of them an identical indirect subsidy through tax deductions for mortgage interest payments and real estate taxes.

Similarly, we do not make much distinction between luxury goods and the necessities of life except at the state level. We have largely abandoned the excise taxes on items like jewelry, furs, automobiles, that were used during World War II to restrain demand and to raise money for the Treasury. Such taxes are cumbersome, they produce some injustices to persons who earn their living in those industries and they were rationalized on the grounds of the emergency nature of the situation. But it is the last point in particular—the emergency felt by the public over inflation—that requires examination of unused means for soaking up dollars that are bidding against each other for goods and services.

At the same time, national policy on inflation must take into account some form of relief for those on whom the burden has been heaviest—mostly lower income persons. Some assistance has already been provided in the form of expanded food stamp programs and increased Social Security benefits. But an increase in the personal exemption to, say, $823 from the current $750 would be a useful supplement.

At the corporate level, there is general agreement that investment in new productive facilities will help hold down future prices. Some help apparently has begun to appear in the form of lower prices for at least some industrial commodities in world markets—copper, tin, rubber, grains. While energy has not fallen back, the price of petroleum at least appears to have stabilized. The steel industry, led by US Steel, may hold the line for the rest of the year.

But rising profits have imposed an obligation on the business community for sensible investment to reduce the danger of future shortages of materials and productive capacity. While it is too early to assess the Interstate Commerce Commission requirement that railroads step up investment in rolling stock as a condition of their recent rate increase, we think this unusual step should be watched closely for its possible utility in other basic industries.

One of the most notable features of the current inflation has been the widespread confession of ignorance from economists, government leaders, businessmen, labor leaders and the general public that it has been a major perplexity. No one, with the possible exception of one group of monetarist economists who want the Federal Reserve to increase the supply of money at a steady rate, has a single, simple answer.

We think consumers should resist higher prices whenever they are in a position to do so—which is not always the case. Perhaps most important, we urge persons who are better off to resist the impulse to pay higher prices just because paying them represents no hardship.

Corporate executives have a special obligation to think about the hazards higher prices impose to the structure of the system in which they have done so well. While "corporate responsibility" is a ringing phrase these years, we think profit maximization has remained the governing standard for too many decision makers. Single-minded pursuit of that goal looks terribly short-sighted in 1974.

Given the need for comprehensive effort by the whole spectrum of society to deal with prices, we find it astonishing that Congress and the Administration have walked away from any form of unified approach to the job. The Cost of Living Council, allowed to die just last month, may have had its flaws but it at least offered a structure for keeping some degree of control on inflation. It should be revived as soon as possible and staffed with officials who know how to make themselves heard.

Ending inflation won't be easy. But living with it will be worse.

INFLATION REMEDY: "TRADITIONAL MEDICARE"

$4,400 DOESN'T GO VERY FAR FOR FOUR

(By Ellen Goodman)

Pauline Keating doesn't think of herself as poor.

"No, no, I'm not poor," she says, taken back by the question. "There are people a lot poorer than I am. They are the poor."

Like nearly all Americans this 32-year-old mother of three from Lynn considers herself middle class. In fact, she studiously separates herself from the poor, defining them as somehow the quitters, the bad element, the others.

"I've seen the mothers at the Aid office and I've seen them with a bottle they might be drinking from right there. And some of their children will be filthy, absolutely filthy, no socks, no shoes, you know, not taken care of at all."

Nevertheless, the slim, auburn-haired woman lives on $4400 a year. She is one of the more than 70,000 divorced, separated or deserted mothers who live in the most expensive area of the country at or below the national poverty level of $4550 for a non-farm family of four. Pauline Keating is part of the statistic which shows that the largest category of the poor are female-headed households.

These families are among the hardest hit by inflation as they try to raise young children on the fixed income of a court decree or public welfare.

For the last five and a half years, since she and her husband separated, Mrs. Keating and her children, Mark, 12, Sharon, 9, and Edward, 7, have been living on Aid for Dependent Children (AFDC). Her ex-husband, now remarried and living with his second wife and a new baby in their own home in Saugus, pays $120 a month to the Department of Welfare. AFDC then adds $252 and sends her a total of $372. Every three months she receives a clothing allowance of $107.

Over the last three years, while the rate of inflation increased more than 19 percent, the welfare increases were 3.2 percent. And last year, while the Greater Boston cost of living rose 9.6 percent, Mrs. Keating's check increased by $2.50 a month, or roughly 62 cents a week.

"Now I don't mean to sound nasty, but what on earth do they think 62 cents is going to get us."

Certainly not the rent. The five-room apartment in a three-decker house near the Lynn General Electric plant rents for $160 a month. Until last year that figure included heat. But after the oil price jump last year, the landlord told her that she'll have to pay her own heat bills. Now the oil company is budgeting her at $25 in 12 monthly payments.

Beyond heat and rent are the other utilities. The Keating electric bill runs between $16 and $18 and the gas bill has risen to $12 a month. The phone costs $10 a month. The only other monthly payment is $10 on a charge account at a local store.

"I have nothing else on credit. Now, that would be silly wouldn't it. I mean I could make the first payment but what then? If the television goes, that's it.

The basic monthly bills add up to $213 a figure that leaves her with $159.

"The rest goes to food. I guess we spend about $40 a week for food."

"Oh yes, well, it's very tight. There's no question about that, now is there," says Mrs. Keating with the traces of Ipswich, England, in her voice.

"But I don't like to complain . . . The others go downtown and swear and cry that they need this or that. Me, I'm grateful for what they give me. We can live with it."

She "lives with it" in an apartment that is immaculate from the ancient linoleum in the kitchen to the living room that is largely filled with her own bed. Her three blonde-haired children come in from playing neater than most children come in from playing. She is trim in dungarees and a print shirt.

But it is hardly the kind of living she knew as a child. Like many other women in her situation, Mrs. Keating's values, prejudices and history are "middle class."

Mrs. Keating grew up in an English working family that she says, "spoiled me rotten." Both of her parents worked and they could afford not only "wall-to-wall carpeting and chandeliers" but new clothes.

"My mother really helped my father. Because she worked, we had things."

She describes her parents as completely different people, who stayed together "for the sake of the children."

"That was the idea then. They thought they had to stay together until we were married. Then they got divorced and they're both happily married now, but what a waste of it."

Pauline worked from the time she was 15½ as a telex or switchboard operator and weekends in a bakery. She met her husband while he was stationed in England in the Air Force.

While they were married, her husband was a postal worker and a man who handled all the money matters. She never knew what he was earning. But she does remember the luxury of having new white shoes and a bag every summer.

"Now, of course, I don't. My winter shoes will have to last a third year and the only summer ones I've bought are those sandals.

After Pauline and her husband separated, she learned that she qualified for AFDC. In the winter she can work part-time as a supermarket cashier while the children are in school. There she earns an extra $22 a week. She keeps two-thirds of that and the other third goes to AFDC.

"In the winter we've had enough; it was a bit easier."

She says she would rather work fulltime, but that's not possible right now.

For one thing, if she kept the minimum-wage job she has now, she would actually be working for less. But the biggest expense would be medical bills, paid now by Medicaid.

Her daughter, Sharon, has diabetes which has to be kept under control with twice-daily shots of insulin and monthly checkups. She also has to be cared for with a watchful eye and six daily snacks. Something as minor as a cut on the foot can hospitalize her.

"I can't just have anyone take care of Sharon. Some of them wouldn't and some I just wouldn't trust.

"But when Sharon can take care of herself, like maybe when she's 11 and can give herself her own shots and take care, maybe then I could go back to work."

For the next two years at least, Mrs. Keating knows she will be on AFDC. And that's not an easy way to be middleclass.

Despite the fact that as of July she now can buy $72 worth of food stamps for $44 the supermarket budget is very tight. The average cost of food has risen 20 percent in the last year alone.

"Whatever we gained there with the food stamps just went to the oil bill anyway, minus a bit. I can only go shopping twice a month when the checks come in and then I go with my list. I don't just go flitting about the market, buying. I only buy what's on my list.

"The kids drink only a half a gallon of milk a day, no more. For the rest it's Za-Rex or juices. The milk is just too high.

"But I'll tell you. I'm old-fashioned, I suppose, but by my idea the children have to have a good hot supper every night. Meat and potatoes. That's how I was brought up and it's important. But we have to go past the expensive meat. We eat a lot of hamburger, meatloaf or meatballs."

Still it's the price of the least expensive meats that have risen the most, and potatoes are among the staples that have greatly increased.

The welfare check can buy nothing but essentials and it's these essentials—rent, fuel, utilities and cheap food—that have been hit hardest by price increases.

"It's harder and harder to pay bills. I worry from month to month if I'll have enough money and sometimes I rob Peter to pay Paul," she said.

"But so far I've made it. We're not poor because we don't owe."

One of the reasons that she doesn't "owe" is that like others in the poor middle class, she has roots and family above the poverty level who cushion her against the bottom. For her, they are the buffer between desperate poverty and genteel poverty.

She is proud that her children look good, but her clothing allotment of $107 every quarter can't be stretched very far. It's her former in-laws who buy presents of clothing for the children, and her own parents who buy her winter coats and occasional birthday outfits.

"If I didn't have my mother-in-law for birthday and Christmas presents, the children wouldn't have much, I know that. She buys them their Easter outfits so when they go to church they look so nice."

Occasionally friends give her material to make her daughter's clothing, and another girlfriend invited them away to New Hampshire for a week.

But the buffer line is a thin one, easily crossed by inflation.

The only place Mrs. Keating could conceivably cut down is rent.

"My biggest worry is rent. I almost got stuck on it once, but I went to the bingo and won. That was a lucky one."

The only apartment she could find that would cost less would be in a project and, to Mrs. Keating, that is "poor."

"I'm not going to go into a project. I'd sit on the doorstep of the welfare first.

"I've seen the women there with the little kids, and they're drinking and screaming about. Now I know I'm on mother's aid and that I need it. But living like that would make me feel lower than what I am. That I couldn't do.

"I'm going to keep my children from that no matter what."

The question is how long "no matter what" will last. Prices are rising, and Mrs. Keating's income is not. Still she has an investment in not being one of the complainers.

"I'm not squawking. I guess I'm one of the nutty ones. Nearly all of them are yelling and complaining."

But, on the other hand, Mrs. Keating doesn't like to think about the future.

"I try not to worry about next year and the year after. I can't do anything about it so I don't want to worry. Would you believe that?"

"Traditional Medicine" To Be Used on Inflation

(By Martin F. Nolan)

San Clemente, Calif.—President Nixon's speech on economics this week is really going to be just another "Sunday sermon," according to one of his top economic advisers.

Mr. Nixon will address a meeting sponsored by the California Chamber of Commerce at 7 p.m. EDT Thursday in the Century Plaza Hotel in Los Angeles.

Herbert J. Stein, outgoing chairman of the President's Council of Economic Advisers said the President's talk will be part of "that same old-time religion." Stein, a leading apostle of that doctrine—reducing government spending and raising interest rates to fight inflation—is pleased with President Nixon's approach.

"This is the traditional medicine and the only medicine that has ever succeeded over any long period in holding down inflation," Stein said.

Stein predicts that inflation, which ran as high as 12 percent earlier this year, will be down to 7 percent by the end of the year through the application of the principles he advocates.

"I think the thing about which there can be no doubt is that there is a major inflation problem before us, that we are left with only the fundamental measures to deal with this and that we are the proponents and champions and executors of the fundamental policies for dealing with it."

"Fundamentalism" is apparently to be the theme of Mr. Nixon's speech and any other suggestion for fighting inflation will probably be extremely unwelcome.

Stein has announced his resignation and the White House released an exchange of letters between him and Mr. Nixon that flattered each other in unusually florid prose.

The President told Stein that he had "for nearly three years guided the council with great distinction as its chairman. It has been a period of exceptional challenge but also unusual opportunity for economic policy.

"Pat joins me in extending to Mildred and you our heartfelt good wishes for every success and happiness in the years ahead," the President said.

Stein, who will teach economics at the University of Virginia in September, wrote: "No CEA chairman could want a more supportive and understanding President than you have been. You have been responsible for conducting US economic policy during its turbulent period, when the whole world was swept by storms of inflation. Your policy has been firm and decisive."

Stein predicted in his letter to the President that: "You will be recognized as the world's leader in the fight against the economic disease of democracy—inflation—just as you are world leader in the fight against the political disease of nations—wars."

In reviewing the economic policy of the President over the past five years, Stein admitted one mistake—the 90-day freeze imposed by Mr. Nixon on wages and prices in August 1971. "I think it was a mistake to have gone into price and wage controls. I think we would have less inflation now if we had not done that."

Stein was asked whether the President would have anything new to say in this week's address or whether it would be more exhortations for governmental belt-tightening and for tighter interest rates set by the Federal Reserve Board. Stein said: "No, but people have been giving sermons every Sunday for 1974 years and people still come out and listen to that same old-time religion.

"People have decided that it is worth listening to because there is always a danger of backsliding in those six intervening days.

"You are generalizing unduly when you say if he repeats the old-time religion he'll be saying the same thing, because the old-time religion is just a general concept which, as I said, needs to be implemented in specific ways and, moreover, it still needs to be brought home to everybody," Stein said.

Stein was asked about an assertion made before a congressional committee by budget director Roy Ash that a $5 billion cut in government spending would only reduce inflation by one-tenth of 1 percent.

Stein wrinkled his nose and said: "What Mr. Ash said is just some of that economics," meaning that an economic model is limited in its ability to predict the future.

"But beyond that I think you have to say that the thing that the model cannot put in, which I think is of terribly great importance at this time, is the psychology and expectations of the people. What we have going on in the world and what is obviously present here is great skepticism about whether the government really means business about the inflation, whether they will ever do any hard thing in order to stop inflation, and end that skepticism or to weaken it would make a great contribution, a contribution which the econometric models don't take account of. And I think that is what I have to do."

Stein said that presidential vetoes of congressional spending bills would not injure working people as much as the spending policies themselves.

Mr. Nixon is considering vetoes of bills for housing and mass transit aid if either bill considered by Congress exceeds a budgetary ceiling set by the White House.

Stein said that such vetoes are necessary because "I think what we have learned is that beyond some limit the government does not help the people of the country by spending more for programs which bear the name 'friend of the people'; that those programs when carried on in too large volume are injurious to the people in the form of inflation."

Stein is to be succeeded as chairman of the Council of Economic Advisers by New York economist Alan Greenspan, who is flying out here this week to confer with Mr. Nixon before the President gives his economic speech.

Greenspan, a private economic consultant, shares the conservative views of Stein and President Nixon in dealing with inflation.

Stein's forecast for the economy was that "We are looking ahead for a moderate rise in the economy and a slowdown in the rate of inflation, but with inflation being a serious and dominant problem which will require the maintenance of a policy of restraint for the remainder of this year and beyond that."

Stein denied that there was any possibility of a recession based on the economic statistics released for the first half of the year.

"I think probably the most reasonable and defensible thing to say is that the decline of the real side of the economy came to an end sometime in the first half of the year."

The decline in the Gross National Product—the aggregate of all goods and services in the economy—came about because the Arab oil embargo had drained some $20 to $30 billion of "earnings from US assets owned abroad," Stein said.

President Nixon's "Sunday sermon," therefore, will be more of the same, Stein said. "Our general philosophy, strategy about what to do about the economy, I think is known," he said. "I think we have described it repeatedly.

"What needs to be done about the economy is to maintain the restraint on the expansion of demands, to hold down the rate of growth of spending, to hold down the rate of expansion of money. This is the traditional medicine . . ."

ORDER OF BUSINESS

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. STAFFORD. Mr. President, the acting minority leader does not desire recognition.

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

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

Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized for not to exceed 5 minutes.

SENATE RESOLUTION 363—A RESOLUTION CALLING FOR A DOMESTIC SUMMIT TO DEVELOP A UNIFIED PLAN OF ACTION TO RESTORE STABILITY AND PROSPERITY TO THE AMERICAN ECONOMY

Mr. BARTLETT. Mr. President, I am very pleased and honored to associate myself with the Senator from Florida (Mr. CHILES), the Senator from New Mexico (Mr. DOMENICI), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Georgia (Mr. NUNN) in sponsoring a Senate resolution which is at the desk and which will be called up later.

It is a resolution that has been sponsored by approximately 60 Senators. I ask unanimous consent that the names of the following Senators be added as cosponsors:

Mr. MANSFIELD, Mr. ERVIN, Mr. PROXMIRE, Mr. CLARK, Mr. PACKWOOD, Mr. ROTH, Mr. MCGOVERN, Mr. EAGLETON, Mr. MCCLURE, Mr. BAKER, Mr. TALMADGE, and Mr. CANNON.

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

Mr. BARTLETT. Mr. President, this important resolution expresses the sense of the Senate in calling for a domestic summit meeting to develop a unified plan of action to restore stability and prosperity to the American economy.

I think this problem that we face today can be described as bigger than any one of us. It is a problem requiring a unified effort on the part of both parties, the cooperation on the part of the executive and legislative branches of Government, along with leadership from labor and business, as well as the consultation from the Federal Reserve and its Chairman.

Then the resolution asks that these people meet until they find a solution and call upon others to meet with them, so that it will be an all-out effort to find solutions to the difficult problems that we are facing today.

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

Mr. BARTLETT. I will yield.

Mr. MANSFIELD. Mr. President, I am about to propound a unanimous-consent request. I ask that it not interrupt the colloquy now underway.

I ask unanimous consent that it be in order at this time to ask for the yeas and nays on the resolution, the Senate resolution, which will be presented shortly.

The PRESIDENT pro tempore. Is there objection? The Chair hears none.

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

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote occur at the hour of 12:30.

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

Mr. BARTLETT. Mr. President, the inflation that this Nation has been experiencing has been called double digit. It certainly is the kind of inflation that we cannot live with and have confidence in the economic future.

Also, we have and are experiencing recession. So we are on the horns of a dilemma. We have an economy now that is not a savings economy, but which is based on debt and based on borrowing—privately, publicly, and in every way.

The old aphorism, a penny saved is a penny earned, is not heard today, and really is not in keeping with the approach that we have been following. But, nonetheless, I think that it is very consistent with the approach that this Nation has taken to its economic challenges in the past, and a penny saved is a penny earned is the kind of philosophy that helped create the wonderful country that we enjoy.

Mr. President, this group of five with which I am associated is a bipartisan group, an ad hoc group, concerned about the economy. I think it is important that it is bipartisan and reflects different philosophies because it shows a mutual concern about our economy, a great interest that we all pull together, and that we have cooperation with the executive branch as well as labor and management.

I think it is also significant that two members of this group, Mr. NUNN and Mr. DOMENICI, circulated a position paper early in the time of my being in the Congress, and also shortly after he was sworn in, in which freshmen Members supported a budget control bill. Such a law is now reality. Additionally, Senator PROXMIRE's amendment to limit Federal spending to a balanced budget has passed the Senate. In the last month 53 Senators cosponsored a letter I circulated calling on the President to submit a balanced budget.

It appears a trend is developing in the Congress. If we are going to be successful in our efforts, all segments of the economy must be willing to sacrifice. For instance, yesterday the Senate voted on the agriculture appropriations bill which is particularly important to my State.

Although I support many of the programs included in the bill, I voted "no" because there is no way to justify this additional expense at this time.

The overall budget submitted to the Congress by the President is $11 billion over a balanced budget, and the agriculture appropriations bill was $120 million more than the amount recommended by the President—9 percent and $3 billion more than last year's budget. Most of the increases were not in pure agriculture but in consumer matters and primarily in increased funding for food stamps, including food stamps for strikers. Certainly the bill will add to our inflationary spiral.

As with the agriculture bill. I intend to vote against future appropriation bills which are inflationary and will tend to add to the burden of the Federal debt.

If we are going to be serious about bringing Federal spending under control we must start now and we will all have to sacrifice. We are far past the stage of paying nominal homage to spending restraints by asking someone else to tighten their belt. We must all contribute to the effort to bring Government under control.

The PRESIDENT pro tempore. The Senator's 5 minutes have expired.

Under the previous order, the Senator from Florida, (Mr. CHILES) is recognized for not to exceed 5 minutes.

Mr. CHILES. Mr. President, I join with my colleagues in submitting this resolution. In it we are calling for a domestic summit conference on the economy in trying to deal with inflation. We use the term "summit conference" a number of times, generally having to deal with our foreign affairs and our international problems. But certainly it is not reserved for that. If it is important enough to think that we need a summit conference to deal with international affairs, certainly the present crisis that we are facing now in regard to our economy justifies our having a domestic summit conference.

When I go home, while inflation has been on people's minds for the last 2 years or so, suddenly I find a situation in which not just the retired people, not just people on fixed incomes, who felt the squeeze very early, are talking about inflation in the economy. Right now you find, completely across the sector, anywhere you go, that the first thing that anybody mentions, whether they are a person working with his hands or whether they are a banker, whatever they are, is that they are concerned about the economy. What they are seeing is our economy going down the drain. They have this tremendously frustrated feeling that no one is doing anything about it; that there is no kind of team effort from their leadership in Washington to do something about it.

What we are seeking in this resolution is to get the sense of the Congress, and the sense of this Senate, that we are ready and willing to participate on the team. We think for there to be a team effort you have to have the congressional leadership from both sides of the aisle; you have to have the leadership of the Federal Reserve System; you have to have the help of the President; you have to bring in labor and you have to bring in management. Everybody has to quit talking about what his plan is and we have to get these heads together and have them sit down and start working together in trying to get a direction we can take.

Mr. President, we are convinced that from the time it was announced that such a meeting was going to be held, the economy would turn around. The people would take heart, because they would realize for the first time since this crisis began developing that we are not going off in splintered directions; that someone is not trying to make partisan political hay, or someone else is not seeking some advantage or to adopt his pet

theories, but we are trying to do something for the country to try to get it back on the track.

Look at what is happening. Every day when I pick up the paper I read that one economist says you have to cut spending at home on some of the domestic programs, and until you do that you are not going to be able to do anything abut inflation.

I find another economist who says you have to cut the military budget, and until you make a drastic cut there, nothing will be done.

Many of us feel that we will have to cut a number of these programs. But you cannot just pick one out and sacrifice it. You cannot expect people in one State or one sector of the economy to bear the burden.

The feeling of this resolution is if we come up with a game plan which has the support of these different groups—of labor and management, the bipartisan support of the Congress and support of the executive—that the American people are perfectly willing to make those sacrifices that they know need to be made and will have to be made in order to do something about our economy. But they want to feel like it is a united effort. Also, Mr. President, so much of this is a psychological thing. Right now we are in the psychology of despair. The despair is because no one is doing anything at this time about the economy.

Mr. President, I ask unanimous consent to add the following names: Mr. BELLMON, Mr. HATFIELD, Mr. HOLLINGS, Mr. METZENBAUM, Mr. ABOUREZK, Mr. BIDEN, Mr. JOHNSTON, Mr. BENTSEN, Mr. CHURCH, Mr. STEVENSON, Mr. HUMPHREY, and Mr. RIBICOFF.

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

Under the previous order, the Senator from New Mexico, (Mr. DOMENICI) is recognized for not to exceed 5 minutes.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors: Mr. PEARSON, Mr. BUCKLEY, Mr. RANDOLPH, Mr. COOK, Mr. HANSEN, Mr. FANNIN, Mr. GOLDWATER, Mr. MONTOYA, Mr. MUSKIE, Mr. HART, and Mr. HATHAWAY.

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

Mr. DOMENICI. Mr. President, today I join with five other first-term U.S. Senators in proposing to the U.S. Senate, and, thus, to the President, Arthur Burns, and the American people, that the leaders of this country join themselves together in what we have chosen to call an economic summit conference.

Mr. President, it is obvious to me that there is no one single way to solve the inflation and the instability which is rampant in the American economy today. Since there is no single way, the American people have no direction from anyone as to what we are going to do. As a matter of fact, we are now only at the point of telling the American people that there are many approaches to inflation, that there are many approaches to solving the instability in the American economy.

Mr. President, one need but read the views of economists, tax experts, fiscal experts, banking experts, and leaders in Congress to find that the answers proposed run from A to Z.

Mr. President, when you have that kind of situation, the American people—the young, the old, the productive, the businessman, the housewife, everyone—concludes no one is doing anything.

Mr. President, I submit that most American people today are in the state of fear, apprehension, anger, shock, because no single leadership forum is telling the American people there is, indeed, a solution, even if it be only that we put some dampers on inflation.

No one is suggesting to the American people the extent of sacrifice, the extent of change, the extent that they individually and they who represent Americans in Congress must change their ways in a unified approach to put the American economy back into a state of stability.

Mr. President, there is no one in the United States that if told the facts and told by the leadership in this country there is an approach, I believe no one from the highest businessman, to the highest business leader, to the average American housewife, to the average American retired person, would not say, "I will give a little, I will sacrifice, I will do what is asked of me."

I honestly believe that the Senators and the Members of the House are willing under a unified approach to say, "I am not suggesting that this approach is right, I had another, but if it is what America needs to convince its people that there is some leadership in effect in the marketplace, then I believe we are all willing to give."

For those who ask how will a conference of this type work when there are diverse views among those who meet, I ask the question, if they do not meet, how will their diverse views solve anything, for their diverse views are not even around the table to see if there is some room for the President to compromise with the congressional leaders, or they with the President, or Arthur Burns with some of them or, indeed, the leaders of labor and management.

If we do not bring them together and insist that they talk, insist that they effect some compromise, even if they leave some loose ends, without some compromise on tax, on the budget, on the restraint that we are going to ask the American people in the area of consumer purchasing, where will that approach come from?

Mr. President, within the last few days——

The PRESIDENT pro tempore. The Senator's 5 minutes have expired.

Mr. DOMENICI. I thank the Chair and would conclude by saying that I am pleased to be part of this and hope that all the Senators will support it and that they will give support to the President of the United States.

The PRESIDENT pro tempore. Under the previous order, the Senator from Kentucky (Mr. HUDDLESTON) is recognized for not to exceel 5 minutes.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the names of Mr. HELMS, Mr. HASKELL, Mr. METCALF, Mr. HUGHES, Mr. PASTORE, Mr. BAYH, Mr. TUNNEY, Mr. STENNIS, Mr. SCOTT of Pennsylvania, Mr. MAGNUSON, Mr. SYMINGTON, Mr. PERCY, and Mr. FULBRIGHT be added as cosponsors to the pending resolution.

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

Mr. ROBERT C. BYRD. Did the Senator include my name?

Mr. HUDDLESTON. If I did not, the Senator will be included before this colloquy is concluded.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. HUDDLESTON. Mr. President, I am very pleased to join with my colleagues in proposing this Senate resolution which calls for a domestic summit to develop a unified plan of action to restore stability and prosperity to the American economy.

It is certainly no secret that our Nation faces grave economic difficulties. In fact, a recent Harris poll found that 82 percent of our people believe the U.S. economy is in trouble. And, according to this survey, confidence in the Federal Government to come up with economic policies that work has now hit rock bottom.

We have the worst inflation rate since World War II. The interest rate is the highest in the history of this country. There are shortages of various industrial materials which underlie our Nation's construction and manufacturing enterprises. Rising prices, combined with a loss of real income and a loss of purchasing power, have saturated the economy. At the same time, we have indications of a downturn in the economy and questions about employment. There is a pervasive disillusionment and apprehension among our people.

We are caught in an economic quagmire, and extricating ourselves from that quagmire is the foremost problem in our Nation. It is a problem which demands resolution, and demands resolution now—or we will all pay the consequences and pay dearly.

Irresolution and inconsequential action will not suffice. We must have a wide-ranging, well-conceived, and well-executed plan of action or we risk contributing to our own disaster.

This resolution, the outgrowth of study and discussion among Senators BARTLETT, CHILES, DOMENICI, NUNN, and myself, is, therefore, being offered as a means of setting a framework for action—action which must come if we are to regain a measure of economic stability and vitality in our Nation. It is based on a few simple concepts—concepts which we nevertheless believe can help us develop a "game plan" which might save us from economic chaos.

First, it is based on the idea that exceptional circumstances demand exceptional responses. There is no question that the current U.S. economic picture is exceptional. The idea of a domestic summit—at the highest levels of Government—and involving all sectors of the economy would we believe focus the necessary attention and activity on the issue.

Second, it is based on the idea that unity is required. Our economic problems

are not simply eastern problems or western problems or Democratic problems or Republican problems or business problems or labor problems or consumer problems. They are American problems, and they require that we put aside partisan politics for the common good.

Third, it is based on the idea that a highly visible group must provide leadership in developing a plan of action for the Nation as a whole.

Fourth, it is based on the idea that a set of recommendations is needed. No one policy, no one program, no single advice is likely to remedy our various economic ills. Instead, we require a number of proposals—to deal with unemployment; with interest rates; with Federal spending; with real income and purchasing power; with savings, investment, and productivity; with shortages of various industrial materials.

Finally, it is based on the realization that no plan of action will be easy. Our problems are serious. They affect all segments of our economy. They affect all our people. They affect very directly the standard of living we enjoy today and that which we hope to have tomorrow.

We have been a fortunate nation, with an abundance of materials and an economy which has provided a good life for millions of Americans for the past 30 years. In order to restore the erosion which has occurred and to insure a good life in the future, we must employ policies which require discipline, compromise, and perhaps sacrifice in the months or even years ahead. Furthermore, we must employ fair policies, which will equitably share the burdens which might be imposed.

Self-interest must now be placed aside in order that we all benefit in the future.

I hope and I believe that our proposal will be given serious and expeditious consideration and that it will set the stage for meeting what I believe to be the most threatening domestic problem of recent time.

The fact that this legislation drew the support of 66 Members of the Senate even before it was introduced is a message to the President that the Congress wants to work with him—and all other parties—in solving our current economic problems. These 66 cosponsors represent both political parties and all philosophical and ideological points of view. This is a nonpartisan approach which in effect says we are all willing to work together, compromise mutually, and put together a plan of action that the country as a whole can support.

If President Nixon would embrace the concept in his nationwide address Thursday night I feel confident that all other sectors of the economy and the public at large would join together in seeking a unified economic policy.

The PRESIDENT pro tempore. Under the previous order, the Senator from Georgia (Mr. NUNN) is to be recognized for a period not to exceed 5 minutes.

Mr. NUNN. Mr. President, I ask unanimous consent that the names of Mr. BEALL, Mr. ROBERT C. BYRD, Mr. NELSON, Mr. CRANSTON, Mr. DOLE, Mr. THURMOND, Mr. STEVENSON, Mr. SPARKMAN, Mr. COTTON, Mr. TAFT, Mr. SCHWEIKER, Mr. COOK, and Mr. STAFFORD be added as cosponsors of this resolution.

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

Mr. NUNN. Today, I have introduced, with four of my colleagues, a resolution calling for a domestic summit to try to get some unity of purpose and action in restoring stability and prosperity to the American economy.

The present threat to America from the serious economic deterioration we are witnessing is far greater than any external threat we face at the moment. It is time to bring the era of negotiation and the spirit of détente home. It is time for us to confront the problems of our failing economy with the same bipartisan dedication to the safety and well-being of the Nation which we have regularly shown in facing foreign dangers but too rarely rise to in meeting domestic difficulties.

It is time for the President, the leadership of Congress, leaders of labor and business and other elements of American society to put aside their domestic and political differences and to work together for the common good. In my view, the overall economic situation is so serious that all sectors of the economy can expect to suffer unless each of us is able to look beyond narrow self-interest and, in a spirit of discipline and compromise, to seek more general and enduring remedies. I believe that if we do not start pulling together now, we are very apt to fall apart.

The resolution my colleagues and I are sponsoring calls for the President, the top leaders of both parties in both Houses of Congress, and the Chairman of the Federal Reserve Board to meet together urgently in a domestic summit with appropriate leaders of business and labor and anyone else they think should participate. It calls on them to keep meeting until some program of action can be agreed to which will show the American people that we have stopped pulling and shoving in different directions and are prepared to move together to end our economic drift.

I do not believe in economic miracles. I do not expect the top public and private leadership to sit right down and come up with a common cure for all that ails us. The problems are too complex, the philosophies are too divergent, the priorities are too varied for us to expect a total unity package to emerge from the summit meeting. But it is not too much to expect specific actions to be agreed to, specific compromises to be reached and specific mechanisms for consultation, coordination, and implementation to be established which can start us back on the road to full economic recovery.

Our resolution does not suggest specific recovery measures to be adopted. Personally, I have strong views about the critical need to balance the Federal budget in order to reduce its inflationary impact and to end the money market demands of deficit financing which have pushed up interest rates. There are other measures I would recommend as well.

But at this point, what we need and what we are calling for is not a specific program or singular approach, for these would only invite controversy and lead to disagreement. What America needs now, first and foremost, and what our resolution seeks by asking for the widest and strongest possible call from Congress, is for the top leadership of the Nation to get together, to work together and to stay together until they can agree on some action plan which will restore economic stability and public confidence.

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

The PRESIDING OFFICER (Mr. CHILES). Under the previous order, the Senator from West Virginia (Mr. ROBERT C. BYRD) is to be recognized for a period not to exceed 15 minutes.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time to be taken out of the time of the Senator from West Virginia.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, I wish to congratulate those Senators who have spoken on the floor today concerning the subject of a summit to deal with the economy.

The United States is in an economic mess. Business people are upset and uncertain; prices and interest rates are astronomical; the financial markets are demoralized; and, although labor unions have shown remarkable restraint, strikes and labor strife are now sweeping the country. The average American citizen is more concerned today than he has been in years about his ability—or his lack of ability—to make ends meet. The price of every necessity of life has gone up and up, and the American standard of living has gone down and down.

No one escapes the cruel squeeze of inflation. Young people establishing households are locked out of the kind of housing they would like to acquire by the sky-high price of real estate and mortgage money. Families with children of college age find that they cannot afford the cost of higher education. The elderly see the value of their life savings slip away, while the purchasing power of fixed incomes diminishes month by month.

It is shocking and outrageous that in this hitherto affluent and prosperous land, old people, thousands of them, are reduced to eating dog food because of the steady escalation in the price of food for human consumption. It is scandalous that the prudent and thrifty now can find no way to protect the savings they have laid aside for their declining years from the steady and ruinous erosion of out-of-control inflation.

And what is the administration doing about it? It is typically resorting to its old and discredited habit of launching a public relations campaign instead of attempting substantial action. High-level meetings are held by the executive

branch; statements are issued, and pious talk is heard about the "old-time religion" in economics. The American people, meantime, are getting an old-fashioned runaround.

The voices coming from the oval office, Key Biscayne, San Clemente, and elsewhere are not even singing the same tune. The Secretary of the Treasury says billions should be cut out of the Federal budget to curb inflation, while the Director of OMB says, "No, it cannot be done." The Chairman of the Council of Economic Advisers takes the position of blaming the American people for inflation and is quoted as saying, "I hope we won't do something just to be seen doing something," while the President himself, I am afraid, is doing just precisely that. The action is all window dressing and charades.

It is time for this administration, the paralysis of Watergate notwithstanding, to level with the American people. If inflation is worldwide, and is a part of the problem—and it is—then the administration ought to undertake serious and meaningful international efforts to deal with the situation. If excessive Government spending is a part of the problem—and it is—then both the administration and Congress ought to make an honest and effective effort to reduce spending and to reduce the budget. If tax law changes are needed to encourage business and help the small taxpayer—and they are—then the administration and Congress should vigorously press for such changes.

The Senate has already acted in one area to stimulate production and thereby reduce prices by passage of its bill to create a National Commission on Supplies and Shortages, which is aimed at improving the situation with respect to strategic materials. Much more action is need to restore the public's confidence in the ability of Government to act. But leadership—sound and effective leadership—on the part of the administration is the first essential.

Despite all the efforts of the administration to discredit Congress, the fact is that Congress, in the first 5 years of the present administration, reduced the administration's appropriations budget by $23.5 billion. And despite all of the rhetoric from the other end of Pennsylvania Avenue, the administration's fiscal and monetary policies have had the net effect of producing, at one and the same time, roaring inflation and economic slowdown. The double digit inflation and the double talk have gone hand in hand.

As for fiscal policy, the Nixon administration's spending has topped all previous records, giving the Nation both its first $200 billion budget and its first $300 billion budget. As for monetary policy—which now has given U.S. business its first 12-percent prime rate ever—that policy has been free and easy for much longer than it has been tight.

I do not believe we are likely to see much improvement in our economic troubles until confidence in Government is restored and until such time as business people and citizens in general can look to the future with some degree of certainty as to what Government leaders will be taken by the President in the cies will be.

Confidence is an intangible, but it is a very real ingredient without which a democratic free enterprise system cannot function as it should. It was confidence that was lacking in the Hoover years of the great depression. The people did not believe then that prosperity lay around the corner, and they do not believe it now.

U.S. economic health and stability have become a casualty of Watergate—and there is little point in trying to ameliorate or camouflage that fact. The sooner that situation can be resolved—and the sooner the administration in power can, and will, bring its full weight to bear in a unified way upon the problems of the domestic economy—the better for all Americans it will be.

I believe, Mr. President, that the resolution that the five distinguished Senators have introduced is a right step in the right direction at the right time, and I am privileged to join with my distinguished majority leader and almost 70 other Senators in cosponsoring this resolution. I congratulate the Senators on their vision and on the kind of leadership that they have shown, and I hope that the Senate will not only overwhelmingly but unanimously vote for the resolution at 12:30 p.m. today.

Mr. MANSFIELD. Mr. President, will the Senator yield to me before the presentation of the resolution?

Mr. ROBERT C. BYRD. Yes, I yield to the majority leader.

Mr. MANSFIELD. Mr. President, I want to join in commending the distinguished Senators—the Senator from Florida (Mr. CHILES), the Senator from Oklahoma (Mr. BARTLETT), the Senator from New Mexico (Mr. DOMENICI), the Senator from Kentucky (Mr. HUDDLESTON) and the Senator from Georgia (Mr. NUNN)—for the initiative which they have shown, as the distinguished assistant majority leader (Mr. ROBERT C. BYRD) has said, in presenting a resolution facing up, or attempting to face up, to the No. 1 problem facing the Nation today. That is, the problem of inflation.

It is one about which consideration is long overdue. I hope that the White House will understand that this resolution is offered in the spirit of cooperation; that what the Senate wants to do, and what the Congress wants to do, is to work in partnership with the President to find ways and means to face up to the inflationary situation which at the present time amounts to somewhere between 11 and 12 percent.

We want to face up to a situation which sees a decline in the stock market but an upswing in unemployment from 5.1 to 5.2 percent; which sees a loss in production of 6 percent under last year; which sees wages lagging behind prices; and that creates a situation which, if not attended to and allowed to progress through the rest of this decade and into the first part of the next, the first year or two in the next decade, will take twice as much money then to buy what we are capable of buying at the present time.

The situation is indeed critical. I hope that the presentation of this resolution will be up to and what Government polispirit in which it has been offered, and hopefully the proposal of the five Senators who are responsible for it will be taken into account when the President makes his address to the Nation tomorrow night on the economy; and that hopefully out of this will come a spirit of cooperation and partnership between the two branches of Government in facing up to this problem which is so acute.

Mr. NUNN. Will the Senator yield briefly?

Mr. STAFFORD. Mr. President, will the Senator yield very briefly?

Mr. ROBERT C. BYRD. I had promised the distinguished Senator from Georgia I would yield next to him; then I shall yield to the Senator from Connecticut.

Mr. NUNN. Mr. President, I wish to thank the majority whip and the majority leader for the kind words they have stated.

I appreciate this, and I know my colleagues, who have worked on this resolution, appreciate the kind words and support of the leaders on both sides of the aisle in seeing that this matter is expedited.

Mr. President, I call up the resolution which is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated for the information of the Senate.

The second assistant legislative clerk read the resolution as follows:

S. RES. 363

Resolution calling for a domestic summit to develop a unified plan of action to restore stability and prosperity to the American economy

Resolved, Whereas the American economy has in recent months reached an alarming state of instability and uncertainty combining reduced economic growth, corrosive inflation, high unemployment, unprecedented high rates of interest, the decline of available loan and venture capital, serious changes in energy supply and pricing, unanticipated and destabilizing commodity shortages, and growing international economic and financial uncertainties; and

Whereas the complexity, magnitude and persistence of these difficulties has occasioned substantial disagreement as to their causes and remedies; and

Whereas no agreed program for effective action has been developed; the Congress, the Administration, and the Federal Reserve Board, acting independently, have not yet been able to overcome these problems; and specific government programs, levels of federal spending and activities in all economic sectors continue to contribute to these difficulties; and

Whereas the American people in the face of this persistent economic deterioration are growing more dismayed and uncertain as evidenced by the widespread labor unrest and the declining financial markets of recent weeks; and

Whereas this deepening lack of confidence could magnify an already serious economic situation into a national crisis should these difficulties continue unabated; Now therefore be it

Resolved, That it is the sense of the Senate that the leadership of the Nation responsible for our economic well being meet together immediately in a spirit of unity to design a set of policy actions to achieve the common goal of restoring stability and growth to the American economy and confidence and prosperity to the American people.

It is imperative as in previous moments of great national need, that the two political parties, the Congress and the President, labor and management, put aside their domestic and political differences and work together in a spirit of discipline, compromise, and sacrifices for the common good.

SEC. 2. It is further the sense of the Senate that this domestic summit be convened forthwith comprised of the President, the majority and minority leadership of both Houses of the Congress, the Chairmen and ranking minority members of the Appropriations Committee of both House, the Chairmen and ranking minority members of the Senate Finance Committee and the House Ways and Means Committee, and the Chairman of the Federal Reserve Board, together with leaders of labor and business, and such other participants as they may agree upon. They shall meet and devote such time as necessary until a plan of action is decided upon which, by its demonstration of renewed unity, direction, and purpose will gain the public support and confidence necessary to be effective in overcoming these difficulties.

SEC. 3. It is further resolved by the Senate that it stands ready to cooperate fully in the spirit of commitment and unity which the solution of this truly national problem will require of all elements of American society.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Under the previous unanimous-consent order the vote will occur on the resolution at 12:30 p.m.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the resolution remain in a laid-aside status until the hour of 12:30 p.m.

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

Mr. ROBERT C. BYRD. Now, Mr. President, I am glad to yield to the Senator from Vermont.

Mr. STAFFORD. Mr. President, I appreciate the assistant majority leader yielding. As the acting minority leader I wish to add our commendation on this side of the aisle to the commendations of the majority leader in connection with the submission by the five Senators of the resolution pending, which will be voted on at 12:30 p.m. today. We, too, hope that the vote will be unanimous. We believe inflation is certainly one of the greatest problems which this Nation faces, and the greatest domestic problem at the present time.

The great danger of inflation is that if it gets totally out of hand it can destroy this country and our ability to meet and face the problems which we have, not only domestically but also around the world.

Speaking for the minority leadership, we join the majority in commending Senators who sponsored the resolution.

I thank the distinguished assistant majority leader for yielding.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, if I have any time remaining, I yield it back.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. NUNN). Under the previous order there will now be a period for the transaction of routine morning business for not to exceed 30 minutes with statements therein limited to 5 minutes each.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT UNTIL 10 A.M. WEDNESDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today that it stand in adjournment until the hour of 10 o'clock tomorrow morning.

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

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the orders for the recognition of Senators are consummated on tomorrow there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 5 minutes each, at the conclusion of which the Senate resume consideration of S. 3146, the real estate settlement services bill; and that at some point during the afternoon, at the discretion of the distinguished majority leader or his designees, the Senate resume its consideration of the unfinished business, S. 707.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The 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. JOHNSTON). Without objection, it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States transmitting a secret document entitled "Should the United States Continue To Finance Military Assistance to Taiwan?" (with an accompanying report). Referred to the Committee on Government Operations.

REPORT OF RECEIPTS AND DISBURSEMENTS TO APPROPRIATIONS FROM DISPOSAL OF MILITARY SUPPLIES, EQUIPMENT, AND MATERIAL AND LUMBER OR TIMBER PRODUCTS

A letter from the Assistant Secretary of Defense, reporting, pursuant to law, on the receipts and disbursements to appropriations from disposal of military supplies, equipment, and material and lumber or timber products, Department of Defense, as of March 31, 1974 (with accompanying papers). Referred to the Committee on Appropriations.

APPROVAL OF REA-INSURED LOAN TO COLORADO-UTE ELECTRIC ASSOCIATION, INC., MONTROSE, COLO.

A letter from the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, reporting, pursuant to law, the approval of an REA-insured loan in the amount of $11,567,000 to Colorado-Ute Electric Association, Inc., of Montrose, Colo. Referred to the Committee on Appropriations.

APPROVAL OF REA INSURED LOAN TO TRI-STATE GENERATION & TRANSMISSION ASSOCIATION, INC., DENVER, COLO.

A letter from the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, reporting, pursuant to law, the approval of an REA insured loan in the amount of $10,326,000 to Tri-State Generation & Transmission Association, Inc., of Denver, Colo. Referred to the Committee on Appropriations.

REVISED CONGRESSIONAL REPORT ON NAVAL AIR ENGINEERING CENTER, PHILADELPHIA, PA.

A letter from the Assistant Secretary of the Navy (Installations and Logistics), transmitting, pursuant to law, a revised congressional report on the facts concerning a Department of the Navy action pertaining to the Naval Air Engineering Center, Philadelphia, Pa. (with an accompanying report). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION FOR STRIKING OF MEDALS IN COMMEMORATION OF THE BICENTENNIAL OF THE U.S. ARMY, THE U.S. NAVY, AND THE U.S. MARINE CORPS

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to provide for the striking of medals in commemoration of the bicentennial of the U.S. Army, the U.S. Navy, and the U.S. Marine Corps (with accompanying papers). Referred to the Committee on Banking, Housing and Urban Affairs.

PUBLICATION ENTITLED "NATURAL GAS ACT, MARCH 1, 1974"

A letter from the Chairman, Federal Power Commission, submitting, for the information of the Senate, a publication entitled "Natural Gas Act, March 1, 1974" (with an accompanying publication). Referred to the Committee on Commerce.

ANNUAL REPORT OF THE FEDERAL POWER COMMISSION, 1973

A letter from the Chairman, Federal Power Commission, transmitting, pursuant to law,

its annual report for the fiscal year July 1, 1972, to June 30, 1973 (with an accompanying report). Referred to the Committee on Commerce.

PROPOSED PUBLIC BROADCASTING FINANCING ACT OF 1974

A letter from the Executive Office of the President, Office of Telecommunications Policy, transmitting a draft of proposed legislation to amend certain provisions of the Communications Act of 1934 to provide long-term financing for the Corporation for Public Broadcasting and for other purposes (with accompanying papers). Referred to the Committee on Commerce.

REPORT ON AMTRAK

A letter from the Secretary of Transportation, transmitting, pursuant to law, a report on the Department's views and recommendations concerning Amtrak in the areas of policy and legislation, financial plans and rail operations (with an accompanying report). Referred to the Committee on Commerce.

REPORT OF INTERNATIONAL AGREEMENTS, OTHER THAN TREATIES, ENTERED INTO BY THE UNITED STATES

A letter from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States (with accompanying papers). Referred to the Committee on Foreign Relations.

REPORT ON BUDGETARY RESERVES, JUNE 30, 1974

A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on budgetary reserves as of June 30, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

REPORT ON ARRANGEMENTS FOR SCIENTIFIC RESEARCH, DEPARTMENT OF THE INTERIOR

A letter from the Assistant Secretary of the Interior, reporting, pursuant to law, on grants made during calendar year 1973 to nonprofit institutions and organizations for support of scientific research programs (with accompanying papers). Referred to the Committee on Government Operations.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports of the General Accounting Office of the previous month (with accompanying papers). Referred to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on Federal productivity, volume I, "Productivity Trends, fiscal years 1967–73" (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 on "Audit of Financial Statements of St. Lawrence Seaway Development Corporation, Calendar Year 1973, Department of Transportation" (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 on "Home Health Care Benefits Under Medicare and Medicaid, Department of Health, Education, and Welfare" (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 on "The Need To Consolidate Responsibility for Automatic Digital Network (Autodin) Terminals, Department of Defense" (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 on Numerous Improvements Still Needed in Managing U.S. Participation in International Organizations, Department of State and other agencies (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 on Military Retention Incentives: Effectiveness and Administration, Department of Defense (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 re Proper Use of the Economic Order Quantity Principle Can Lead to More Savings, Department of Defense, Department of Transportation, General Services Administration, and Veterans' Administration (with an accompanying report). Referred to the Committee on Government Operations.

PROPOSED PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE NORTHERN PAIUTE BEFORE THE INDIAN CLAIMS COMMISSION

A letter from the Acting Secretary of the Interior, submitting, pursuant to law, a proposed plan for the use and distribution of judgment funds awarded in docket 87 to Northern Paiute before the Indian Claims Commission (with an accompanying report). Referred to the Committee on Interior and Insular Affairs.

PROPOSED PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE NEZ PERCE TRIBE OF IDAHO BEFORE THE INDIAN CLAIMS COMMISSION

A letter from the Acting Secretary of the Interior, submitting, pursuant to law, a proposed plan for the use and distribution of judgment funds awarded in docket 175 to the Nez Perce Tribe of Idaho before the Indian Claims Commission (with the accompanying report). Referred to the Committee on Interior and Insular Affairs.

PROPOSED PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE EASTERN BAND OF CHEROKEE INDIANS BEFORE THE INDIAN CLAIMS COMMISSION

A letter from the Acting Secretary of the Interior, submitting, pursuant to law, a proposed plan for the use and distribution of judgment funds in accordance with the Indian Judgment Funds Use or Distribution Act of 1973 (87 Stat. 466) (with an accompanying report). Referred to the Committee on Interior and Insular Affairs.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports relating to third preference and sixth preference classification for certain aliens (with accompany papers). Referred to the Committee on the Judiciary.

ANNUAL REPORT OF THE INTERIM COMPLIANCE PANEL

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, the annual report of the Interim Compliance Panel for calendar year 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

SECOND SPECIAL REPORT ON ALCOHOL AND HEALTH

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the Second Special Report on Alcohol and Health (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

REPORT OF THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

A letter from the Office of the Deputy Attorney General, transmitting, pursuant to law, a report of the Equal Employment Opportunity Coordinating Council (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

PROPOSED EXECUTIVE PERSONNEL SYSTEM ACT

A letter from the Chairman, U.S. Civil Service Commission, transmitting a draft of proposed legislation to amend title 5, United States Code, to establish and govern the Executive Personnel System and for other purposes (with accompanying papers). Referred to the Committee on Post Office and Civil Service.

REPORT ON REDUCTION IN WATER CONSUMPTION AND FLOW OF SEWAGE

A letter from the Administrator, U.S. Environmental Protection Agency, transmitting, pursuant to law, a report on the preliminary results of studies and investigations by the Environmental Protection Agency on reducing water consumpton and the total flow of sewage (with an accompanying report). Referred to the Committee on Public Works.

PROSPECTUS PROPOSING RENEWAL OF LEASEHOLD INTEREST AT 30 WEST BROADWAY, NEW YORK, N.Y.

A letter from the Acting Administrator, General Services Administration, submitting, pursuant to law, a prospectus which proposes renewal of the leasehold interest at 30 West Broadway, New York, N.Y. (with accompanying paper). Referred to the Committee on Public Works.

REPORT ON USE OF MASS MEDIA FOR HIGHWAY SAFETY

A letter from the Secretary of Transportation, transmitting, pursuant to law, a report on the use of mass media for highway safety (with an accompanying report). Referred to the Committee on Public Works.

REPORT TO CONGRESS ON 1974 HIGHWAY LITTER STUDY

A letter from the Secretary of Transportation, transmitting, pursuant to law, a report on the 1974 Highway Litter Study (with an accompanying report). Referred to the Committee on Public Works.

PROPOSED AMENDMENT OF SECTION 322, TITLE 23, UNITED STATES CODE

A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend section 322 of title 23, United States Code (with accompanying papers). Referred to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore (Mr. METCALF):

A concurrent resolution from the Legislature of the State of Louisiana. Referred to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION No. 111

"A concurrent resolution urging Congress to repeal the Professional Standard Review Organization Law; and for other purposes

"Whereas, Section 249–F of Public Law 92–603, Professional Standard Review Organization (PSRO), was enacted by the Congress of the United States in 1972 without due consideration and careful deliberation by both its bodies; and

"Whereas, operation of Professional Standard Review Organization will cause great harm and financial hardship to the elderly and poor people of our country because of its unrealistic requirements on physicians to practice their profession based on standards and norms approved by the Department of Health, Education, and Welfare; and

"Whereas, these segments of our population will suffer greatly if denied medical care and hospitalization deemed necessary by their physician but not in conformance with HEW standards based on averages and medians rather than human needs; and

"Whereas, this law may well inhibit the great advancement seen in American medicine during this century of progress in conquering many of man's dread diseases.

"Now, therefore, be it resolved by the House of Representatives of the Louisiana Legislature, the Senate thereof concurring herein, that this body notify the Congress of the United States that the Professional Standard Review Organization Law is ill-conceived legislation, harmful to the public and pernicious in its effect on the practice of medicine.

"Be it further resolved that the Congress be urged to repeal the Professional Standard Review Organization Law as quickly as possible to prevent the damage it will cause to the public and the American health care system.

"Be it further resolved, that this Legislature encourage Louisiana physicians to continue the ethical practice of their profession, to maintain the privacy and confidentiality of their patient's records, to retain their right to make medical decisions based on their own professional judgment, and to support the existing system of peer and utilization review available in hospitals and nursing homes, medical societies and associations.

"Be it further resolved that the Secretary of State is hereby authorized and directed to transmit an appropriate copy of this Resolution to the Secretary of the Senate of the United States, to the Clerk of the House of Representatives of the United States, and to each member of the Louisiana Congressional Delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PASTORE, from the Joint Committee on Atomic Energy, with amendments:

H.R. 15323. An Act to amend the Atomic Energy Act of 1954, as amended, to revise the method of providing for public remuneration in the event of a nuclear incident, and for other purposes (Rept. No. 93–1027).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. TALMADGE, from the Committee on Finance:

Charles A. Cooper, of Florida, to be an Assistant Secretary of the Treasury;

Stephen S. Gardner, of Pennsylvania, to be Deputy Secretary of the Treasury; and

Richard R. Albrecht, of Washington, to be General Counsel for the Department of the Treasury.

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

By Mr. CANNON, from the Committee on Commerce:

Francis H. McAdams, of the District of Columbia, to be a member of the National Transportation Safety Board; and

Louis M. Thayer, of Florida, to be a member of the National Transportation Safety Board.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. STEVENSON:

S. 3794. A bill to amend the Emergency Daylight Saving Time Energy Conservation Act of 1973 in order to provide that daylight saving time pursuant to such act shall terminate on the last Sunday of October 1974 and that in the calendar year 1975 daylight saving time shall begin on the last Sunday of February. Referred to the Committee on Commerce.

By Mr. SPARKMAN (for himself and Mr. ALLEN):

S. 3795. A bill to amend the Clean Air Act to assure consideration of the total environmental, social, and economic impact while improving the quality of the Nation's air. Referred to the Committee on Public Works.

By Mr. WILLIAMS:

S. 3796. A bill to amend the Rail Passenger Service Act of 1970 in order to require that before the National Railroad Passenger Corporation changes any schedule of, or increases any rate, fare, or charge for, rail passenger service, the Corporation shall hold a public hearing and make a finding that such change or increase is reasonable and in the public interest. Referred to the Committee on Commerce.

By Mr. BENTSEN:

S. 3797. A bill to provide education equalization incentive grants to the States. Referred to the Committee on Labor and Public Welfare.

By Mr. JAVITS (for himself, Mr. KENNEDY, Mr. DOLE, Mr. JOHNSTON, Mr. ABOUREZK, Mr. BROOKE, Mr. CASE, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HOLLINGS, Mr. HUMPHREY, Mr. LONG, Mr. MATHIAS, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. METZENBAUM, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. HUGH SCOTT, Mr. TUNNEY, and Mr. WILLIAMS):

S. 3798. A bill to extend the Economic Opportunity Act of 1964, further Head Start, community action, community economic development, and other antipoverty efforts, to provide for increased involvement of State and local governments in antipoverty efforts, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. FONG:

S. 3799. A bill for the relief of Mrs. Agnes J. Wong and Dr. Samuel J. Wong, Jr. Referred to the Committee on the Judiciary.

By Mr. FONG (for himself, Mr. METCALF, Mr. BENNETT, Mr. BROOKE, Mr. DOLE, Mr. DOMENICI, Mr. FANNIN, Mr. GURNEY, Mr. JAVITS, and Mr. WILLIAMS):

S. 3800. A bill to provide for the appointment of legal assistants in the courts of appeals of the United States. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STEVENSON:

S. 3794. A bill to amend the Emergency Daylight Saving Time Energy Conservation Act of 1973 in order to provide that daylight saving time pursuant to such act shall terminate on the last Sunday of October 1974 and that in the calendar year 1975 daylight saving time shall begin on the last Sunday of February. Referred to the Committee on Commerce.

Mr. STEVENSON. Mr. President, last December 15 the Congress approved year-round daylight saving time on a 2-year experimental basis to save energy during a serious energy shortage. I had earlier proposed legislation limiting the experimental period to 1 year. But because the Department of Transportation and the Office of Energy Conservation said it would take 2 years to assemble the necessary data to analyze the effects of year-round daylight saving time, the Congress provided for a 2-year experimental period.

As part of the experiment, the Department of Transportation was required to provide the Congress with an interim report on the effects of year-round daylight saving time by June 30, 1974. That report has now been made available, and it supports all the claims which were made for temporary year-round daylight saving time when the Congress approved it.

The report notes:

The analysis indicates that yrdst probably reduces electricity demand during the winter months, with the savings amounting to approximately one percent.

The report also concludes that—

No significant effects on traffic safety can be attributed to Yrdst . . . fatalities involving school-age children over the entire day in both January and February, 1974, are reduced from the previous year.

Despite the positive results of this experiment with year-round daylight saving time, the Department of Transportation study found that a majority of the American people would prefer daylight saving time from March through October—an 8-month period.

The study also concludes that more data concerning energy savings and traffic effects are needed and urges that the daylight saving time experiment be continued on a modified basis.

I believe these conclusions make good sense. And so I am introducing legislation to repeal year-round daylight saving time and provide instead for 8 months—March to October—of daylight saving time. The Arab oil embargo has been lifted, and the immediate energy emergency has eased. But with 8-month daylight saving time we can continue to achieve energy savings and at the same time respond to the public preference for standard time from November through February. To avoid the public inconvenience associated with dark mornings, I believe it makes sense to return to standard time during November, December, January and February.

The bill I am introducing would provide for a return to standard time beginning on the last Sunday in October and ending on the last Sunday in February.

September and October are months during which we have observed daylight saving time since enactment of the Uniform Time Act in 1966. Significantly, the length of the days and the time of sunrise in March and April are approximately the same as in September and October. According to the Department of Transportation report, a majority of the public approved daylight saving time during the months of March and April, as well as the months of September and October. This bill would extend daylight saving time to 8 months by making it effective in March and April.

Mr. President, I hope the Senate Commerce Committee will schedule hearings in the near future to consider this matter in time to initiate appropriate changes before the end of October.

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

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

S. 3794

A bill to amend the Emergency Daylight Saving Time Energy Conservation Act of 1973 in order to provide that daylight saving time pursuant to such Act shall terminate on the last Sunday of October 1974 and that in the calendar year 1975 daylight saving time shall begin on the last Sunday of February

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 7 of the Emergency Daylight Saving Time Energy Conservation Act of 1973 is amended to read as follows:

"SEC. 7. (a) This Act shall take effect at 2 o'clock antemeridian on the fourth Sunday which occurs after the date of enactment of this Act, and except as provided in subsection (b) shall terminate at 2 o'clock antemeridian on the last Sunday of October 1974.

"(b) For the purposes of section 3(a) of the Uniform Time Act of 1966 (15 U.S.C. 260a (a)) the period for the advancement by one hour of the standard time of each zone shall in the calendar year 1975 begin at 2 o'clock antemeridian on the last Sunday of February."

Sec. 2. Notwithstanding the first section of this Act the Secretary of Transportation shall make the final report pursuant to section 4(a) of the Emergency Daylight Saving Time Energy Conservation Act of 1973, except that such report may be made not later than August 31, 1975.

By Mr. WILLIAMS:

S. 3796. A bill to amend the Rail Passenger Service Act of 1970 in order to require that before the National Railroad Passenger Corporation changes any schedule of, or increases any rate, fare, or charge for, rail passenger service, the Corporation shall hold a public hearing and make a finding that such change or increase is reasonable and in the public interest. Referred to the Committee on Commerce.

NATIONAL RAILROAD PASSENGER CORPORATION AMENDMENTS OF 1974

Mr. WILLIAMS. Mr. President, the public need for modern rail passenger service is greater than ever, yet the service provided by Amtrak has severe shortcomings. Trains are on unreasonably slow schedules, equipment failures are routine occurrences, information and reservation service is very poor, financial losses are unreasonably high when compared with public benefits, and great gaps remain in the structure of Amtrak routes.

Recently, the Senate gave perfunctory approval to Mr. Roger Lewis' reappointment as a member of the Board of Amtrak. I have reservations about that action, and I wish to emphasize that I do not consider this confirmation to be an endorsement of Amtrak's past management performance. In fact, the poor performance of Amtrak is making it increasingly likely that Congress will be forced to remove some of the discretionary authority which was given to Amtrak management.

Today I am introducing a bill to require that, before the National Railroad Passenger Corporation changes schedules or increases rates for rail passenger service, it must hold a public hearing and make a finding that the change or increase is reasonable and in the public interest. I believe this is a minimal requirement which Amtrak could have instituted, but has not.

When Congress approved the Rail Passenger Service Act less than 4 years ago, which created Amtrak, Congress clearly emphasized that it is the public convenience and necessity which require the continuation and improvement of intercity rail passenger service. In order to promote maximum flexibility and to respond to marketing changes as rapidly as possible, Amtrak was exempted from certain provisions of the Interstate Commerce Act pertaining to regulation of rates, fares, and charges. In addition, Amtrak is not subject to any State or other law relating to routes, rates, and service for rail transportation.

Since July 1, 1973, Amtrak has had the authority to determine that certain trains are not required by public convenience or necessity and will impair the ability of the Corporation to provide adequately for other services. The Corporation may then discontinue this service. Although Amtrak must post notification of changes in service at least 30 days prior to any change, there is no channel for public input other than through personal correspondence from affected individuals to the Corporation. And, although Amtrak does post notification of changes in rates, fares, and charges; again, there is absolutely no provision for public input other than correspondence.

It seems clear to me that at the very least we must provide for some public input by requiring a public hearing before Amtrak decides to increase its rates or change its schedule. The public should at least be assured that the changes are reasonable and in its best interest. It also seems to me that this was the intention of Congress when it passed the act 4 years ago.

The Senate Commerce Committee was explicit when it approved guidelines for notifying all localities, organizations and persons whose interests would be affected by discontinuance of service, so they would be afforded adequate notice. The committee believed that this provision was most essential in protecting the public interest. If, within the 30-day notification period, State, regional, or local agencies request continuation of the service and then agree, within 90 days, to reimburse Amtrak for losses accrued by the service, it would be continued.

Certainly Congress recognized that the public, whose support of Amtrak is vital to the Corporation's very existence, must have time to prepare and present its entire case on any occasion when scheduled service is proposed to be discontinued. The same reasoning should hold for proposed schedule changes and increases in rates, fares, and charges.

In view of the great resources available to the railroads for attorneys, experts, the purchasing of transcripts, and the printing of briefs, the provisions in the act regarding public notification are a minimal burden on the Corporation. They are reasonable and clearly consistent with protecting the best interests of the public.

Therefore, I am introducing this bill, which would require that such a public hearing be held and that the Corporation make a finding that such a change or increase is both reasonable and in the public interest. The public should be heard before this determination. Since Amtrak can raise its rates at its own discretion, the public should be given a chance to understand why such an increase was necessary and in its best interest. These hearings would be held in the areas where such service is affected and at least 30 days after notice of any change is posted in each station, depot, or other facility served.

I am hopeful that the management and performance of Amtrak will improve dramatically. If the flexibility provided in the legislation creating Amtrak is not used effectively, Congress can and will revise it.

Mr. President, I ask unanimous con-

sent that this legislation 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. 3796

A bill to amend the Rail Passenger Service Act of 1970 in order to require that before the National Railroad Passenger Corporation changes any schedule of, or increases any rate, fare, or charge for, rail passenger service, the Corporation shall hold a public hearing and make a finding that such change or increase is reasonable and in the public interest

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title IV of the Rail Passenger Service Act of 1970 is amended by inserting at the end thereof the following:

"SEC. 406. PUBLIC HEARING PRIOR TO SCHEDULE CHANGE OR FARE INCREASE.

"The Corporation shall not change any schedule of, or increase any rate, fare, or charge for, rail passenger service until after at least one public hearing with respect to such increase, and finding that such change or increase is reasonable and in the public interest. Any such hearing shall be held (1) in the area where such service is provided, and (2) at least thirty days after notice thereof is posted in each station, depot, or other facility served."

By Mr. BENTSEN:

S. 3797. A bill to provide education equalization incentive grants to the States. Referred to the Committee on Labor and Public Welfare.

THE EDUCATION EQUALIZATION ACT OF 1974

Mr. BENTSEN. Mr. President, I am today introducing the Education Equalization Opportunities Act of 1974. This legislation is virtually identical to an amendment I submitted to the Elementary and Secondary Education Act earlier this year, which was passed by the Senate less than 2 months ago, then dropped in a House-Senate conference.

Mr. President, there is no more fundamental question in education today than the right of a child to have an equal chance for a quality education, wherever he may happen to live.

As long as our school systems depend primarily on the local property tax for their support, there will be more money to educate children in wealthy school districts and less money to educate children in poor districts, where the need is far greater.

The Supreme Court handed down a landmark ruling on school finance last year, in the Rodriguez case, which affected my own State of Texas. And while I agree with that part of the Court's decision declaring that education is primarily a State function, I must also agree with Justice Potter Stewart, that "the method of financing public schools in Texas, as in almost every other State, has resulted in a system of public education that can best be described as chaotic and unjust."

There are those who say the Rodriguez decision only guarantees that the system will continue to be "chaotic and unjust," and that a child's education will be determined by how many wealthy taxpayers there are in his school district.

But it is my belief that the Rodriguez decision is not a cause for despair. It is an incentive to seek justice and equality through new avenues—to wage the battle with creative legislation.

As a result of the wide publicity given to the Rodriguez case in Texas, the Serrano case in California, and cases in New Jersey and other States, public consciousness has been awakened to the issue of equality in the financing of public education.

Several States are now wrestling with the problem, which has been aggravated by increasing school costs in a period of unparalleled inflation, decreasing revenues for education, and the fluctuations and delays in Federal support.

The purpose of this legislation is to provide incentives and rewards for those States which either proceed with equalization plans or maintain the plans they presently have.

I do not believe that movements to equilization can be provided by Federal subsidy alone. I do not believe that it is the proper course for the Federal Government to mandate equalization; that, in fact, would run counter to the decision in the Rodriguez case.

But I do believe that it is a Federal responsibility to assist the States who make the effort to adopt workable plans to improve educational opportunities for children in poorer school districts, through a more equitable method of school finance.

It is quite simply unfair to the children in poorer school districts, which cannot match their wealthy sister districts in teachers salaries, quality of material, and the freedom which adequate funds can provide to experiment in education. The problem is a severe one; in my own State of Texas the variations in taxing ability between the richest and the poorest district ranges as high as 84 to 1; in Louisiana, 52 to 1; in Michigan 30 to 1. The problem is not limited to one section of the country or to the heavily urbanized or rural States; it is a national problem.

Essentially, this legislation would provide reward incentives to States which move to adopt statewide plans for public school financing. To qualify, a State would have to demonstrate to the Commissioner of Education that it has a strategy to insure that State wealth, not local school district wealth, will determine educational quality; that children with greater educational needs, such as the handicapped, receive funds commensurate with their needs; that it will take into account the higher costs of educating children in areas with higher living costs and other factors contributing to increased educational expenditures.

The bill purposefully does not mandate a single method of achieving equalization. That would be counterproductive, since several of the States are now moving in different ways to achieve the same result. Moreover, the Serrano decision in California specifically indicates that there may be several means to achieve the same end. The important factor will be whether there is a statewide strategy and whether that strategy makes a serious effort to upgrade support for the poorer school districts and takes into account the specific criteria listed in the bill.

For too long, we have penalized the child who happens to have been born in a poor school district by giving him an unequal chance for a quality education. The buildings he studies in may be dilapidated and run down; the teaching he receives, despite exceptions, tends to be of lower quality than that in wealthier school districts; the textbooks and supplemental materials he uses may be meager and outdated. All of these inequities must be corrected.

It is a job to which all levels of government—State, Federal, and local—must direct their best efforts.

At this point, I ask unanimous consent to have printed in the RECORD the text of the Education Equalization Opportunities Act of 1974.

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

S. 3797

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Congress finds that the Federal Government has an obligation to provide incentives for each State to assist them in equalizing the resources available within that State so that an opportunity to obtain an education appropriate to individual need will be available to all children regardless of their place of residence within the State. It is, therefore, the purpose of this Act to provide financial assistance in the form of incentives to the States to encourage them to equalize educational opportunity.

SEC. 2. (a) The Commissioner is authorized to make grants to States in accordance with the provisions of this Act. Incentive grants received under this Act may be used to improve the quality of elementary and secondary education among the local educational agencies within each State, in such areas as the State deems vital.

(b) A State is eligible to receive a grant under this Act only if the State educational agency provides assurance that—

(1) the quality of education provided to a child within that State is not the result of the wealth of the school district of the local educational agency in which the child attends school, but reflects the wealth of the State as a whole;

(2) amounts commensurate with their needs are expended on children with greater educational needs, including, but not limited to, educationally disadvantaged, gifted, talented, handicapped, and vocational education students; and

(3) amounts commensurate with the education costs are expended in local educational agencies within the State with greater costs, including cost attributable to sparsity of population, high density of population, and high living costs.

(c) The Commissioner is authorized to establish general guidelines for defining the principles set forth in subsection (b) of this section. No guidelines established under this subsection shall be based upon a formula requiring a mathematical equality of educational expenditures among school districts.

SEC. 3. (a) Any State desiring to receive a grant under this Act shall submit an application to the Commissioner at such time, in such manner, and accompanied by such information as the Commissioner may reasonably require. Each such application shall—

(1) (A) describe the State equalization program that meets the requirements of section 2;

(B) describe, in the case of a State equalization program already in effect, a description of that program which meets the requirements of section 2;

(2) provide assurances that the State will make substantial progress to carry out the State equalization program or will maintain its present equalization program;

(3) provide for making periodic reports to the Commissioner evaluating the effectiveness of the State equalization program assisted under this Act and such other reports as the Commissioner may reasonably require to perform his functions under this Act.

(b) The Commissioner shall approve an application which meets the requirements of subsection (a). The Commissioner shall not finally disapprove an application of a State except after reasonable notice and opportunity for a hearing to a State.

(c) Whenever the Commission, after reasonable notice and opportunity for a hearing to any State, finds that there is a failure to meet the requirements of this Act, the Commissioner shall notify the State that further payments will not be made to the State until he is satisfied that the requirements have been met.

SEC. 4. Unless inconsistent with the purposes of this Act, the General Education Provisions Act shall apply to the equalization incentive grant program authorized by this Act.

SEC. 5. (a) There are authorized to be appropriated to carry out the provisions of this Act $50,000,000 for the fiscal year ending June 30, 1976, $75,000,000 for the fiscal year ending June 30, 1977, and $100,000,000 for the fiscal year ending June 30, 1978.

(b) (1) No State may receive more than 10 per centum of the funds available for making grants under this Act for any fiscal year. In making distributions under this Act the Commissioner shall consider an equitable geographical distribution.

(2) Funds appropriated to carry out the provisions of this Act shall remain available for the succeeding fiscal year after the year in which they were appropriated.

By Mr. JAVITS (for himself, Mr. KENNEDY, Mr. DOLE, Mr. JOHNSTON, Mr. ABOUREZK, Mr. BROOKE, Mr. CASE, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HOLLINGS, Mr. HUMPHREY, Mr. LONG, Mr. MATHIAS, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. METZENBAUM, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. HUGH SCOTT, Mr. TUNNEY, and Mr. WILLIAMS):

S. 3798. A bill to extend the Economic Opportunity Act of 1964, further Head Start, Community Action, community economic development, and other antipoverty efforts, to provide for increased involvement of State and local governments in antipoverty efforts, and for other purposes. Referred to the Committee on Labor and Public Welfare.

THE ECONOMIC OPPORTUNITY AND COMMUNITY PARTNERSHIP ACT OF 1974

Mr. JAVITS. Mr. President, I introduce for myself and Senators KENNEDY, DOLE, and JOHNSTON, and 30 additional Senators, the Economic Opportunity and Community Partnership Act of 1974. Joining with us are the following: Senators ABOUREZK, BROOKE, CASE, CLARK, CRANSTON, GRAVEL, HART, HASKELL, HATFIELD, HATHAWAY, HOLLINGS, HUMPHREY, LONG, MATHIAS, MCGEE, MCGOVERN, MCINTYRE, METZENBAUM, MONDALE, MOSS, MUSKIE, PASTORE, PEARSON, PELL, PERCY, RANDOLPH, RIBICOFF, HUGH SCOTT, TUNNEY, and WILLIAMS.

This measure would:

First, extend the basic authorizations of appropriations for programs under the Economic Opportunity Act of 1964, including community action, community economic development, Headstart and similar programs for a period of 3 years, through fiscal year 1977, with an aggregate authorization of $5.1 billion over the 3-year period as follows: $1.5 billion for fiscal year 1975, $1.7 billion for fiscal year 1976, and $1.9 billion for fiscal year 1977; this compares with the current estimated level of $1.0 billion for the year just ended, fiscal year 1974. The authorizations for these programs expired this past June 30, but funding for the programs, as well as for the Office of Economic Opportunity itself, is provided through Spetember 30 under House Joint Resolution 1062, the continuing resolution, signed into law by the President on June 30.

Second, establish, as a separate and independent agency of the Federal Government, a new "Community Services and Community Economic Development Administration," to replace the Office of Economic Opportunity.

The new agency to be established within 6 months of enactment, would be authorized to maintain direct funding for community action local-initiative programs at the current level; it would also provide increased funding for the community economic development programs, and maintain certain other activities, including evaluation, research, and demonstration, now—and in the interim—conducted by the Office of Economic Opportunity.

However, the character of the new agency would differ from the current Office of Economic Opportunity by virtue of two new mechanisms to provide for the increased involvement of State and local government in antipoverty efforts, as generally urged by the administration:

Under a new authority, funds would be provided on an increasing basis over the 3-year period for community partnership agreements. Under that authority, a State or local government could receive additional assistance if it entered into an agreement with the community action agency in its particular area for planning, development, and administration of programs to strengthen the capability of public and private community institutions to undertake antipovery efforts.

Moreover, to serve as a catalyst and review agent in the formulation of such agreements, as well as to review the possible sources of funding for antipoverty efforts generally, there would be established in the new Administration, a National Intergovernmental Review Board on the Financing of Community Services. The Board, appointed by the President, and subject to Senate confirmation, would consist of nine members, including three representatives of State and local government, three of community action and similar agencies, and the remainder from the private sector.

Third, transfer the Headstart and Follow Through programs, and certain other activities, from OEO to the Department of Health, Education, and Welfare, as requested by the Administration.

Mr. President, this bipartisan proposal is offered as an alternative to the Administration's plans under which the Economic Opportunity Act would be repealed and no authority would be provided for continuation of either the Office of Economic Opportunity or direct Federal funding for the Nation's 1,000 community action and similar agencies; but community action agencies and their programs would be continued only if State and local government chose to do so from their own "general revenue sharing" and other funds. Under the administration's plans, the Headstart and Follow Through programs would be continued in the Department of Health, Education, and Welfare, and other programs would be administered by other existing agencies, for example, the community economic development program by the Department of Commerce.

It is an alternative also to H.R. 14449, the Community Services Act, passed by the House of Representatives on May 29, 1974, which would repeal the Economic Opportunity Act and eliminate the Office of Economic Opportunity, but continue direct funding for community action agencies under a new Community Action Administration to be established within the Department of Health, Education, and Welfare; under the House bill, other elements would be spunoff to other existing departments, for example, community economic development to the Department of Commerce. The House bill authorizes an aggregate of $3.75 billion for antipoverty efforts over a 3-year period.

Mr. President, we consider the administration's proposal to be a liquidation of the core of the antipoverty program as we now know it; it constitutes a dismantlement of OEO at the Federal level and of the community action agencies at the local level, without presenting any coherent blueprint for effective replacements for these vital community agencies.

Similarly, the House bill, while it would maintain community action agencies at the local level, would merely transpose much of the Office of Economic Opportunity into the Department of Health, Education, and Welfare. Without criticizing that fine agency, I would like to say I am concerned that community action—the key element of the antipoverty program—would get lost in this huge deck during the shuffle.

Neither plan, in our opinion, offers a positive updated blueprint for implementation of the Nation's commitment to eliminate poverty over the next decade.

We propose, through the measure we introduce today to reaffirm the Nation's

legislative commitment to eliminate poverty as we approach the bicentennial year in a manner which will maintain past efforts in transition toward greater involvement of State and local governments in antipoverty efforts, which the administration itself has generally urged.

With that general background, I shall now comment upon the basis for each of these elements in more detail.

EXTENSION OF THE ECONOMIC OPPORTUNITY ACT OF 1964

The Economic Opportunity Act of 1964 states, in its purpose clause, that:

It is therefore the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity to live in decency and dignity.

Under the act millions of persons have moved themselves out of poverty and into the economic mainstream of the Nation, through substantial efforts in manpower training, legal services, child care, and other programs conducted under the act.

However, 24 million persons are still in poverty, other millions of "near poor" are on the edge of poverty, and 11 million persons are stuck in the crunch of the outdated welfare system without the benefit of the long sought welfare reform.

We should approach our bicentennial year with the national policy embodied in the Economic Opportunity Act, still on the books and do nothing in the meantime to abrogate it—as continued recognition by the Congress and the executive that the job is not yet accomplished.

To put teeth into that extension, increased funding must be provided to provide the resources to do the job.

At the present time, the OEO programs are reaching 15 million persons annually—a little more than half of the Nation's 24 million poor and then with rather inadequate resources in respect to overall needs in terms of the multitude of services that are needed; in fact, applying the $1.0 billion in funds available for antipoverty activities in fiscal year 1974 to the 24 million poor persons, it comes to $41.65 per person in poverty—hardly a commitment at all.

The bill provides for increases in the amounts for programs toward meeting greater needs within the bounds of "fiscal responsibility."

I ask unanimous consent that a chart showing these levels in respect to each of the major programs compared with the current level and the House bill be printed in the RECORD at this point.

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

JAVITS-KENNEDY ECONOMIC OPPORTUNITY AND COMMUNITY PARTNERSHIP ACT OF 1974—COST ESTIMATES [1]

Program	Fiscal year 1974 estimated level	Fiscal year 1975		Fiscal year 1976		Fiscal year 1977	
		Proposed	House bill	Proposed	House bill	Proposed	House bill
Local initiative	$328.9	$330.0	$330.0	$330.0	$330.0	$330.0	$330.0
Community partnership (incentives)		70.0	50.0	140.0	50.0	210.0	50.0
Community economic development	39.3	84.0	40.0	120.0	40.0	156.0	40.0
Legal services [2]	71.5	90.0	----	100.0	----	110.0	----
Emergency food and medical services	25.0	30.0	25.0	35.0	30.0	35.0	30.0
Senior opportunities and services	10.0	15.0	10.5	20.0	10.5	25.0	10.5
Consumer action and cooperative services	([3])	10.0	----	15.0	----	20.0	----
Design and planning assistance programs	([3])	10.0	----	15.0	----	20.0	----
Native Americans program	32.0	33.5	32.0	37.0	37.0	43.0	43.0
Emergency energy conservation services	([3])	100.0	----	100.0	----	100.0	----
Youth sports program	3.0	3.0	3.0	3.0	5.0	3.0	5.0
Summer youth recreation program	15.0	26.0	----	30.0	----	35.0	----
Training and technical assistance	4.0	5.0	----	6.0	----	7.0	----
State economic opportunity offices	12.0	12.0	----	12.0	----	12.0	----
National intergovernmental review board		1.5	----	1.5	----	1.5	----
Migrant program	54.0	56.0	56.0	60.0	60.0	60.0	60.0
Headstart	408.0	500.0	500.0	550.0	525.0	600.0	550.0
Follow through	41.0	60.0	60.0	65.0	60.0	70.0	60.0
Human services policy research	23.7	22.0	22.0	22.0	22.0	22.0	22.0
Evaluation, coordination, research, demonstration	4.4	60.0	----	70.0	----	80.0	----
Other programs and administration	25.0	30.0	----	30.0	----	30.0	----
Total	1,096.8	1,548.0	1,200.0	1,761.5	1,259.5	1,903.0	1,300.5

[1] House estimates based on House Committee Report (93-1043) which specified certain levels; in cases where the House Committee did not specify funds, general funds may still be made available for those purposes. In that connection, note that the overall House authorization totals exceed the aggregate of the specific amounts. However, the Javits-Kennedy bill totals do equal the aggregate of the specific items.

[2] Standby authority in the event that H.R. 7824, Legal Services Corporation Act, is not enacted.

[3] Nominal funding under local initiative and demonstration authorities.

ESTABLISHMENT OF A NEW SEPARATE AGENCY FOR THE POOR

Mr. JAVITS. Mr. President, as I indicated, the bill would establish within 6 months of enactment a new "Community Services and Community Economic Development Administration" as a separate and independent agency of the Federal Government to replace the current Office of Economic Opportunity as the principal spokesman and innovator for the poor.

In a message to the Congress in 1969, President Nixon stated that:

From the experience of the OEO, we have learned the value of having in the Federal government an agency whose special concern is the poor.

Its value as an innovator has arisen, in my opinion, from two basic sources. First, its ability to fund and recognize the creative solutions to poverty which have their "feet in the soil," as efforts developed by community action agencies and community economic development programs at the local level. Second, its ability to evaluate the actions of existing Federal departments in terms of their impact upon the poor, with an objective eye.

It is questionable whether the innovative cycle can be continued—without loss or impairment if community action is placed, as proposed in the House bill, in the Department of Health, Education, and Welfare, which already, in fiscal year 1974, was responsible for administering $32.7 billion in programs, exclusive even of social security programs.

We believe that there continues to be a need for a separate agency for the poor and that if it is the consensus that the OEO itself should not be continued—as appears to be the case at least with the House of Representatives and the administration—then an agency of a new character should take its place.

This new agency would be chartered both to continue those existing functions which still require the care of an agency whose special concern is the poor, and to step out in the direction of greater involvement of State and local government which the administration has previously urged, but for which it provides no constructive policy.

FURTHERING OF EXISTING PROGRAMS AND ACTIVITIES

Community action agencies: Under our proposal, the new agency would have authority to continue to fund the 1,000 community action and similar agencies and their own local-initiative programs; for this purpose, the current level of $330 million would be reserved for each of the first 2 fiscal years from funds available under the act. For fiscal year 1977, "such sums" would be provided. The Federal matching share for these purposes would be as it is now, that is 80 percent.

The administration urges that all Federal funding for community action agencies cease and that State and local governments continue them from their own general revenue sharing and other existing funds. But to date, less than 3 percent of the $14.27 billion in general revenue sharing funds, have gone to programs for the poor.

This is clear evidence that the administration's proposed policy with respect to community action agencies is ill-founded, or at best, premature.

If implemented, it would clearly result in a substantial portion of the 180,000 community action agency employees being out on the street—thus only further aggravating the situation, interruption of services to the poor, and loss of exper-

tise that community action personnel have developed.

Community economic development: Importantly, the new agency, as suggested by its title, would be charged further with expanding the "community economic development" effort, building with increased resources upon the experience under title VII of the Economic Opportunity Act—which I coauthored with Senator KENNEDY and the previous efforts under the "Special Impact" title I–D of the act in such areas as Bedford-Stuyvesant in New York.

There are currently 35 federally funded community development corporations—split almost evenly between urban and rural areas—a number of rural cooperatives, and 75 like privately funded corporations and similar entities across the Nation which have sprung up to harness the energies of their communities.

But due to lack of direct Federal funding, inadequacy of support from other Federal agencies, and the lack of long-term credit, the potential of even the present community economic development programs has not been fully tested, as a precursor to a more expanded system of community development corporations across the Nation. Existing CDC's have been impeded by the lack of resources and other areas have been denied even start-up funds; in fact, beyond that, "Action for Community Economic Development," a group representing the CDC's, documents that over $60 million is required for a "growth" budget for current corporations in the current year, compared with $39.3 million made available in fiscal year 1974, and requested for fiscal year 1975. According to the Office of Economic Opportunity new applications have numbered 75–100 in recent years.

The measure we introduce today provides for a step-up in funding—from $84 million in fiscal year 1975 to $156 million in fiscal year 1977, directs greater support from other Federal agencies, and provides for long-term credit.

To look to the future, it directs also a 1-year joint congressional study on its future administration, as well as its potential generally which would include, of course, the possibility of transfer to the Department of Commerce at some future date.

We believe such a transfer or "spin-off" premature, until the program is further defined and expanded and we believe that the independent agency which we propose can best serve as the agent for development, maintaining the basic character of the program as we now know it.

Related programs: The agency would also be responsible for continuing direct funding for related programs, such as emergency food and medical services, senior opportunities services, migrant programs, and a new program of emergency energy conservation services as well as evaluation, demonstration and other efforts.

I ask unanimous consent that there be included at this point in the RECORD a chart showing administering agencies under the current law, the House bill and our proposal.

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

ADMINISTERING AGENCY

Program	Current	Proposed	House bill
Local initiative	OEO	New agency	HEW/CAA.[1]
Community partnership (incentives)	Not available	do	HEW/CAA.
Community economic development	OEO	do	Department of Commerce.
Legal services	OEO	do	No provision.
Emergency food and medical services	OEO	do	HEW/CAA.
Senior opportunities and services	OEO	do	HEW/CAA.
Consumer action and cooperative services	OEO	do	HEW/CAA.
Design and planning assistance programs	OEO	do	HEW/CAA.
Native Americans programs	HEW	do	HEW.
Emergency energy conservation services	OEO demonstration.	do	No provision.
Youth sports program	OEO	do	HEW/CAA.
Summer youth recreation program	Labor	do	No provision.
Training and technical assistance	OEO	do	HEW/CAA.
State economic opportunity offices	OEO	do	HEW/CAA.
National intergovernmental review board	Not available	do	No provision.
Migrant program	Labor	do	Labor.
Headstart	HEW (by delegation).	HEW	HEW.
Follow Through	do	HEW	HEW.
Human services policy research	HEW	HEW	HEW.
Evaluation, coordination, research, demonstration.	OEO	New agency	HEW.
Other programs and administration	OEO	do	HEW/CAA.

[1] Community Action Administration in HEW.

NEW DIRECTIONS

Mr. JAVITS. Mr. President, as I suggested, in the field of antipoverty, the administration espouses the concept of "New Federalism"—State and local governmental involvement, but offers neither adequate resources or mechanisms to make that a realistic alternative to the present situation.

Bloc grant or special revenue sharing approaches have now been adopted by the Congress in the field of manpower training, as embodied in the Comprehensive Employment and Training Act of 1973, and are under consideration in other areas.

It is premature, at best, to apply completely such an approach in the case of antipoverty programs generally—that is to give funds to State and local governments alone to use at their discretion—given the opposition of some local governments toward the community action agencies, and the lack of experience in those fields.

But it is not too early to provide the resources and mechanism to get State and local government into the picture and to provide incentives to forge creative partnerships between those governments and the community action agencies which have for almost a decade been viewed by the poor as "their agencies" while generally distrustful of the so-called establishment in the form of the State house or city hall.

To do so, we have included in the bill a new concept of a "community partnership agreement" under which a State and local government on the one hand, and a community action agency on the other, if they agree on the terms, can conduct programs jointly.

If they cannot agree, then the area may lose the funds allocated to it—of course, maintaining present local initiative funding which goes directly to the community action agencies—and the lost funds will go to another area.

What they are able to agree upon—in terms of administration, programs to be conducted, sharing of responsibility—will be basically up to the agreeing parties, compatible with the concept of the "New Federalism" that those on the local level should decide on the priorities.

What we are proposing is similar to special revenue sharing with the element that the community action agency and the State and local government share equally in the overall decisionmaking process.

For "community partnership agreements," the bill authorizes to be reserved $70 million for fiscal year 1975 and $140 million for fiscal year 1976; for fiscal year 1977, such sums as authorized.

The National Intergovernmental Review Board, to be established under our bill, would act as a high-level catalyst to encourage the formulation of such agreements, as well as evaluate their implementation.

It is hoped that this will bring new resources to fight poverty, act as a catalyst, and give the Congress a real test of the extent to which State and local government will enlist in these efforts.

TRANSFER OF HEADSTART AND FOLLOW THROUGH PROGRAMS

The Head Start and Follow Through programs were delegated to the Department of Health, Education, and Welfare from the Office of Economic Opportunity in 1969 and 1967 respectively, and the Congress has generally approved of their delegation.

Under the administration of the Department of Health, Education, and Welfare, funds for each of these programs have generally increased since that delegation and I believe as a general matter, the programs have been carried out with maintenance of the character of the programs as they were first developed in the Office of Economic Opportunity.

It is now appropriate, as the administration itself has urged, that they be established legislatively completely within the Department of Health, Education, and Welfare.

Our measure would do so basically following the administration's own request, but with slight variations in the allocation formula, the ability to establish fee schedules, and the set asides for handicapped children—all of which are

particularly important in the States, including New York.

Mr. President, we hope for early hearings on our measure in the Subcommittee on Employment, Poverty, and Migratory Labor, which is chaired by Senator GAYLORD NELSON of Wisconsin, that legislation for the future of this antipoverty program can be soon resolved in the Senate and with the House, and the resulting measure can be signed by the President at the earliest opportunity—well before the expiration of funding for the program under the continuing resolution.

I ask unanimous consent that there be printed in the RECORD at this time a description of the major provisions of the Economic Opportunity and Community Partnership Act of 1974.

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

DESCRIPTION OF MAJOR PROVISIONS OF THE ECONOMIC OPPORTUNITY AND COMMUNITY PARTNERSHIP ACT OF 1974

1. *Extension of Authorization of Appropriations of Act.*—Extends the authorization for appropriations of the Economic Opportunity Act of 1964, which expired this past June 30, for an additional three year period through fiscal year 1977; extends the Act itself which expires June 30, 1975 for an additional three year period, through fiscal year 1978.

Authorizes an aggregate of $1,548.0 million for fiscal year 1975, $1,761.5 million for fiscal year 1976, and $1,983.0 million for fiscal year 1977, as indicated on the attached Appendix A.

The Act further provides, as in basic education legislation, for automatic extension of the authorizations beyond fiscal year 1977, unless the Congress passes or formally rejects extension of authorizations, or by concurrent resolution, provides that the automatic extension shall no longer apply.

2. *New Independent Agency.*—Establishes a new separate independent "Community Services and Community Economic Development Administration", headed by an Administrator appointed by the President, subject to the advice and consent of the Senate; the Agency would be established within six months of the enactment of the legislation.

Under the Administrator, there would be a "Deputy Administrator for Community Services" and a "Deputy Administrator for Community Economic Development".

"Community Services" would include continued direct funding for community action "local initiative" programs, "Community Partnership Agreements", and certain national emphasis anti-poverty activities such as Emergency Food and Medical Services, Senior Opportunities and Services, and other efforts such as evaluation, demonstration and other general activities; provision is made for continuation of the current legal services program, pending final affirmative action on H.R. 7824, the "Legal Services Corporation Act".

"Local-initiative" programs would be continued under the current authority with a reservation for that purpose of $330.0 million in fiscal year 1975 and for the succeeding fiscal year; thereafter, "such sums" would be authorized. The Federal share for such activities would be 80 percent (as it is currently).

Demonstration "Community Partnership Agreements" would be funded by the Agency upon approval of an agreement entered into by a community action agency or similar public or private non-profit agency, and the public agency of a State or political subdivision of a State, or any combination, for local initiative type programs. An agreement must meet very limited requirements concerning the use of funds; in no event could funds be used in substitution of "local-initiative" or other antipoverty programs.

A "National Intergovernmental Review Board on the Financing of Community Services" would be established in the new Administration to review community partnership agreements, as well as sources for funding of anti-poverty efforts generally. The Board, appointed by the President, and subject to Senate confirmation, would consist of nine members, including three representatives of State and local government, three of community action and similar agencies, and the remainder from the private sector.

"Community Economic Development" programs would include "special impact" programs through community development corporation in rural and urban areas; special rural programs, including funding of rural cooperatives; developmental loans for community economic development programs, including establishment of a model domestic development enterprise corporation; training and technical assistance.

Under the Act, an interagency "Community Economic Development Resource Committee" would be established to insure the maximum application of resources of other agencies, such as the SBA, the Department of Housing and Urban Development, and the Department of Commerce Economic Development Administration.

The Act would provide also for a Joint Congressional study during the fiscal year ending June 30, 1975, in respect to an appropriate administering agency for the conduct of the community economic development program in the future, including consideration of an independent community economic development agency.

3. *Transfer of Program to HEW.*—Transfers the Headstart and Follow Through Programs (now conducted by the Department of Health, Education and Welfare under a delegation agreements from the Office of Economic Opportunity) to the Department; certain other programs and activities would also be transferred to existing agencies.

Attached Appendix B indicates in respect to each effort now conducted under the Economic Opportunity Act, the proposed administering agency, compared with the House bill.

4. *Other Changes in the Law.*—The Act would amend the Comprehensive Employment and Training Act of 1973 and the Older Americans Act of 1965 to insure that public service funds may be made available to hire personnel who are to be assigned to community action or other agencies in providing community services.

Mr. KENNEDY. Mr. President, I am pleased to join Senator JAVITS as a chief sponsor of the Economic Opportunity and Community Partnership Act of 1974 with Senator JOHNSTON, Senator DOLE, and some 30 other cosponsors.

The bill will extend the Economic Opportunity Act for an additional 3 years, through fiscal year 1977. It will provide another 3 years of life for the programs authorized by that act within a new independent agency, a successor to OEO, to be called the Community Services and Community Economic Development Administration.

This legislation represents an effort to restate the congressional intention to see that an independent agency remains as an advocate of the poor within the Federal bureaucracy. Although we have established a new agency with several new elements, its legislative mandate remains the same. It will be the Federal antipoverty agency.

This measure is essential now to permit the continuation of programs which have been providing vital services to the poor. Although we were pleased to see the strong House action in support of the continuation of those services, we believe an independent agency is not only the best structure to see that they operate effectively but it is the best vehicle to assure an agency free to innovate and develop new efforts to deal with the problems of rural and urban poverty. I am joining in the introduction of this bill because I disagree with the administration's decision to dismantle OEO and believe that the consequences of that disappearances will prolong the existence of poverty in this country.

Since 1973, when the White House attempted to administratively destroy OEO to the present date, the clear opposition of the administration to an independent poverty program has been evident. The courts first rejected the effort to abolish OEO by administrative fiat and the Congress rejected the second attempt by approving appropriations for the agency despite the administration's zero budget request.

This year, the fiscal year 1975 Presidential budget again requests no new appropriations for OEO. Some existing programs including Community Action, were to die and others were to be shuttled off to existing departments, rarely with their identity protected.

Mr. President, when a recent census report shows 24 million Americans still living in poverty, I believe the administration policy to do away with a Federal antipoverty agency represents the abandonment of the Federal Government's responsibility to pursue social and economic justice for all citizens.

This bill, while it extends and increases funding for Headstart and the Follow Through, maintains those programs within HEW. All other programs, including local initiative, community economic development, legal services, emergency food and medical services, senior opportunities and services, consumer action and cooperative services, design and planning assistance program, youth sports program, the summer youth recreation program, and the migrant program would be operated by the new agency.

Also the new agency would operate a major new local antipoverty program, the community partnership program, which would provide incentives to a State or local governmental agency which entered into agreements with a community action agency to undertake joint antipoverty project. Some $70 million would be available the first year for these projects, $140 million the following year and $210 million the following year.

Operating in tandem with the traditional community action program, this new effort will substantially increase the level of resources for meeting the challenge of alleviating the impact of poverty in communities throughout the Nation.

The local initiative or community action programs have been the heart of OEO since its inception.

In 1967, eight "national emphasis programs" were authorized to be operated by community action agencies. Directed by elected representatives of the poor, these CAA's soon became the core of local antipoverty efforts.

Across the country today, more than

185,000 people are employed by programs conducted by these agencies. The programs they conduct include a broad range of services—from preschool Headstart programs to senior service program for the elderly.

An estimated 50 million persons are affected by these programs according to a sample survey conducted by the National CAA Executive Directors Association. I ask unanimous consent that the preliminary findings of the survey be printed at the conclusion of my remarks.

In addition, of the 185,000 persons employed by CAA's some 51 percent were previously unemployed or receiving public assistance. These men and women are now working and providing vital services to their cities and communities.

In my own State, some 24 community action agencies are now operating and they provide a vital and unique service to the State's low-income citizens.

Not only do they provide a wide range of social services, but they also serve as the advocate of the poverty community, awakening traditional agencies to their responsibilities to those at the bottom rung of the economic ladder.

ABCD in Boston is one example of a program that has earned the respect not only of the poverty community it serves, but of the larger urban community as well. One of the most tragic examples of the shortsightedness of the administration is its decision to deny any funding to the CAA's and instead to abandon them entirely. The impact can be seen by examining what would occur in a single rural Massachusetts area. I ask unanimous consent that a summary of the impact on the southern Berkshire community action program be printed in the RECORD.

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

SUMMARY

Southern Berkshire Community Action, Great Barrington, Massachusetts (A breakdown of the prospects for one rural CAA.)

SBCA serves 14 towns with a total population of 26,027 including 1,371 families with incomes of less that $6000. It functions in an area where no other agency is equipped to operate a range of human services, to act as South County liaison with Manpower, etc., and to provide a vehicle through which new services can be initiated.

Transportation Program.—a weekly trip to Pittsfield for doctor's appointments, etc. Since inception in November, 1973, 26 elderly and low-income persons have made the trip one or more times. Potential is greater.

Probable impact of termination of SBCA: Transportation service would end.

Food Stamp Program.—serves 84 households in Great Barrington, 34 households in Lee.

Probable impact of termination of SBCA: Food Stamp Program would proceed, but with inadequate facilities and manpower to accomplish the certification of applicants.

Tutorial Program.—22 low-income elementary school children are tutored on a one-to-one basis by students from Berkshire School and Simon's Rock Early College.

Probable impact of termination of SBCA: End of program, no agency to serve as bridge between the private school communities and low-income families.

Employment—interview an average of 22 a week, guiding them to available jobs in the private sector.

Probable impact of termination of SBCA: End of service except for youth. No other agency in the area to provide supervision for the programs or to act as liaison between regional Manpower Board, DES, and the Southern Berkshire Community.

Consumer Affairs—"Saver Trips", Newsletter, Consumer Directory (distributed to 2500 people.

Probable impact of termination of ABCS: End of service.

Programs jointly sponsored by SBCA and related organizations:

Housing—Approximately 50 families have been successfully located in rental housing. 25 homes winterized, etc. If SBCA is terminated, Tenant's Association could continue home heating loans out of a member's home, resulting in less families being served. Construct could continue for six months. The multipurpose center would be lost. Rental assistance program could continue only as long as Construct program.

Child Care.—more than 30 children. *Headstart*—15 children. Programs could continue but would be without SBCA provision of space and transportation.

The Family Planning Center would be forced to relocate. *Legal Services* would be forced to terminate.

Mr. KENNEDY. Mr. President, perhaps the single most pervasive effect of OEO across the years has been the impact of community action agencies on the structure of public programs. The concept of public participation and the right of the poor to be heard and to be respected by Government agencies at all levels to the large extent derives from OEO efforts. We have not yet fully succeeded but the difference between 1964 and 1974 in terms of Government acceptance of the right and recognition of the value of public participation is substantial.

Under this bill, the new Administration would have a Deputy Administrator for Community Services responsible for community action as well as the community partnership programs and other national emphasis antipoverty activities.

Community Action would continue in the next 2 fiscal years at a level of $330 million per year with an open-ended authorization in the succeeding fiscal year. A separate study will be conducted by a National Intergovernmental Review Board on the Financing of Community Services with its recommendations available prior to the establishment of appropriations levels for the final year. It is my expectation that the board will ultimately find additional sums beyond the $330 million to be necessary.

The new agency will have a second Deputy Administrator for Community Economic Development.

The community economic development program will have independent statutory protection and will provide a focus for what I believe is the best long-range answer to turning the tide of poverty in inner city and depressed rural areas.

These "special impact" programs originated in legislation introduced by Senator Robert Kennedy and Senator JAVITS in 1967, and were expanded by the measure I introduced with Senator JAVITS which was enacted in the 1972 Amendments to the Economic Opportunity Act.

By treating the poverty areas as an underdeveloped area and combining economic and social development, this program has produced significant benefits. Ultimately, the Community Economic Development Corporations—CDC's—now operating across the country in 36 areas should be matched by hundreds of counterparts operating in every major urban and rural poverty area.

The current programs have created more than 12,500 jobs and these jobs are now filled by wage-earning and tax-paying individuals, 40 percent of whom were unemployed prior to the CDC activity.

Annual wages from those operations now exceeds $8.5 million and some 250 businesses have been created.

In addition to the income-earning enterprises fostered by CDC's, a vast array of services to poverty area residents also are offered. Those services include housing, health clinics, manpower training, and social services.

By establishing the community economic development program as an independent division within the new agency, we will be giving it the recognition I believe it deserves.

This action is the reverse of the attitude taken by the administration. Although the administration recognized its value to the extent that it requested continued funding for fiscal year 1975, it proposed to bury the CDC program at the lowest level of the Commerce Department, making it a junior partner of the Office of Minority Business Opportunity.

I believe that our action is the best mechanism to protect and encourage the expansion of community economic development corporations and to diminish the gap between rich and poor in America.

In Roxbury, in East Boston, in Hough, in Rochester, in Salt Lake City, in southeastern Kentucky and in Harlem and Bedford-Stuyvesant, CDC's have given the poverty community new hope. We cannot afford as a nation to turn our backs on that effort.

Instead of the $39.3 million proposed by the administration, which is some $25 million below the estimate of what the CDC's need to even remain at a standstill level, we are proposing $84 million for fiscal year 1975, $120 million in fiscal year 1976, and $156 million in fiscal year 1977.

Also included in the community econominc development division will be a community economic development resource committee representing other Federal agencies and designed to insure the maximum use of resources from other Federal agencies for CDC's. This concept is similar to the provisions now in the law with the exception that a specific committee would be charged with the responsibility.

Also, the act provides for a joint congressional study, to be conducted by a blue-ribon task force of urban economists, representatives of CDC's, rural development experts and business and labor members which will explore the feasibility of establishing an independent office of community development similar to the independent legal services corporation, as one element in a view of the long-term Federal role in community economic development.

The overall authorization in the bill we are introducing is not substantially more than the level of authorization approved by the House of Representatives already. The overall authorizations approved by the House were $1.2 billion in fiscal year 1975, $1.25 billion in fiscal

year 1976, and $1.3 billion in fiscal year 1977. This bill, with the additional programs and including standby legal service authorizations includes $1.5 billion in fiscal year 1975, $1.7 billion in fiscal year 1976, and $1.9 billion in fiscal year 1977.

In order to place those figures in some perspective, it should be recognized that that total 3 year authorization for Federal antipoverty efforts represents less than the amount of increase proposed for this fiscal year for the Department of Defense by this administration.

Mr. President, across this country, millions of Americans share the fate of the poor around the world. They do not have enough food to eat. They do not have decent homes to shelter their families. They do not have adequate clothes to dress their children. And they do not have health care services to protect themselves from disease.

That poverty is perhaps more of a condemnation of this society than it is of any other because we are a Nation that has accumulated more material wealth and demonstrated greater economic success than any other nation. The gap between rich and poor in America must be narrowed and the poor must be given the opportunity to find a life of dignity.

This bill establishing an independent antipoverty agency as a successor to OEO is not the whole answer; but it is an essential part of the answer.

Mr. President, in addition to the key programs I have mentioned already, I would like to describe in some detail other antipoverty programs which are being extended in the bill proposed here today.

HEAD START

Project Head Start was initiated in 1965; since 1969 it has been operated by the Office of Child Development in HEW by delegation from the Director of OEO. It provides a multitude of services to disadvantaged preschool children; among these, it is the Nation's largest preschool health care program.

The fiscal year 1974 budget for Head Start was $392 million, $357.7 million of which is allocated directly to the centers. The remaining $34 million is spent on experimental, developmental, and evaluation programs. The program in fiscal year 1974 served more than 379,000 children through more than 10,000 centers thoughout the United States, Puerto Rico, and the Virgin Islands. Massachusetts was served by 160 Head Start Centers in fiscal year 1974, with a funding level of approximately $7.1 million.

A fiscal year 1975 budget of $430 million was proposed in the budget. This bill authorizes $500 million in fiscal year 1975.

FOLLOW THROUGH

Follow Through is a research and development program for disadvantaged children which is particularly designed to sustain and expand the gains made by children in Head Start or similar preschool programs. It is now in its seventh year.

In fiscal year 1974, Follow Through funded enrollment for over 81,000 children in 617 schools throughout the country and Puerto Rico with a total Federal obligation of $53 million. In Massachusetts, Follow Through served 1,234 children in five community schools on a total budget of $851,738.

A November 1973 evaluation of the program by an independent firm found that:

(1) Although the Follow-Through children generally start out lower than their local comparison groups on a standard test of achievement, they finished the kindergarten year slightly ahead of the comparison groups.

(2) Follow-Through had a significant positive effect on attendance figures for enrolled children, which represents a significant impact on the total average daily attendance in the participating school districts, which in turn can have significant effects on funding for those school districts.

Under the administration's plan, Follow Through is scheduled to be phased out at the rate of one grade level per year beginning with fiscal year 1975, and its projected fiscal year 1975 budget is only $35 million. Our bill extends the program and increases its authorization to $60 million.

EMERGENCY ENERGY CONSERVATION SERVICES

The Emergency Energy Conservation Services office has existed at a nominal budget level as an OEO demonstration program. Its primary accomplishment has been Project FUEL, an energy conservation demonstration project which involved winterizing the homes of some of Maine's poorest families in response to last winter's energy crisis.

Project FUEL was announced by OEO on December 6, 1973, and was underway less than three weeks later. Although $276,000 went to purchase winterizing materials for 3,000 Maine homes, it is estimated that the winterizing process will save that much in one year alone. "The great bulk of the labor was donated by homeowners, friends, neighbors and by ongoing manpower training programs," according to the final Project FUEL report, issued June 1974.

The people served by Project FUEL met OEO poverty guidelines; in fact, 83.4% of those served had incomes below $5,000 and another 11.7% had incomes under $7,000. Nearly 60% participated in the Food Stamp or donated commodities program, and 62.5% were unemployed. Moreover, 53.2% of the houses benefited were valued at less than $5,000, and another 26.8% at $5,000–$10,000.

Project FUEL has been termed a "dramatic success" in the final project report issued by the Maine Division of Economic Opportunity.

This bill will authorize $300 million for Emergency Energy Conservation Services over the next three years.

MIGRANT PROGRAM (LABOR)

The Migrant Program was designed to provide manpower and support services for individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry. The program is intended to be flexible in design and to achieve two major objectives; to provide alternatives to seasonal agricultural work with the goal of integrating the migrant and his family into the full-year job market, and to improve the living conditions of migrants who wish to continue as agricultural workers. Programs provide placement services for employment, interim housing, emergency food and medical services, transportation from migrant camps to employment areas, and obtain job training slots for migrants at skills centers.

The New England Farmworkers' Council, which serves Massachusetts migrant laborers, also provides driver education to improve migrant mobility and publishes a newspaper to create a sense and awareness of a migrant community. Other typical migrant program services are classes in English as a second language and the subsidy of the G.E.D., a high school equivalency examination which the states administer for a fee.

In FY 1974 the Migrant Program obligated a total of $40 million to 66 grantees representing approximately 330 programs which served a migrant population of 16,355. In Massachusetts, the New England Farmworkers' Council received a total of $250,000 to administer programs serving 300 migrants.

The migrant program in Massachusetts is considered by the Department of Labor to be "one of our most effective and sound programs."

Although the Migrant Program was transferred to the Department of Labor last year, the complaints from local programs and the lack of attention to the program require that it be operated by the new agency.

This bill will authorize $176 million for the Migrant Program over a three-year period.

OFFICE OF NATIVE AMERICAN PROGRAMS

The Office of Native American Programs began as the OEO Indian Division in 1969. It was transferred to HEW in August 1973, where it was re-established as the Office of Native American Programs in the Office of Human Development.

ONAP obligated $30.9 million in FY 1974, serving 450,000 Native Americans on 154 reservations and 49 urban centers in 36 states. This bill will authorize $113.5 million in funds for ONAP over the next three years.

CONSUMER ACTION AND COOPERATIVE SERVICES

The potential for consumer education and for cooperative programs has yet to be adequately tapped. Since 1971, programs have been operated as integral parts of community action programs. Despite its success, last year the Administration dropped its support of the General-Consumer Protection Division of the Massachusetts Department of Attorney which is estimated to have served 250,000 people annually. That program, the National Consumer Information Center here in the District of Columbia, and the National Consumer Law Center in Boston have established valuable precedents for protecting the poor from unscrupulous businessmen.

This bill will authorize $45 million for Consumer Action and Cooperative Services programs over a three-year period.

EMERGENCY FOOD AND MEDICAL SERVICES

Emergency Food and Medical Services has operated since 1968 as a part of OEO. EFMS programs are intended to supplement and assist the other food assistance programs, and to provide needed medical services for health problems associated with malnutrition. It operates both through regional CAA programs and headquarters-granted research and demonstration programs. The Administration has sought to phase out EFMS since 1971 despite consistent evidence of its effectiveness.

In FY 1974, EFMS obligated a total of $21.9 million to programs in the U.S. as a whole. In Massachusetts, a total of $413,000 was obligated to three projects, two in Framingham and one in Boston.

This bill will authorize $100 million for Emergency Food and Medical Services in a three-year period.

NATIONAL SUMMER YOUTH SPORTS (HEW)

The National Summer Youth Sports Program is administered through the President's Council on Physical Fitness and Sports in HEW, and has been funded since its inception in 1969 at a $3 million level.

In FY 1974, there were 105 National Summer Youth Sports Program projects at colleges, universities, and junior colleges in 75 cities, with a national enrollment of some 42,000 disadvantaged youths.

In Massachusetts, there were three NSYSP projects which enrolled 1,100 disadvantaged youths.

This bill will authorize $9 million for National Summer Youth Sports programs over a three-year period.

HUMAN SERVICES POLICY RESEARCH

In FY 1974, a major segment of the research and development activities of the Office of Economic Opportunity was transferred to the Office of the Secretary of Health, Education and Welfare. These activities deal with the nature and causes of poverty, the development of better means to enable the poor to become self-sufficient, improving the systems by which state and local governments provide social, health, and educational services to the poor, and measuring the social and economic effects of proposed alternative systems of providing financial assistance to low-income persons. The major segment of this program's expenditures is devoted to income maintenance and employment systems aimed at developing new knowledge about the effects of alternative approaches to income supplementation, particularly work incentive effects, to aid in decisions on reform of the nation's welfare system.

In FY 1974 a total of $21,810,000 in federal money was obligated to 56 projects throughout the United States. In Massachusetts, $540,000 was obligated to five programs. This bill will authorize $66 million for human services policy research over the next three years.

SENIOR OPPORTUNITIES AND SERVICES

The Senior Opportunities and Services Program was established in 1967 after the early experience with OEO demonstrated conclusively the need for specific federal concern for the problems of the elderly. Its overall mandate was to insure that all other OEO programs "serve, employ, and involve" the aged poor.

As chairman of the Senate Special Committee on Aging's Subcommittee on Federal, State, and Community Services, I have sought to encourage OEO in expanding SOS activities. In Fiscal Year 1973, approximately one million elderly poor received services from local SOS programs.

As a result of its proven ability to stimulate other sources of funds in addition to its own, SOS has enabled large numbers of elderly poor to obtain services they otherwise would be denied.

Our bill will retain SOS in the new agency and will increase its funding to $15 million in FY 1975, $20 million for FY 1976, and $25 million for FY 1977.

SUMMER YOUTH RECREATION PROGRAM (LABOR)

The Summer Youth Recreation program is designed to work closely with other Department of Labor programs, as well as with state and local community agencies, to provide supervised recreational activities to disadvantaged youths. The program places a great emphasis on employing disadvantaged young people, who are often neighborhood Youth Corps enrollees, as recreational supervisors.

Currently, the Program has obligated a total of $17 million to some 500 summer youth program sponsors who provide recreational activities to approximately two million disadvantaged youths throughout the country. In Massachusetts, the Program has obligated a total of $425,761 to seven grantees for Summer Youth Recreation programs.

This bill will authorize $91 million for the summer Youth Recreation Program over the next three years.

EXHIBIT NO. 1

[From Library of Congress Congressional Research Service, April 12, 1974]

THE DISMANTLING OF OEO—JANUARY 1973 TO PRESENT

PRESIDENT NIXON PROPOSES OEO DISMANTLING

Although the Office of Economic Opportunity is authorized under the Economic Opportunity Act through June 30, 1975, and its authorization for appropriations extends through June 30, 1974, President Nixon requested no Federal funding for OEO in his FY 1974 budget. He proposed that the agency be "dismantled" by transferring certain programs to other Federal agencies and by terminating Federal support of others, including the Community Action Program (CAP), Senior Opportunities and Services (SOS), the National Summer Youth Sports Program, Emergency Food and Medical Services (EFMS), State Economic Opportunity Offices (SEOOs), and training and technical assistance to communities developing OEO programs. In the FY 1974 budget message, the President observed that State and local governments could choose to fund these programs through general and special revenue sharing or from other available funds. Because OEO's authorization for appropriations extends until FY 1975, Congress voted to fund the agency through June 1974. In his budget request for FY 1975, President Nixon again requested zero funding for OEO.

Under the Economic Opportunity Act of 1964, the President is authorized to transfer most OEO programs to other Federal agencies without Congressional approval of the action. Using this authority, the President announced in the FY 1974 budget message his intention to transfer Special Indian Programs to the Department of Health, Education, and Welfare (HEW) and the Migrant and Seasonal Farmworker Program to the Department of Labor. Research and demonstration activities would be transferred to agencies receiving existing OEO programs, including the National Institute of Education (HEW), the Office of Child Development (HEW), the Department of Labor and the Department of Housing and Urban Development (HUD). These three programs were transferred to their receiving agencies in August of 1973. (Various OEO programs, including Alcoholic Counseling, Comprehensive Health Services, and Family Planning, were in the process of being transferred to HEW before the dismantling proposal was announced.)

Two programs within OEO, legal services and Community Economic Development (CED), could not be transferred without Congressional authorization. The President announced his intention to introduce legislation to transfer the Community Economic Development program to the Office of Minority Business Enterprise in the Department of Commerce and to replace the OEO legal services program with an independent corporation. An Administration-sponsored bill to transfer the Community Economic Development program to the Department of Commerce is pending in committee in both the House and Senate. H.R. 7824, a bill to establish a national legal services corporation, passed the House on June 21, 1973, and the Senate on January 31, 1974. A conference committee began consideration of the two versions of the bill on April 2, 1974. (See Appendix A for a summary of the proposed transfers.)

OEO SUPPORTERS OPPOSE DISMANTLING

Supporters of OEO sought to prevent dismantling of the program through action in Congress and the courts. Supporters of the agency also demonstrated in Washington against the proposed dismantling on February 20, 1973. Between 20,000 and 45,000 people attended a rally in front of the Capitol. Several bills were introduced in Congress to extend the agency's authorization for one or more years, and funds were eventually appropriated for FY 1974. Transfer of OEO programs to other agencies was not prevented, however.

Hearings were held in the House and Senate on legislation to extend the Economic Opportunity Act. The Equal Opportunity Subcommittee of the House Education and Labor Committee held hearings on February 7, 8, 27, and 28, and again on March 19, 20, 23, 24, 26, 27, 29 and 30, 1973 on H.R. 3641, to extend the authorization of appropriations for the Economic Opportunity Act of 1964 for two additional years, and H.R. 3175 and H.R. 3147, bills to establish a national legal services corporation. (See Appendix B for major bills pertaining to OEO introduced in the 93rd Congress.) Mayors, CAA administrators, and two members of Congress testified before the subcommittee. Howard Phillips, acting director of OEO, testified on February 27, and sought to explain his plan for transferring certain programs then in OEO and termmating support for others. Phillips argued that he was authorized to terminate funding for programs authorized by Congress (including CAA's, EFMS, SOS and the National Summer Youth Sports Program) because the President's budget for FY 1974 requested no funds for these programs. Subcommittee members challenged Phillips' authority to take actions on the budget request, which had not yet been considered by Congress. The following exchange between Representative Mink and Mr. Phillips illustrates a point of disagreement that arose repeatedly between subcommittee members and OEO's acting director:

"Mrs. MINK. Under what presumption are you operating, that the budget recommendation of the administration is going to be the action of the Congress?

"Mr. PHILLIPS. I have to assume that the President's budget will be adopted.

"Mrs. MINK. What authority in the law gives you this right to issue instructions making such assumption, when the Congress has not yet acted on the appropriation measure and has in fact, authorized the program to continue in existence, which you readily admit, until July 1, 1974?

"Mr. TRACHTENBERG [OEO's deputy general counsel]. The position of the Office of Economic Opportunity, on your question, Mrs. Mink, is that in carrying out the budgetary . . . considerations reflected in what has been submitted to the Congress now, certain actions have to be taken in anticipation of a favorable response by the Congress."

On May 3 and 4, the Subcommittee on Employment, Poverty and Migratory Labor of the Senate Labor and Public Welfare Committee held hearings on S. 1560, the Emergency Employment Act Amendments of 1973, and S. 1559, the Job Training and Community Services bill. S. 1559 contained provisions to make revenue sharing funds available to CAA's at the discretion of State and local governments. The provision providing funds for CAA's after a State and local government "pass through" was deleted in conference, however.

COURT CHALLENGES TO OEO DISMANTLING

Several groups filed lawsuits to prevent the dismantling of OEO. On February 26, 1973, three suits were filed in District Court in Washington. The class action suits were brought on behalf of all OEO employees, all CAA's receiving funds from OEO, all CAA employees and all beneficiaries of CAA programs. The combined suits contended that Howard Phillips was acting illegally as acting director of OEO, arguing that:

1. The Economic Opportunity Amendments of 1972 forbid Phillips from terminating OEO funding of CAA's.

2. The termination of CAA functions constitutes an illegal reorganization because the terms of the Executive Reorganization Act of 1949 were not complied with.

3. The acting director's directives concerning the termination of CAA funding are illegal because Mr. Phillips failed to publish them in the *Federal Register*, as required in the 1972 Economic Opportunity amendments.

On April 11, U.S. District Court Judge William Jones ruled that the dismantling of OEO and the termination of Federal

funding of CAA's was illegal. The judge ruled that:

(1) the Administration could not unilaterally terminate OEO programs that had been authorized by Congress to extend through FY 1975,

(2) Acting Director Phillips' actions to abolish OEO by terminating certain programs and transferring others was illegal under the Reorganization Act, which requires the President to submit to Congress a reorganization plan before the abolition of an Executive agency can take place, and

(3) all actions already taken to dismantle OEO were "null and void" because they had not been published in the *Federal Register*, as required by the Economic Opportunity Amendments of 1972.

Judge Jones observed in his opinion that because the authorization of the Economic Opportunity Act, as amended, extends through FY 1975, it was clearly the intent of Congress that the Community Action Program continue until the authorization expires. The judge ruled that OEO's programs must be continued until such time as Congress may decide to terminate them and that funds appropriated for the continuation of OEO programs cannot be used to end them. Judge Jones ordered Acting Director Phillips to cease the phaseout of CAA operations, saying these actions were "unauthorized by law, illegal and in excess of statutory authority."

A contradictory opinion was handed down on the same day in a U.S. District Court in Illinois. Judge James Parsons ruled that nothing in the Economic Opportunity Act of 1964, its amendments, or the FY 1973 appropriations bill precluded the Acting Director of OEO from choosing to use FY 1973 funds for phaseout activities. The judge reached this conclusion after receiving an affidavit and testimony from an OEO official assuring him that CAA funding would not be discontinued prior to the end of FY 1973. The judge observed that until Congress appropriated funds for OEO for FY 1974, OEO was under no obligation to carry out its programs. The judge also ruled that the Acting Director was authorized to carry out the proposed transfer of OEO programs to other agencies, and, because these transfers were authorized in the Economic Opportunity Act of 1964, as amended, the President was not required under the Reorganization Act to submit his plan to transfer certain programs and terminate the agency to Congress. Because the Administration decided not to appeal Judge Jones' decision, despite a favorable ruling by Judge Parsons, Jones' order to halt the dismantling of OEO was binding on the agency.

A fifth suit, brought by Senators Harrison Williams, Clairborne Pell, Walter Mondale, and William Hathaway, sought removal of Howard Phillips as acting director of OEO. The suit contended that Phillips was serving illegally because he had not been confirmed by the Senate within 30 days after his appointment.

On June 11, Judge Jones ruled that Howard Phillips was holding office illegally because his name had not been submitted to the Senate for confirmation, as required by law. Judge Jones enjoined Phillips from taking any further actions as head of OEO. The ruling delayed implementation of the transfer of certain OEO programs to other agencies that had been signed by the President on June 7. The decision also left the agency without a director to make policy decisions or approve grant applications. On June 27, Judge Jones addressed this problem by ruling that a "state of emergency" existed within OEO. He ordered Alvin Arnett, who had been appointed "director designate" by President Nixon the day before, to process over 600 grant applications before June 30, the end of the fiscal year, in order to prevent the remaining unobligated funds from reverting to the Treasury. At Senate Appropriations hearings on July 19, Arnett reported that he had approved 668 grants totalling $142 million. Approximately $7 million remained unobligated and reverted to the Treasury.

After Howard Phillips' tenure as acting director was declared illegal, President Nixon submitted Alvin Arnett's name to the Senate for approval. The Senate Labor and Public Welfare Committee held confirmation hearings on July 20.

Arnett stated at the hearings that he personally favored the $333.8 million appropriation approved by the House Appropriations Committee for the agency during FY 1974, but that he had been required to advocate the Administration's request for zero funding before the Senate Labor-HEW Appropriations Subcommittee the day before.

According to Arnett's testimony:

"I asked [the Administration] for the opportunity to defend the $333 million that the House appropriated. That request was denied. I came forward to carry the burden of the Administration's request for zero [funding] for community action."

Arnett stated that he saw his role to be primarily one of acting as a liaison between OEO and those agencies receiving OEO programs. Arnett, formerly Executive Director of the Appalachian Regional Commission, was confirmed by the Senate on September 12 by a vote of 88 to 3.

Judge Jones' first decision, in effect, kept OEO alive until June 30, 1973. The decision did not touch on the legality of transferring OEO programs other than CAA's, legal services and Community Economic Development to other Federal agencies. This issue was resolved on August 3, when U.S. District Court Judge Thomas Flannery ruled that the delegation of OEO programs was not "integral to the abolition of OEO or its programs." He observed that the delegations "were consistent with the past actions of delegating OEO programs to other Executive agencies either at the point that they have matured into operational programs or when the OEO programs can enhance the activities and functions of such agencies." The judge ruled that the planned transfers could go forward immediately.

As a result of the Flannery decision, several OEO programs were transferred to other Federal agencies in August. Special Indian Programs moved to HEW, the Migrant and Seasonal Farmworkers Program was transferred to the Department of Labor, and research and demonstration functions were transferred to the National Institute of Education and the Office of Child Development (HEW), the Department of Labor and HUD. Programs remaining in OEO included CAA's, legal services, Community Economic Development, Senior Opportunities and Services, State Economic Opportunity Offices, and the National Summer Youth Sports Program.

OEO RECEIVES FISCAL YEAR 1974 FUNDS

Hearings on the dismantling of OEO were also held before the House and Senate Appropriations Committees. Acting Director Howard Phillips testified before the House Labor-HEW Appropriations Subcommittee on May 8, 1973, and Director-Designate Alvin Arnett appeared before the Labor-HEW Appropriations Subcommittee in the Senate on July 19. Both requested zero funding for OEO for FY 1974. Director-Designate Arnett stated at the hearings that he viewed OEO's role as that of an advocate for the poor within the Federal bureaucracy, whose primary role should be to prod other agencies on behalf of poor people.

Both appropriations committees included funds for OEO in the FY 1974 Labor-HEW appropriations bill (H.R. 8877). The House Appropriations Committee appropriated $333.8 million for OEO, including $218 million for Community Action operations, $71.5 million for legal services, $39.3 million for Community Economic Development and $5 million for general support. The committee report chose to continue funding for the Community Action Program for one additional year due to its belief that "a majority of these agencies are performing important functions, and that in many cases there would be no other local agency capable of assuming those functions if the Community Action Agencies are terminated."

The Committee noted that most authorizations for appropriations under the Economic Opportunity Act expire on June 30, 1974, and stated that "the Committee assumes there will be a review of the role of the Office of Economic Opportunity and the Community Action Agencies as a result of the expiration of these authorities, and hopes that a solution can be reached which is acceptable to both the President and the Congress. The Committee believes the Office of Economic Opportunity must be continued in existence until such a solution is reached."

The House approved H.R. 8877 on June 26, 1973.

The Senate Appropriations Committee approved the same amount of funding for OEO, but added an additional $25 million for the Emergency Food and Medical Services (EFMS) program. The Senate committee concurred with the House committee's statement that funds should be provided for OEO through the end of FY 1974, when its authorizing legislation expired. The Senate committee advocated a more limited role for OEO "as an experimental and demonstration agency for developing innovative approaches to solving the problems of poverty."

The Senate passed H.R. 8877 on October 4, 1973.

The House approved the conference report on December 5 and the Senate on December 6. The conference report appropriated $346,300,000 for OEO, including $12.5 million for EFMS, or half the amount appropriated in the Senate version of the bill. The conference-reported bill also contained a provision that would permit the President to impound up to 5% of the appropriations for any program whose appropriation exceeded his budget request. This provision would permit the President to withhold up to $17 million of the OEO appropriation, leaving the agency with $329 million.

H.R. 8877 was signed into law on December 18, 1973 (P.L. 93-192). (During the first half of FY 1974, OEO had been funded through a continuing resolution.)

FISCAL YEAR 1975 BUDGET AGAIN REQUESTS ZERO FUNDS FOR OEO

President Nixon's FY 1975 budget request again proposed zero funding for CAA's and the elimination of OEO. The budget stated that "with the phaseout of direct Federal funding for Community Action, the continued existence of OEO as an operating agency is no longer necessary." The budget request included $33 million in the HEW budget for the phaseout of present OEO activities.

At a hearing before the House Equal Opportunity Subcommittee on February 5, 1974, Alvin Arnett declared that the proposed end of OEO "is not an end to the war on poverty," adding that "neither an extension of the Economic Opportunity Act nor the enactment of H.R. 10865* is necessary for us to meet our obligation to our disadvantaged Americans." As an alternative to OEO, Arnett proposed a renewed attempt to reform the welfare system.

Arnett argued that OEO programs continue to prosper when transferred to other agencies, pointing out that funding for the transferred programs increased by $27 million in FY 1974 and an additional $17 million in FY 1975. (See Appendix C.) In addition, the FY 1975 budget requests $71.5 million in the HEW budget, to be transferred to the legal services corporation if it is established, and $39.3 million in the Department

*A bill to provide revenue sharing funds for CAA's. (See description below.)

of Commerce budget, to go to the CED program if it is transferred to the Office of Minority Business Enterprise.

Arnett pointed out that, although CAA's, SEOO's, and SOS are budgeted for zero funding in the Administration's FY 1975 budget request, the programs could be funded by state and local governments beyond June 30, 1974. (The budget request also allocates zero funding for the Emergency Food and Medical Program.) Arnett announced that the National Summer Youth Sports Program would be delegated to HEW and receive funds from OEO for operations during the summer of 1974.

An analysis of the FY 1975 budget, prepared by the National League of Cities and the U.S. Conference of Mayors, disagreed with Arnett's assessment of the Community Action Program. Calling the loss of Community Action operations funding "the most significant loss for cities" in the OEO budget, the analysis observed that "the termination of Community Action Agencies can cause the closing or disruption of numerous services which the low-income areas of cities desperately need. This, in turn, will place considerable pressure on cities to provide funding for these services thus increasing the burden on the steadily diminishing financial resources of cities." The analysis continued, "Community Action Agencies have gained considerable experience during the past years in operating service programs, in conducting planning, and in dealing with the general problems of poverty at the local level." The analysis added that in many communities, CAA's employed a significant number of poor people, who may return to poverty when the program ends.

LEGISLATION TO CONTINUE OEO

Three bills to continue OEO programs have been introduced during the second session of the 93rd Congress. The Subcommittee on Equal Opportunity of the House Education and Labor Committee held hearings on H.R. 10865 starting October 15, 1973. The bill, introduced by Mr. Hawkins, would establish a Human Resources Service in the Executive branch to provide financial assistance to enable state and local governments to assume responsibility for community services. The bill would provide a mechanism and funding to continue programs and services now operated by CAA's. H.R. 10865 would authorize $329 million to states and localities through a revenue sharing framework. Except for the revenue sharing structure, the bill is similar to the Economic Opportunity Act of 1964.

H.R. 12464, introduced by Messrs. Hawkins, Perkins, and Pell, provides for a simple extension of OEO with an authorization of $1,440,000,000 for each year through FY 1977. Hearings on the bill were held February 5, 19, and 21, 1974. A third bill, H.R. 14094, was introduced on April 9, 1974, by Augustus Hawkins, chairman of the Subcommittee on Equal Opportunity. The bill would combine existing OEO programs and ACTION, forming a new independent agency called Agency for Development, Volunteer and Other Community Assistance Programs (ADVOCAP). The subcommittee marked up the bill and reported it to the full committee on the same day, it was introduced. The full Education and Labor Committee was scheduled to consider the bill on April 10, but the meeting was postponed until after the Easter recess.

Because OEO's authorization for appropriations expires at the end of FY 1974, the future of the agency is now dependent on Congressional action.

APPENDIX A—CURRENT STATUS OF OEO PROGRAMS

(as of April 12, 1974)

Program, President's fiscal year 1974 proposal, and current status

Community Action Program: No Federal funding in FY 1974 budget—funding by local option; funding through FY 1974 (P.L. 93–192).

Senior Opportunities and Services: No Federal funding in FY 1974 budget—funding by local option and under Older Americans Act; funded through FY 1974 (P.L. 93–192).

State Economic Opportunity Offices: No Federal funding in FY 1974 budget—funded by local option; funding through FY 1974 (P.L. 93–192).

Legal Services: To be discontinued on June 30, 1973. Proposes creation of a national legal services corporation, effective July 1, 1973; H.R. 7824, creating a legal services corporation, submitted on May 11, 1973. Passed, as amended, by House on June 21, 1973. Senate passed H.R. 7824, after substituting language of S. 2686, on January 31, 1974. A conference date has not been set for consideration of the bills.

Training and Technical Assistance: To be discontinued—June 30, 1973; discontinued.

National Summer Youth Sports Program: To be discontinued—June 30, 1973; FY 1973 funds used for 1973 summer program—delegated to HEW. Will receive funds from OEO for FY 1974 summer program.

Special Indian Programs: To be transferred to HEW; transferred to HEW, August 1973.

Migrant and Seasonal Farmworkers Program: To be transferred to Department of Labor; transferred to DOL, August 1973.

Community Economic Development: To be transferred to Office of Minority Business Enterprise in Department of Commerce; legislation pending in House (H.R. 8556) and Senate to transfer to DOC.

Alcoholic Counseling: No proposal; transferred to National Institute of Mental Health, July 1, 1973. Transfer planned before OEO dismantling announced.

Comprehensive Health Services: No proposal; transferred to HEW, June 30, 1973. (Health manpower activities to National Institute of Health). Transfer planned before OEO dismantling announced.

Family Planning: No proposal; transferred to HEW in previous years.

Research and Demonstration: To be transferred to National Institute of Education, Office of Child Development, HEW, DOL, Department of Housing and Urban Development; transferred, August 1973.

APPENDIX B—MAJOR BILLS PERTAINING TO OEO INTRODUCED DURING THE 93D CONGRESS

H.R. 3641 (Introduced by Mr. Hawkins, Feb. 5, 1973)—To extend the authorization of appropriations for the Economic Opportunity Act of 1964 for two additional years. Referred to the Education and Labor Committee. Hearings held by Equal Opportunity Subcommittee, Feb. 7, 8, 27, March 19, 20, 1973.

H.R. 4343 (Introduced by Mr. Badillo, Feb. 20, 1973)—To establish OEO as an independent agency. Referred to the Education and Labor Committee. Pending in committee.

S. 706 (Introduced by Mr. Mondale, Mr. Cranston, Mr. Kennedy, Mr. Williams, Mr. Jackson, Feb. 1, 1973)—To provide for one additional year of authorization for programs under the Economic Opportunity Act of 1964. Referred to the Committee on Labor and Public Welfare. Pending in committee.

H.R. 10865 (Introduced by Mr. Hawkins, Oct. 11, 1973)—To establish a successor agency to OEO, known as the Human Resources Service, in the Executive branch. The service would provide financial assistance to enable state and local governments to assume responsibility for Community Action Agencies through a revenue sharing framework. Referred to the Education and Labor Committee. Hearings held by Equal Opportunity Subcommittee, Oct. 15, 1973.

H.R. 12462 (Introduced by Mr. Hawkins, Jan. 31, 1974)—To extend certain programs under the Economic Opportunity Act for two additional years. Referred to the Education and Labor Committee. Hearings held by Equal Opportunity Subcommittee, Feb. 5, 19, 21, 1974.

H.R. 14094 (Introduced by Mr. Hawkins, April 9, 1974)—To provide for the mobilization of community development assistance and volunteer services and to create an agency to administer such programs. Referred to the Education and Labor Committee. Reported by Equal Opportunity Subcommittee, April 9, 1974.

NOTE: Legislation has been introduced to transfer the Community Economic Development program from OEO to the Office of Minority Business Enterprise in the Department of Commerce (H.R. 8556). The bill is pending in the Education and Labor Committee. Legislation has been passed by both houses of Congress to establish a legal services corporation to replace the OEO legal services program (H.R. 7824).

APPENDIX C

OEO FUNDING, 1973–75

[In millions of dollars]

	Obligations		Budget authority (1975 proposed budget, other agencies)
	1973, OEO	1974 estimated, other agencies	
Various agencies (research and development)	33.0	31.3	57.1
HEW (health services)	122.1	140.9	130.8
Native American programs	23.1	32.1	33.2
DOL (migrants and seasonal farmworkers)	38.7	40.0	40.0
Total	216.9	244.3	266.1

The FY 1975 budget request also contained funds for legal services and Community Economic Development, in the event that legislation is passed to transfer these programs to a legal services corporation and the Department of Commerce.

[In millions of dollars]

	Obligations		Budget authority—1975 proposed budget, other agencies
	1973 OEO	1974 estimated OEO	
Community economic development	36.6	38.1	39.3
Legal services	77.2	71.5	71.5
Total	113.8	109.6	110.8

Source: OEO budget statement, Alvin Arnett, Feb. 4, 1974.

TERMINATED PROGRAMS

[In millions of dollars]

	Obligations		Budget authority—1975 proposed budget
	1973 OEO	1974 estimated OEO	
Community action operations	406.8	208.1	----------
General support	18.1	4.8	----------
Total	424.9	212.9	----------

Source: Fiscal year 1974 budget request.

Mr. JOHNSTON. Mr. President, poverty in the midst of plenty still abounds in this country. And, the problem of poverty is mounting. Not only have the overall numbers of poor people increased, but the relative position of the millions of impoverished Americans is worsening. Among other factors, spiraling inflation, and the rising costs of essential goods

and services, such as food, shelter, and heat, are aggravating the problem of being poor.

In short, Mr. President, this is not the time for the Federal Government to withdraw from its commitment to battle poverty. The past year and a half has seen the slow whittling away of the Office of Economic Opportunity, the agency charged since 1964 with advocating the needs of the poor and with administering programs designed to attack poverty. The Office of Economic Opportunity has been beset with program and personnel transfers, with program eliminations, and with the threat of general discontinuation. Local community action agencies, which have been the principal cogs of OEO's operation—by helping the disadvantaged to understand and use opportunities available to them in their own communities—are earmarked for extinction. These pullbacks are exactly the reverse of what the disadvantaged and what our Nation need at this time. The impoverished and the Nation cannot stand to have these programs dispersed, debilitated, and the antipoverty focus lost.

Mr. President, what is needed is an ongoing national concern about the plight of the poor. What is needed is a concerted attack on poverty, spearheaded by the Federal Government, backed by a strong Federal commitment in terms of dollars, programs, and longevity.

This is the approach that the bill that we are introducing today takes. It creates a separate independent agency to administer antipoverty efforts. This agency would emphasize the feeling of Congress that the problems of poverty are too important to be dismissed or submerged into another giant bureaucratic agency. This agency would also be capable of effecting a coordinated, concerted Federal antipoverty effort.

In addition, the bill would insure the continuation of valuable community action and economic development programs, along with research and demonstration programs and interim legal services authority.

As important as any substantive feature of this bill, however, is the continuation of a Federal agency to advocate both nationally and locally, the interests of the poor.

Mr. President, I have personally witnessed the valuable work that the antipoverty programs, and particularly community action programs, have done in Louisiana and throughout the South. I want to see these efforts continued and strengthened. Therefore, I am pleased to introduce this bill along with my distinguished colleagues.

By Mr. FONG (for himself, Mr. METCALF, Mr. BENNETT, Mr. BROOKE, Mr. DOLE, Mr. DOMENICI, Mr. FANNIN, Mr. GURNEY, Mr. JAVITS, and Mr. WILLIAMS):

S. 3800. A bill to provide for the appointment of legal assistants in the courts of appeals of the United States. Referred to the Committee on the Judiciary.

Mr. FONG. Mr. President, I am introducing today a bill to provide for the appointment of legal assistants in the courts of appeals of the United States so as to assist the judges of these courts to perform their duties in a more effective and efficient manner and to help expedite the disposition of the ever-mounting number of appeals to the courts.

The number of appeals filed in the 10 circuits and the District of Columbia circuit has increased from a total of 4,204 in 1961 to a total of 15,629 in 1973—almost a fourfold increase in volume of appeals filed. In the short period from 1969 to 1973, the volume of the proceedings handled by the courts of appeals has risen from 10,248 appeals in 1969 to 15,629 in 1973, or a more than 50-percent increase in volume.

Mr. President, to show the increase in the number of appeals commenced, terminated, and pending in each of the U.S. courts of appeals for the fiscal years 1961 and 1969 through 1973, I ask unanimous consent that a table marked table 1, an excerpt from the 1973 annual report of the Director, administrative office of the U.S. courts, be printed in the RECORD at this point in my remarks.

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

TABLE 1.—APPEALS COMMENCED, TERMINATED, AND PENDING IN THE U.S. COURTS OF APPEALS, FISCAL YEARS 1961 AND 1969 THROUGH 1973 BY CIRCUIT

Circuit	Fiscal year						Percentage change	
	1961	1969	1970	1971	1972	1973	1973 over 1961	1973 over 1972
All circuits	4,204	10,248	11,662	12,788	14,535	15,629	271.8	7.5
District of Columbia	527	1,094	1,127	1,055	1,168	1,360	158.1	16.4
1st	146	221	277	383	421	401	174.7	−4.8
2d	674	1,263	1,343	1,423	1,317	1,709	153.6	29.8
3d	334	671	1,053	1,100	1,179	1,197	258.4	1.5
4th	250	1,098	1,166	1,211	1,399	1,573	529.2	12.4
5th	630	1,763	2,014	2,316	2,864	2,964	370.5	3.5
6th	340	868	911	1,015	1,248	1,261	270.9	1.0
7th	328	712	854	902	999	1,117	240.5	11.8
8th	246	440	589	713	798	821	233.7	2.9
9th	443	1,494	1,585	1,936	2,258	2,316	422.8	2.6
10th	286	624	743	734	884	910	218.2	2.9
Terminated:								
All circuits	4,049	9,014	10,699	12,368	13,828	15,112	273.2	9.3
District of Columbia	518	896	1,025	1,013	1,001	1,288	148.6	28.7
1st	172	207	277	350	385	370	115.1	−3.9
2d	663	932	1,177	1,571	1,593	1,462	120.5	−8.2
3d	309	596	702	1,105	1,201	1,281	314.6	6.7
4th	242	1,092	1,127	1,050	1,391	1,676	592.6	20.5
5th	509	1,606	1,891	2,289	2,662	2,871	464.0	7.9
6th	324	947	1,004	1,001	1,098	1,239	282.4	12.8
7th	320	591	806	792	882	1,088	240.0	23.4
8th	243	406	554	703	797	821	237.9	3.0
9th	470	1,110	1,524	1,725	1,968	2,140	355.0	8.7
10th	279	631	612	769	850	876	214.0	3.1
Pending end of fiscal year:								
All circuits	2,375	7,849	8,812	9,232	9,939	10,456	340.3	5.2
District of Columbia	262	909	1,011	1,053	1,220	1,292	393.1	5.9
1st	51	97	97	130	166	197	286.3	18.7
2d	386	939	1,105	957	681	928	140.4	36.3
3d	169	515	866	861	839	755	346.7	−10.0
4th	100	617	656	817	825	722	622.0	−12.5
5th	400	1,284	1,407	1,434	1,636	1,729	332.3	5.7
6th	215	582	489	503	653	675	214.0	3.4
7th	148	617	665	775	892	921	522.3	3.3
8th	130	369	404	414	415	415	219.2	
9th	372	1,471	1,532	1,743	2,033	2,209	493.8	8.7
10th	142	449	580	545	579	613	331.7	5.9

Mr. FONG. Further, Mr. President, it must be pointed out that the number of cases pending at the end of the fiscal year rose from 2,357 in 1961 to an unprecedented high of 10,456 cases pending at the end of fiscal year 1973. For specifics as to each circuit, see table 1, supra.

The Commission on Revision of the Federal Court Appellate System in its report of recommendations under section 6, paragraph (1), Public Law 489, 92d Congress, submitted by its chairman, Senator ROMAN L. HRUSKA on December 18, 1973, entitled "The Geographical Boundaries of the Several Judicial Circuits: Recommendations for Change," recognizes and I quote from the very first sentence on page 1, paragraph 1 of that report:

For more than a decade the United States Courts of Appeals—courts of last resort for all but a handful of federal cases—have been a source of continuing concern. During this period they have experienced an increase in caseloads unprecedented in magnitude.

This increase in volume is not confined to appeals in any one circuit or from any one of the agencies or even to appeals from the district courts in any one State. While the situation is more desperate in some circuits, such as the second, fifth, and ninth circuits, it is rapidly deteriorating in the other circuits, and particularly in the sixth circuit.

Mr. President, to show the source of the rapidly escalating volume of appeals in each circuit and the number of appeals from the district courts in the various States and from the other sources for the years 1969 to 1973, I ask unanimous consent that a table marked table 2, entitled "Source of Appeals and Original Proceedings Commenced During Each of the Fiscal Years 1969, 1970, 1971, 1972, and 1973 by Circuit," as it appears in the 1973 annual report of the Director, Administrative Office of the U.S. Courts, be printed in the RECORD at this point.

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

TABLE 2.—U.S. COURTS OF APPEALS—SOURCE OF APPEALS AND ORIGINAL PROCEEDINGS COMMENCED DURING EACH OF THE FISCAL YEARS 1969, 1970, 1971, 1972, AND 1973, BY CIRCUIT

Source	Fiscal years— 1969	1970	1971	1972	1973
Total appeals	10,248	11,662	12,788	14,535	15,629
U.S. district courts	8,728	9,866	11,057	12,678	13,667
Other courts	22	33	18	----	----
Boards and commissions, total	1,345	1,522	1,383	1,509	1,616
Tax Court of the United States	215	237	296	202	241
Civil Aeronautics Board	11	23	7	24	58
Federal Communications Commission	52	74	83	70	75
Federal Power Commission	139	23	52	143	128
Federal Trade Commission	17	10	11	11	23
National Labor Relations Board	629	649	619	740	612
Secretary of Agriculture	6	3	10	7	5
Securities and Exchange Commission	16	16	22	18	20
Board of Tax Appeals (District of Columbia)	----	4	----	----	----
Immigration and Naturalization Service	215	413	201	175	228
All other boards and commissions	45	70	82	119	226
Original proceedings	153	241	330	348	346
District of Columbia Circuit	1,094	1,127	1,055	1,168	1,360
U.S. District Court	891	892	829	907	979
District of Columbia Court of Appeals	22	33	18	----	----
Board of Tax Appeals (District of Columbia)	----	4	----	----	----
Tax Court of the United States	5	----	5	4	4
National Labor Relations Board	60	42	37	46	48
All other boards and commissions	101	134	140	179	300
Original proceedings	15	22	26	32	29
1st circuit	221	277	383	421	401
Maine	11	13	15	19	19
Massachusetts	125	141	207	229	223
New Hampshire	14	16	30	37	39
Rhode Island	20	25	18	36	34
Puerto Rico	25	38	58	48	43
Tax Court of the United States	3	7	10	6	8
National Labor Relations Board	19	24	12	20	19
All other boards and commissions	2	9	29	20	8
Original proceedings	2	4	4	6	8
2d circuit	1,263	1,343	1,423	1,317	1,709
Connecticut	82	70	97	96	151
New York:					
Northern	54	74	35	32	60
Eastern	189	227	248	275	298
Southern	624	645	722	645	815
Western	51	55	67	53	84
Vermont	20	15	22	13	30
Tax Court of the United States	44	48	29	23	69
National Labor Relations Board	106	82	64	98	82
All other boards and commissions	70	97	89	48	70
Original proceedings	23	30	50	34	50
3d circuit	671	1,053	1,100	1,179	1,197
Delaware	17	34	34	53	43
New Jersey	160	321	249	268	245
Pennsylvania:					
Eastern	209	236	337	372	408
Middle	27	40	74	85	85
Western	103	148	253	199	222
Virgin Islands	45	38	30	51	70
Tax Court of the United States	15	24	17	31	16
National Labor Relations Board	38	16	37	43	42
All other boards and commissions	40	155	36	39	24
Original proceedings	17	41	33	38	42
4th circuit	1,098	1,166	1,211	1,399	1,573
Maryland	220	178	210	199	243
North Carolina:					
Eastern	79	89	63	107	145
Middle	54	66	66	102	112
Western	105	78	61	87	107
South Carolina	87	88	99	132	146
Virginia:					
Eastern	336	370	403	495	531
Western	80	90	95	85	98
West Virginia:					
Northern	46	66	66	65	54
Southern	43	90	60	57	80
Tax Court of the United States	10	8	26	10	7
National Labor Relations Board	34	33	35	38	24
All other boards and commissions	3	3	8	13	11
Original proceedings	1	7	19	9	15
5th circuit	1,763	2,014	2,316	2,864	2,964
Alabama:					
Northern	64	83	92	107	90
Middle	27	42	31	49	74
Southern	42	50	74	84	67
Florida:					
Northern	51	37	64	66	85
Middle	161	185	175	198	203
Southern	199	254	309	478	453
Georgia:					
Northern	98	174	216	236	305
Middle	64	65	75	76	74
Southern	29	27	26	47	39
Louisiana: [1]					
Eastern	173	219	241	276	256
Middle	----	----	----	11	64
Western	66	67	86	100	121
Mississippi:					
Northern	43	60	55	64	58
Southern	98	69	85	72	75
Texas:					
Northern	113	145	222	256	261
Eastern	42	52	48	91	69
Southern	113	136	152	193	261
Western	119	155	157	157	185
Canal Zone	2	6	8	15	6
Tax Court of the United States	20	29	32	51	22
National Labor Relations Board	133	113	106	108	86
All other boards and commissions	97	30	30	76	77
Original proceedings	9	16	32	53	33
6th circuit	868	911	1,015	1,248	1,261
Kentucky:					
Eastern	44	58	79	78	80
Western	92	76	83	106	96
Michigan:					
Eastern	119	125	156	186	259
Western:	41	17	24	30	32
Ohio:					
Northern	130	115	119	154	203
Southern	64	79	96	187	143
Tennessee:					
Eastern	83	126	155	157	105
Middle	70	65	67	95	80
Western	55	74	91	85	98
Tax Court of the United States	44	27	22	12	17
National Labor Relations Board	87	118	105	127	107
All other boards and commissions	26	12	12	16	25
Original proceedings	13	19	6	15	16
7th circuit	712	854	902	999	1,117
Illinois:					
Northern	339	398	431	500	547
Eastern	26	32	45	63	60
Southern	29	32	43	58	51
Indiana:					
Northern	57	53	61	50	83
Southern	53	50	92	83	112
Wisconsin:					
Eastern	47	52	87	78	79
Western	18	23	20	26	41
Tax Court of the United States	17	24	27	16	18
National Labor Relations Board	38	55	43	62	61
All other boards and commissions	73	110	29	30	23
Original proceedings	15	25	24	33	42
8th circuit	440	589	713	798	821
Arkansas:					
Eastern	40	45	53	51	55
Western	46	40	45	38	27
Iowa:					
Northern	15	10	19	31	20
Southern	22	38	43	33	40
Minnesota	47	62	102	130	137
Missouri:					
Eastern	101	98	141	174	159
Western	63	130	110	101	136
Nebraska	27	56	53	97	66
North Dakota	17	24	23	17	34
South Dakota	15	16	47	33	50
Tax Court of the United States	8	2	16	11	17
National Labor Relations Board	30	44	35	56	40
All other boards and commissions	4	5	13	14	14
Original proceedings	5	19	13	12	26
9th circuit	1,494	1,585	1,936	2,258	2,316
Alaska	21	22	24	27	22
Arizona	117	152	172	172	196
California:					
Northern	251	271	343	449	383
Eastern	71	43	74	89	72
Central	386	397	473	523	583
Southern	103	116	150	277	252
Hawaii	11	20	15	32	32
Idaho	25	10	11	20	25
Montana	23	25	28	21	30
Nevada	51	67	45	56	59
Oregon	85	96	85	103	101
Washington:					
Eastern	37	22	13	26	23
Western	77	68	107	115	130
Guam	13	11	14	28	29
Tax Court of the United States	44	59	105	26	52
National Labor Relations Board	68	92	126	112	79
All other boards and commissions	69	73	76	111	185
Original proceedings	42	41	75	71	63
10th circuit	624	743	734	884	910
Colorado	79	134	105	136	167
Kansas	161	218	205	196	216
New Mexico	108	78	94	108	98
Oklahoma:					
Northern	34	30	52	64	51
Eastern	36	29	31	53	29
Western	97	106	92	135	169
Utah	49	75	58	63	70
Wyoming	12	13	17	21	25
Tax Court of the United States	5	9	7	12	11
National Labor Relations Board	16	30	19	29	23
All other boards and commissions	16	4	6	22	29
Original proceedings	11	17	48	45	22

[1] 1 additional district was added in the State of Louisiana, effective Apr. 1, 1972, Public Law 92-208.

Mr. FONG. Mr. President, in the years 1962 to 1973, the number of judgeships on the courts of appeals has risen from 78 to 97, an increase of 24.4 percent, but the number of cases filed in that time period increased from 4,823 to 15,629 or, as pointed out by the Division of Information Systems of the Administrative Office of the U.S. Courts, the increase in the percentage of cases filed was 224.1 percent—tenfold the increase in the percentage of increase in judgeships.

The increase in the number of cases terminated in the period from 1962 to 1973 admirably reflects the diligence of the judges of the courts of appeals. In 1962, 78 judges terminated 4,167 cases or 53.4 cases per judge. In 1973, the 97 judges managed to terminate 15,112 cases, or an average of almost 155.8 cases per judge.

Yet, despite this prodigious effort on the part of the judges, the number of appeals pending increased from 3,031 cases in 1962 to 10,456 cases pending at the end of 1973.

Mr. President, I ask unanimous consent to have a table marked table 3, entitled "Appeals Filed, Terminated, and Pending in the U.S. Courts of Appeals," fiscal years 1962 through 1973 annual report of the Director, Administrative Office of the U.S. Courts, be printed in the RECORD at this point.

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

APPEALS FILED, TERMINATED, AND PENDING IN THE U.S. COURTS OF APPEALS, FISCAL YEARS 1962-73

Fiscal year	Number of judgeships as of June 30	Appeals		
		Filed	Terminated	Pending
1962	78	4,823	4,167	3,031
1963	78	5,437	5,011	3,457
1964	78	6,023	5,700	3,780
1965	78	6,766	5,771	4,775
1966	88	7,183	6,571	5,387
1967	88	7,903	7,527	5,763
1968	97	9,116	8,264	6,615
1969	97	10,248	9,014	7,849
1970	97	11,662	10,699	8,812
1971	97	12,788	12,368	9,232
1972	97	14,535	13,828	9,939
1973	97	15,629	15,112	10,456
Percent change: 1973 over 1962	24.4	224.1	262.7	245.0
1973 over 1972		7.5	9.3	5.2

Mr. FONG. Mr. President, something must be done to help the courts alleviate this huge backlog. There has been discussion over a long period of time of splitting the circuits and of appointing more judges. The Commission on Revision of the Federal Court Appellate System has been working on this problem; bills are pending in committee, but immediate action is required.

At the present time, the only legal personnel available to assist judges of the courts of appeals in the discharge of their duties are the law clerks.

28 U.S.C. 712 reads:

712. Law clerks and secretaries. Circuit judges may appoint necessary law clerks and secretaries.

The salaries of the law clerks are fixed by the Director of the Administrative Office of the U.S. Courts under the supervision and direction of the Judicial Conference of the United States.

The pertinent part of the applicable law (28 U.S.C. 604(a)(5)) reads:

604. Duties of Director generally.

(a) The Director shall be the administrative officer of the courts, and under the superversion and direction of the Judicial Conference of the United States, shall:

* * * * *

(5) Fix the compensation of clerks of court, deputies, librarians, criers, messengers, *law clerks*, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law; (Emphasis supplied.)

However, Congress has seen fit to put limitations on the compensation of the law clerks and on the aggregate salaries paid to law clerks and secretaries appointed by each circut court judge.

Public Law 93-162, approved November 27, 1973, making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending June 30, 1974, and for other purposes, under title IV—the judiciary, in pertinent part, provides:

Court of Appeals, District Courts, and Judicial Services.

* * * * *

Salaries of Supporting Personnel

For salaries for all officials and employees of the Federal Judiciary, not otherwise specifically provided for, $83,450,000: *Provided*, That

* * * * *

the salaries of law clerks to circuit and district judges shall not exceed the compensation established in chapter 51 of title 5, United States Code, for General Schedule grade (GS) 7, 8, 9, 10, 11, or 12: *Provided further*, That (exclusive of step increases corresponding with those provided for by chapter 53 of title 5 of the United States Code, and of compensation paid for temporary assistance needed because of an emergency) the aggregate salaries paid to secretaries and law clerks appointed by each of the circuit and district judges shall not exceed $43,453 and $33,377 per annum, respectively, except in the case of the chief judge of each circuit and the chief judge of each district court having five or more district judges, in which case the aggregate salaries shall not exceed $56,228 and $42,897 per annum respectively.

With a limitation of $43,453 per circuit court judge—except for the chief judge in each circuit who is entitled to pay salaries of not to exceed $56,228—and a limitation of a maximum salary of $22,744 payable for the equivalent of a GS-12 grade, the maximum amount a law clerk may be paid, there is obviously a severe limitation put upon the number and especially, the caliber of the type of legal assistance available to circuit court judges to clear up the backlog, I heretofore showed, exists throughout the circuits.

The Commission on Revision of the Federal Court Appellate System, in the fall of 1973, held hearings to obtain the recommendation of the judges of the District of Columbia, the fifth and ninth circuits.

Chief Judge John R. Brown, Judge Robert A. Ainsworth, Judge John Minor Wisdom, and Judge Griffin B. Bell of the Court of Appeals for the Fifth Circuit, testified as to their need for a central legal staff to screen cases and prepare preliminary memorandums for use by the bench on cases sent to the oral argument calendar.

Chief Judge Richard H. Chambers, Judge Charles E. Merrill, Judge James R. Browning, and Judge Herbert Y. C. Choy, of the Court of Appeals for the Ninth Circuit have spoken eloquently of their need for such staff legal assistants as well as of personal law clerks and of the need for supervision of those staff legal assistants by an attorney of outstanding ability and experience.

This plea of the judges has not fallen on deaf ears.

Mr. Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts, under date of May 11, 1973, wrote to the Honorable Spiro T. Agnew, President, U.S. Senate, indicating that the Judicial Conference of the United States, by resolution adopted April 1973, approved a proposal for legal assistants in the Courts of Appeals of the United States as theretofore approved at its October 1971 meeting, and approved the sending along of a draft of a proposed bill providing for such legal assistants.

In this letter, Mr. Kirks stated:

The purpose of the draft bill is to enable the Judicial Conference to authorize Courts of Appeals to appoint legal assistants to the court who would have sufficient professional experience and legal background to qualify such attorneys to perform the function of making the preliminary examination of all matters filed with the court; identify the issues raised; distinguish these substantial issues requiring more extended review by the court from insubstantial cases requiring less deliberation; settling preliminary procedural matters incident to appeals which now divert the time of judges away from their substantive tasks; and otherwise performing screening procedures necessary to expedite the task of the judges in reaching the substance of the matters presented to the court.

It is anticipated that such legal assistants would receive salaries commensurate with the high demands of their legal duties and with the experience and scholastic qualifications which would be imposed. Such officers would perform these screening services for the entire court and are to be distinguished from law clerks who are on the personal staff of individual judges. . . .

Mr. President, I ask unanimous consent that the full text of the letter, dated May 11, 1973, from the Director of the Administrative Office and the draft bill be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FONG. Mr. President, the bill, which it is my privilege to sponsor and which is cosponsored by Senators METCALF, BENNETT, BROOKE, DOLE, DOMENICI, FANNIN, GURNEY, JAVITS, and WILLIAMS, is an answer to some of the much needed assistance to the judges of the courts of appeals to enable them to continue to efficiently and effectively dispose of their ever-increasing caseload.

Every effort must be made to see that appellate review is timely, thorough, and available, lest justice be denied.

Accordingly I ask my colleagues'

cosponsorship of this bill, I ask that the Committee on the Judiciary expedite the reporting of this bill so that the Senate may work its will on this much needed legislation.

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

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

S. 3800

A bill to provide for the appointment of legal assistants in the courts of appeals of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 47 of title 28, United States code, is amended by adding at the end thereof the following new section:

§ 714. Legal assistants

"A court of appeals may appoint necessary legal assistants to positions authorized by the Judicial Conference of the United States who shall be subject to removal by the court. Such legal assistants shall perform such duties as the court shall determine involving the preliminary processing of matters filed in such court. The approval of the Judicial Conference of the United States shall be required prior to the establishment of each such position."

(b) The analysis of such chapter 47 is amended by adding at the end thereof the following new item:

"714. Legal assistants.".

SEC. 2. Section 604(a)(5) of title 28, United States Code, is amended by inserting "legal assistants," immediately after "law clerks,":.

EXHIBIT 1

MAY 11, 1973.

HON. SPIRO T. AGNEW,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: In accordance with the resolution of the Judicial Conference of the U.S. adopted at its meeting in April of 1973, reapproving the proposal, there is transmitted herewith a draft bill providing for legal assistants in the Courts of Appeals of the United States, for appropriate referral and consideration by the Congress. The proposal was previously approved by the Judicial Conference at its October 1971 meeting.

The purpose of the draft bill is to enable the Judicial Conference to authorize Courts of Appeals to appoint legal assistants to the court who would have sufficient professional experience and legal background to qualify such attorneys to perform the function of making the preliminary examination of all matters filed with the court; identify the issues raised; distinguish these substantial issues requiring more extended review by the court from insubstantial cases requiring less deliberation; settling preliminary procedural matters incident to appeals which now divert the time of judges away from their substantive tasks; and otherwise performing screening procedures necessary to expedite the task of the judges in reaching the substance of the matters presented to the court.

It is anticipated that such legal assistants would receive salaries commensurate with the high demands of their legal duties and with the experience and scholastic qualifications which would be imposed. Such officers would perform these screening services for the entire court and are to be distinguished from law clerks who are on the personal staff of individual judges. The latter are usually newly graduated law students without prior experience in law practice who spend a brief tenure, usually a year, with the individual judge to perform research. Legal assistants, on the other hand, would be permanent staff attorneys to the entire court with higher qualification standards necessary to the duties which they would perform.

The necessity of appointing staff attorneys as legal assistants to the court is evidenced in large measure by the magnitude of judicial business faced by the courts of appeals, especially those with the highest volume of filings. Overall since 1961, the appeal filings in the eleven judicial circuits have increased by 246%. The volume since 1968 alone has increased 59%. Though the dispositional rate of the courts has been constant, the overall increase in the pending caseload is 319% greater than fiscal year 1961.

The request for the assistance of staff attorneys to perform the function of preliminary processing of matters filed with the court originated with the Chief Judge of the Court of Appeals for the Fifth Circuit. That court has ranked first in filings among the eleven judicial circuits and covers a vast geographical territory from Texas to Florida. The Fifth Circuit first demonstrated to the Conference an urgent need for legal assistants to this court who could handle the preliminary processing of matters submitted to the court and reduce the valuable time of its 15 active and 4 senior judges which can be more wisely deployed in deciding the merits of the litigation before them.

It might be noted that under the provisions of this draft bill, prior approval of the Judicial Conference is required before any such position of judicial assistant is established. (We would anticipate their limited use at this time only in courts of appeals having the greatest case volume.) The legal assistants will be appointed by and be removable by the court itself. Under the provisions of Section 604(a)(5), the Director of the Administrative Office would set the salaries and qualifications of these employees with the approval of the Judicial Conference. The exact range of salaries would presumably be a subject of a reference in the Judicial Appropriation Act.

It seems clear without express mention that these new officers would be subject to the usual benefits of federal employment such as retirement, health and life insurance benefits, and the like as well as specific provisions dealing with salaries administratively fixed (see 5 U.S.C. 5307).

Representatives of this office will be pleased to provide additional information that is necessary.

Sincerely,

ROWLAND F. KIRKS,
Director.

A bill to provide for the appointment of legal assistants in the Courts of Appeals of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 47 of title 28, United States Code, is amended by adding the following new section:

"§ 714. Legal assistants.

(a) A court of appeals may appoint necessary legal assistants to positions authorized by the Judicial Conference of the United States who shall be subject to removal by the court. Such legal assistants shall perform such duties as the court shall determine involving the preliminary processing of matters filed in such court.

(b) The compensation of legal assistants shall be fixed pursuant to section 604(a)(5) of this title, and the approval of the Judicial Conference of the United States shall be required prior to the establishment of each such position."

SEC. 2. The analysis of chapter 47 is amended by adding immediately following, "713. Criers, bailiffs and messengers." the following new material:

"714. Legal assistants."

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 949

At the request of Mr. MONDALE, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 949, the "Youth Programs Act."

S. 2022

At the request of Mr. TUNNEY, the Senator from New Jersey (Mr. CASE) was added as a cosponsor of S. 2022, the Flexible Hours Employment Act.

S. 3648

At the request of Mr. TUNNEY, the Senator from Iowa (Mr. HUGHES) was added as a cosponsor of S. 3648, a bill to amend the Urban Mass Transportation Act of 1964 to insure that transportation facilities built and rolling stock purchased with Federal funds are designed and constructed to be accessible to the physically handicapped and the elderly.

S. 3649

At the request of Mr. PELL, the Senator from Maryland (Mr. BEALL), the Senator from Nevada (Mr. BIBLE), and the Senator from Florida (Mr. CHILES) were added as cosponsors of S. 3649, the Social Security Recipients Fairness Act.

SENATE RESOLUTION 364—SUBMISSION OF A RESOLUTION TO REFER S. 3799 TO THE CHIEF COMMISSIONER OF THE U.S. COURT OF CLAIMS

(Referred to the Committee on the Judiciary.)

Mr. FONG submitted a resolution (S. Res. 364) to refer the bill (S. 3799) entitled "A bill for the relief of Mrs. Agnes J. Wong and Dr. Samuel J. Wong, Jr." to the Chief Commissioner of the U.S. Court of Claims for a report thereon:

S. RES. 364

Resolved, That bill (S. 3799) entitled "A bill for the relief of Mrs. Agnes J. Wong and Dr. Samuel J. Wong, Jr.", now pending in the Senate, together with all the accompanying papers, is referred to the Chief Commissioner of the United States Court of Claims; and the Chief Commissioner shall proceed with such bill in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practical date, giving such findings of fact and conclusions thereon as will be sufficient to inform the Congress of the nature and character of the demands as a claim, legal or equitable, against the United States, or as a gratuity, and the amount, if any, legally or equitably due from the United States to the claimants.

SENATE RESOLUTION 365—SUBMISSION OF A RESOLUTION RELATING TO THE PRINTING OF LEGISLATIVE PROCEEDINGS WITH RESPECT TO THE DEATH OF FORMER SENATOR WAYNE L. MORSE

(Referred to the Committee on Rules and Administration.)

Mr. HATFIELD submitted a resolution (S. Res. 365) relating to the printing

of legislative proceedings with respect to the death of former Senator Wayne L. Morse:

S. RES. 365

Resolved, That the legislative proceedings in the United States Congress relating to the death of the former Senator from Oregon, Mr. Morse, be printed as a Senate document.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974—AMENDMENTS

AMENDMENT NOS. 1601, 1602, 1603, 1604

(Ordered to be printed and to lie on the table.)

Mr. HATHAWAY submitted four amendments, intended to be proposed by him, to the bill (S. 3164) to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes.

AMENDMENT NO. 1605

(Ordered to be printed and to lie on the table.)

Mr. STEVENSON submitted an amendment, intended to be proposed by him, to the bill (S. 3164) supra.

CONSUMER PROTECTION AGENCY ACT—AMENDMENTS

AMENDMENT NO. 1606

(Ordered to be printed and to lie on the table.)

Mr. STEVENSON submitted an amendment, intended to be proposed by him, to the bill (S. 707) to establish a Council on Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

AMENDMENT NO. 1607

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted an amendment, intended to be proposed by him, to the bill (S. 707) supra.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1375

At the request of Mr. HATHAWAY, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of amendment No. 1375, intended to be proposed to S. 2351 to prohibit sex discrimination by education institutions whose primary purpose is the training of individuals for the military services of the United States or the merchant marine.

AMENDMENT NO. 1449

At the request of Mr. TUNNEY, the Senator from Iowa (Mr. HUGHES) was added as a cosponsor of amendment No. 1449, intended to be proposed by him to S. 3035 to amend title 23, United States Code, the Federal Highway Act of 1973, and other related provisions of law, to establish a unified transportation assistance program, and for other purposes.

AMENDMENT NO. 1562

At the request of Mr. METCALF, the Senator from Georgia (Mr. NUNN) was added as a cosponsor of Amendment No. 1562 to S. 707, the Consumer Protection Agency Act.

ORDER FOR PRINTING A SENATE DOCUMENT 93-81—ANNUAL REPORT OF THE NATIONAL FOREST RESERVATION COMMISSION

Mr. TALMADGE. Mr. President, I ask unanimous consent that Senate Document 93-81 be reprinted. This is the annual report of the National Forest Reservation Commission for the year ended June 30, 1973.

The Commission's secretary informs me that the original printing is "barely legible," improperly set up, and that "page numbers have been omitted."

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

ANNOUNCEMENT OF HEARINGS ON SHORTAGES AND ALLOCATION OF OIL COUNTRY TUBULAR GOODS

Mr. JACKSON. Mr. President, on Thursday, July 25, the Committee on Interior and Insular Affairs will continue its hearings on shortages of oil country tubular goods, and on the possible need for allocating such materials. The following representatives of the administration will appear as witnesses:

The Honorable William J. Casey, President and Chairman, Export-Import Bank of the United States;

The Honorable John C. Sawhill, Administrator, Federal Energy Administration; and

The Honorable Tilton N. Dobbin, Assistant Secretary of Commerce for Domestic and International Business.

The hearing will begin at 10 a.m. in room 3110, Dirksen Senate Office Building.

ANNOUNCEMENT OF HEARINGS ON FEA NOMINATIONS

Mr. JACKSON. Mr. President, on Friday, July 26, 1974, the Committee on Interior and Insular Affairs will hold hearings on two nominations for officials of the Federal Energy Administration. The nominees are Robert E. Montgomery, to be General Counsel, and Roger W. Sant, to be Assistant Administrator for Conservation and Environment. For the benefit of my colleagues, I ask unanimous consent that the biographic summaries of the two candidates be printed at this point in the RECORD.

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

BIOGRAPHY OF ROGER W. SANT

ASSISTANT ADMINISTRATOR, CONSERVATION AND ENVIRONMENT, FEDERAL ENERGY ADMINISTRATION

Roger W. Sant, 43, of Menlo Park, California, has been nominated by the President for the position of Assistant Administrator for Conservation and Environment of the Federal Energy Administration. His duties will include directing the energy conservation and environmental programs of the agency.

Mr. Sant is currently Vice President for Planning and Development of Saga Corporation, a nationwide food service management and restaurant concern. He joined Saga in 1971 and has been responsible for strategic and market planning and for mergers and acquisitions. From 1968 to 1971, he was a full-time lecturer at the Stanford University Graduate School of Business and since 1971 has been a part-time lecturer there. He also co-founded two companies in that period—Finnigan Corporation, a scientific instrument company and Bandak Corporation, a manufacturing jeweler. From 1965 to 1968, Mr. Sant was a Vice President at Syntex Laboratories, a worldwide pharmaceutical concern, where he had primary responsibility for financial operations, planning, and strategy. Before that, he was Treasurer and Chief Financial Officer for Wilkens Instrument and Research, Incorporated.

He was born in Los Angeles, California, and received a B.S. degree in Management from Brigham Young University in Utah and a M.B.A. degree with distinction from Harvard University. From 1955 to 1958, he was an officer in the Navy and was honorably discharged as a lieutenant. Mr. Sant has also served in executive posts for various charitable and community activities.

He is married to the former Victoria Post, also of California. The couple have two children, Alison and Alexis, age 4. Mr. Sant has two children from a prior marriage, Shari, 16, and Michael, 15, who live in Los Angeles.

BIOGRAPHY OF ROBERT E. MONTGOMERY, JR.

Robert E. Montgomery, Jr., 35, joined the Federal Energy Office as its Deputy General Counsel February 1, 1974. During the previous year, Mr. Montgomery was Assistant General Counsel for Legislation and Congressional Affairs at the Federal Trade Commission.

Prior to joining the FTC, Mr. Montgomery served as Acting Deputy Director and General Counsel of the White House Office of Consumer Affairs. Previously, he had served as an assistant to the U.S. Army's General Counsel.

Mr. Montgomery received a bachelor of science degree in engineering from the U.S. Military Academy in 1960, graduating second in his class. A Rhodes Scholar, he earned his M.A. degree at Oxford University in politics, philosophy and economics. In 1969, Mr. Montgomery received his J.D. from the University of California at Berkeley, where he was editor-in-chief of the California Law Review.

A native of Whittier, California, he served as an infantry captain in Vietnam from June, 1965, to June, 1966.

Mr. Montgomery is married to the former Sandra Lee Jennings, and they live with their three children in Alexandria, Virginia.

ADDITIONAL STATEMENTS

FORMER SENATOR WAYNE MORSE

Mr. McGEE. Mr. President, yesterday, during the debate on the Agriculture Appropriations bill, we learned of the death of one of the most esteemed former colleagues, Wayne Morse of Oregon.

I had the distinct pleasure of serving in this body with Senator Morse for several years, and although we disagreed on some matters of foreign policy, neither he nor I ever lost our warm affection, respect and regard for each other.

Wayne Morse was truly one of a kind, a man whose life was devoted to the public good and who expressed his views

on that public trust forcefully, intelligently and with great honor. He served a distingiushed 24 years in the Senate, and was characteristically, with vigor and undimmed effort trying for yet another term at the age of 73 when his final illness struck him. And, as reported after his death, his courage showed again when he refused to be kept alive by a machine. Instead, he and his courageous wife chose to fight his final battle with only his own strong mind and heart.

Mr. President, David S. Broder of the Washington Post wrote a fine tribute to Wayne Morse in this morning's edition, and I ask unanimous consent that the obituary of this distingiushed and honorable American be printed in the RECORD.

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

[From the Washington Post, July 23, 1974]

FORMER SENATOR WAYNE MORSE DIES IN PORTLAND HOSPITAL AT 73

(By David S. Broder)

Former Sen. Wayne L. Morse of Oregon, a maverick who switched parties twice and fought with five Presidents, died yesterday in a Portland hospital at the age of 73.

Morse, whose characteristic independence of judgment made him one of only two senators to oppose the 1964 Gulf of Tonkin resolution that launched America into the Vietnam war, succumbed to kidney and heart failure following a urinary tract infection that hospitalized him last Wednesday.

Until then, he had been campaigning for another term in the Senate against Sen. Bob Packwood (R-Ore.), who defeated Morse in 1968 after a 24-year tenure as a Republican, Independent and Democratic Senator.

A new senatorial candidate is to be chosen by the Democratic state central committee.

Morse is survived by his widow, Mildred, three daughters—Nancy Campbell, Judith Mary Eaton and Amy Ann Bilich—six grandchildren, two brothers and a sister. Funeral arrangements are pending.

In his 30 years in public life, Morse, whose intellectual brilliance was acknowledged by even his most bitter critics, at various times served, supported and scorned every President of both parties from Franklin D. Roosevelt through Lyndon B. Johnson.

His feuds were proverbial, and over the years came to include almost every colleague in the Oregon congressional delegation and many of the newsmen who covered him.

Yet among those same legislators and journalists, he was respected as a gifted lawmaker, with a genuine mastery of the fields of foreign policy, education and labor legislation he made his own.

At the same time that President Johnson was in almost daily verbal combat with Morse over the Vietnam war, he chose the Oregonian to floor-manage his landmark aid-to-education bill, and when it was passed, Johnson said, "No one else could have done it."

Long before it became fashionable for other politicians, Morse espoused the view that he would not bend his personal philosophy to the needs of party regularity. He bolted the Republican party in 1952 in disgust with the Eisenhower-Nixon campaign, served for two years as an independent, then joined the Democrats, only to fight John F. Kennedy for the nomination of his new party, and to take the early lead against the Vietnam policies of President Johnson.

Describing his own philosophy as one of "constitutional liberalism," Morse said in a 1953 article that he believed his course of personal independence was "the best way I can challenge the political expediency of both parties."

It was his fiercely cultivated and bristling independence—as well as his prescience on Vietnam—that senators noted in their eulogies yesterday.

Sen. Mark O. Hatfield (R-Ore.), a man Morse jumped party lines to endorse in 1966 and against whom he ran in 1972, called Morse "a politician from a unique mold and an enigma to many people. When convinced of a position on an issue, he was not swayed. . . ."

Sen. Packwood said, "Wayne Morse was a man of integrity and courage. He was never afraid to fight for his convictions." Senate Majority Leader Mike Mansfield (D-Mont.) called him "a man of fierce independence."

Wayne Lyman Morse was born on a farm outside Madison, Wis., on Oct. 20, 1900, and as a boy came under the spell of the great Wisconsin independents, the LaFollettes. He attended the University of Wisconsin, studied law at the University of Minnesota and Columbia University, and moved west in 1929 to join the University of Oregon law school faculty. Less than two years later, at 30, he became the youngest law school dean in the nation.

His debut in national life came in 1941, when Roosevelt chose Morse, already a skilled labor arbitrator, as chairman of an emergency board created to head off a nationwide railroad strike.

A marathon 38-hour final bargaining session after six weeks of hearings produced a compromise settlement on Dec. 6, 1941—the eve of Pearl Harbor.

Roosevelt then named him a public member of the War Labor Board, where he served for two years until he resigned with a characteristically sharp attack on Roosevelt and Secretary of Interior Harold L. Ickes over the settlement of a coal dispute. A letter to Ickes, complaining about him and Under Secretary Abe Fortas, showed even then Morse's mastery of the acerbic style for which he became famous:

"Dear Mr. Secretary. Thank you very much for your letter of June 11, 1943. It is in keeping with and supports my low esteem of you. The attempt of you and Mr. Fortas to try to convict me, without justification, of deceiving the President in order to divert attention from your gross mishandling of the coal case should be beneath you as a Cabinet officer . . . I deeply resented the 'off-the-record' statements which you made at your press conference at the time you announced your scuttling truce with [John L.] Lewis. . . ."

"I am perfectly aware of the fact that for one in my subordinate position to express his complete lack of respect for and confidence in men in such high positions as you and Mr. Fortas is not in accordance with government protocol, but I could not have done less and kept faith with my self-respect," Morse concluded.

In 1944, he was back in Oregon to win his first term in the Senate, as a Republican. He came back to Washington from the campaign by car, towing his two champion saddle horses, the forerunners of a string of horses and cattle he kept at his farms in Maryland and Oregon.

In his first six months in the Senate, he made more speeches than all the other freshmen combined. The Senate reporters nicknamed him "the Five O'Clock Shadow," in grudging tribute to his habit of taking the Senate floor each day when all other business was finished to deliver himself of some views.

In his first term, he conducted a 10-hour filibuster on behalf of President Truman's veto of the Taft-Hartley labor act—a record he more than doubled in another speech in 1953 lasting 22 hours and 26 minutes.

But despite his support of the Democratic President on that highly partisan issue, Morse was no ally of Truman's. He accused Truman of "showboating" on another labor issue and denounced him from the platform in 1946 as the "head of one of the most corrupt political machines in this country."

But after his re-election in 1950, Morse joined seven other Senate Republicans in decrying Sen. Joseph R. McCarthy's tactics in investigating alleged Communists in the Truman administration, and became a major Republican advocate of Truman's civil rights program.

In 1951 Morse suffered a broken jaw when kicked by a horse he was showing at a Virginia fair. Years later, the incident was revived in the course of a memorable fight he had with Clare Booth Luce.

Morse led a Senate battle against her confirmation as ambassador to Brazil in 1959, and when she prevailed, by a lopsided 79-to-11 margin, the playwright could not refrain from saying that her difficulties all occurred because "some years back . . . Wayne Morse was kicked in the head by a horse."

Morse indignantly returned to the Senate floor to denounce "this slanderer," and three days later Mrs. Luce withdrew from the post.

Morse's transformation from maverick Republican to maverick Democrat began in 1951, when he announced early for Dwight D. Eisenhower, but warned that "if my political party offers me a President and a platform in 1952 of only isolationist candidates, I will take a long walk . . . I have no intention of placing party above country."

Eisenhower was, of course, nominated, but on Oct. 18, 1952, Morse announced he would vote for Adlai Stevenson, because "never have I been so completely disillusioned about any man as I am about Eisenhower."

A week later, he resigned from the Republican Party, and when he returned to the Senate in January, 1953, he brought along a folding chair, saying, "Since I haven't been given any seat in the new Senate, I decided to bring my own."

The Republicans quickly stripped Morse of his seniority on the Armed Services and Labor committees and he was made a junior member of Public Works and the District of Columbia committees.

His independence, vigor and combativeness quickly made Morse a leading figure in District affairs, and he emerged as one of the strongest congressional advocates of home rule for the nation's capital.

He applied his strong concern for civil rights and civil liberties to Washington's problems, vowing to do his utmost to eliminate racial segregation and deliver self-government to the people of the city.

Only days after his reelection in 1956, Sen. Morse—by then one of the hardest-working of Washington's "city councilmen" in the Senate—announced that he wanted to stay on the District Committee because it provided him a special opportunity for public service.

Even in his later years in the Senate, when he became absorbed in the Vietnam war opposition, he continued to devote long hours to hearings and speeches on District legislation.

As chairman of the Senate District subcommittee on health, education and welfare matters, the senator constantly—and often bluntly—reminded colleagues on both sides of the Capitol of his firm belief that the bulk of Washington's problems were traceable to the absence of self-government.

But Morse's battle on behalf of home rule for Washington did not keep him from criticizing the leadership at the District Building when he felt improvements could be effected there.

In the field of education he pressed for many improvements in the public school system and was the Senate sponsor of legislation establishing Federal City College and the Washington Technical Institute.

In 1954, Morse campaigned hard for the election of Richard L. Neuberger (another man with whom he was later to carry on a personal fued) as Oregon's first Democratic senator of modern times.

He joined the Democratic Party himself in

1955 and for the next decade was the center of a series of battles over environmental, natural resources, education and labor issues, including the tideland oil fight, the Hells Canyon Dam case, the Landrum-Griffin labor reform bill and a series of struggles over federal aid to education.

In 1956, he won what was perhaps his sweetest personal victory when he ran for re-election as a Democrat and trounced Eisenhower's Secretary of Interior, Douglas McKay, who had returned to Oregon in an effort to purge the renegade Morse.

But four years later, in 1960, Oregon Democrats rejected Morse in favor of John F. Kennedy in their presidential primary.

In 1964, Morse cast the vote of which he said he was most proud when he joined the late Ernest Gruening of Alaska as the only opponents of the Gulf of Tonkin resolution, the measure that President Johnson took as congressional sanction for American intervention in Vietnam.

For the next eight years, in office and out, Morse traveled the country, tirelessly arguing against the war.

In his 1962 biography of Morse, called "The Tiger in the Senate," Portland Oregonian correspondent A. Robert Smith (who himself was periodically barred by an irate Morse from entering the senator's office) recalled that Morse had once told a Detroit reporter, "I sometimes wonder if I'm going at this a little too hard."

"But then," the senator continued, "I think of all the men and women who wish there were just one politician in Washington who would speak his mind and cast his vote honestly and freely with only his conscience to guide him."

"Maybe it's a bit brash to assume that I'm that man," Morse said, "but believe me, I'm trying to be."

(NOTE.—*This obituary was prepared with the research assistance of Elisabeth Donovan and Robert L. Asher.*)

PROGRESS REPORTED FOR WHALE CONSERVATION MEASURES

Mr. FONG. Mr. President, the International Whaling Commission—IWC—met in London last month for its 26th session on conservation measures for world whale stocks.

The United States again pushed for a moratorium of 10 years duration on the further harvesting of whales to permit gathering of better data on whale species populations and to more accurately determine if whaling could be permitted without endangering species survival.

An amendment to the U.S. proposal was adopted over the opposition of Japan and the Soviet Union which resulted in an IWC resolution imposing selected moratoria on certain species of whale. The moratoria would not take effect until after next year's annual meeting of the commission as the commission's scientific advisory committee will meet in December to reach its best scientific judgment on which species in which areas of global waters should be placed under a harvesting moratorium. The commission will then act next year on its committee's recommendations.

Although the United States was unable to obtain commission agreement to a global moratorium on all commercial taking of whales, this Nation's efforts to protect whales have resulted in improving IWC's conservation program. Although some progress has been made, this is not enough. The United States should continue to make every effort to achieve the moratorium we seek.

I wish to call attention to a progress report made by Dr. Robert M. White, the U.S. Commissioner, upon his return from the latest commission session. For the benefit of all concerned with the preservation of the world's whales, I ask unanimous consent to have printed in the RECORD the official press release on Dr. White's report.

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

PROGRESS REPORTED FOR WHALE CONSERVATION MEASURES

Although the United States did not achieve its goal of a 10-year moratorium on all commercial whaling, "significant progress" has been made in many aspects of international whale conservation, according to Dr. Robert M. White, U.S. Commissioner of the International Whaling Commission. Dr. White has just returned from the 26th Session of the Commission, held in London, England.

Progress has been made in four areas, Dr. White noted. They are

—A selective moratorium will apply to any stock of whales that falls below optimum population levels;

—World-wide quotas for whale species of most concern have been greatly reduced;

—Whale stocks will be managed by ocean areas rather than oceans as a whole;

—In establishing optimum stock levels, factors other than simple number of whales will be considered—factors that encompass the health of the total marine ecosystem, and that will lead to establishment of more conservative quota levels.

"Adoption of the principle of a selective moratorium represents a major change in the outlook for the preservation of the world's whales," said Dr. White, who is Administrator of the National Oceanic and Atmospheric Administration.

"Imposition of such a moratorium—suggested by the Australians as an amendment to the U.S. proposal for a 10-year moratorium on all whaling—will ensure the most rapid possible restoration of depleted whale stocks." The Commerce Department official noted that the action makes possible a moratorium for certain species, such as the fin whale, for longer than 10 years.

The world-wide quotas established by the Commission provide significant reductions in the allowed catch of several species. In the case of the fin whale, last year's quota has been reduced by 35 percent, from 2,000 to 1,300, with an anticipated reduction to zero for the 1975–76 whaling season. The quota for the sei whale has been reduced 20 percent from 7,500 to 6,000. The sperm whale quota was maintained at last year's level of 23,000.

Only in the case of minke whales has the quota increased, from 5,000 to 7,000, on the assurance of scientists that this level will not seriously affect stocks of this small whale, which has only recently begun to be harvested.

The total number of whales that will be allowed by the quotas approved by the IWC for the next year total 37,300.

The agreement that all whale stocks will be managed by ocean areas, rather than for the oceans as a whole, will make possible much improved conservation and management by individual whale stocks. Quotas are established for each ocean area, rather than for the oceans as a whole. This means, for example, that if a whaling vessel catches its quota for an area, it may not catch additional whales in that area but must move to another. This provision eliminates the danger of seriously depleting individual stocks within an era, as has happened in the past.

The fourth area of major progress involves new methods for determining optimum population levels, and provides that factors such as the weight of the animals, the interaction among various species of whales and between whales and other living things, be considered.

"The progress achieved at this Commission meeting, while falling short of the U.S. objectives, is gratifying and is due to the recognition by member countries of the increasing need for improved conservation measures," Dr. White said. "A critical element in the changing attitude of the International Whaling Commission has been the advocacy of strong whale conservation measures by nongovernment environmental organizations both in the U.S. and in other countries.

"The United States remains concerned about many features of international whale management and conservation. Catch Per Unit of Effort of critical species of whales continues to fall. This is a warning signal that whaling stocks may be in less healthy shape than some data portray."

He also stated that in the U.S. view quotas are still being set too high, particularly in view of the uncertainties in the base data and the risk of long-term or irreversible loses of the resource and the possibility that local stocks may be overfished.

"Finally," he noted, "the question of the humaneness of whale killing methods requires further examination."

In other actions at the meeting, the Commission decided to strengthen the Secretariat and its research activities. To that end it voted a budget increase from $16,800 to $86,400. There was agreement by all member countries for the first time to consider changes in the International Convention for the Regulation of Whaling and a working party was established to undertake a thorough consideration of possible changes.

TIME IS RUNNING OUT

Mr. HOLLINGS. Mr. President, citizens all across this land of ours are upset. They are upset at double-digit inflation which at one fell swoop erodes their purchasing power, jeopardizes their savings, and condemns those on fixed incomes to an ever-decreasing standard of living. They are worried, too, about an energy shortage which has not really gone away. They want Government to come to grips with these issues, and they are fed up with Government's inability to act.

Government is the servant of the people, and when Government reflects and acts upon the concerns of the people, it is truly representative. But when the concerns of the people are given short shrift, and when Government becomes preoccupied with its own rivalries and bickering, then government of the people has been subordinated to government of the government, by the government, and for the government. I am afraid this is our situation today, and for this sad state of affairs no one or two people are exclusively to blame. It took more than just a few to get us into as much trouble as we presently have.

If Government seems unable to act, the people are not. And if Government does not know what needs to be done, the people do. First of all, the people expect Government to practice the same self-discipline which the family practices. They know that Government cannot go on living beyond its means. They know that there is such a thing as priorities, and that we cannot have our cake and eat it, too. So the first place to act is to bring spiraling Federal Government spending under control. We must bal-

ance our budget. We must pass legislation such as I have introduced to require the President to submit, and the Congress to enact, a balanced budget each year. If we could get this Federal red ink under control, we would be a long way down the road to curbing inflation and restoring the value of the American dollar.

On the energy front, the time is also here to act. We must get the facts—the accurate facts—not the twisted statistics presented by Big Oil and the special interests. We must have a coherent policy for energy self-sufficiency in order to end this ridiculous dependence upon unpredictable oil sheiks thousands of miles from our shores. And we must make crystal clear for everyone to see that the energy policies of the U.S. Government are directed toward the well-being of all its citizens, not toward the get-rich-quick profits of the barons and moguls of Big Oil.

Mr. President, these are not easy things to accomplish—but certainly they can be done. And they must be done. For that is why we are sent here—to cope with these serious problems which our citizens encounter each and every day. Everywhere I look, I see these concerns. They are reflected in every home and town I visit. They are heard in every question I am asked, and in every suggestion I listen to. And they are in the hundreds of letters which come to my office every day.

Recently the city council of Sumter, S.C., went on record in order to encourage action on these issues. The council passed a resolution which states, concisely and to-the-point, what the concerns are. And it makes all of us in public life aware that the people are fed up with rhetoric and promises. They want results.

Mr. President, I ask unanimous consent that the text of the May 28, 1974 Resolution of the city council of Sumter, S.C., be printed in its entirety in the RECORD. I hope it will be widely read. And I hope we will have the good sense to act on it. For, in truth, time is running out.

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

RESOLUTION

A RESOLUTION RELATING TO THE STATE OF THE ECONOMY AND THE ENERGY SHORTAGE

Be it resolved by the mayor and councilmen of the city of Sumter, in meeting regularly assembled, as follows:

(1) That grave concern is felt over continued inflation and continued skyrocketing of costs.

(2) That it appears imperative that steps be taken to halt inflation and roll back prices.

(3) That the energy shortage, particularly in reference to supplies of gasoline, is becoming increasingly acute and creating numerous, varied, and substantial problems.

(4) That it appears necessary and desirable that further positive steps be taken in an effort to relieve the problems being caused by existing shortage of gasoline.

(5) That the mayor of the city of Sumter is authorized and directed to transmit this resolution and to convey its content to any and all persons in interest at any and all government levels in any situation in which it is felt that such action might prove helpful.

Done and ratified in meeting assembled on this the 28th day of May 1974.

THE TAXPAYER AND INFLATION

Mr. CHURCH. Mr. President, the state of the economy remains the overriding concern of a great many Idahoans. Inflation is raging at an annual rate of above 10 percent. This is worrisome news to housewives, small businessmen, and farmers who have been plagued by rising costs. The administration's consolation that the "worst is behind us," words which the public has heard before, has met with skepticism among American consumers. And who can blame the wage earner who has watched hard-earned dollars buy less and less each year, while this administration fiddles with "game plans" that never work.

Clayton Fritchey's recent article in the Washington Post has put the matter of the administration's mismanagement of the economy right on the line. I ask unanimous consent that his article be printed in the RECORD.

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

[From the Washington Post, July 17, 1974]

INFLATION: BLAMING THE TAXPAYER

(By Clayton Fritchey)

Not since Voltaire created Dr. Pangloss ("everything is for the best in this best of all possible worlds") has there been anyone quite like Mr. Nixon's official optimist, Dr. Herbert Stein, who, as chairman of the Council of Economic Advisers, has proved time and again that even the President's most disastrous domestic policies are really blessings in disguise.

Now, on the eve of his departure from the government to resume teaching (heaven help the students), Prof. Stein has surpassed himself in demonstrating once more that Mr. Nixon's economic policies are just what the doctor ordered or, if they aren't, somebody else is to blame.

For some years, Dr. Stein has specialized in explaining away the inflation that has plagued the Nixon administration. First, it was nothing to worry about. Then the story was that Americans are really "better off." Finally, it was that the administration had it under control and it would soon subside. Just be patient. Today inflation is raging at a rate of almost 12 per cent. Not even Dr. Stein can pooh-pooh it any longer. So in his latest pronouncement, he reluctantly admits it is bad but blames the public for causing it.

The public, it appears, should be impeached for obstructing the President in the performance of his duty. The logic is that inflation couldn't be stopped without raising taxes, but Mr. Nixon's hands were tied because the people "were so reluctant to have a tax increase."

It is a libel on the American people, who have consistently accepted sacrifice when necessary in the national interest. They have often borne heavier taxes, wage ceilings and rationing with good grace. No President has ever made essential, patriotic demands on the people and been rejected.

Much of the present inflation can be traced to the Vietnamese war, which caused large budget deficits year after year. Mr. Nixon's response was to cut taxes rather than raise them. He presumably was taking no chances on reelection.

Former President Harry Truman did just the opposite when inflation was triggered by the Korean war in 1950. He quickly called for a tax boost, and Congress passed an increase shortly after the war started. Two more tax bills were passed before the year was out. How did the public react? The late Sen. Robert A. Taft, who strongly supported the tax legislation, was easily re-elected in the fall of 1950.

The upshot of Mr. Truman's early and decisive action was that Korea became virtually a pay-as-you-fight war. The deficit averaged only about $2 billion annually for the peak years of 1950–52, and the rate of inflation in the same period was held to 4.5 per cent, dropping to less than 1 per cent for 1952–55.

Dr. Stein says he is against any tax cut for Americans at the present time because "we should not be putting $5 billion or $10 billion in their hands which they'd only go out and spend." But the whole point of a tax reduction would be to stimulate employment and production through more purchasing power. Hoarding would simply defeat that objective.

The way to salvation, Dr. Stein admonishes, us, is through "old-time religion" economic policy, as allegedly practiced by the administration. It is described as strict governmental spending limits, tight monetary policy, a balanced budget and no tax reduction. Dr. Stein must be joking.

Mr. Nixon has been in office well over five years, and this is how his practice compares with Dr. Stein's preaching: Administration spending has broken all previous records, producing both the first $200 billion budget and the first $300 billion one. The monetary policy, rather than being "tight," has until recently been notoriously free and easy. The budget has been unbalanced by more than $100 billion. And there have been several tax reductions.

With that performance, inflation was inevitable. Would Dr. Stein still like to insist that the public is the guilty party? He should heed Dr. Karl Brunner of the University of Rochester, who says, "An irrelevant or poorly conceived explanation of inflation cannot yield useful suggestions for an effective and successful anti-inflationary package."

Not long ago, Dr. Arthur Burns, chairman of the Federal Reserve Board, broke ranks to warn that "the gravity of our currrent inflationary problem can hardly be overestimated." Mr. Nixon was not impressed. His crystal ball saw "encouraging signs that the worst is behind us."

Nobody really knows Richard Nixon. Even Gen. Eisenhower misjudged him. Back in 1968, the former President is quoted as having privately said, "I think Dick's going to be elected President, but I think he is going to be a one-term President. I think he's really going to fight inflation and that will kill him politically." Well, Mr. Nixon is certainly in trouble politically, but not because he killed inflation which, alas, is alive and well and living it up all over the land.

CAPTIVE NATIONS WEEK

Mr. SCHWEIKER. Mr. President, the week of July 14–20 marked the 15th anniversary of Captive Nations Week, which was provided for in 1959 by joint congressional resolution and Presidential proclamation.

It is a time when we reaffirm our commitment to the struggle of the captive nations of the world for political, religious and cultural freedom and our strong opposition to any form of repression behind the Iron Curtain.

As the sponsor of the Ethnic Heritage Studies Act, and as one who has spoken out repeatedly on behalf of the struggle of captive nations for self determination, I am honored to join in the commemoration of Captive Nations Week 1974.

LET'S PHASE-IN THE COMPETITIVE VIABILITY OF INDEPENDENT OIL DEALERS

Mr. HUMPHREY. Mr. President, the Federal Energy Office is pushing forward with its intensive plans to decontrol the allocation of petroleum products in the United States without clearly addressing the problem of the fast-shrinking markets of the independent oil refiners and marketers. Yesterday, the FEA held public hearings on their proposal to exempt fuel oil from the mandatory petroleum allocation program. It is my firm belief that we must continue the allocation program until the problem of maintaining the competitive viability of the independents is solved. As I have said many times before, the only true competitive force we have had in the petroleum field comes from the independents, and that force has been of direct benefit to the consumer.

A letter I received from an independent oil dealer in Minnesota discusses the problems facing nearly every small oil marketer in America, if the FEA continues its plans to decontrol oil products. This letter points out the dire need to extend the Emergency Petroleum Allocation Act. I would like to remind my colleagues that I have introduced a bill, S. 3717, with 23 cosponsors, which would extend the allocation program from February 28, 1975, to June 30, 1976.

Mr. President, I ask unanimous consent that the text of a letter from Mr. James W. Emison of the Oskey Gasoline Oil Co., of Minneapolis, Minn., be printed in the RECORD.

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

OSKEY GASOLINE & OIL COMPANY, INC.,
Minneapolis, Minn., July 17, 1974.

Hon. HUBERT H. HUMPHREY,
U.S. Senator, U.S. Senate Building, Washington, D.C.

DEAR SENATOR HUMPHREY: As you no doubt are aware, the FEA has proposed to exempt fuel oil from the Mandatory Petroleum Allocation Regulation for a period of three months commencing August 1, 1974. Public hearings on the proposal will be held by the FEA in Washington on July 22, 1974. The FEA has stated informally that it expects to hold similar hearings on the subjects of aviation fuels and propane and that the gasoline and heating fuels will be considered in September as a subject for a deregulation hearing.

In my view, the FEA has no real feel for the damage already done to the independent segment of the pertoleum marketing industry whether that market be gasoline, propane or residual fuel oil. As a result I believe the FEA is moving too quickly to a position that in effect deregulates the major companies before the FEA determines if the independents are presently in a secure or at least somewhat secure position.

I can speak for nearly every independent in the country and simply say that they are all scared to death of not only their present position, but what the future holds. Therefore, I urge you to publicly oppose a commencement of deregulation process until:

1. Under Section 4(g)2 of the Emergency Petroleum Allocation Act of 1973 ". . . there is no domestic shortage of the particular oil or product".

2. That the FEA be required to give (1) above the practical interpretation that a shortage can be presumed in the marketplace for independent buyers until such time as the industry has proved on a "track record basis" or by *direct polling of affected independents* that such a shortage does not exist and is unlikely to recur again in the reasonable foreseeable future.

While I hold the general view that there are a good many capable people in the FEA and they have generally acted in good faith, the FEA must develop some fool-proof ways such are suggested in (2) above to prevent the majors from completing their takeover of the independents' marketplace by steamrolling through the deregulation of refined products.

With all of the uncertainties connected with the Middle East, international and domestic markets and the present inability or unwillingness of the Canadian government to establish a firm continental energy policy, it seems rank foolishness to commence dismantling a program that as yet is not even fully in place and during which the independents share of the U.S. domestic gasoline market alone has fallen from about 28% to 18% (a similar or like reduction in the independents' market share have occurred with respect to other products as well).

I urge you to strongly support the position I have outlined. May I hear from you.

With warmest regards, I am,

Sincerely,

JAMES W. EMISON.

THE HUMAN IMPACT OF OUR RECESSION-INFLATION ECONOMY

Mr. BAYH. Mr. President, the state of the American economy is no laughing matter.

Inflation is running rampant at an annual rate of 13 percent. That is no joke for the average American worker whose take-home pay—despite limited pay increases—buys 4.5 percent less today than it did a year ago.

Unemployment is 5.2 percent, and has been 5 percent or higher every month this year. That is not likely to bring any laughter from the more than 4.5 million American workers who cannot find jobs.

Recession is a reality, the gross national product continues to slide backward at an annual rate of 4 percent, when our economy requires real growth of 4 percent annually to stay even. That is not likely to bring forth a smile from businessmen, who are beset by rising costs on one hand, and by reduced demand, on the other hand.

Interest rates are higher than they have been in more than a century, with a 12-percent prime rate, but who borrows at prime today? That is not the least bit funny to the family that cannot get a mortgage to buy a new home, or to the construction worker who is feeling the effect of the 30-percent drop in new housing starts.

No, Mr. President, the state of the economy is no laughing matter. It is a serious and grave situation, reflecting the total inability of the present administration to come to grips with the problem which is foremost in the minds of the American people.

Yet in the past 48 hours we have seen two examples of how frivolously and callously the Chairman of the President's Council of Economic Advisers approaches the human impact of our recession-inflation economy.

Chairman Herbert Stein has taken to writing guest columns, first in Sunday's Washington Post and then in the July 29 issue of Newsweek, which I guess are supposed to be funny. They are not.

Instead of taking the opportunity provided by the editors of these respected publications to address himself to the very real fears of the American people regarding the state of the economy, Mr. Stein tried his hand at comedy writing. As in economic policy, he has failed once again.

Not only were his columns not funny, the very fact that he sought to deal with our economic woes in his facetious fashion shows how little Mr. Stein has learned during the many months that the Nixon administration has so mismanaged the economy that we are left with the worst of both worlds—recession and runaway inflation.

There should be little wonder, Mr. President, that only 14 percent of the American people polled in a recent Harris survey gave the Nixon administration good marks on its economic performance. With the economy in rough waters, and little indication that there is anyone in the administration who can chart a better course, the American people are rightfully distressed about this state of affairs. What they need is confidence that someone is taking charge of the situation, seeking solutions rather than accepting the status quo. What they do not need are feeble attempts at humor from the Chairman of the Council of Economic Advisers.

But perhaps we should not expect any more from the same man who has tried to blame the American people for inflation, because they objected to higher taxes.

I must confess, Mr. President, Mr. Stein's posture poses something of a dilemma. On one hand, I am inclined to say to him, "Get about the business of curing our ailing economy; stop writing columns and start dispensing economic advice." But on the other hand, given Mr. Stein's undistinguished track record, it just may be that we are better off if he writes articles rather than ruin the economy.

Mr. President, at the heart of Mr. Stein's misjudgment in these two columns is not simply the fact that they ignore the seriousness of our economic problems. More fundamental, and what I find all too typical of this administration, Mr. Steins' columns are totally insensitive to the human consequences of the economic bungling of this administration.

There are terrible human costs in inflation. I have visited supermarkets in Indiana and seen the heartbreak in the eyes of young parents who cannot afford to give their children a decent diet. I have spoken with senior citizens who long ago gave up the hope of eating properly, and now merely try to survive from week to week.

There are terrible human costs in unemployment. I have seen the despair on the face of working people who ache to find a decent job, and to support their families, but who are the innocent victims of a policy which is designed to

accept unemployment to fight inflation and which results in both inflation and unemployment. The agony of a husband and father who has to face his wife and children and tell them he has been laid off through no fault of his own is what unemployment is all about—not some impersonal numbers from the Bureau of Labor Statistics.

It is the total lack of any comprehension of these human elements in his statistics and economic models that makes Mr. Stein's attempts at humor so unfortunate.

Mr. President, Herbert Stein has tendered his resignation. Let us call upon his successor, and all the economic bigwigs in this administration, to recognize that the numbers they juggle in any discussion of the economy translate into people; people who are at wit's end over inflation and in despair over unemployment. When officialdom forgets about those people it forgets what government is all about.

SENATOR PERCY REVIEWS SAVINGS REALIZED BY REDUCING PCS ROTATIONS

Mr. PERCY. Mr. President, I have always felt that we in the Senate sometimes tend to forget to look back at past action and evaluate its success or failure. Certainly we can all benefit by reviewing the effects of our votes, and I have made it a practice in the past to review one initiative with which I was particularly involved and report to the Senate on what has happened in the intervening years.

Mr. President, on August 21, 1971, while the Senate was considering the military procurement bill, I offered an amendment designed to reduce the costs of permanent change of station—PCS—rotations by 25 percent. Very simply, PCS moves are those encountered by members of the military and their families as they are transferred from assignment to assignment. This reduction was supported by the Fitzhugh report and was supported in principle by former Deputy Secretary of Defense David Packard. The Fitzhugh report summed up the problem when it said:

Officers and enlisted men are rotated among assignments at much too frequent intervals. It is clear from the evidence that the rotation practices which have been followed result in (a) excessive and wasteful cost, (b) inefficiencies in management, and (c) difficulty in fixing responsibility.

My amendment was proposed to save approximately $140 million of the total $1.3 billion which was earmarked in fiscal 1972 for PCS moves. It was also designed to force the military to adopt more cost-effective practices. But perhaps most importantly it was designed to increase the morale of the members of the Armed Forces and their dependents who had to face the constant trauma of uprooting their families and their lives, on the average of every 14 months, by moving to a new assignment. I had received many, many letters from servicemen and their families complaining about the constant and unnecessary disruptions in their lives as they were forced to pack up their belongings and their families and move to new areas. This was, and still is, a major concern of many career servicemen. Air Force magazine, in its February 1974 issue, had an article on PCS entitled "Life in the Air Force—A Moving Experience." In that article, the author, Ed Gates, cataloged the annoying features of PCS moves, as well as the costs of such moves. I ask unanimous consent that this article be printed at this point in the RECORD.

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

[From the Air Force magazine, February 1974]

LIFE IN THE AIR FORCE—A MOVING EXPERIENCE

(By Ed Gates)

PCS—Permanent Change of Station. For some in the military, it heralds a welcome change of scene. Others shrug it off as just another part of military life. But for still others, it means uprooting house and home one more time and—too often—separating families. The energy crisis and congressional pressure notwithstanding, it is virtually impossible for the military to cut the huge sums spent annually on PCSs. Military personnel seem destined to continue moving around at about the pace they have in recent years, making. . . .

The subject under discussion before a manpower symposium at the 1967 Air Force Association Annual National Convention was excessive permanent change of station (PCS) moves and the problems they create.

Escalating troop commitments to Southeast Asia at that time had increased the number of transfers and the accompanying turmoil. Some quarters were suggesting that later, surely when the Vietnam War wound down, moves would drop off. Things would get back to "normal." Military people would stay in place longer.

It took symposium participant Gen. Gabriel Disosway, then head of Tactical Air Command, to puncture this bubble.

"All talk about things settling down on the move front," the outspoken General Disosway told the symposium throng, "is a myth. There will always be frequent moves in the military, and people should understand this when they enter service. . . ."

That message is equally valid today.

While a large segment of the service population shrugs off frequent transfers as routine—indeed, numerous careerists welcome the changing scene—the move problem tops the list of negative factors associated with military life. A recent Air Force survey confirms this, showing moves that separate families as the leading unfavorable aspect of a career in uniform.

Yet, try as they may, military authorities have been unable to reduce personnel moves significantly. The matter has been studied and restudied and agonized over, year after year. But annually, PCS moves continue to exceed the size of the force.

If PCS transfers were dispensed equally, every member would transfer at least once a year, a few twice. Air Force in FY '73, for instance, transferred about 775,000 persons, although its on-board personnel strength averaged only 708,000 throughout the period.

The total cost piled up for those moves—they included family moves, dislocation allowances, household goods shipments, furniture storage, etc.—came to an estimated $475 million. That was $27 million more than was spent during the previous year.

And the outlays are increasing. This fiscal year, although troop strength and the number of programmed moves are dropping, USAF's PCS travel bill should top the half-billion-dollar mark. Specifically, for FY '74, Air Force anticipates 738,000 PCS moves for an average-year population of only 682,000 members. Cost: an estimated $503.2 million.

It's the same story among the other services. The Navy's PCS budget has increased nearly $100 million in each of the past two years, despite a slight reduction in personnel. The Marine Corps's PCS budget has remained constant, though that branch has reduced troop strength slightly.

The Army is the lone service invoking really heavy cuts in the number of transfers, though this is hardly surprising. Army is down to almost half its peak-Vietnam strength, reached in 1968. Even so, Army's estimated FY '74 PCS outlay of $356 million, combines with the planned expenditures of the other services to create a PCS price tag Defensewide of $1.26 billion.

Transportation costs associated with operations and maintenance, including funds for temporary-duty travel, add another $170 million each year to the Air Force move budget, and almost half a billion dollars more in all the services.

The energy crisis, of course, will affect the military travel picture. Some TDY figures * * * moves may be more difficult to secure. Slower highway speed limits may require more Stateside PCS en route time, which would increase expenditures.

And while the nation's fuel shortage could lead to some PCS cuts, most indicators point to permanent transfers occurring in about the same order of magnitude as originally planned, Air Force authorities said late last year.

CONGRESSIONAL CONCERN

The rather astonishing number of moves—and their cost—that the services make year after year frustrate congressmen and Pentagon officials. The lawmakers, particularly those on the Defense Appropriations subcommittees, periodically rake over the services for their alleged failure to reduce moves.

Service witnesses are accused of many evils, from wasting funds on commercial storage of members' household goods, to deliberately failing to initiate policies that would curb PCS movements.

A recent meeting of service leaders with the House Defense Appropriations subcommittee, in which FY '74 personnel spending projects were examined in depth, proved no exception. USAF's Director of Personnel Programs Maj. Gen. Oliver W. Lewis and then-Director of the Budget Maj. Gen. Joseph R. De Luca were on the witness stand when Rep. John J. Flynt, Jr. (D-Ga.), declared:

"You gentlemen are well aware . . . that this committee has been concerned about the increasing cost for travel performed in conjunction with changes in assignments. . . . Despite repeated assurances from numerous witnesses before this subcommittee over the years [that reductions would be made], the cost for PCS travel has continued to climb at rates either in total or on an average cost per move basis which far exceed the rates of inflation for the economy in general."

A bit later, when advised that $353 million of Air Force's FY '74 PCS budget is earmarked for rotational travel to and from overseas, Flynt said, "This indicates that you [the Air Force] are rotating people overseas too fast. . . . We frequently receive letters from people who say that they want to stay overseas and that the service . . . will not permit them to do so. . . ."

General Lewis countered that "we . . . approved some 13,000 extensions [abroad] last year, so we do honor the man who is there [overseas] and likes it."

Still, horror stories of members suffering incredible numbers of transfers, of persons uprooted prematurely for no apparent reason, not infrequently are hurled at service witnesses, much to their embarrassment.

A report issued by the subcommittee's investigative staff, meanwhile, charged that the services have "failed to demonstrate any pol-

icy changes that resulted in a decrease in the number of gross PCS moves."

Air Force responded that "it continues . . . to strictly limit the number of PCS moves to those essential to meet valid military requirements." During FY '74, General Lewis said, "we will continue to pursue our efforts to encourage voluntary overseas tour extensions whenever service considerations permit."

This is typical of the inconclusiveness that normally results when legislators and military officials jawbone over the transfer issue: the former press their demands for fewer moves and reduced outlays; the latter promise to do their best. Which is about all they can do.

UNACCEPTABLE ALTERNATIVES

Reducing the size of household goods shipments Uncle Sam pays for at transfer time, especially for higher-ranking families or couples with no children—wouldn't that be a good way to pare travel-associated costs, critics at the recent session asked.

No, Air Force responded, noting that by the time people make higher rank they normally have accumulated larger families and more possessions. They should not be penalized, nor should other families just because they have no offspring.

Another question frequently put to the services concerns the movement of family members when the serviceman elects—or is given—a short, unaccompanied tour. Defense policy provides that, in such instances, wives and children will be moved, at government expense, to a Stateside site of their choosing. When the member's tour ends, Uncle Sam pays for uniting them at the new permanent-duty base.

This policy, the committee suggested, offsets most of the savings the services generated from their short- and hardship-tour programs. Should not the Pentagon limit the rights of servicemen to move their families and belongings prior to going on such tours, the lawmakers asked.

Definitely not, Air Force replied. "We wouldn't consider it," said General Lewis, adding that when families are split, "we have an obligation to permit the member to relocate his dependents, at government expense . . ." to a place of their choice.

But the committee was not about to backtrack on the issue. Late last year, it told all the services they "should inform personnel selecting unaccompanied tours where his next duty assignment will be, and then encourage but not force him to move his family to that station immediately, rather than to select an interim location."

The critics' concern over the costs that go into the transfer budget is understandatable. Each military member's car when shipped abroad costs the government about $300. Household goods shipments price out at about $1,000–$1,400 for each enlisted family, around $1,600–$1,700 per officer family.

Trailer allowances at PCS time average about $750 each. Dislocation allowances average around $150. Travel mileage costs average from $200-plus to well over $300 per move. So when these and still other move-associated costs are multiplied by well over 700,000 transfers annually (in USAF alone), it becomes an expenditure area of concern.

The services, it should be made clear, are as anxious as the critics to reduce PCS moves. A substantial reduction of moves would draw cheers from various elements of the military establishment. Periodic uprooting of families, pulling the kids from one school after another, taking a licking on rents and deposits, and all the rest—these can get awfully tiresome.

And some persons otherwise favorably inclined toward military life won't put up with it. Or their wives won't. Extended TDY travel that operational crews frequently take on adds to the problem in some commands.

WHY SO MANY PCS MOVES?

Despite the pressures on the services to cut people moves, and the services' desire to comply, significant reductions are not in the offing. Not as long as the US maintains its vast installation network in this country and abroad; all must be manned with the proper skills and periodic replacements provided.

Enlistment expirations, retirements, transfers to career schools, compassionate moves, hardship tours, involuntary elimination of substandard performers—these are just some of the necessary actions that create thousands of PCS moves every year.

Even in the traditionally popular overseas areas, attempts to keep personnel in place longer have sputtered. In 1972, for example, USAF extended normal "accompanied" tours abroad from thirty-six to forty-eight months. It was a bold attempt to hold thousands of families on station an extra year and realize travel money savings.

It was also a response to congressional arm-twisting.

The plan didn't work, however. It brought angry cries from many people involved; their plans to return home had been torpedoed. Raging inflation in Germany and other countries where USAF people serve also soured many of them on the idea of staying an extra year. It didn't save much, either.

So Air Force last year responded with plans to phase back to the previous thirty-six-month tour abroad. Officials in the Hq. USAF office of the DCS/Personnel said at press time that they expected to get early funding approval to implement in the phase-back.

Still, what's wrong with an average of one PCS every three years? Wouldn't that arrangement, for all service members, be fair and equitable and save Uncle Sam considerable money to boot?

Indeed so. But an average of one transfer per person every three years—it would cut total Air Force PCS moves to around 240,000 this year—is a pipe dream. Nothing close to it will ever occur, because of the vast number of "unavoidable" moves that critics fail to consider or refuse to acknowledge.

First of the "unavoidables" is the "accession" move—it brings a person from civilian to military life, usually to basic training. Then there is the move from basic to technical training school, followed by one from tech school to a duty station.

This fiscal year alone, according to Hq. USAF, these three categories will account for over 300,000 Air Force PCS moves (*see chart*).

Add rotations to and from bases in the States and abroad. Add separation travel—there will be more than 118,000 such USAF moves this year. Finally, add some 200,000 associated dependent family moves, and you've got an annual half-a-billion-dollar program.

LIVING STANDARDS AND LARGE LOADS

It is much the same story in the other military services. And all are experiencing an associated impact brought on by changing life-styles. Years ago, the typical service member was single, poor, and not burdened with personal possessions. He probably didn't own a car. Most of his gear fitted into a barracks bag. It cost the government very little to move him around.

No more. Now he has money to spend, to accumulate a civilian wardrobe, records, stereo equipment, maybe a recreational vehicle. There's much more to ship at transfer time, to say nothing of the inflated prices civilian movers charge to move it.

Storage costs of members' household goods is another item that has skyrocketed in recent years.

In short, nearly every ingredient that goes into determining overall people-move costs continues to escalate; the services are almost helpless to stop it. The principal exception is the recent cuts in troop strength, but these may have about run their course.

The government, meanwhile, hopefully will not invoke nasty little restrictions as it has done sometimes in the past. An example: In late 1972, Congress, with almost no advance notice, ordered a halt in government payments for shipment of service members' cars from abroad, if the vehicles were foreign-made. The Defense Department quietly bowed to the congressional dictate.

AIR FORCE PCS MOVES, EXPENDITURES, FISCAL YEAR 1972 AND FISCAL YEAR 1974 COMPARED

[Dollar amounts in thousands]

	Fiscal year 1972		Fiscal year 1974	
	Number of moves	Amount	Number of moves	Amount
Accession travel	109,319	$17,801	95,630	$15,854
Training travel	169,996	22,512	142,788	20,711
Operational duty stations	61,923	55,333	72,868	69,226
Rotational, to and from overseas	252,342	269,205	295,556	353,110
Separation travel	135,271	51,307	118,562	43,967
Organized unit travel	3,961	2,482	12,465	8,089
Total member moves	732,812	418,640	737,869	510,957
Reenlistment travel payments		5,094		4,963
Total	732,812	423,734	737,869	[1] 515,920

[1] Reduced to $503,200,000 per Pentagon's decision to delay granting full travel benefits to E–4's with 2 years' service, from July 1973 to January 1974.

Note: Average USAF military personnel strength in fiscal year 1972 was 750,000, compared to an estimated average of 682,000 for the current fiscal year. Yet, fiscal year 1974 PCS outlays are slated to top those of 2 years earlier by at least $80,000,000, although the actual number of moves is almost the same. In fiscal year 1973, Air Force PCSed about 775,000 persons, which, with about 177,000 associated dependent moves, cost $475,000,000.

The FY '74 military appropriations bill, as it was nearing final approval recently, fortunately contained no new PCS-related curbs.

Even as the services reexamine their transfer programs, searching for economies, a new factor that can only drive costs up attains prominence: extending full travel entitlements to lower-ranking enlisted personnel.

E-4s with less than four years of service, and below, normally have not received dependent travel, government-paid transportation of household goods, dislocation or trailer allowances, overseas station allowances, and movement of private cars.

Yet matrimony continues. Without these benefits, this low-salaried group suffers immensely. The resulting problems burden units, commands, and military missions, particularly overseas where young wives suddenly appear without funds.

Some quarters insist that continued withholding of these benefits from low-ranking members constitutes gross discrimination. And the pressures, from within and without military officialdom, to provide these benefits to all members is intensifying. But it's going to be very costly.

Already, extension of these benefits to E–4s with as few as two years of service has been authorized. Funds to carry out this program, beginning January 1, 1974, are contained in the appropriations bill cited above. Earlier plans to launch the program in July 1973 were scrapped, resulting in a $12.5 million "saving" to the Air Force.

When and if the government extends full travel entitlements to E–1s through E–3s, more—not less—money must be appropriated.

Air Force authorities, meanwhile, point out that a way does indeed exist whereby PCS moves can be reduced and enormous "savings" achieved. But they are not about to endorse it.

This "plan" recognizes that normally for every service member separated or retired, a replacement is required. Each recruit, of course, triggers three rapid-fire moves (accession, tech training, and duty station). Accordingly, by retaining rather than involuntarily separating misfits and second-raters, by barring retirements until twenty-five or thirty years of service, and by taking related steps to curb attrition, each military service could sharply curtail its input of new members. PCS moves would plunge.

And, just as certainly, the services would become saddled with disciplinary problems, curtailed promotions, and accompanying woes. Chaos would lurk just around the corner.

Military personnel and their families, it seems clear, will continue to move around at a fairly rapid clip. Those who are adaptable and adventuresome, who welcome a changing scene, thrive on new challenges, and disdain the same old routine, should find the prospects stimulating.

And those who cannot accept frequent movement as a condition of their role in the vital business of national security? As General Disosway indicated, they're in the wrong business.

Mr. PERCY. Mr. President, since my amendment, with the support of Senators STENNIS and GOLDWATER, passed the Senate by a vote of 69 to 0, and a modified version was adopted in the House-Senate conference which did not set a target percentage reduction, I have each year asked the Department of Defense for a report on the progress that has been made in implementing the thrust of my amendment. And each year I have reported its response to the Senate. By and large, I believe that the Armed Forces have made a bona fide effort to reduce PSC moves. Of course, there are limitations on how far this can go, and each service has encountered different problems. In addition, the picture has been clouded by an overall reduction in force in the Armed Forces, along with the end of our military involvement in Vietnam. Nonetheless, I believe that these efforts have, indeed, helped to accomplish all three of my goals. The only tangible result, of course, is in dollars and cents, and here the results are interesting. These dollar savings are cited in the reports which I will have printed in the RECORD.

Mr. President, I will attempt to summarize these annual reports. Let me first say, though, that it is somewhat difficult attempting to assign specific cost savings. The various services use different criteria, and each year there can be a difference in the figures sighted for any one year. However, the following figures appear to be fair inferences from the material supplied.

The Army has registered a savings of $79.9 million for fiscal year 1972, and 1973. This represents a savings in PCS operation and travel costs for fiscal year 1972 of $28.5 million. For fiscal year 1973, the total number of PCS moves was reduced by 35 percent, while the Army strength dropped by 12 percent, and the savings for that year totaled $51.4 million. This indicates that despite the reduction in the number of men and women in the Army during that time period, there was a reduction in PCS costs over and above that which would normally have been expected.

The Navy's figures are more difficult to compute, since in each of the three reports, the Navy seems to be using a different base cost. However, based on the information supplied in its more recent report, the Navy reports a savings of $28.6 million. This is broken down as follows: The PCS costs for fiscal year 1971 were $161 million; for fiscal year 1972, $145.2 million; for fiscal year 1973, $133 million. Thus there appears to have been a $16.4 million savings in fiscal year 1972 and a $12.2 million savings in fiscal year 1973.

The Air Force has had a difficult time in achieving reductions in the amount of money spent on PCS rotations. In its report, it cited the reason for this as inflation, and the increased costs of transportation. Nonetheless, in its 1972 report, the Air Force estimated an $850,000 savings by extending CONUS assignments by 12 months and $40 million in fiscal year 1972 by extending all 36-month overseas tours to 48 months. The estimated saving which resulted was $40 million. However, the Air Force reports that the result of this policy was unsatisfactory because of morale problems. In the 1974 report, the Air Force estimated a $15 million savings as a result of requiring major commands to restrict the number of PCS moves under their jurisdictions. However, even with these reductions, the PCS costs have risen, though much less than would have been the case without the reductions.

Thus the overall savings incurred through the Air Force appear to be approximately $55 million.

In the Marine Corps, from the end of fiscal year 1970 to the end of fiscal year 1972, the corps was reduced in total strength by 23.7 percent. The total cost for PCS was reduced 32.8 percent. The total operations moves in CONUS and rotation moves from overseas were reduced by 58.5 percent. In 1973 there was a 50-percent reduction in PCS moves. The Marine Corps concludes that if the number of moves in fiscal year 1974 was the same as the number for fiscal year 1971, the PCS budget would be $60 million more than the $80 million budget which has been approved.

Therefore, the savings are:

	Million
Army	$79.9
Navy	28.8
Air Force	55
Marine Corps	60
Total	223.7

These savings would never have been possible just as the result of my amendment. The full cooperation of the Defense Department in connection with the action taken by Congress which prompted the military to make the effort to reduce the cost of PCS moves was essential.

I am satisfied that the Armed Forces have accepted the spirit of the Congress as expressed in my amendment. However, I want to urge them to continue their efforts. As the article printed above indicates, there is still much concern over PCS moves, and there is still room for improvement. I hope that the military will keep searching for ways like this to save money. Though neither glamorous nor particularly newsworthy, they mean a great deal to the men and women and their families who serve this Nation in our Armed Forces.

Mr. President, I ask unanimous consent that the three status reports I have received, dated October 18, 1972, September 28, 1973, and May 17, 1974, from the Department of Defense over the past 3 years be printed at this point in the RECORD.

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

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., October 18, 1972.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: This is in response to your recent telephonic request to furnish an update of the progress that the Department of Defense has made toward decreasing the number of PCS moves since your amendment in connection with the FY 71 Authorization Bill. Each of the Military Services has furnished information as follows:

ARMY

1. Effective 12 July 1971, Army recruiters were stabilized for 36 months.

2. Effective 1 August 1971:

a. Individuals volunteering for overseas service were required to have sufficient remaining service to complete the full overseas tour. Prior to this restriction, volunteers needed only six months if going to Vietnam, sufficient service to complete other short tours, and 18 months if going to long tour areas.

b. Personnel who were assigned to Pershing missile units in Europe after 1 January 1971 were restricted from reassignment until completion of the normal tour in Europe.

c. Officers and warrant officers were required to have at least 12 months when assigned to a short tour area. Enlisted personnel in grades E–7 through E–9 were also required to have minimum of 12 months service remaining to be assigned overseas. Previously, they could be assigned overseas with as little as six months.

3. Effective 27 September 1971 and 20 March 1972, respectively, Seregants Major and 1st Sergeants were stabilized for 18 months minimum.

4. Effective in October 1971, involuntary inter-theater transfers were discontinued.

5. Effective 15 February 1972:

a. Individuals serving in Korea who volunteered for Vietnam were required to have approval of the Commanding General, Eighth U.S. Army. Previously, applications were submitted directly to Headquarters, Department of the Army.

b. WAC's serving overseas were required to have received credit for a completed tour before being reassigned to Vietnam.

c. Inter-theater transfer requests required approval of Headquarters, Department of the Army in all cases.

d. Restrictions were placed on the reassignment of personnel to a short tour unaccompanied area for a minimum period of 12 months if they had completed 12 cumulative months of TDY during a preceding 24-month period.

6. Effective 1 April 1972:

a. Officers serving in stabilized positions were restricted from volunteering for overseas service (except for Vietnam) until completion of their stabilized tour.

b. Personnel volunteering for Vietnam were required to submit their applications through channels so the major command could indicate the need for retention of the individual in his present assignment.

c. Provisions permitting volunteers for Vietnam to volunteer and be trained in an MOS not presently held were rescinded.

d. Volunteers for Vietnam serving in other

overseas commands were restricted from reassignment to Vietnam until they had completed 16 months or 12 months after arrival of dependents in the overseas command, whichever was longer.

e. Individuals were permitted to voluntarily extend their overseas tours with Headquarters, Department of the Army approval, up to a maximum of five years in-country.

7. Announced 2 February 1972 and effective for personnel departing CONUS on or after 1 July 1972:

Enlisted personnel with less than six years service for pay purposes were ineligible for overseas service or for reassignment between overseas commands unless they had 12 or more months service remaining as of port call or availability date.

8. Announced 4 February 1972 and effective for personnel departing CONUS on or after 1 July 1972:

Provisions permitting personnel who had previously completed an unaccompanied tour to take their dependents overseas providing they had a minimum of 18 months service remaining were rescinded.

Monetary savings as a result of stabilization have been realized in the rotational and operational PCS travel categories.

An increase in overseas average tour lengths in long tour areas between FY 71 and FY 72 resulted in the following estimated cost savings in PCS rotational travel for FY 72:

Reduction in moves

Officer	1,956
Enlisted	27,370
Total	29,326

Cost savings
[In millions]

Officer	$4,583
Enlisted	14,861
Total	19,444

Between FY 71 and FY 72, the percentage of operational moves per Army manyear declined from 11.4% to 9.4%. Operational travel is that travel performed between CONUS duty stations or within/between overseas commands. This reduction resulted in the following estimated cost savings in this PCS travel category:

Reduction in moves

Officer	2,005
Enlisted	16,910
Total	18,915

Cost savings (In millions)

Officer	$3,770
Enlisted	5,263
Total	9,033

The total monetary savings attributable to stabilization policies for these travel categories for FY 72 is $28.5 million.

NAVY

Throughout FY 71 and FY 72, Navy continued to experience turbulence as a result of further drawdowns in Southeast Asia, reductions in strength, force levels and the supporting structure. An early release program for enlisted personnel was in effect on a generally continuous basis throughout FY 71 and FY 72. Over 2400 officers were early released in FY 71 and over 3400 in FY 72. The early releases were required to remain within budgetary and strength constraints and generated unplanned moves required to fill essential billets vacated by personnel released early. Additionally, as the move toward an all volunteer force continues, necessary people-oriented programs, such as drug/alcohol rehabilitation, have been implemented with resulting unplanned moves.

Information presented below reflects the decrease in Navy PCS moves in categories other than those which are mandatory in nature, e.g., training, accession and separation. Included are moves associated with combat assignment. Available data does not provide detail on the number of moves directly associated with these assignments. Navy sea/shore requirements and policy tend to obscure the relationship between combat related assignment and other type moves in data as now recorded.

The numbers below reflect moves reported except in mandatory moves, categories as defined above. FY 70 is provided for comparison:

Number of moves

Fiscal year 1970	176,600
Fiscal year 1971	146,600
Fiscal year 1972	125,900

The actions indicated below were for the most part initiated in FY 71 and are still in effect. They have become more stringent in their applications each year as the effort to reduce PCS moves continues, Actions taken:

1. Reassignment of personnel within the same geographical area has been maximized and the number of cross-country moves drastically reduced.

2. All USNR Officers serving three-year obligations and not career motivated, toured until active duty release date unless tour lengths otherwise directed by departmental or DoD directives.

3. Rotational policy for medical officers serving two-year obligations modified to increase stability within community.

4. Initial tour for surface warfare junior officers extended for 18 months to 24 months, and to 36 months in FY 73.

5. Officers tours are no longer shortened solely because of promotion or non-selection for promotion.

6. Command tour lengths have been extended.

7. Temporary duty and briefings enroute between duty stations reduced to absolute minimum.

8. Newly appointed warrant officers not ordered from present command unless no valid billet vacancy exists for an officer of his grade and designator at his present activity.

9. Exceptions to prescribed tour lengths are rigidly screened and have been substantially reduced.

10. Voluntary tour extensions are actively solicited.

11. Minimum sea tour for all enlisted ratings established at 36 months.

12. 36 month overseas accompanied tours have been increased to 42–48 months.

13. Selected enlisted shore tour lengths are being increased as sea/shore billet ratio is improved.

14. Selected first term enlistees assigned to sea or shore duty for entire enlistment.

15. Selectively deferred transfer of school eligible personnel (reenlistment incentives) to project rotation date only.

16. Eliminated split tour reassignments for enlisted personnel with long sea tours.

17. Implemented management systems to control and monitor PCS move programs and resulting PCS funds expenditures at the desk assignment level. Placement/detailing personnel are closely monitored and must identify reasons for individual reassignment.

18. A PCS Model has been designed and validated. It is used to initially determine PCS move requirements/cost and then to monitor actual program accomplishment at all assignment levels. Gross monetary savings commensurate with more reductions have not been realized for two reasons:

a. Higher cost of moves due to such factors as increased travel tariffs, MAC passenger and cargo rates, per diem rates, cost of moving household effects, higher BOQ/BEQ occupancy standards, etc.

b. General increase in entitlements and number of personnel entitled. For example:

(1) An E–4 with two years service and four additional years obligated if now eligible for all moving allowances.

(2) Single personnel now receive dislocation allowance if not assigned to government quarters.

(3) Now official Table of Distances increased travel mileage entitlement by about 3%.

(4) Increased per diem allowance.

The costs below reflect moves reported except in the mandatory categories previously stated. FY 70 is provided for comparison:

(In millions)

Fiscal year 1970	$145.0
Fiscal year 1971	133.4
Fiscal year 1972	128.5

AIR FORCE

Since the enactment of the amendment to the FY 1971 Authorization Bill seeking reduction in the number of military PCS moves, Air Force has made several significant advances, resulting in cost reductions as well as assignment and personnel stabilization.

Specifically, the following policy changes are cited:

1. During the past fiscal year, members overseas were permitted to request voluntary extensions of tours to a total of five years. While not specifically identified what portion of the general reduction of rotational moves is attributable to this change, it is estimated that this resulted in reduced costs of between $4 and $5 million last fiscal year.

2. Also last fiscal year, members in the CONUS on stabilized tours were permitted to request up to 12-month extensions in tours. Again, specific cost savings were not captured for this policy change but estimates are slightly over $850,000.

3. Most significant, however, was the Air Force decision to extend all 36-month overseas tours to 48 months with the exception of a few locations. This extensive policy change resulted in a marked stabilization of overseas tours and an estimated avoidance of over $40 million in FY 72 (the return and replacement of these involuntarily extended personnel were considered as additive costs in FY 73 estimates). In spite of the significance of this savings, it has become apparent that the results of this policy change have not been satisfactory. Overseas commanders have noted a marked adverse impact on morale, a fact borne out by feedback from the personnel themselves. For the future, it is expected to request a reversion to former policy, which will obtain equity of tour lengths with the other services.

4. Some additional items which represent progress toward general stabilization include the restriction of the PCS movement of personnel approaching separation, the lengthening of initial tours for officers and airmen, and the use of graduates of training programs as instructors at the same schools. Unfortunately, it is difficult to attach cost savings figures to these sorts of policy changes since the portion of overall improvement that is attributable to each is not identifiable.

MARINE CORPS

Marine Corps personnel management has continually stressed the stabilization of personnel and the reduction of PCS moves to the lowest possible level. In recent years, almost all PCS moves have been directly related to Marine forces deployed in the Western Pacific. These moves were either to or from WestPac or were necessitated by vacancies created by other PCS moves to WestPac.

The Marine Corps policy on a normal tour of duty in any one organization within CONUS is three years. Lengthening CONUS tours has the effect of reducing the rotation base to sustain deployed forces. An increase in the CONUS tour length without an increase in the unaccompanied overseas tour

would require a change in operational commitments. On the other hand, an increase in the overseas unaccompanied tour would impact adversely upon morale and retention of the career force.

During the period from end FY 70 to end FY 72 the Marine Corps reduced its total strength from 259,737 to 198,238, a 23.7% decrease. The total cost for PCS moves during FY 70 of $106,955,000 was reduced to $71,847,000 during FY 72, a 32.8% decrease. This reduction in cost was due to the:

(1) Decrease in strength of West Pac forces from 58,000 at end of FY 70 to 24,000 at end of FY 72, and

(2) Positive management actions to insure that all PCS moves were a result of a valid military requireemnt consistent with individual skill and career development needs.

The following information is provided relative to numbers of PCS moves, addressing only operational moves between assignments with CONUS and rotation to and from overseas:

	Fiscal year		
	1970	1971	1972
Total operational moves, Conus	23,072	32,223	22,421
Total rotation to and from overseas	221,637	144,637	79,124
Total	244,709	176,860	101,545

It should be noted that during the period when the total Marine Corps strength was reduced by 23.7% the total operational moves within CONUS and rotation moves to and from overseas were redued by 58.5%.

Each of the Military Services is in full accord with the intent of Congress to encourage maximum stabilization in the stationing of military personnel. Policies are under constant review to identify better avenues for meeting mission requirements with a minimum of turbulence.

The opportunity is appreciated to report to you on the progress in decreasing PCS moves and expenditures and to assure you that efforts will continue.

Sincerely,

LEO E. BENADE,
Lieutenant General, USA,
Deputy Assistant Secretary of Defense.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., September 28, 1973.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: As you have requested, each of the Military Services has furnished information to update the progress report made to you on October 18, 1972, which outlines the actions taken to decrease the number of PCS moves within the Department of Defense.

ARMY

1. Personnel stability and the means of attaining it were primary considerations in taking personnel actions and in making personnel policy decisions in FY 73. Progress has been made in this area. From FY 72 to FY 73, the total number of PCS moves were reduced by 35% while the Army strength dropped by 12%. Specific actions taken to increase stability were:

a. Providing for voluntary extension of overseas tours in long tour areas up to a maximum of 72 months.

b. Permitting voluntary extension of tour in long tour overseas areas for any amount of time less than six months on a one-time basis.

c. Requiring members of units deploying overseas to have a minimum of 12 months service remaining in lieu of the 90 days previously required.

d. Requiring members of units moving in CONUS to have a minimum of 12 months service remaining to serve at the new station; also, requiring members to have completed a minimum of one year at the old station since returning from overseas.

e. Guaranteeing non-prior service combat arms enlistees a minimum of 16 months in unit of choice, CONUS or overseas long tour area. Wherever possible, personnel on their initial period of enlistment serve the remainder of their tour at one location in CONUS or overseas following completion of advanced individual training. (Personnel sent to a short tour location complete only the established overseas tour.)

f. Not reassigning non-CONUS residents returned to area of residence for a minimum of three years.

2. Monetary savings resulting from reduced PCS moves in FY 73 are as follows:

a. Monetary savings as a result of stabilization have been realized in the rotational and operational PCS travel category.

b. An increase in overseas average tour lengths in long tour areas between FY 72 and FY 73 resulted in the following estimated cost savings in PCS rotational travel for FY 73:

	Reduction in moves	*Cost savings (thousands)*
Officer	4,424	$10,767
Enlisted	56,386	32,647
Total	60,810	43,414

c. Between FY 72 and FY 73, the percentage of operational moves per Army Manyear, declined from 9.4% to 7.3%. This reduction resulted in the following estimated cost savings in FY 73:

	Reduction in moves	*Cost savings (thousands)*
Officer	1,210	$2,558
Enlisted	16,014	5,509
Total	17,224	8,067

d. Total PCS cost savings in FY 73 are $51.4 million.

NAVY

1. As the result of force drawdowns, the Navy has experienced numerous realignment and force adjustment problems. Despite these demands, the Navy has been able to reduce the number of moves in the other than mandatory move category.

	Moves (thousands)	*Costs (millions)*
Fiscal year 1970	176.6	163.6
Fiscal year 1971	146.6	163.0
Fiscal year 1972	126.9	139.2
Fiscal year 1973	88.5	136.8

2. While the numbers of moves are decreasing, the cost per move reflect the rising economic factors involved.

3. The following is an updated list of policies and actions to constrain the number of moves to the minimum that will allow the Navy to maintain its forces in readiness:

a. Extending overseas assignments to the maximum tour length allowed.

b. Limiting the numbers of dependents for enlisted personnel when considering eligibility for overseas duty.

c. No longer shortening officer tours solely because of promotion or non-selection for promotion.

d. Making concerted efforts to reassign personnel within the same geographic area.

e. Extending tour lengths for commanding officers.

f. Assigning first term enlisted personnel a tour length that corresopnds to the length of their enlistment, but not to exceed four years.

g. Establishing a minimum of 24 months for enlisted personnel.

h. Permitting the early release of selected personnel who are near the expiration of their enlistment if a member of an activity being deactivated or moved.

i. Increasing all tours after an initial tour for unrestricted line officers in CONUS Sea or Shore Tours an average of six months.

j. Extending all USNR officers serving three-year obligations and not career-motivated until the active duty release date unless the tour length is otherwise directed by departmental or Department of Defense Directives.

k. Defining CONUS Short Tours as five years in the same geographic area for officers in the grades of lieutenant commander/commander, who have failed of selection for promotion.

l. Modifying rotational policies for medical officers serving two-year obligations.

m. Extending the initial tour for surface warfare junior officers to 36 months in FY 73.

n. Reassigning newly appointed warrant officers only where no valid billet vacancy exists at the present duty station.

o. Deferring transfer on a selective basis of school-eligible personnel to a projected rotation date.

4. The management system to monitor and control the PCS Program continues to promote efforts to reduce costs of each move. In spite of those efforts, inflationary factors have reduced the number of moves available for a given dollar. Some dollar saving actions have had a deleterious effect on Navy retention and in the long run, policy must be tempered by that factor.

5. During FY 73, the following short-term cost avoidance actions were employed to live within the underfunded PCS Budget:

a. Extending Accompanied Overseas Shore Tours to six months beyond DoD maximum for officers for FY 73, but not to exceed 48 months (Proviso of DoD waiver-authority to impose extensions expired 30 June 1973.)

b. Delaying the filling of selected overseas billets.

c. Extending projected rotation dates of most enlisted personnel for six months.

d. Eliminating all except no-cost split sea tours for certain enlisted ratings. (Split sea tours for FY 74 will be limited for retention reasons.)

6. The Navy believes it has reached the point that more stringent policy/actions to reduce PCS moves and further limit sea/shore rotation would be detrimental to morale, well being of personnel and fleet readiness.

AIR FORCE

1. Total operational and rotational moves were reduced by 116,868 moves from FY 71 to FY 73. This is a direct result of increased average time on station in the CONUS and the marked reduction in the number of rotational moves in relation to the number of Air Force personnel stationed overseas. These reductions have done much to stabilize the lives of personnel.

2. Unfortunately, specific cost savings cannot be isolated for some actions. However, the following are actions which have resulted in reducing PCS moves:

a. Extending the average time on station for airmen being reassigned within CONUS from 19 months in FY 71 to 22 months in FY 73.

b. Extending the average time on station for officers being reassigned within CONUS from 30.5 months in FY 71 to 33 months in FY 73.

3. The number of operational moves has been reduced from 76,189 in FY 71 to 52,730 in FY 73; however, even with the reduction of 23,459 in this two-year period, the total cost of operational moves has increased, as a direct result of rising transportation costs.

4. Rotational moves to and from overseas decreased from 320,158 in FY 71 to 226,749 in FY 73. The reduction of 93,409 moves was achieved while overseas strengths dropped less than 35,000. Again, the total cost of rota-

tional moves did not show a similar decline due to increased rates and inflationary impacts on cost factors.

5. Commanders are being reminded annually that it is Air Force policy to solicit and encourage extension of CONUS stabilized tours and overseas tours. The commanders are advised that if the individual's duty performance and conduct was up to Air Force standards, approval of extensions should be the rule, and disapproval the exception. This policy has resulted in over 13,000 extensions from FY 73 into later years. This action alone has produced a significant portion of the decline in PCS moves and will result in long-term savings.

MARINE CORPS

1. The major thrust of the Marine Corps' efforts to effect further PCS cost reductions was taken in conjunction with planned operational moves (CONUS to CONUS). These were reduced by about 50% during FY 73. Of the 23,306 moves which were originally projected, only 13,276 were actually executed.

This action resulted in:

a. Avoiding PCS costs of approximately $7.0 million.

b. Decreasing the turbulence caused by PCS moves for 12,030 Marines by extending their time on station.

You may rest assured that each of the Military Services will continue with positive to maximize the stabilization of military personnel without impairing mission requirements.

Your interest in matters pertaining to military personnel is appreciated.

Sincerely,

LEO E. BENADE,
Lieutenant General, U.S.A., Deputy Assistant Secretary of Defense.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., May 17, 1974.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: Each of the Military Services has furnished information to update the progress report made to you on September 28, 1973, outlining the efforts made to reduce the number and costs of Permanent Change of Station (PCS) moves within the Department of Defense.

ARMY

1. The following constitutes those actions and policy changes instituted by the Army to reduce costs and decrease personnel turbulence:

a. In November 1973, the tour of duty on the Army Staff was extended from three to four years.

b. On January 31, 1974, restrictions on the maximum period an individual may extend overseas were eliminated.

c. Reduction in moves and costs is limited to PCS rotational travel to and from long tour areas and to operational moves.

2. An increase in overseas average tour lengths in long tour areas between FY 71 and FY 72 resulted in the following estimated cost savings in PCS rotational travel for FY 72:

	Reduction in moves	Cost in savings thousands
Officer	1,956	$4,583
Enlisted	27,370	14,861
Total	29,326	19,444

3. Between FY 71 and FY 72, the percentage of operational moves per Army manyear declined from 11.4% to 9.4%. Operational travel is that travel performed between Continental United States (CONUS) duty stations or within/between overseas commands. This reduction resulted in the following estimated cost savings in this PCS travel category:

	Reduction in moves	Cost in savings thousands
Officer	2,005	$3,770
Enlisted	16,910	5,263
Total	18,915	9,033

4. The total monetary savings attributable to stabilization policies for these travel categories for FY 72 is $28.5 million.

5. An increase in overseas average tour lengths in long tour areas between FY 72 and FY 73, resulted in the following estimated cost savings in PCS rotational travel for FY 73:

	Reduction in moves	Cost in savings thousands
Officer	4,424	$10,767
Enlisted	56,386	32,647
Total	60,810	43,414

6. Between FY 72 and FY 73, the percentage of operation moves per Army manyear declined from 9.4% to 7.3%. This reduction resulted in the following estimated cost savings in FY 73:

	Reduction in moves	Cost in savings thousands
Officer	1,210	$2,558
Enlisted	16,014	5,509
Total	17,224	8,067

7. Total PCS cost savings in FY 73 are $51.4 million.

8. Total PCS cost savings for FY 72 and FY 73 are $79.9 million.

NAVY

1. The following is an updated list of continuing policies and actions designed for cost reduction and to constrain the number of moves to the minimum that will allow the Navy to maintain its forces in readiness.

a. Detailers include estimated move cost in the decision process for each individual assignment.

b. Officers in the grades lieutenant commander/commander failed of selection for promotion have CONUS Shore Tours defined as five years in same geographic areas.

c. Unrestricted line officers CONUS Sea/Shore—increased all tours subsequent to initial tour an average of six months (initiated in FY 73).

d. Washington Tour defined as minimum of three years (include National War College and Industrial College of the Armed Forces students).

e. Non-Command Screen and Post Command Screen Tours, if CONUS shore, set at four-year minimum.

f. All USNR Officers serving three-year obligations and not career motivated, toured until active duty release date unless tour lengths otherwise directed by departmental or Department of Defense (DoD) Directives.

g. Rotational policy for medical officers serving two-year obligations modified to increase stability within community.

h. Initial tour for surface warfare junior officers extended from 18 months to 24 months, and to 36 months in FY 73.

i. Officer tours are no longer shortened solely because of promotion or non-selection for promotion.

j. Command tour lengths have been extended.

k. Temporary duty and briefings enroute between duty stations reduced to absolute minimum.

l. Newly appointed warrant officers not ordered from present command unless no valid billet vacancy exists for an officer of his grade and designator at his present activity.

m. Exceptions to prescribed tour lengths are rigidly screened to minimize broken projected rotation dates.

n. Voluntary tour extensions are actively solicited.

o. Concerted efforts to reassign personnel with the same geographic area and to reduce cross country moves.

p. Assign first term enlisted personnel a tour length that corresponds to the length of their enlistment not to exceed four years.

q. Set a minimum activity tour of 24 months for enlisted personnel.

r. Selectively deferred transfer of school eligible personnel to projected rotation date.

s. Permit early release of selected personnel who are near expiration of enlistment when their unit/activity changes location or is deactivated.

t. Limitation on numbers of dependents for enlisted personnel to be eligible for overseas duty.

2. Force drawdowns have created numerous realignment and force adjustment problems. Even with these demands, the Navy has reduced numbers of moves in other than mandatory move categories.

3. The figures listed below provide the latest information available:

	Moves (Thousands)*	Cost (Millions)
Fiscal year 1971	146.0	161.6
Fiscal year 1972	125.9	145.2
Fiscal year 1973	87.9	133.0

*Operational, Rotational and Organized Unit Moves.

4. Although numbers of moves decreased by 40%, rising economic factors prevented a proportional decrease in cost.

5. During FY 73, the following short-term cost avoidance actions were employed to live within the underfunded PCS budget.

a. Accompanied Overseas Shore Tours extended to six months beyond DoD maximum for officers for FY 73—not to exceed 48 months (Proviso of DoD waiver—authority to impose extensions expired 30 June 1973).

b. Delayed filling selected oversea billets.

c. Projected rotation dates extended six months for most enlisted personnel.

d. Eliminated all except no-cost split sea tours for enlisted deprived ratings. In view of retention efforts, the Navy has "backed off" to a position of limiting split sea tours for FY 74.

6. Severe cost avoidance actions taken to remain within budgetary constraints during FY 73 depressed moves to level which is lower than Navy can expect to sustain.

7. The management system to monitor and control the PCS Program continues to promote efforts to reduce numbers of moves and the cost per move. In spite of these efforts, inflationary factors continue to reduce the numbers of moves available for a given control dollar. Navy has reached a point that more stringent policy/actions to reduce PCS moves and further limit sea/shore rotation would be detrimental to morale, well being of personnel and fleet readiness.

AIR FORCE

1. The Air Force has initiated a series of actions designed to accomplish increased stability for members and their dependents. These include:

a. Voluntary tour extensions in CONUS and overseas are encouraged annually. (There were approximately 13,000 extensions in FY 73 and FY 74.)

b. Major commands are required to restrict the number of PCS moves under their jurisdiction. (During FY 73, the number was decreased by 13,154 for an estimated savings of $15.0 million.)

2. Air Force PCS Programs for the Fiscal Years indicated are as follows:

	Moves		Cost (thousands)	
	Number	Change	Amount	Change
Fiscal year—				
1971	807,083		$432,916	
1972	732,812	—74,271	423,734	—$9,182
1973	712,131	—20,681	476,379	+52,645
1974	672,245	—39,886	519,738	+43,359

3. Between FY 71 and FY 74, PCS moves decreased by 134,838. Part of this decrease is attributable to overall strength reduction.

4. The average time on station in CONUS at the time of a PCS between CONUS locations has increased from 30.5 months in FY 71 to 33 months to FY 74 for officers, and from 19 to 25 months for enlisted personnel during the same time period.

MARINE CORPS

1. During the past four years, the Marine Corps has decreased the number of PCS moves by 144,051, in an effort to reduce the PCS move expenditures. Due to the increasing rates associated with transportation, packing and handling of household goods, a reduction in expenditures has not been realized. To illustrate the severity of the increases, the rate increases experienced since 1 January 1974, are depicted in the attached enclosures.

2. If the number of moves in FY 74 were the same as FY 71, the PCS budget would be $140 million. This is $60 million above the $80 million approved for the FY 74 budget. Increased management control of moves has helped reduced PCS moves to a minimum, consistent with the Marine Corps' operational commitment.

In summary, while the Services will, of course, continue their efforts to stabilize personnel assignments wherever practicable, in order to maintain viable, ready forces, there is no alternative to keeping the right people in the right jobs in operational units. Although the number of PSC moves have been significantly reduced, complying with Congressional intent to increase the locational stability of military members and their families, the costs associated with PCS programs continue to rise. These increases are directly related to inflation, the increases in Civil Aeronautics Board tariff rates, the higher cost of shipping and storing of household goods and the long overdue increases in entitlements for lower grade enlisted personnel.

The actions which have been initiated by the Services are rapidly reaching the point where more stringent policy changes and actions to reduce PCS moves might prove detrimental to the moral and well being of personnel and their dependents, with an adverse effect on combat readiness.

I trust this information will be of assistance to you. Thank you for your interest.

Sincerely,

LEO E. BENADE,
Lieutenant General, U.S. Army, Deputy Assistant Secretary of Defense.

Move type	Fiscal year— 1971 Number of moves	1971 Average miles per move	1972 Number of moves	1972 Average miles per moves	1973 Number of moves	1973 Average miles per moves	Estimated 1974 Number of moves	Estimated 1974 Average miles per move
I. Accession:								
Officer	2,485	2,320	2,332	2,439	2,531	2,533	2,451	2,520
Enlisted	48,600	3,282	44,641	3,138	57,805	2,423	58,251	2,650
II. Training:								
Officer	981	1,148	953	1,156	1,298	1,006	1,400	1,237
Enlisted	1,526	1,271	2,978	1,332	3,148	1,388	[1] 3,284	1,275
III. Operation								
Officer	2,149	1,082	2,059	1,203	1,145	1,140	900	850
Enlisted	30,074	982	20,362	1,102	12,131	956	10,000	1,009
IV. Rotation:								
Officer	13,087	1,871	7,560	2,575	5,697	1,554	[2] 4,450	1,968
Enlisted	131,553	1,551	71,564	1,644	50,121	1,810	[2] 53,345	1,635
V. Separation:								
Officer	3,697	1,443	3,823	1,212	2,892	1,256	2,187	([3])
Enlisted	105,405	1,918	70,136	1,326	62,106	1,108	59,232	([3])
Total moves	339,557	(1,650)	226,417	(1,813)	198,874	(1,695)	195,506	(1,689)
Total costs	$94,258,000		$78,112,000		$75,890,000		[4] $81,970,000	
Average cost per move	$277.59		$346.52		$381.60		$429.07	
Percent increase in average cost per move			$24.83		$10.12		$12.43	
Percent increase in average cost per move relative to fiscal year 1971			$24.83		$37.46		$54.46	

[1] 2d half of fiscal year 1974 reflects new definitions of training travel.
[2] Reflects move economies dictated by rapid cost escalation and a liberalized overseas extension policy.
[3] Data is too incomplete to be able to estimate a mileage figure.
[4] Includes reimbursables.

INEQUITABLE TREATMENT OF U.S. CARRIERS AT FOREIGN AIRPORTS

Mr. CANNON. Mr. President, the export trade of the United States is of critical importance to this country's economy. Our ability to sell American products and services overseas is important if we are to offset the effects of the high level of imports received by this country each year. American technology has enabled us to produce goods and services widely in demand around the world and we must market them to the maximum.

The airlines of the United States are a major contributor to the export program of this country. In 1973, U.S. airlines sold approximately $1 billion worth of air transport services to the citizens of foreign countries. This contribution to our export trade is essential and its expansion should be encouraged wherever possible. It is unfortunate that this contribution is more than offset by the $1.7 billion worth of air transport services that Americans purchased from foreign airlines last year. Foreign carriers have been able to tap the American market to a far greater extent than the American airlines have been able to accomplish overseas.

I do not believe that this adverse balance is caused by a shortcoming in the U.S. carriers. They are highly competitive and market their services to the maximum extent possible.

I believe there are other reasons which prevent our airlines from competing on an equal basis with foreign carriers. Your Aviation Subcommittee has been holding hearings in which a whole range of unfair competitive practices used by foreign governments and foreign carriers have been revealed. Unlike the situation in the United States where foreign airlines have free and open access to the lucrative American international transportation market, all too frequently our airlines face artificial restraints which inhibit them from competing.

I believe the Members of this body should be aware of the difficulties facing U.S. airline companies in their effort to market their services abroad. One such problem revealed by the hearings is the wide-spread preference given to the foreign government-owned and controlled monopoly airlines at airports in their own country. These advantages range from reductions in rentals, free advertising, preferential gate space, nearly total control over terminal space and rentals, air traffic control preferences, and monopolies for the handling of ground services. At some airports such as Madrid and Rome, U.S. airlines are at the complete mercy of the national carrier as far as space in the airport terminal is concerned. In Madrid expansion of Iberia is carried out at the cost of space for U.S. carriers which are moved even further into the corner than they have been before. A similar situation exists in Rome. In Belgium, in Greece, in Japan, and many other countries the foreign national flag carrier is given total preference. This is quite contrary to the situation foreign airlines find when they come to the United States where all carriers are treated equally at airports and no preferences given.

One particularly sore point revealed by a recent Civil Aeronautics study is the existence of a monopoly in the foreign national carrier to do all of ground handling for foreign airlines operating to that country. In countries such as Argentina, Switzerland, Sweden, and Mexico, U.S. airlines must use the services of the monopoly if they do not handle themselves. The same is true in Belgium, Brazil, China, Costa Rica, Greece, Iran, Ireland, Israel, Italy, Japan—the list goes on and on.

It is not difficult to imagine the kind

of service that is given to a U.S. airline by the foreign carrier if its own flights are being serviced at the same time. Our airlines are subjected to inferior service, substantial delays, and must pay exorbitant fees for the privilege of receiving this kind of service. In some countries, if a U.S. airline desires to provide its own services, a royalty fee is exacted from them for the privilege of doing so. This fee is then turned over to the national carrier to compensate for their inability to obtain the contractual services with the U.S. airline.

Foreign governments and foreign airlines work hand in hand to exact as much as possible from the U.S. carriers operating to their countries. The U.S. Government has not, for the most part, taken adequate initiatives to insure equal treatment for our own airlines.

Is it any wonder that we have an adverse balance in our effort to sell our airline services overseas? Is it any wonder that our carriers find it a constant up-hill battle to hold their own when they are competing not only with well-equipped and well-financed foreign airlines but also their owners, the foreign national governments?

If our carriers are forced to provide inferior service at airports because of lack of space, high fees and preferential treatment given to the foreign national carrier, how can they be expected to attract passengers?

This is a clear example of the unfair atmosphere in which our airlines find themselves and they have had precious little help from U.S. Government agencies and departments who have a responsibility to insure equal treatment for our airlines. Your Aviation Subcommittee is determined that it will do everything in its power to have these departments and agencies wake up and begin to assert themselves on behalf of the U.S. industry. I believe it is only fair that our airlines be given an equal opportunity to compete. I believe that any foreign government that denies our carriers such equal opportunity should do so with the knowledge that its airline's operations to the United States will be placed in jeopardy.

The Aviation Subcommittee is now considering legislation in which the Congress will give clear policy direction to have these problems dealt with, promptly and firmly. I am hopeful of bringing this legislation before the Senate in the very near future.

TRIBUTE TO JEROME "DIZZY" DEAN

Mr. GOLDWATER. Mr. President, just last week one of the great heroes of American athletics passed away. That was Dizzy Dean. We who have lived through his era and who marveled at his proficiency and those of us who knew him personally in the years following felt a very keen, personal loss. I read many of the columns on him that appeared in the Eastern press, all of them accurate, all of them good, but I think that the best story of all about Dizzy appeared in the Los Angeles Times on July 19 under the by-line of Jim Murray who I consider to be one of the Nation's outstanding sports writers.

To those of you, my colleagues and other readers who had the privilege of living through this great period of American sports, I urge that you read this touching and accurate article. Therefore, I ask unanimous consent that it be printed in the RECORD following my remarks.

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

HE NEVER GREW UP

(By Jim Murray)

Well, we're all 10 years older today. Dizzy Dean is dead. And 1934 is gone forever. Another part of our youth fled. You look in the mirror and the small boy no longer smiles back at you. Just that sad old man. The Gashouse Gang is now a duet.

Dizzy died the other day at the age of 11 or 12. The little boy in all of us died with him.

Dizzy was not your manufactured American eccentric. He was the real article. He came out of a time and a place, the Grapes-of-Wrath America, that today's two-cars-in-the-garage, television-aerial America cannot even conceive.

The part of the country that spawned Dizzy Dean also gave delivery to Bonnie and Clyde, Baby Face Nelson, the Joads, Jukes, Huey Longs, the share-cropping 20s, Dust Bowl 30s, Brother can you spare a dime, Eddie Cantor on Sunday night, Father Coughlin, NRA, breadline America.

I once had an editor who insisted Dizzy Dean was the invention of a St. Louis newspaperman named J. Roy Stockton, but not even Ring Lardner could dream up a Dizzy Dean. He had a third-grade education, in his own language, and, fortunately for all of us, he never grew up. I don't think anyone ever saw him scowl. I'm positive he died laughing. Or eating.

He got in the Hall of Fame because he was Dizzy Dean. He only won 150 games. But he won them in a little over five years. The only right-handed pitcher I have ever seen who was any better was Satchel Paige. It tells you a lot about Dizzy when you know he was one of the few, if not only, white pitchers who cheerfully went on barnstorming tours with Satch.

Dizzy never knew for sure what his right name was or where or when he was born. He chopped cotton, ate sowbelly and went barefoot till he was old enough to join the Army. Someone gave him a baseball and it was like giving Caesar a sword or Napoleon a cannon.

He was as vain as a movie star, as amiable as a dolphin. He pitched for $3,000 a year in that Depression time and won 20 games. He used to laugh at the hitters. "Son," he once asked a hitter he'd struck out all day, "what kind of a pitch would you like to miss?"

In the World Series of 1934, when Hank Greenberg, one of the feared sluggers of the American League, came to bat, 0 for 4 against Dizzy in the final game, Dizzy went to the manager, Frankie Frisch. "What kind of a pitch did you say he like to hit?" "High, inside fastball. Don't throw him none," said Frisch.

Dizzy threw him a high, inside fastball. Greenberg singled to center. Frisch screamed, "What'd you do that for?" "I was beginning to think he couldn't hit nothin'," said Dizzy serenely.

The late Detroit columnist, Doc Green, tells of the time Dizzy reported that the people who scouted him thought he was left-handed. "That was because they seen me killing squirrels with stones th'owing left-handed. If I'd of th'owed right-handed I would have squashed them."

Dizzy let death dig in on him, something no other batter could do. His life, like his career, was too short. He was still a 60-year-old barefoot boy when he died.

But, for one brief shining afternoon in 1934, he brought a joy to that dreary time when most we needed it.

Dizzy Dean. It's impossible to say without a smile. But, then, who wants to try? If I know Diz, he'll be calling God "prodner" someplace today. I hope there's golf courses or a card game or a slugger who's a sucker for a low outside fastball for old Diz. He might have been what baseball's all about.

PROTECTION OF WETLANDS

Mr. HOLLINGS. Mr. President, recently the Attorney General of the United States, the Honorable William B. Saxbe, delivered a memorable and hard-hitting speech on the importance of protecting our national wetlands. Our good friend and former colleague spoke before the Conference on the Protection of the Gulf Coast Wetlands in Tarpon Springs, Fla., on July 18. I am happy to report that Bill Saxbe has lost none of his straightforward, tell-it-like-it-is approach toward the issues of our time.

The Attorney General told the Conference:

If we fail to save the wetlands, we will be losing more than an economic and aesthetic asset that can never be re-created. The loss may also signal an impending and crushing defeat in the larger effort to maintain an environment that civilized man can inhabit.

Mr. President, this warning is right on target. The wetlands are vital to our future. Some 75 percent of our Nation's commercial fish and shellfish are dependent upon the preservation of the wetlands for their survival. And these wetland areas are absolutely essential to the purity of our ground water and subsurface water supplies. If they disappear, the whole delicate balance of the environment would be upset. The potential of the coastal and ocean areas would be unalterably destroyed. We destroy the wetlands at our peril. Yet destroy them we do.

The Department of Justice, under the Attorney General's vigorous leadership, is fighting to preserve the wetlands, and Federal prosecutors have been told to stop the despoiling of these lands. Whereas 2 years ago there were less than two dozen wetlands cases in the Justice Department, we already have 151 this year.

Mr. President, I ask unanimous consent that the Attorney General's address to the Conference on the Protection of the Gulf Coast Wetlands be printed in its entirety in the RECORD, along with a July 19 article from the Los Angeles Times detailing the efforts of the Justice Department in this area. And I recommend the Attorney General's address to my colleagues as an excellent analysis of the problem and as testimony to the admirable efforts of the Justice Department in one of the truly important matters affecting the well-being of each and every American.

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

ADDRESS BY HON. WILLIAM B. SAXBE

I am very pleased to be here today as you begin the work of this important conference. The development of more effective ways to

preserve the vital wetlands of the Gulf Coast states will be a significant contribution to the well being of the entire Nation.

All of you have a keen interest in conservation but your work in the coming months will transcend the states you represent. In very tangible ways, the successes or failures of the efforts in the Gulf states will help to set the pattern for other regions in the country.

One reason I have looked forward to attending this meeting is that I have a great interest in conservation. Long before it became fashionable, people in rural areas knew the real benefits of conservation—particularly soil conservation. Since I come from a rural area, the value of conservation and environmental protection have been readily apparent to me all of my life.

But in addition, I now have the special opportunity as the Attorney General to join you in helping to enforce laws designed to protect important but fragile links in the ecology.

From my perspective, preservation of the wetlands will not be an easy task. Serious inroads already have been made. And if present trends continue, the wetlands will have been gravely diminished a decade from now. If we do nothing, we face the very real prospect that at some point, they may practically vanish except for modest park areas.

Whether they are saved to become a perpetual resource depends in large measure on us and our counterparts throughout the nation. A great deal also hinges on how effectively we inform all segments of the public and business community about the nature of the present crisis while enlisting their responsible support.

No single segment of society will be able to preserve the wetlands by itself, no more than a lone segment can solve other environmental perils.

The issues are of such magnitude that they require a joint effort—by government at all levels, by industry and landowners, and by the general public.

What is in jeopardy is not merely the scenic view of ocean frontage or lakeshore—as important as they are.

The wetlands represent far more. They are an irreplaceable resource. And in turn, they are part of a threatened environment in which some detect dangers not only to our way of life but to the very existence of life.

In his book, *The Closing Circle*, Barry Commoner discussed some of the perils facing the nation with which we are all so familiar. They include: rivers and lakes being polluted; the air poisoned; forests being stripped; farmland dangerously misused and eroded; wildlife being destroyed.

He summed it up in these somber words: "The environmental crisis is a signal of approaching catastrophe."

The struggle to preserve the environment does not depend only on saving the wetlands. Prompt and meaningful solutions must be found for a host of problems: The pernicious effects of pesticides and chemicals, automobile and industrial pollution; sewage; and even some fertilizers.

However, if we fail to save the wetlands, we will be losing more than an economic and aesthetic asset that can never be re-created. The loss may also signal an impending and crushing defeat in the larger effort to maintain an environment that civilized man can inhabit.

Though the Department of Justice is not involved in environmental research, part of our law enforcement responsibility does relate to our natural resources. Science has long warned us about the growing threat to the environment—including the wetlands.

As you know, wetlands is a broad term. It really means any area that is covered by water at least part of the time. And it includes areas along our coastlines, bays, estuaries, rivers, creeks, lakes, marshes, and swamps.

Each category is threatened to some extent. But it is the areas that are on or near the oceans that I wish to discuss with you now.

Biologists are among the most practical men of science. They tell us that the coastal wetlands and estuaries are essential for the survival of perhaps three-fourths of our commercial fish and shellfish. The bulk of coastal game fish also are dependent on the wetlands, which serve as both spawning and feeding grounds. If the wetlands vanish, so do those fish.

Biologists contend it is not necessary to destroy all of the wetlands before the cycle of life for fish is destroyed. It is enough to merely reduce the wetlands to a certain point—and then the fish are gone. No one knows exactly what that breaking point is or when we may reach it.

But it is something that we better not gamble on—not if we care anything for our future.

One survey showed that seven percent of the nation's estuary marshlands were lost from 1947 to 1967 to industrial, commercial, and residential development. Another study published in 1969 said that New York State had lost 28 percent of its coastal wetlands in a 15-year period. In that same time, Connecticut's wetlands shrank by 21 percent.

A more recent survey, published last year, said that California had lost 67 percent of its marshland to commercial and industrial use. It added that Louisiana was losing more than 16 square miles of marshland a year.

Some might ask: Who needs fish? Well, we do. It's a vital source of protein in a world where the food supply shrinks each year.

This point was perhaps made most harshly last year in the size of the anchovy catch from the sea off Peru. The fish meal made from anchovies is one of the world's leading sources of protein and has been a major supplier of poultry and livestock feed.

But in 1973 the anchovy catch was only two million tons—a staggering drop from catches of up to 12 million tons in previous years.

As this protein vanished, shortages were triggered in turn in soybeans and other feed grains which are used as substitutes in the United States and other nations. Feed grain prices rose dramatically, as did poultry and other livestock prices.

Some scientists maintain that subtle changes in ocean currents may have been partially responsible for the decline of the anchovies. But there also is speculation that it may have been a simpler cause—overfishing that destroyed brood stock.

In the United States, commercial catches of some fish also have declined sharply.

California fishermen once caught up to 1.5 billion pounds of Pacific sardines a year—but today there are virtually none. And the nation's salmon catch is one-third of what it was 30 years ago.

In some cases, over-fishing has been the key factor in the declines. In other instances, however, pollution and dams have been major causes.

Given enough excesses—the destruction of fish, the ruination of cropland—we could at some point begin to face food shortages on a scale that has caused widespread death and suffering in other nations.

We need the wetlands for other reasons as well.

In the face of diminishing wildlife resources, we must become more aware that the wetlands also nurture and support a variety of birds and animals.

To cite only one example, every duck hunter faces the prospect of ducks and geese disappearing if the wetlands are destroyed. Every sport fisherman must realize there may come a day when his rod will be futile if the twin threats of wetlands destruction and water pollution work their ultimate evils.

Those who have no concern for commercial fish supplies or for wildlife preservation might look at wetlands destruction in another way.

As more and more shoreline is developed, the pollution from homes and factories tends to increase—particularly from sewage and industrial wastes.

If anyone doubts the impact of pollution, they should look this summer at the beaches on oceans, lakes, or rivers which are closed to swimming.

And why are they unsafe? Because pollution breeds disease—disease that can attack anyone. You don't even have to go into the water to become a potential victim.

Many dangers spring from a variety of pollution.

Only last week, the Public Health Service warned American travelers to avoid swimming in water contaminated with human sewage off beaches in Portugal because of an outbreak of cholera.

Mercury poisoning has struck in several parts of the world in recent years. One outbreak killed 46 persons in Japan after they had eaten contaminated fish, and others suffered permanent brain damage. There has been a growing body of evidence that a variety of pollution reaching the sea can have an adverse impact on both aquatic and human life.

Some scientists feel that even the oceans may not be the self-sustaining resource that most once considered them to be. It is possible that they also may be damaged beyond recall.

By building wall-to-wall housing developments and industrial installations along the coastlines, we run the risk of dumping such unprecedented amounts of effluents into the seas that the offshore waters could become basins of sludge. They would be devoid of aquatic life but rich cesspools for the growth of disease.

There already are signs of substantial damage to the sea in some areas. Several reports during the past few years indicate that a large section of the Atlantic Ocean off New York is badly polluted from the wholesale dumping of all kinds of waste.

In terms of the environment, oceans might be viewed as merely large lakes. And we all know what has happened to our own Great Lakes. Not many years ago, most people maintained that they were too large to be spoiled. Now we read periodically that they are dying or declining.

As I tick off these problems, you may be struck by the same thought that has occurred to me, nature is no longer being destroyed by inches, but by square miles.

Aside from marine life, coastal wetlands benefit the nation in other ways. Studies have shown that in some areas they help to replenish supplies of ground water. Interior Department reports say they also provide a natural barrier to diminish the effects of storms and often prevent ocean water from contaminating supplies of sub-surface drinking water.

At some point, what happens to the environment begins to affect every person in this country—whether they realize it or not. Destruction of the wetlands does more than destroy these marvels of nature. Another domino in the ecology topples, leading in turn to other disasters.

After all the arguments on the basis of health and food and economy have been summoned on the side of wetlands preservation, one final point remains to be made.

It was perhaps stated best by Aldo Leopold, a forester and naturalist, in a book called *A Sand County Almanac*.

Leopold said, in these words: ". . . the opportunity to see geese is more important than television, and the chance to find a pasque-flower is a right as inalienable as free speech. . . ."

Leopold was not a man hidden away in an ivory tower. He spent much of his life

in wilderness areas, and was an ardent hunter and fisherman. He recognized, more clearly than most, that resources have to be nurtured carefully. And he knew that the wise preservation of wildlife and the areas that give them life can mean their existence in perpetuity. But he also was deeply aware that once diminished, a cycle leading to the extinction of a species may begin to develop. And too often that is an irrevocable turn of events.

There are many instances where this has already happened. While they are unpleasant, they should be a constant spur to us so that tragedies of greater magnitude can be prevented.

Many of us read newspaper stories last month that the stuffed remains of Martha, the last Passenger Pigeon, were being shipped by the Smithsonian Institution to an exhibit in Cincinnati.

These birds once existed—and not that long ago—by the untold millions until they were slaughtered and their feeding grounds destroyed. As bad as that was, it was an ominous sign of worse things to come.

The list of endangered species of wildlife—both birds and animals—is growing. Fish resources have declined in alarming ways—ranging from the runs of salmon on the West Coast to a variety of once-abundant species in the Great Lakes.

Again I come back to the wetlands and to something Leopold said: "One of the fastest shrinking categories of wilderness is coastlines . . . No single kind of wilderness is more intimately interwoven with history, and none nearer the point of complete disappearance."

As we go about our work here, we should consider not only the content but the irony of those words. For Leopold said them in a book published nearly 30 years ago. The danger signals have been hoisted for a very long time, but too few have paid attention.

I know we all agree that needless damage to wildlife areas has been extensive. But I am equally certain we share a conviction that total disaster can and must be averted. That is why we are all here. But time is growing short.

I am happy to say that there are a number of promising signs that we may be able to preserve much of the wildlife resources and the areas which sustain them.

For one thing, the public today is much more aware than it was five or ten years ago of the need for conservation and protection of the environment.

The Federal government in the last few years has begun moving in unprecedented ways to combat a wide range of problems.

Congress has created a substantial amount of important legislation in the environmental area. One of the bills it enacted into law not long ago, the Coastal Zone Management Act, has particular relevance to the wetlands.

State and local governments have also become more deeply involved in preservation efforts. And we see a growing awareness on the part of many businesses and industries that they have major responsibilities in the environmental area. Private organizations have enlarged not only the scope of their preservation programs but their intensity as well.

You probably read recently that the 25 members of the Santee Club of South Carolina had donated a 25,000-acre tract of land fronting on the ocean to a group called the Nature Conservancy. This area, to be maintained as a wildlife refuge, is a home for the Southern Bald Eagle and the American Alligator—both endangered species.

Some business firms also have made notable donations of wildlife areas. And many more are spending large amounts of money to minimize the environmental effects of their operations.

Acts of these kinds are of immense value to the entire nation, and I hope they can be part of a new emerging pattern.

For it is up to every segment of our society to contribute to the preservation of our resources. To be successful, environmental protection has to be a joint effort. And a cooperative spirit must permeate all of the law enforcement efforts carried out by local, state, and Federal governments if we are to preserve the wetlands.

I believe it is fair to say that these efforts thus far have been too limited in scope and lacking in proper coordination. As a result, vast areas of this irreplaceable resource have been destroyed.

My purpose in making these remarks is not to find fault. There is enough of that to go around and last all of us a long time. My point is that we simply have to do a better job—and I stress that I am most particularly talking about the Department of Justice doing a better job.

As you know, the law requires that the Army Corps of Engineers must approve any project to alter wetlands, to dredge or fill them, or to build anything on them. It falls to the Department of Justice to represent the Government in the event a court suit stems from the Corps' refusal to grant a permit for wetlands work. We also have the responsibility to bring criminal or civil actions when such work is done without a permit—and this sort of twentieth century buccaneering is much too prevalent.

Two years ago, the Department was processing only 21 cases relating to the wetlands. By June of 1973, the total had grown to 96 cases. And by last month, there were 151 such cases in progress—50 criminal and 101 civil actions.

The growing number of cases represents in part the tougher standards being applied by the Corps of Engineers. In part, it reflects the work of the Environmental Protection Agency—which takes part in each hearing for a wetlands application. The Department of Interior is now directly involved in investigating cases and in providing expert biologists as witnesses.

As the case statistics show, the Department of Justice has also become much more aware of its responsibilities.

Our Land and Natural Resources Division early this year decided to make wetlands and related cases a top priority. I fully support that decision.

Among other things, the Land Division is holding a series of conferences with State and local officials as well as with other Federal agencies on wetlands preservation.

The meeting we are attending today is the most ambitious thus far of a conference schedule that already has included in-depth discussions along the Pacific Coast and in Georgia and South Carolina. It is likely that another meeting will be held later this year on preservation of the valuable wetlands in Chesapeake Bay.

The point of these conferences and the new task force approach is to build a framework that will make all of us more alert to ill-conceived or illegal wetlands projects and to move more promptly in court.

The wetlands of the Gulf states are a particularly important part of the coastal areas we seek to protect. Studies by the Department of Interior show that major—and often adverse—inroads already have occurred in Florida, Alabama, Mississippi, Louisiana, and Texas.

Our over-all job is to protect the wetlands from illegal activities and to help shape policies which will enable both preservation and development to proceed together.

I believe it is possible to have intelligent development while at the same time protecting the bulk of the wetlands. One does not have to cancel out the other. But it is also a fact that there are substantial conflicts today between conservationists and the business community.

Beyond enforcing the laws, we have a deep obligation to enlist the voluntary support of those who want to turn wetlands into housing developments, industrial parks, sites for nuclear power plants, and even grazing grounds for cattle.

I am determined that all of the needed resources will be available for the Department of Justice to move swiftly and resolutely in the courts in wetlands cases. Since the bulk of this litigation falls upon the United States Attorneys, I am requesting that they give a major priority to litigation involving the wetlands—in every part of the country.

If we look at the recent past, it is easy to see some of the reasons for the mutual suspicion between conservationists and land developers.

Developers often feel that any effort to preserve the wetlands means, in effect, a ban on all new projects.

Conservationists frequently believe that all developers feel that ownership gives them a blank check for any actions—no matter how harmful to the environment.

Let me reiterate that I believe it is possible to have careful planning in land use so that we can achieve both measured growth and conservation. But it will take every ounce of energy that the state, local, and Federal governments can muster. The job will not be done this year or next. In a sense, it will require hard work on the part of all for decades. But we can and must start now to do a better job.

The problems exist virtually everywhere.

In San Francisco Bay, for example, filling for everything from housing tracts to garbage dumps has gone on for years.

On the Oregon Coast, the Department won a court fight against a developer who had failed to get permission to alter the course of a river.

Recently, the Department won a wetlands suit against a developer in Georgia. The court required that the salt marsh area which had been filled to be completely restored.

Not long ago, the Department brought suit against a developer in Maryland who was filling in tidelands without a permit for a housing development.

Not long ago there were press reports that foreign investors have purchased large tracts of North Carolina wetlands and plan extensive development.

We know that additional pressures for development will continue. This is particularly true as the Nation seeks new sites for power plants, for resorts, and for farming and livestock operations.

Nuclear power plants are an important factor in the Nation's future growth. But they should be located carefully to avoid damage to wetlands and marine resources.

Whatever the particular problems may be, the clock is tolling. There is no time for recriminations. There is only time to try to work together to develop sensible programs that rest on twin foundations of sensible, planned growth and real conservation.

Aldo Leopold said that: "We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect."

And Joseph Wood Krutch, the noted nature writer, maintained in an essay on the meaning of conservation that the stakes are very high. He put it this way:

"The generation now living may very well be that which will make the irrevocable decision whether or not America will continue to be for centuries to come the one great nation which had the foresight to preserve an important part of its heritage. If we do not preserve it, then we shall have diminished by just that much the unique privilege of being an American."

His comment has a particular importance today as the Nation prepares to celebrate the 200th anniversary of its founding. The Bicentennial Year will provide an opportunity to take stock of a great many valuable things we as a people have struggled to both create and preserve over the course of two centuries.

The Nation's natural beauty and wildlife resources are certainly among them. And I can think of no better challenge as we set about the work of the coming months and years.

Thank you.

[From the Los Angeles Times, July 19, 1974]

SAXBE ENTERS BATTLE TO SAVE U.S. WETLANDS

(By Ronald J. Ostrow)

WASHINGTON.—"Like a spendthrift who comes into an immense fortune and squanders it recklessly, so the American people are squandering their heritage."

That quotation, memorized by Atty. Gen. William B. Saxbe from a high school oration he delivered 40 years ago, is becoming the keynote of a stepped-up Department of Justice drive to protect America's wetlands—breeding grounds for much of the nation's wildlife.

Government attorneys are using a 75-year-old federal law enacted to keep rivers and harbors navigable as a major weapon in their fight to preserve the wetlands—the estimated 74 million acres of soil periodically covered by water both brackish and fresh.

Department of Interior biologists estimate that up to three-fourths of the nation's commercial fish and shellfish depend on coastal wetlands and estuaries for survival. Most sport fish use the wetlands for spawning and feeding. The areas also abound with waterfowl.

Wetlands aid in replenishing ground water supplies, help diminish the impact of storms and can prevent the oceans from contaminating sub-surface water supplies.

Under attack primarily from residential and industrial developers and dumpers, the wetlands are fast disappearing.

Surveys cited by Department of Justice officials estimate that California has lost 67% of its marshland to commercial and industrial use, that Louisiana is losing more than 16 square miles of marshland a year and that New York state lost 28 of its wetlands in just 15 years.

Saxbe, beginning with a speech Thursday in Tarpon Springs, Fla., at a Department of Justice-sponsored conference on protecting Gulf Coast wetlands, is attempting to focus national attention on the problem.

In a recent interview, he said there had been a great deal of governmental effort to rescue the wetlands, but that it had never been properly coordinated.

"We are the agency that can best pull this together," he said, noting that agencies with a stake in the outcome include the Environmental Protection Agency, the Army Corps of Engineers, and the Department of the Interior's Fish and Wildlife Service as well as state and local entities.

(Saxbe's credentials in the environment field—aside from his schoolboy oration at Mechanicsburg (Ohio) High School—were established early.

(His first full-time job was with the Ohio Division of Conservation, where he gave a preview of the outspoken nature that has become his trademark. Lecturing on fish and game around the state, he accused a sugar company of polluting the Sandusky River and spending more money on defending its processes in court than it would cost to clean up the waterway.

(The company, he said, ought to be closed. "I got hell—up and down," Saxbe recalls.)

Others involved in the government's wetlands campaign, while expressing admiration for the Department of Justice's accelerated legal efforts, see its primary role as more delicate than that of co-ordinator.

As one official put it, "Justice occupies a middle ground between the Corps of Engineers and the Department of Interior. The Corps of Engineers want to build—not protect. The Fish and Wildlife people are fin and feather zealots. They don't take into account the legitimate needs for developing the coastline.

While Saxbe's involvement in the wetlands effort, which came at the urging of Asst. Atty. Gen. Wallace H. Johnson Jr., is recent, the Department of Justice's role dates back more than four years.

A key 1970 ruling by the U.S. 5th Circuit Court of Appeals in New Orleans and a crackdown on wetland violators by the U.S. attorney in North Carolina combined to shape the department's effort, according to Martin Green, chief of the pollution control section in the Department of Justice's land and natural resources division.

The appellate court ruled that, under the 1899 Rivers and Harbors act, the Corps of Engineers could refuse for ecological reasons to grant a permit to a developer to dredge and fill, even though the project would not interfere with navigation, which had been the law's chief concern.

The ruling reversed a lower court's decision that ordered the issuance of a permit to fill in 11 acres of tidelands in Florida's Boca Ciega bay for use as a mobile trailer park. The lower court had ruled that the Corps of Engineers had no power to consider anything except interference with navigation.

Citing "civilization's potential destruction from breathing its own polluted air and drinking its own infected water," the appellate court held that authorities were "entitled, if not required, to consider ecological factors."

Around the same time, Green said, the then-U.S. attorney in North Carolina, Warren Harding Coolidge, became concerned about protecting his state's wetlands, hired an expert to check the coastline and filed civil suits against developers who had failed to secure Corps of Engineers' permits.

The totals of such cases pending in court tell the rest of the tale: at the end of June, Green said there were 151 "Section 10" cases—named for the section of the 1899 law that authorizes them—in the courts, compared with 96 a year earlier and only 21 at the end of June, 1972.

The figures are likely to increase further because Saxbe is asking U.S. attorneys throughout the nation to give major priority to wetlands litigation.

Two-thirds of the current cases are civil actions. Tom Lee, an attorney in the pollution control section, explained that in the typical criminal case, the violator is fined, with the maximum penalty under the law being $2,500.

Civil suits, on the other hand, are more likely to produce a court order for the errant developer to restore the wetlands he has damaged—a principle the government attorneys are eager to establish.

Johnson, the head of the department's land and natural resources division, sees the wetlands campaign as welcome, positive relief in the midst of Watergate.

"It employs the Department of Justice to pull together the federal constabulary and involves U.S. attorneys in broad policy-making, which we're trying to do," Johnson said. "And we're able to do it without taking a philosophical position for or against development."

ENDING EMERGENCY GOVERNMENT

Mr. MOSS. Mr. President, my good friend and neighbor from Idaho, Senator FRANK CHURCH, recently addressed the 68th annual convention of the National Association of Attorneys General on the subject of ending emergency government which the United States has had since March 1933, and providing legislative order to the whole emergency process.

I know that bipartisan legislation along these lines is being prepared for introduction soon; I understand that this effort is based less on disapproval of what has taken place over the last 41 years than on what could take place.

Senator CHURCH states to the Attorneys General—

The emergency powers are like a loaded gun lying around the house . . . Frail men continue to succumb to the temptations of great power. These are times when we can ill afford to let that power go unchecked.

I ask unanimous consent that Senator CHURCH's perceptive speech on "Ending Emergency Government" be printed in the RECORD.

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

ENDING EMERGENCY GOVERNMENT

(Address by Hon. FRANK CHURCH)

I want to express, first of all, to the Attorneys General representing each state of the Union a warm welcome to Idaho. I think you will find the natural and intellectual environment of Coeur d'Alene clean-aired and clear-headed, a fitting surrounding to conduct your 68th annual convention. I also want to express my deep-felt gratitude to you for inviting me to participate with such a distinguished group of public servants concerned with strengthening the rule of law.

Today I want to speak on an issue of importance to our common future and the future well-being of our Constitutional system of government. My concern has to do with ending emergency government which the United States has practiced since March 9, 1933, and establishing an orderly procedure for handling inevitable emergency situations.

There are now in effect four presidentially proclaimed states of national emergency: The national emergency declared by President Roosevelt in 1933, to deal with the Great Depression; the national emergency proclaimed by President Truman in December 1950, during the Korean conflict, and the two states of national emergency declared by President Nixon in March 1970 and on August 15, 1971. None of them has ever been terminated.

This means that a majority of the American people have lived all their lives under emergency rule. For 41 years, protections and procedures guaranteed by the Constitution have, in varying degrees, been abridged by executive directives that derive from presidentially proclaimed states of national emergency.

As a philosophical issue, how a constitutional democracy should deal with great crises reaches back to the Greek city-states and the Roman Republic. In the United States, actions taken by the Executive in times of crises have—from, at least, the Civil War—in important ways shaped the present phenomenon of a permanent emergency.

In fact, at the end of the 19th century, several major mining strikes took place right in this Coeur d'Alene area which led to the intervention of the federal government. President Harrison dispatched federal troops here in 1892; President Cleveland did it in 1894; President McKinley in 1899. During this latter incident, the military commander, with presidential sanction, declared martial law in Coeur d'Alene. As one historian has put it, "Here was a limited form of martial law being established by the United States although it was preceded by no announcement either from the President or from the commanding officer." A few days later, however, the Governor of Idaho declared martial law, placing the general on firmer legal ground. These displays of force by the Fed-

eral Executive, along with the President's dominant role in the Pullman Strike in Illinois, established the Chief Executive as the key figure in domestic emergencies. His interventions in Idaho made a generally favorable impression on the public. And in the famous *Debs* case, with which most of you are familiar, the Supreme Court strongly supported the President's hand in emergency labor disputes.

In the years since, the President has claimed the right to invoke extraordinary powers whenever he deemed a national emergency to exist, whether it took the form of a war abroad, or economic disruption here at home. One declared state of emergency has been piled on top of another.

In January 1973, Senator Charles McC. Mathias of Maryland and I became Co-chairmen of a Special Committee created by the Senate to examine the consequences of terminating the declared states of national emergency that now prevail; to recommend what steps the Congress should take to ensure that the termination can be accomplished without adverse effect upon the necessary tasks of governing; and also, to recommend ways in which the United States can meet future emergency situations with speed and effectiveness but without relinquishment of congressional oversight and control.

In accordance with this mandate, the Special Committee on National Emergencies and Delegated Emergency Powers—in conjunction with the Executive branch, expert constitutional authorities, as well as former high officials of this government—has been engaged in a detailed study to determine the most reasonable ways to restore normalcy to the operations of our government.

A first and necessary step was to bring together the body of statutes, which have been passed by Congress, conferring extraordinary powers upon the Executive branch in times of national emergency. This was a most difficult task, completed last autumn. Nowhere in the government, in either the Executive or Legislative branches, did there exist a complete catalog of all emergency statutes. Many were aware that there had been a delegation of an enormous amount of power but, of how much power, no one knew. In order to correct this situation, the Special Committee staff worked with Executive officials, experts in the Library of Congress and the General Accounting Office, and knowledgeable legal authorities to compile an authoritative list of delegated emergency powers.

In the past, the only way to compile a catalog useful to Congress would have required going through every page of the 86 volumes of the Statutes-at-Large. Fortunately, the U.S. Code (1970 edition and one supplement) was put into computer tapes by the U.S. Air Force in the so-called LITE system, which is located at a military facility in the State of Colorado. The Special Committee devised several programs for computer searches based on a wide spectrum of key words and phrases contained in typical provisions of law which delegate extraordinary powers. Examples of some trigger words are "national emergency" "war," "national defense," "invasion," "insurrection," etc.

These programs, designed to produce a computer printout of all provisions of the U.S. Code that pertain to a state of war or national emergency, resulted in several thousand citations. At this point, the Special Committee and Library of Congress staffs went through the printouts, separating out all those provisions of the U.S. Code most relevant to war or national emergency, and weeding out those provisions of a trivial or extremely remote nature. Two separate teams worked on the computer printouts and the results were put together in a third basic list of U.S. Code citations.

To determine legislative intent, the U.S. Code citations were then hand checked against the Statutes-at-Large, the Reports of Standing Committees of the U.S. Senate and House of Representatives and, where applicable, Reports of Senate and House Conferences.

In addition, the laws passed since the publishing of the 1970 Code were checked and relevant citations were added to the master list. The compilation was then checked against existing official catalogs of the Department of Defense, the Office of Emergency Planning, and a 1962 House Judiciary Committee synopsis of emergency powers. The result was a compilation and commentary on 470 special statutes invokable by the President during a time of declared national emergency.

These hundreds of statutes clothe the President with virtually unlimited powers with which he can affect the lives of American citizens in a host of all-encompassing ways. As the chief law-enforcement official of your state, you should know that this vast range of powers, taken together, confers enough authority on the President to rule the country without reference to normal constitutional processes.

Under the authority delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens.

A review of these emergency statutes reveals a consistent pattern of law-making by which Congress, through its own actions, has transferred this awesome power to the executive, ostensibly to meet the problems of governing effectively in times of great crisis. No charge can be sustained that the Executive branch usurped these powers from the Legislative branch. The contrary is true; the transfer has been routinely mandated by Congress itself in response to the exigencies of war and other grave emergencies. But this is a time when the fears and tensions of the cold war are giving way to detente. A stable truce exists between North and South Korea, direct U.S. involvement in the Indochina civil war has ended, and big power confrontation in the Middle East has subsided. The time is ripe for Congress to assess the nature, quality, and effect of what has now become known as emergency powers legislation. These laws are of such significance to civil liberties, to the operation of domestic and foreign commerce, and to the general functioning of the U.S. government, that, in microcosm, they reflect dominant trends in the political, economic, and judicial life in the United States.

Let me cite a few examples. In the context of the war powers issue and the long debate of the past decade over national commitments, 10 USC 712, entitled "Foreign governments: detail to assist," is important. It reads:

"(a) Upon the application of a country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

"(1) any republic in North America, Central America, or South America;

"(2) the Republic of Cuba, Haiti, or Santo Domingo and

"(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

"(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions."

The Defense Department, in answer to inquiries by the Special Committee concerning this provision, has stated that it has only been used with regard to Latin America, Liberia and Iran, and interprets its applicability as being limited to noncombatant advisers. However, the language of Section 712 is wide open to other interpretations. Since Congress has delegated this power in such an open-ended way the argument could be made that no further congressional concurrence was necessary.

The repeal, three years ago, of almost all of the 1950 Emergency Detention Act was a constructive step, but 18 USC 1383 remains. "Restrictions in military areas and zones" reads:

"Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than $5,000 or imprisoned not more than one year, or both."

This statute appears, on its face, to be a permanent, not an emergency power. It was used as the basis for interment of Japanese-Americans in World War II. Although it seems to be cast in a permanent form, the legislative history of the section shows that the statute was intended as a World War II emergency power only, and was not to apply in "normal" peacetime circumstances. Yet the law remains on the books.

A second study by the Special Committee soon to be published analyzes the arbitrary use of Executive Orders in times of declared national emergency. It is our conclusion that a great many of the most significant Presidential decisions are not available for Congressional or public scrutiny either in the *Federal Register* or through transmittal of classified information to the Senate and the House.

Again Congress' complacency can be cited as the reason for this disorderly state of affairs. Congress has not specified substantive standards under which all—and I emphasize all—presidential directives should be recorded. In addition, Congress has not yet enacted laws to prevent the Executive from abusing its power to classify documents where its purpose is to withhold information from Congress and the public. The problem of public accountability is unfortunately wrapped in legal controversy and is, in a sense, technical in nature. It involves, however, in a profound sense, the survival of constitutional government.

What the Executive does with public funds and who is entitled to know about Executive directives are among the most important questions now being asked of our system. Until a majority of the men on Capitol Hill grapple with these problems directly, Congress will be confronted with a continuing veil of secrecy and left shackled in its capacity to oversee the Executive. The bombing of Cambodia, indeed the whole presidential conduct of the Indochina war, and now Watergate, tragically demonstrate the results of such legislative abdication.

Current revelations of how power has been abused by certain presidential advisers and high executive officials should give rise to new concerns about the potential exercise, unchecked by Congress or the American peo-

ple, of these extraordinary emergency powers. Like a loaded gun lying around the house, the plethora of delegated authority could readily be used for purposes far removed from those originally intended.

Accordingly, Senator Mathias and I, along with members of the Special Committee and Majority Leaders Mansfield and Minority Leader Scott, plan to offer an omnibus legislative package after the July 4th recess to remedy this situation. The measure would terminate all existing emergencies and provide orderly procedures for both declaring and ending new national emergencies in the future.

It would provide that, in the event of an invasion of the U.S., a declaration of war by Congress, an insurrection within the United States in aid of a foreign enemy, an economic disaster or dislocation of national proportions, or a catastrophic natural disaster, the President could proclaim the existence of a national emergency. Such a presidential proclamation would be published in the *Federal Register* in which the President would have to designate those provisions of emergency law to be exercised during the declared emergency, in order for the statutes to become operative.

Any national emergency so declared by the President would automatically end—as would those laws triggered by the emergency—after 90 days. However, by concurrent resolution, Congress could either end the emergency earlier or extend its life for a specified period, but not to exceed a year at a time. I might note here that through both World Wars, the British Parliament declared the U.K. to be in a state of national emergency for only 30 days at a time.

Since the failure of the Roman Republic, historians and philosophers have analyzed the problem posed to a legislature when it confers extraordinary power upon the Executive. Their writings teach us that liberty is fragile, and vulnerable to those who exercise power purely for its own sake. Machiavelli, in his Disclosures on Livy, acknowledged that great power may, on occasion, have to be given to the executive if the state is to survive, but warned of the grave dangers in doing so. He cautioned:

"Nor is it sufficient if this power be conferred upon good men; for men are frail, and easily corrupted, and then in a short time he that is absolute may easily corrupt the people."

Rousseau also discussed the question of delegated emergency powers in his *Social Contract*. He wrote:

"However this important trust be conferred, it is important that its duration should be fixed at a very brief period, incapable of being ever prolonged. In the crises which lead to its adoption, the State is either soon lost, or soon saved; and the present need passed, the dictatorship becomes either tyrannical or idle."

Despite this ancient advise, frail men continue to succumb to the temptations of great power. These are times when we can ill afford to let that power go unchecked.

So, I urge the National Association of Attorneys General—and each of you separately—to give active support to this legislative effort to retrieve normal government and restore those checks and balances, which form the bedrock principle of our constitutional system. Notify your Senators and Congressmen that the time has come to end emergency government in this "land of the free."

DUE PROCESS IN AN IMPEACHMENT TRIAL

Mr. ABOUREZK. Mr. President, the question of how much due process is due a President in an impeachment trial is one which has troubled many people since the beginning of the House's inquiry in impeachment. An excellent article by Charles Rembar in the New York Times Magazine of Sunday, July 21, 1974, helps in answering this question. I ask unanimous consent that the article be printed in the RECORD.

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

HOW MUCH DUE PROCESS IS DUE A PRESIDENT

(By Charles Rembar)

There is confusion, a dangerous confusion, in our talk about impeachment. In the year or so since public discussion of the subject began, most of the discussion has been cast in concepts borrowed from the criminal law. It is said the President is to be presumed innocent until he is proved guilty, that the evidence must establish guilt beyond a reasonable doubt; it has even been argued that the President's production of evidence should be sheltered by the privilege against self-incrimination. We talk as though Richard Nixon, the man and citizen, were on trial, rather than the conduct of his office.

This is error. Impeachment is no closer to a criminal trial than it is to an election. It is not an election, of course, despite the fact that our new Vice President, when he was a Congressman (either cynically, he being a proponent of impeachment at the time, or, more likely, thoughtlessly) declared that an impeachable offense is whatever Congress says it is. The definition of impeachable transgressions is not the subject of this piece, which deals, rather with the standards according to which Congress should arrive at its decision on whether such transgressions have occurred. But procedure here, as nearly everywhere, is hardly less significant than substance.

The impeachment of a President is virtually unprecedented. The House has voted Articles of Impeachment only 12 times in our history, and only four times has impeachment resulted in removal. Only once has a President been involved, and though the Senate vote was notoriously close, the charges against Andrew Johnson were ludicrous. He was accused of two "high crimes and misdemeanors." One was making speeches disrespectful of the Congress. The other was that he fired his Secretary of War, in violation of a statute designed by Congress to provoke a confrontation, a statute obviously unconstitutional. The charges against President Nixon are quite different.

We naturally turn to precedents in a crisis; the past has banked its wisdom and it is foolish not to draw on it. But since there are no precedents actually in point, we tend to make the error of reaching for precedents not in point. And since the abuses charged, whatever they amount to technically, are crimes in that larger sense of the word we often use, we tend to look for guidance to the criminal law. But impeachment is not a criminal prosecution; removal from office is not a penalty. Impeachment and removal, rather, are a unique political mechanism, created by our Constitution, a proceeding *sui generis*.

The confusion is natural. The idea of judicial trial is root-deep in our culture. Most of those at the Capitol are lawyers (two-thirds of the Senators, more than half the Representatives), but this is a minor factor. All of us are lawyers in this sense. Law is more than an implement of government, more than an operating institution. It is as much a part of our culture as morals, art, technology. And the center of this aspect of our culture is the adversary trial, the age-old, well-loved struggle in the courtroom. (A measure of its hold on us is that there is no surer scene for a stage success.) The adversary trial is the method by which Americans (and Englishmen; other legal systems differ) settle disputes among themselves and between themselves and their government. All of us, whether or not we practice law, are educated in it, have thoughts about it, feel strongly on what is right and wrong in the conduct of a trial. We pit antagonists against each other—trial by battle has never died—and we want to see a fair fight. Each contesting individual has procedural rights and privileges, which are given extra dimension when he is accused of crime.

These ideas and feelings find expression, tersely and powerfully, in our Constitution, in the phrase "due process of law." We look upon due process, along with the First Amendment's guarantees, as the basis of our freedom. And we are familiar with its rudiments. When the litigation is civil, our property is at stake, or certain personal rights the law tends to treat as property (reputation, privacy, domestic claims). When the litigation is criminal, it is our liberty, our property again, or even (rarely now) our lives. They are not to be taken from us, by force of law, except according to the system; that is, by the adversary process our culture tells us is our due.

But these are not the things at stake when an official is impeached. What is at stake, on both sides of the matter, is the welfare of a nation. Whatever "high crimes and misdemeanors" may mean, the standards under which the test is made need not be, and should not be, the standards of the courtroom. There is no "case" in the courtroom sense. The people are deciding for themselves, through their elected representatives, whether the President ought to stay in office.

If the distinction seems remote, too technical and abstract, let me give a few examples on how it bears on concrete problems. "Presumption of innocence" and "proof beyond a reasonable doubt" have been cited, on behalf of the President, as much by his liberal opponents as by those who support him. Our criminal procedures are based on the premise that it is better that many of the guilty should escape than that one innocent be punished. Hence the guilty have the benefit of rules designed to protect the innocent; felons have a license to take advantage of the inhibitions we put upon enforcement of the penal law. But the proceedings for impeachment and removal created especially by the Constitution are not penal. It cannot be supposed that the Founding Fathers thought it better that many office-holders who betray their office should nevertheless stay in office than that one of them, perhaps misjudged, should be expelled. Removal from the White House is not a punishment; it is a protection of the Presidency, and a safeguard to the people, created by the Constitution. Hence there is no room for favoring presumptions, no requirement of overwhelming proof. These familiar legal principles of criminal law would be pertinent if an official, having been impeached and removed from office, were later prosecuted for violation of the penal code. But in impeachment proceedings, each Senator must vote the way the evidence points; he should not vote against removal because he thinks there is, say, one chance in five that the official has not committed the extreme offense he is charged with.

The same holds for the privilege against self-incrimination. The privilege comes from the Fifth Amendment, which states: "No person . . . shall be compelled in any criminal case to be a witness against himself." The proceedings in the Senate are not a criminal case. Indeed, Article I, Section 3 of the Constitution draws a distinction between impeachment (whose effects are carefully limited to removal and disqualifica-

tion) and any criminal case that may come afterward, (which these provisions expressly mention). Self-incrimination therefore cannot be a ground on which an official subject to impeachment can keep evidence out of the hands of Congress. (Indeed, President Nixon has not invoked the privilege in his refusal to supply the evidence.)

In a subsequent criminal prosecution, it might be argued that the yielding of certain evidence in the course of an impeachment invalidates the prosecution. But the possibility that criminal offenses might for this reason go unpunished is hardly relevant. Vindictiveness has no place here. Compliance with the Constitution, the need that public servants perform responsibly and not abuse their powers, is incomparably more important than whether an individual who has committed a crime gets his just deserts.

The concepts of the criminal law are incongruous in impeachment, and analogies drawn from civil litigation are scarcely better. It has been suggested that the model for the Senate proceedings should be the kind of litigation in which the beneficiary of a trust complains of his trustee's actions. But the constitutional nature of impeachment excludes mechanical adherence to any courtroom standards. There is grave distortion when we view impeachment in the mirror of our courtroom adversary system, and see it as a struggle between an individual intent on preserving something that he claims belongs to him and another who seeks to take it from him. The notion that the Presidency is a form of private property is constitutionally obscene.

Consider the manner in which the proceedings might be conducted. Should they be televised? The Supreme Court, dividing five to four, has held that televising a criminal trial denies due process. One of the reasons given was that the defendant would be subjected to unwarranted additional strain.

At a criminal trial, the defendant must be present in the courtroom; in impeachment, the President has an option, and the likelihood is he will not be present in the Senate chamber. If he chooses to, he will have made a judgment that his appearance will help his cause, a benefit magnified by television.

Another factor in the majority's decision was the jury trial tradition that jurors must be insulated from public opinion; the Justices were concerned about the effect of television on the jurors' independence. In impeachment proceedings, the Senators and Representatives cannot be cut off from the people. They will be sensitive to public opinion, and that opinion, therefore, ought to be as well-informed as possible, a goal toward which television is a mighty aid. There are other dangers in the broadcast of a jury trial that have no relevance to impeachment; there is not space to list them all. If we keep in mind that the national welfare is involved—and not, as in the courtroom, the welfare of an individual—the answer is quite clear; everything possible should be done to subject what goes on to the closest national scrutiny. For this purpose, it is fortunate that we have lately had the means to give the people first-hand knowledge, without journalistic intermediation.

Take another important matter: the way the evidence and the argument are presented. The adversary tradition can be useful; having the evidence offered, and arguments made, from opposing points of view may help to reach right judgment. But there is a crucial difference. The Senate has a set of rules adopted when Andrew Johnson was impeached. The House of Representatives selects a group of its members, called "managers," to present the case for removal. The President is represented by counsel. I would suggest, instead, that both sides of the issue be presented by the House.

Those who voted for impeachment would select the managers for removal; those who voted against impeachment would select the managers opposed. Each group should be free to employ outside counsel. But, given the public interest on both sides of an impeachment, it is inappropriate that the case for keeping the officeholder in office should be made by his private counsel. Since it is not a matter of preserving personal rights, there should be no personal counsel.

Then there is the question of the kind and amount of evidence. Here again the judicial adversary system should not be closely followed. Courtroom rules of evidence were developed with a view to protecting juries against whole categories of proof deemed not reliable enough. When a case is tried before a judge without a jury, the rules of evidence are more flexible and much less is excluded. Rules are, of course, abstractions, and can work badly in specific cases. Whatever their value for the generality of jury trials, they should not be uncritically taken out of context. Since the question for decision involves the good of the whole country, and not the liberty or property of a single citizen, these traditional rules of evidence may be illuminating, but they cannot be controlling.

What has just been said would tend to enlarge the quantity of the evidence to be heard. Another need in this extraordinary situation points the other way; it might cut down the testimony. A long continued Senate proceeding is obviously unhealthy. Stalling is a familiar tactic in courtroom litigation. Judges try to counter it, not always with success. Its capacity for mischief is infinitely greater here. There have been suggestions that the President means to stall, perhaps in the hope that some outside event will divert a current running against him.

It has been suggested, on the other hand, that his opponents want to prolong proceedings which, whatever the final decision, would make the President look bad enough to affect the voting of the citizens in the following election (which may be in 1976 rather than 1974). Neither strategem, of course, should be aided or abetted. The snail's pace of litigation is too leisurely for impeachment. The "motions," "objections," points of the trial procedure—the adagio of the courtroom—can be too costly here.

Sometimes President Nixon's presentation of the issue is consistent with a proper differentiation, as when he speaks about the Presidency. At other times, as when he promises to "fight like hell," he seems to view the White House as a personal possession of which assailants might deprive him.

The real question is: Has the Presidency, within the meaning of the constitutional proscription, been abused? And the way to reach the answer, the way provided by special clauses in the Constitution—Sections 2 and 3 of Article I, Section 4 of Article II—is, as I have said, unique. The due process that is required is not the criminal due process that protects an accused's life, liberty and property, none of which is at hazard here. It is rather the due process that pervades the entire Constitution and all our law. The damage to the country is minuscule when one criminal goes free. The damage to the country is critical when the abuses specified in Article II occur.

The kind of fairness that due process calls for here is fairness to the people, whose concern to have the right conclusion reached is all that really matters. Richard Nixon's personal interest—the question whether Richard Nixon gains or loses—can have no weight in this extraordinary balance. It is, of course, a matter of dramatic interest, with rooters for and against. Nixon-haters and Nixon-lovers have clothed the event with their feelings about the man. But these competing feelings are trivial in relation to the vast importance of the issue. This is not a game we are watching.

If we are to think in adversary terms at all, we should think of these preceedings not as *The People v. Richard Nixon* but as *The People v. The People*. It is the United States that is concerned, on both sides of the issue. But the "versus," even with "the People" on both sides of it, is infelicitous. The man who occupies the White House should be ejected if he has acted in a way the Constitution does not tolerate. He should stay if he has not. It is as important that an official who has not breached the constitutional injunction should serve out his term as that one who has committed the trespass should be ousted. Either way, it is the welfare of the Republic that is the subject, not the welfare of Richard Nixon.

ADVERSE EFFECTS OF THE PAY CEILING ON SALARIES OF GOVERNMENT OFFICIALS

Mr. McGEE. Mr. President, the problem of compression in the upper reaches of the General Schedule occasioned by the statutory restriction against career civil servants being paid more than individuals at level V of the Executive Schedule, has been thoroughly explained by the General Accounting Office.

In a paper prepared prior to the Senate's action this year disapproving the President's recommendations on executive, legislative, and judicial salaries, the GAO covered the serious and deleterious impact this ceiling is having. This presentation comes in the second part of the GAO paper, for which I now ask unanimous consent that it be printed in the RECORD.

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

THE PAY CEILING IMPOSED ON SUPERGRADES AND OTHER SENIOR EMPLOYEES IS HAVING SERIOUS ADVERSE EFFECTS

Pay rates for Federal white-collar employees under statutory pay systems are subject to annual review and adjustment in accordance with 5 U.S.C. 5301. However, the law provides that these pay rates may not exceed the rate for Level V of the Executive Schedule. The Level V pay rate was last increased in March 1969, from $28,000 to $36,000. This rate has been the ceiling for Federal employees pay since that time. The pay rate for GS–18 employees reached this ceiling in January 1971. With the continued increase in other General Schedule salaries, based on comparability with the private sector, the percent of all supergrade employees paid less than the comparability rate has increased sharply because of the $36,000 ceiling, as shown below:

Year	Percent
1971	18
1972	33
1973	64
Today (plus 1,000 at GS–15)	85

There are now 4,200 employees in grades GS–16, GS–17, and GS–18, and 1,000 employees in the top step of GS–15 who should be paid more than the $36,000 ceiling. The following table shows the GS–15 to GS–18 salary rates, as determined by the comparability process, and the comparability rates affected by the ceiling.

Steps	GS–15	GS–16	GS–17	GS–18
1	$28,263	$32,806	[1] $37,976	[1] $43,926
2	29,205	33,899	[1] 39,242	
3	30,147	34,992	[1] 40,508	
4	31,089	[1] 36,085	[1] 41,774	
5	32,031	[1] 37,178	[1] 43,040	
6	32,973	[1] 38,271		
7	33,915	[1] 39,364		
8	34,857	[1] 40,457		
9	35,799	[1] 41,550		
10	[1] 36,741			

[1] The rate of basic pay for these employees is limited to $36,000 because of the statuory ceiling.

The $36,000 ceiling similarly affects the senior levels of other Federal pay systems.[1] This is the *compression problem*, which adversely affects both Federal employees and the Government. These adverse effects include:

Imbalance between salaries and responsibilities.

Loss of income to the employee, including future retirement benefits.

Early retirement is made more attractive.

Increased turnover of top management personnel and consequent decrease in skill levels.

Declining appeal of supergrade positions.

Hiring for supergrade positions made increasingly difficult.

IMBALANCE BETWEEN SALARIES AND RESPONSIBILITIES

Salary compression seriously weakens two pay principles providing internal equity which are established by law: equal pay for equal work; and maintaining pay distinctions in keeping with work and performance distinctions. All employees in grades GS–18, and GS–17, 80 percent of those in GS–16, and 4 percent of those in GS–15 now receive annual salaries of $36,000. The statutory principles (5 U.S.C. 5301) dictate that those paid the same should have responsibilities that are equal; but obviously they are not. In fact, three levels of supervision in a typical major division or bureau are earning the same salary, a condition which would be considered unacceptable in the private sector.

The difference between the pay of senior employees and the pay of employees at lower levels has narrowed sharply during the past several years. In December 1969, when Federal salaries were unaffected by the present ceiling, the differential between the pay of an employee in the first step of GS–12 and a GS–18 employee's pay was 150 percent. After the October 1973 pay increase, the differential had narrowed to 106 percent. Continuation of this narrowing will not only further distort pay distinctions in keeping with work distinctions, but it may reduce morale within the work force and have a negative impact upon the career incentives of employees entering the career service.

LOSS OF INCOME

The most obvious adverse impact of compression is that employees are denied salary increases to which they would otherwise be entitled. The following table shows the annual salary loss of employees at levels GS–18, GS–17 (step 4), GS–16 (step 5), and GS–15 (step 10) based on current comparability rates.

	Comparability rate	Ceiling	Annual salary loss
GS–18	$43,926	$36,000	$7,926
GS–17 (step 4)	41,774	36,000	5,774
GS–16 (step 5)	37,178	36,000	1,178
GS–15 (step 10)	36,741	36,000	741

When viewed on a cumulative basis, the inequity caused by the ceiling seems even greater. For example, a GS–18 employee's cumulative salary loss for the 3-year period ended January 5, 1974, was $11,557:

Period	Comparability rate	Ceiling	Difference	Salary loss
January 1971	$37,624	$36,000	$1,624	$1,624
January 1972				
Do	39,693	36,000	3,693	3,693
January 1973				
Do	41,734	36,000	5,734	4,411
October 1973				
Do	43,926	36,000	7,926	1,829
January 1974				
Total				11,557

The affected employees are continually losing ground since every cost-of-living increase means a further loss in purchasing power of their stagnated $36,000 salary. For example, the GS–18 salary increase in January 1971 was limited by the $36,000 ceiling and has remained at that rate. Using the changes in the Consumer Price Index (CPI) since that time, we estimate that the purchasing power of a GS–18 employee's $36,000 salary is now worth about $30,985: a drop in purchasing power of $5,015.

An employee's retirement income is determined by applying a formula to the average of his 3-years highest salary. In other words, the higher the average, the greater the employee's retirement income. By compressing salaries below pay rates computed under the comparability process, the ceiling is penalizing employees, since the amount of retirement income they would otherwise be entitled to is being reduced.

For example, if a 55-year old GS–18 employee retired in January 1974 after 30-years service, his retirement income during a 19.3 year remaining life expectancy would be about $44,100 less than if the pay ceiling had not been in effect.

EARLY RETIREMENT MADE MORE ATTRACTIVE

Under current economic conditions, continuation of the $36,000 salary ceiling will allow many employees to earn more retirement income by retiring early rather than continuing to work for the Government. They can then substantially better their current income by accepting non-Government employment.

In planning whether to continue a career or retire, an employee whose salary is at the ceiling must consider the relative financial benefits. For each additional year of work, the employee increases his annual retirement income by about $720 (2 percent of $36,000) and contributes $2,520 to the Civil Service Retirement Fund. If the CPI rises and remains at the minimum of 3 percent during that year, it would be more advantageous for the employee to have retired since his annual annuity would have increased by about $810 [1] and he would not have been required to make any additional contributions to the retirement fund.

The following hypothetical example involving a 55-year-old GS–18 employee with 30 years' service at December 31, 1973, illustrates why early retirement has become more attractive. Assuming 5.5 percent cost-of-living annuity increases at January 1 for each of the next 3 years, and the employee retired at December 31, 1973, the employee's annual annuity at January 1, 1977, would be $25,120. However, if the employee works the additional 3 years he would contribute an additional $7,560 to the retirement fund, and would receive about $1,477 a year less in his retirement annuity for the rest of his life.

INCREASED TURNOVER OF TOP MANAGEMENT PERSONNEL

The turnover of supergrade employees has increased since 1970. This is attributable, in part, to salary compression coupled with cost-of-living increases in retirement annuities. Between 1970 and 1972, supergrade retirements increased from 264 to 380, a rise of about 44 percent. Further, during the first 8 months of 1973, another 379 supergrades retired. If retirements during the last 4 months of the year were at the same rate as during the first 8 months, we estimate that a total of about 570 supergrades retired during 1973, or more than twice the number of 1970.

In terms of the supergrade population, the retirement rate also increased.

	Number supergrades employed	Supergrades retirements	Percentage
1970	4,754	264	5.6
1971	4,855	273	5.6
1972	4,384	380	8.7
1973	4,909	570	11.6

[1] Projected for 12 months based upon 379 actual retirements during the 1st 8 months of 1973.

More than 1,000 supergrade employees are now eligible to retire, with 400 to 500 becoming eligible each year. Also, these supergrade employees are retiring at an earlier age.

	Total supergrade retirements	Below 60-years of age	Percentage
1970	264	85	32.2
1971	273	100	36.6
1972	380	154	40.5
1973 (8 months)	379	188	49.6

This loss of experienced management talent is discussed in the following sections.

DECREASE IN SKILL LEVELS

Skill levels in some supergrade positions have fallen because on occasion, vacancies caused by early retirements must be filled by employees who have less experience and lower skills. The personnel director of a major Government commission in the Washington metropolitan area informed us that his organization sometimes must promote relatively "green" GS–15 employees to fill GS–16 vacancies caused by retirements. Other personnel directors indicated similar experiences in their organizations.

DECLINING APPEAL OF SUPERGRADE POSITIONS

Salary compression is making supergrade positions less attractive and threatens the integrity of Federal pay systems. Personnel officers with whom we consulted stated that some employees refuse to accept higher positions in the supergrade ranks because of the absence of additional monetary rewards. Others have expressed unwillingness to make geographic moves to new work assignments even when promotions were involved.

During our study, many such instances were cited to us. One case involved a GS–15 (step 10) employee who was offered a GS–16 position in the personnel office of a major department. The employee would not accept the higher position because of the added responsibilities and arduous work without additional income.

HIRING FOR SUPERGRADE POSITIONS MADE INCREASINGLY DIFFICULT

Some agencies report that they are experiencing increasing difficulty in hiring qual-

[1] i.e. P.L. 313: Foreign Service and Other.

[1] Civil Service retirement annuities are adjusted on the first day of the third month that begins after the Consumer Price Index (CPI) has risen at least 3 percent from the last adjustment, and remains at this higher level for 3 consecutive months. The annuity increase is equal to the highest percentage increase in the CPI during the 3 consecutive month period, plus 1 percent. During the past 3½ years annuity payments to Government retirees increased 29.5 percent.

ified personnel from outside the Government to fill senior level positions. This is particularly notable in the scientific, medical, and educational fields. Personnel directors told us that the individuals best qualified to fill supergrade positions often are refusing to accept Government employment because they would suffer a loss of income.

REFORMS APPEAR ESSENTIAL

The problems discussed above will progressively worsen with each year of delay in adjusting Executive Schedule pay. In addition, if the current ceiling continues until the next scheduled quadrennial review, another 21,000 General Schedule employees will be added to those whose salaries would be limited to $36,000—including the top two steps of GS–14, most of those in GS–15, and all of those in GS–16, GS–17, and GS–18. There would then be about 28,000 employees all earning the same pay, even though their responsibilities range from GS–14 through Executive Level V. This would mean that six levels of responsibilities would be earning the same pay.

This would result in a virtually meaningless pay system for Federal managers and would seriously undermine the ability of the Government to attract young men and women interested in a long-term career in Federal service.

The current proposal in the President's budget, while falling short of the Quadrennial Commission objective, would offer a measure of relief. Therefore, we believe that the Congress should accept the President's recommendations for adjusting executive, legislative, and judicial salaries.

The cost of this proposed salary adjustment in the fiscal year 1975 budget is $34 million, out of a budget of over $300 billion—or $1 for each $10,000. We believe that the public will recognize the importance of this investment since it will help attract and retain the most competent managers. We also believe that the adjustment is essential even if Congress decides to exempt itself at this time, and even though, in such an event, some Federal executives would earn salaries in excess of the basic pay of Members of Congress (a condition which already exists for Members of the Cabinet).

We believe that the Congress should also consider major reforms in the processes for adjusting Executive Schedule salaries, such as:

Making Executive Schedule salary rates subject to an annual cost-of-living adjustment, in the years between the quadrennial review.

Initiating early action leading to integrating the Federal pay structures at the top of the General Schedule and the bottom of the Executive Schedule. The report of the Quadrennial Commission proposes the establishment of a task force to develop a plan for achieving this objective. The executive branch should be called upon to proceed with a study and to report its conclusions to the Congress in the next session.

Establishing a policy under which employees whose pay is affected by compression have their retirement income adjusted to reflect the amount to which they would have been entitled if compression were not a factor.

JIM WEBB: NASA HERO

Mr. MOSS. Mr. President, this Sunday's Washington Post includes an article reminding us of the leadership that James E. Webb gave the Nation as Administrator of the National Aeronautics and Space Administration from 1961 to 1968.

Having known Jim Webb, and counted him a friend, since our law school days together, I am pleased to call this article to the attention of my colleagues. I know that, as the anecdotes in the article amply demonstrate, Jim will shrink from the appellation of "hero." President Johnson often referred to Webb as "the best manager in Government," and I feel that this praise is richly deserved.

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

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

NASA's OTHER HERO

(By Julian Scheer)

This weekend is the fifth anniversary of man's first footprints on the moon. There will be toasts to Armstrong, to Aldrin, to Collins, Von Braun and others. And deservedly so, for they played major roles. But in the great tradition of history, there is also the forgotten or unknown man. For the space program it may be James E. Webb.

It won't worry Jim Webb a wit, but it was his incredible leadership which made the event possible.

Jim Webb had been Truman's Director of the Budget and Dean Acheson's Under Secretary of State—which made him Washington-wise—and he was enjoying a successful and lucrative business career in Oklahoma when he was called on by a somewhat reluctant President Kennedy to be administrator of the National Aeronautics and Space Administration.

He likes to point out that he was 18th or 19th on Kennedy's list of prospects and, after all had declined, it was Lyndon Johnson who persuaded Kennedy to select him.

Webb simply was not a Kennedy type. He appeared humorless, bull-headed, too knowledgeable about how Washington worked, too close to Sen. Robert Kerr (D-Okla.) who was becoming "Mr. Space" in Congress. And he was not good at taking orders. Early on, when someone in the White House suggested a good location for a NASA procurement award, Webb replied with a blistering memorandum to Ken O'Donnell—clearly intended for Kennedy eyes—which simply said: You run the White House, I'll run the NASA. He meant it; it was reflected in every move he made after that.

In dealing with the White House, Webb fought the Bureau of the Budget for every nickel—as if the loss of five cents would topple all that had gone before. It was a blood-on-your-hands attitude. And when he finally got his way, which he usually did, he kept the White House congressional aides away from *his* committees of Congress. He'd fight his own battles—his way of maintaining his freedom within the Executive Branch.

And Congress found a new kind of man to deal with. Few believed Webb not to be a scientist or engineer, for he dazzled them with his knowledge of the technical as well as the management of the vast NASA program structure.

His only weapon was "tell 'em all." He never wined or dined them at his home, was straightforward and rather formal with them. His torrent of words numbed them, and when the committees were reeling under the verbiage and charts and graphs, he would bring on his experts, even the astronauts.

Instead of complaining about going to the Hill for committee after committee and subcommittee after subcommittee of testimony, he bragged that Congress knew everything he knew and that NASA testified 5–6,000 pages worth each session.

But it was in the internal workings of NASA where his strength lay. He was first to arrive, last to leave each day. He peppered every individual on his staff with a dozen memos a day—new ideas, new concepts, new thoughts. The sentences were paragraphs and the paragraphs were pages. His internal intelligence network was astounding.

"I hear there's a problem with the LM guidance system at Bethpage," he'd say—two days before a program review revealed it. While he left the technical decisions in the wisest hands, the program managers came prepared to discuss a technical problem in minute detail. If they fell short under a barrage of questions, there would be no decision until they returned better equipped.

He constantly juggled personnel to get a better mix and to push everyone to his Peter Principle. He fondly called it "planned disequilibrium." He had an uncanny knack for standing back and looking at the big picture—a trite phrase for a Webb strong suit:

"Managing this size program, how can we expand internationally and draw in other partners.

Managing 35,000 NASA employees, 400,000 in 20,000 companies, how do we pull it all together so it will give the country a lasting base in technology?

"In giving facility grants to colleges and universities, let's force the President there to get the philosophers involved or to spend some time looking at local domestic programs.

"Is our patent policy adequate?

"How do we transfer this new technology to the civilian sector?"

There was a constant barrage of ideas. He never took on a problem without coming out with two, three or four options. First, he'd solve the problem and then, like a sensitivity session, everyone had to "learn" from the problem and look at the other options—which were, to Jim Webb, opportunities. Everything was an opportunity.

Webb's relationship to his staff was largely impersonal but not without feeling. At the end of a terrible crisis day it was not unlike him to ask about a sick child—something he had picked up from his intelligence network.

And he never took advantage of the emoluments of the office. When GSA sent brochures over so he could pick the limousine he wanted, he was upset at the high prices and ordered a Checker cab, painted black, which was NASA's official vehicle for nine years.

A typical "Webbism," as his habits were often called, occurred at a conference on the peaceful uses of outer space in Kansas City in the early '60s. Webb arrived at the hotel and found no reservation in his name. The advance people had fouled up and everyone on the NASA staff in attendance, guests, speakers, etc., were comfortably in their rooms. Webb made no scene, did not identfy himself, and a staff member found him hours later in a far corner of a first-floor ballroom. There he had pulled some chairs together and stretched out for the night, fully clothed, shoes off, and reading some paperwork. He was finally persuaded to take a quickly discovered room.

Abruptly in 1968, Jim Webb resigned. Most of the major Apollo decisions had been made. There were tough days ahead—Apollo 8 and onward—but brilliant Tom Paine was there. Webb knew Nixon would keep him after the election (or Humphrey if he'd won). But Webb decided the time had come. It was part of his feeling for Washington and NASA and what he felt the country needed. And he knew Paine could do the job and was untouchable. Few agencies had such good men back to back.

Almost shocklingly, it was less than a year away from the first manned lunar landing. Had he struck it out, waited just a while longer, he could have basked in the moment of tremendous glory.

Simply, for Jim Webb, it was time.

ENERGY POLL: IS ALMOST HALF THE PUBLIC "ANTINUCLEAR"?

Mr. GRAVEL. Mr. President, soon the Senate will be voting on nuclear insurance legislation which was passed by the House July 10. During the House debate, members of the Joint Committee on Atomic Energy claimed that a vote

against the committee's bill would be a vote against nuclear power.

Although I strongly disagree with that claim, I do not wish to argue that point today. I simply want to ask my colleagues, what is wrong with being "antinuclear"?

A recent poll taken by National Analysts, which a Philadelphia division of Booz, Allen & Hamilton management consultants, indicates that a full 46 percent of the American public either opposes or is "concerned" about nuclear powerplants. Even if the poll is off by 15 points in either direction, the percentage would still be extremely significant.

Mr. President, so that my colleagues may consider some details of that poll, I ask unanimous consent that the article entitled "What Others Think—Public Attitudes Toward Nuclear Power Plant Construction," from the May 23, 1974, issue of Public Utilities Fortnightly, be printed in the RECORD at the end of my remarks.

WHICH WAY WILL THE WIND BLOW?

In addition to the poll, there are other indicators that the wind is blowing against nuclear power. For instance, the Task Force against Nuclear Pollution reports a 400 percent increase over a year ago in the rate at which it is receiving antinuclear petitions.

Both of the country's leading environmental lobbies, Friends of the Earth and the Sierra Club, favor a nuclear power moratorium. Furthermore, the League of Conservation Voters is starting to watch our nuclear votes for its environmental rating charts on each of us.

I would like to remind my colleagues that last summer, 100 top scientists of the Pugwash Conference issued the following warning about nuclear power:

> The as yet unsolved problem of waste management and the possibly unsolvable (in an absolute sense) problems of catastrophic releases of radioactivity and diversion of bomb-grade material, combine to create grave and justified misgivings about the vast increase in the use of nuclear power that has been widely predicted. The wisdom of such an increase must at the present time be seriously questioned.

Many of the Pugwash members are nuclear physicists who once worked on nuclear weapons; they cannot be accused of "fear of the unknown" or "fear of what they do not understand." For the full text of their statement, please see the RECORD, volume 119, part 25, pages 33154–57.

Last but not least, after 1½ years of looking into the safety problems associated with American nuclear reactors, the British Government has rejected American reactors in Britain. Some details are available in the RECORD of July 17, 1974, page 23791, and of March 20, 1974, page 7413.

Under the circumstances, I believe an "antinuclear" position is the most responsible one. Nuclear advocates are really playing a game of "Russian Roulette."

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

[From Public Utilities Fortnightly, May 23, 1974]

WHAT OTHERS THINK—PUBLIC ATTITUDES TOWARD NUCLEAR POWERPLANT CONSTRUCTION

(By Alfred E. Goldman)

Although almost half of the American people are concerned about the risks involved in the production of electricity from nuclear power plants, almost six out of ten apparently prefer to run these risks rather than have the use of electricity rationed or restricted.

This conclusion is based on a survey of a scientifically selected cross section of Americans eighteen years old and over conducted by National Analysts.

While 44 per cent of the 931 men and women interviewed said they thought the use of nuclear power to generate electricity was either a "serious" or a "very serious" problem, 59 per cent said they would rather have a nuclear-powered generating station within 25 miles of their home than to have their use of electricity rationed or restricted.

Another survey, conducted in 1973 for the Electric Companies Public Information Program, showed that 61 per cent of those interviewed in a national sample were either "strongly favorable" or "somewhat favorable" toward nuclear power plants as a source of electrical energy. A total of 61 per cent also indicated they felt more nuclear plants would be needed by 1980 "in order to have enough electric power for all needs."

A somewhat higher proportion of people (71 per cent) interviewed in November, 1973, by the Harris Survey reported they would favor President Nixon's proposal to speed up the construction of nuclear power plants as one of the ways "of avoiding a serious shortage of energy in this country."

While these surveys indicate a majority of Americans at the present time are apparently willing to approve construction of nuclear power plants as the least objectionable of a number of undesirable alternatives, they should not be interpreted to mean that the nuclear power plant building program will proceed smoothly without the possibility of serious public opposition.

The prediction made last fall by Ralph Nader before the Western Governors' Conference that public concern would bring a halt to the construction of nuclear power plants within five years is probably an exaggeration. On the other hand, the statement of the Atomic Energy Commission chairman, Dixy Lee Ray, last December on the Columbia Broadcasting System program "Face the Nation" was probably an underestimate of opposition to the nuclear plant construction program.

The AEC chairman stated (as quoted in The New York Times) that the actual "strong opposition" to construction of nuclear power plants among the general public is only a "minority of 5 to 10 percent."

The National Analysts' nationwide survey showed that about one-fourth of those interviewed (24 per cent) stated that if they learned a nuclear-powered generating station was going to be built within 25 miles of their homes they would "join others in the area in trying to prevent it from being built." An additional 5 per cent indicated they would be concerned enough about the risks to cause them "to plan to move to a new location." Another 17 per cent said they would "be concerned but not do anything about it."

At the other extreme, 33 per cent stated they would welcome the building of such a facility in their area because they felt this would mean cheaper electricity. The remaining 21 per cent said they would not care one way or the other.

These responses were made to a question which made no mention of a fuel shortage or the possibility of rationing or restricting of electricity. When asked to respond only to the proposal for a nuclear power plant within 25 miles of their home without having to face a choice between the nuclear power plant and a shortage of electricity, this cross section of the American public divided into three fairly equal parts: (1) strongly opposed, as evidenced by plans actively to oppose the building of a plant or to move out of the area because of it (29 per cent), (2) somewhat concerned but not motivated strongly enough to take any action or indifferent (38 per cent), and (3) positively supporting new construction because of the prospect of cheaper electricity (33 per cent).

These findings suggest that the proportion of the public strongly opposed to the program may be substantially higher than the AEC chairman has claimed.

The division of the public into three fairly equal groups suggests that there is a relatively low degree of crystallization of public opinion on this issue at the present time. The middle group, made up of those who are either indifferent or who are somewhat concerned but who stated they would probably not take any action, could be pushed in either direction by the course of events and or the effectiveness of the presentation of the issues by the protagonists in the controversy.

A continuation or worsening of the energy situation would no doubt tend to push this middle group toward more active support of the nuclear power plant program. On the other hand, events, such as the discovery by the Colorado Department of Health of abnormal levels of radioactive hydrogen in the drinking water of a town five miles from a factory making plutonium triggers for nuclear weapons, would tend to draw the relatively indifferent or mildly concerned into the ranks of active opponents.

There is further evidence in the National Analysis survey of the lack of solidification of public opinion on *this issue* at the present time, increasing the possibility of public opinion shifting one way or the other. Those interviewed were asked to express their degree of concern over eight separate problem areas: crime and violence, the fuel shortage, deterioration of our cities, protection of our environment, using up our natural resources, the Watergate affair, narcotics and drug usage, and using nuclear power to generate electricity. Each person was asked to indicate his degree of concern with each of these problems. The proportion choosing the middle of the scale, representing the position "not concerned one way or another," was far higher on the nuclear power plant question than on any of the other problems.

Members of the public had very clear-cut opinions one way or the other on crime and violence and drugs, only 5 per cent and 6 per cent, respectively, indicating the middle position on these problems. On the other hand, almost one-third (32 per cent) chose this middle position on the nuclear power plant question. With the exception of the question on the fuel shortage, which also showed a fairly high degree of undecided or indifferent opinion (23 per cent), on all of the other questions those taking part in the survey showed a much greater tendency to take a clear-cut position on the question than in the case of the nuclear power plant question. For example, only 16 per cent chose the undecided or indifferent position with respect to Watergate, while only 14 and 15 per cent, respectively, chose this position on "environmental protection" and "using up our natural resources."

Voters in Austin, Texas, indicated a very narrowly divided and shifting opinion on this issue in two recent bond issue elections. In September, 1972, the voters rejected a proposal to join with three other Texas cities in the construction of a nuclear power plant. Fourteen months later, however, they reversed that decision by a narrow margin of

722 votes, 50.9 percent of the total votes cast being in favor of the proposal. At the same election, a proposal to approve the construction of a coal- or lignite-fired electric power plant was approved by an overwhelming majority of some 21,000 votes, with 77.4 per cent of the total favoring the proposal.

We would need a study of the motivations of the Austin voters before we could determine the reasons for such a marked difference in the degree of support for the traditional and the nuclear-powered plants. While economic factors might be one possible reason for the difference, these factors do not appear to be too important since the voters were asked to approve a total of $337 million for the construction of traditional facilities and only $61 million for participation in the nuclear power plant construction. Differences in the public's perception of the relative safety of the two sources of electric power *could* be one of the important determinants of the great difference in degree of approval, but it would not be valid to conclude this was the most significant factor without an actual study of voter decisions.

Another indication of the volatile nature of opinion on this issue came from the mail response to two programs featuring the nuclear power plant controversy aired over some 200 National Educational Television stations. Mail response to two programs on "The Advocates," originating at station WGBH in Boston, shifted from a majority approving nuclear plants in 1971 to a majority disapproving them in 1974. In the earlier response, 60 per cent favored nuclear plants and 40 per cent opposed them; in the 1974 response, 58 per cent of the mail votes showed disapproval compared with 42 per cent in favor of such construction.

The National Analysts survey shows that there is a widespread concern over environmental protection, with 78 per cent of the public feeling that environmental protection is either a "serious" or a "very serious" problem. More than half (54 per cent) stated that it was a "very serious problem." Only a small minority (7 per cent) said that environmental protection was either "not at all serious" or "not serious."

The seriousness of the conviction regarding the importance of environmental protection is shown by the fact that almost twice as many people were willing to accept the rationing or restriction of electricity than were willing to approve the construction of a power plant "where it may interfere with the balance of nature."

Although some of the groups most active in the environmental protection movement are also active in the opposition to the nuclear power plant program, our data suggest that concern over environmental protection and opposition to the nuclear power plant construction program are far from identical attitudes—78 per cent regarding environmental protection as either a "serious" or "very serious" problem compared with 44 per cent so regarding nuclear power plant construction.

Supporters of the nuclear power plant program, cognizant of this widespread concern for environmental protection, are emphasizing the claim that fossil fuel as a source of electrical energy presents more of a threat to the environment than nuclear power. Opponents of the program, of course, vigorously dispute the claim.

In the battle for public approval, apparently the supporters of the nuclear power plant program currently have an edge over the opponents, but our assessment leads us to conclude that public opinion on the issue is far from solidified. Therefore, it is possible that public opinion could shift dramatically in either direction, depending on the course of future events and the relative effectiveness of the public information campaigns of the protagonists in the controversy.

(About the author—Alfred E. Goldman is president of National Analysts, a division of Booz, Allen & Hamilton, Inc., international management consultants. He received his BS and MA degrees in psychology from City College of New York and his PhD in clinical psychology from Clark University. Prior to joining National Analysts, he was a research associate at the Harvard University School of Public Health and assistant director of psychological services at Norristown State Hospital.)

EVERYONE MUST OBEY THE COURTS

Mr. MONDALE. Mr. President, many years ago Mr. Justice Felix Frankfurter wrote:

> No one, no matter how exalted his public office or how righteous his private motives, can be judge in his own case. That is what courts are for.

It has long been a basic tenet of our constitutional system that the courts are the proper place for the resolution of public and private disputes and that everyone must obey the courts.

Again, the words of Mr. Justice Frankfurter:

> When in a real controversy . . . an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy.

Yet, we are witnessing a strange jig, being danced by the President of the United States and his counsel, with respect to the President's plans with regard to obedience of the U.S. Supreme Court.

I am appalled that the President is unwilling to say that he will obey the High Court. The President's conduct represents a presumptuous affront to the dignity of the Court as well as a serious blow to public confidence in our governmental processes and the rule of law.

Repeatedly over the past several weeks, high White House officials have turned away questions as to the President's willingness to obey a Supreme Court decision. Most recently, Mr. St. Clair in California last night repeatedly refused to say that the President would obey the Court.

I cannot understand the President's apparent unwillingness to say, simply, that he will obey the U.S. Supreme Court. Such a statement is little to ask of a lawyer, a member of the Supreme Court bar, a former Member of Congress, and the chief law enforcement officer of the Nation. Such a statement would seem to represent nothing more than a reaffirmation of commitment to the rule of law. Yet, we do not get an answer.

Mr. St. Clair says that he does not want to put pressure on the Court by discussing Presidential compliance. But is not that precisely what Mr. St. Clair is doing? It appears that the President and his counsel are engaged in psychological warfare with the Court. The refusal to affirm obedience appears to be an attempt to scare the Justices into second-thoughts about the merits of the controversy by planting seeds of doubt in their minds as to the enforceability of a decree.

Such tactics have frequently backfired throughout our constitutional history. And such conduct represents a serious affront to the fairness and objectivity of the members of the High Court.

Perhaps the President is, indeed, seriously entertaining the possibility of actual disobedience of a future Court order. Perhaps he believes that the Court could not enforce an order directed against the President.

However, although the Court has no troops to enforce its orders, the army of public opinion could not help but look unkindly on disobedience of our highest judicial tribunal.

Whatever the President's motives may be, his conduct strikes a hammer-blow to an already shattered public confidence in our Government. His unwillingness to submit himself, in advance, to obedience causes many to doubt whether our system of justice remains strong, whether there are differing systems of justice for the mighty and the weak, and whether the fabric of our constitutional structure can stand the strain.

These doubts should not be allowed to exist. And, more importantly, they should not be engendered by the refusal of the Chief Executive to simply state that he will obey the Supreme Court.

The Court may not—because of questions of standing or justiciability—ever reach the merits of the controversy between President and Special Prosecutor. The Court may rule in the President's favor on the merits.

But, whatever the Court ultimately rules, the President should immediately tell the American public that he will obey that ruling. Any other course of conduct questions the legitimacy of our ultimate dispute-settlement mechanism and fosters public confusion and doubt.

Again, the words of Mr. Justice Frankfurter:

> If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny.

PROTECTION OF INDEPENDENT FUEL DEALERS

Mr. CHURCH. Mr. President, the time has come for Congress to enact legislation to aid the independent fuel dealer. In the wake of the energy crunch, they have become the pawns in a marketing game being conducted by the Nation's major oil companies.

Time is of the essence and I urge the members of the Commerce Committee to report out what has been called the "dealer day in court" legislation. The Senate has already passed such a measure three times. But each time it became the victim of circumstances, once being left out of a conference report, and once vetoed, as a part of the emergency energy legislation, by the President.

I have written a letter to Senator MAGNUSON, chairman of the Commerce Committee, setting forth a history of this legislation, its current need, and a suggested vehicle for bringing the matter before the full Senate. I urge its consideration.

Mr. President, I ask unanimous consent that my letter to Senator MAGNUSON,

and a copy of the "dealer day in court" legislation be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., July 15, 1974.

Hon. WARREN G. MAGNUSON,
Chairman, U.S. Senate Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: I am becoming more and more concerned over what seems to be an unfortunate ramification of the energy crunch—the treatment of independent fuel dealers by their oil company suppliers. I know that, as Chairman of the Commerce Committee, you are familiar with these problems and are in a position to help these small businessmen gain needed protection.

Approximately 90 percent of the nation's service stations are independently operated, usually under lease or rental agreements with petroleum companies. Under these arrangements the independent dealer buys his products from the oil company and then is responsible for marketing, maintenance, sales of accessories and a variety of related activities. They represent the only real "free enterprise" left in an industry which has long since gone the way of cartelism.

The problems they face just in maintaining their businesses and performing a service for their customers and their communities are enough to discourage many would-be businessmen. But now, in addition to the normal rigors associated with small business, they face a much more serious challenge from the major oil companies.

Petroleum dealers have no control over the pricing policies of their suppliers. In spite of this, dealers are often blamed for the ever-increasing price of fuel. In addition, the pricing policies of the oil companies often leads to a dealer finding himself uncompetitive with others in his area. This may lead, in turn, to a reprimand to the dealer, from the oil company, for not selling enough gasoline.

My greatest concern, however, lies in the complete control over the dealers—through lease and rental agreements—exercised by the oil companies. These agreements generally contain provisions for the sale of oil company products such as tires, batteries, crankcase oil, etc.

Many dealers are now being harassed by the oil companies, which come into their businesses and threaten sudden termination of their leases if the dealer does not step up sales of oil company products, or comply with ever-changing credit policies, or display materials to the satisfaction of the company.

Generally, the provisions of these lease or rental agreements allow the oil company to terminate the agreement—often without cause—effective in a number of days. In that rests the most serious problem facing the dealers.

It is obvious that major oil companies are beginning—in the wake of the energy crunch—to carry out plans to shape the future face of retail petroleum marketing. These plans may even represent a "dividing up" of the nation for the marketing purposes of the majors. As is usual in these matters, nothing is provable.

Whatever the reasons for these changes, independent dealers are the pawns in the game. The examples of sudden lease terminations for little—and in some cases no—cause are many and varied. There are a number of such examples in the state of Idaho, although Idaho dealers are certainly not the only victims. I can cite examples of oil companies chastising dealers for not selling enough of their product, in spite of the fact that the companies have priced them out of the market. Hanging over the head of the dealer is the threat of lease termination. At this juncture, almost any lease is vulnerable if the dealer does not fit in the future plans of the oil company.

The time has come to provide some legal recourse and protection to independent dealers. It is not an idea which is new to this Congress. The Senate has passed so-called "dealer day in court" legislation three times. First, as a part of the Mandatory Petroleum Allocation Act. Because the House had no similar provision in its allocation bill, it was dropped in conference. The Senate again passed such a provision as a part of S. 2589, the emergency energy legislation. This time, because the House had also passed such a provision, it survived the conference and was again passed by both houses in the adoption of the conference report. That legislation, as you know, became the victim of a Presidential veto.

Each time the "dealer day in court" legislation has passed, with seeming strong support, it has been the victim of circumstance. Although the Administration has indicated the "dealer day in court" provision as one of the "objectionable" provisions which prompted President Nixon's veto of the emergency energy legislation, it is doubtful that—standing alone—the legislation would again be vetoed.

For that reason, I urge the Commerce Committee to report this legislation to the full Senate for consideration. This time standing alone, so that the "dealer day in court" proposal may have a test of its support in the Senate. I have every faith it will pass.

Your Committee has already held hearings on the substance of this proposal. Because of those hearings, and in view of the Senate's earlier support of the legislation, further hearings would seem unnecessary. A possible vehicle could be the attachment of the "dealer day in court" provisions of the conference report on S. 2589 (a copy of which is enclosed) to, or as a substitute for, S. 1694, the proposed Fair Marketing of Petroleum Products Act, which is now before the Commerce Committee.

I strongly feel that we must move soon on this matter. Each day, I receive new reports of harassment of dealers in Idaho and elsewhere. To enact the "dealer day in court" legislation, providing for established procedures in lease termination, and access to judicial redress for the dealer, would be a great step toward protection of the most competitive sector of the petroleum industry.

Thank you for your consideration.

With best wishes,

Sincerely

FRANK CHURCH.

To provide for protection of franchised dealers in petroleum products. From conference report on S. 2589

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act:

(1) The term "distributor" means a person engaged in the sale, consignment, or distribution of petroleum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

(2) The term "franchise" means any agreement or contract between a refiner and a distributor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which such retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.

(3) The term "refiner" means a person engaged in the refining or importing of petroleum products.

(4) The term "retailer" means a person engaged in the sale of any refined petroleum product for purposes other than resale within any State, either under a franchise or independent of any franchise, or who was so engaged at any time after the start of the base period.

(5) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 2. (a) (1) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless he furnishes prior notification pursuant to this paragraph to each distributor or retailer affected thereby. Such notification shall be in writing and sent to such distributor or retailer by certified mail not less than ninety days prior to the date on which such franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate together with the reasons therefor, the date on which such action shall take effect, and a statement of the remedy or remedies available to such distributor or retailer under this Act together with a summary of the applicable provisions of this Act.

(2) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless the retailer or distributor whose franchise is terminated failed to comply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdraws entirely from the sale of refined petroleum products in commerce for sale other than resale in all States.

(b) (1) If a refiner or distributor engages in conduct prohibited under subsection (a) of this section, a retailer or a distributor may maintain a suit against such refiner or distributor. A retailer may maintain such suit against a distributor or a refiner whose actions affect commerce and whose products with respect to conduct prohibited under paragraph (1) or (2) of subsection (a) of this section, he sells or has sold, directly or indirectly, under a franchise. A distributor may maintain such suit against a refiner whose actions affect commerce and whose products he purchases or has purchased or whose products he distributes or has distributed to retailers.

(2) The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under subsection (a) of this section which it finds to exist including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual and punitive damages (except for actions for a failure to renew) where indicated, in suits under this section, and may, unless such suit is frivolous, direct that costs, including reasonable attorney and expert witness fees, he paid by the defendant. In the case of actions for a failure to renew damages shall be limited to actual damages including the value of the dealer's equity.

(3) A suit under this section may be brought in the district court of the United States for any judicial district in which the distributor or the refiner against whom such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the issues which are embodied in the Genocide Convention affect and concern all Americans. I continue to receive expressions of this concern in my mail. Just yesterday I received a letter from Ms. Michele Mooney of Los Angeles, Calif. In her letter she implored:

> The ratification of the Genocide Convention by the Representatives of the United States, should, MUST, be underwritten by those who were elected to be the voice of all freedom-loving citizens.
>
> Please keep up the combat on behalf of love!

Over the years, I have received many such honest, forthright expressions of grassroot support for the Genocide Convention. Letters such as the one Ms. Mooney sent reinforce my strong conviction that the Senate must not renege on its moral obligation to ratify this treaty. In this spirit, I again urge my colleagues to act favorably on the Convention.

WAYNE MORSE—IN MEMORIAM

Mr. ABOUREZK. Mr. President, on July 22, 1974, death took away one of the most outspoken, incorruptible and brilliant Senators this Nation ever had. Wayne Morse was a man whose sense of outrage was activated by the irresponsibility, greed and corruption he encountered while serving the citizens of Oregon.

Wayne Morse was a blunt man. Wayne was Wayne Morse who once said that Morse was a man of utmost integrity. It every day that he walked onto the floor of the Senate, he acted as if it was his last day. Wayne Morse did not believe in image making, nor did he care if he offended political friends. He acted out his deep sense of what he called "constitutional liberalism." Wayne Morse did not cast his votes in the Senate while looking to the next election. He voted on principle.

While he often said that many of his colleagues agreed with him in the cloakroom and told him that he was right, they meekly admitted that "because of other reasons" they had to vote against him. Wayne Morse would smile at this behavior, not because it was so funny, but because it was sad.

Perhaps if Wayne Morse had been in the White House in 1968, the country would have had the kind of moral leadership it is so sorely lacking today. And if Wayne Morse had been in the White House in 1968, serving the public interest would have been the clarion call rather than the victim of Presidential action.

I join my colleagues in the Congress and my fellow citizens across the Nation in mourning the death of Senator Wayne Morse, a man who carried the banner of American constitutional democracy when it made both friend and foe alike terribly uncomfortable.

Mr. President, I ask unanimous consent to have two articles, one from the Washington Post and the other from the New York Times printed in the RECORD.

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

[From the New York Times, July 23, 1974]

WAYNE MORSE DIES; A SENATOR 24 YEARS

(By Alden Whitman)

Former Senator Wayne Morse of Oregon, a strong early critic of the Vietnam war and a long-time Congressional liberal, died yesterday of kidney failure in Good Samaritan Hospital, Portland, Ore. He was 73 years old.

Mr. Morse had entered the hospital last Wednesday in the midst of an arduous campaign in which his chances to regain the Senate seat he lost in 1968 were considered good. He had won the Democratic nomination in a primary two months ago and was opposing Senator Robert W. Packwood, the Republican incumbent.

A Populist in the tradition of George W. Norris, Robert M. La Follette and William Jennings Bryan, Wayne Lyman Morse spoke up for many transiently unpopular causes. He opposed American military involvement in Vietnam; he fought for trade unionism and for civil rights.

As a champion of the common people, he was often raspy and blunt, but he regarded himself as a man who refused to compromise his principles or mute his voice. Many of his critics, though, saw him as an opportunist and a threat to the Establishment.

At various times in his 24 turbulent years in the Senate, Mr. Morse was a Republican, an independent and a Democrat. Neither party was wholly pleased with him, nor was he ever wholly compatible with a party label. He was impartially scornful of both Democratic and Republican Presidents, upbraiding them with his rich talent for invective.

He described an address to Congress by President Harry S. Truman as "one of the cheapest exhibitions of ham acting I have ever seen"; he denounced President Dwight D. Eisenhower as a "hypocrite"; he accused President Lyndon B. Johnson of being "drunk with power." Nor did Mr. Morse spare his fellow Senators, once calling one of his corpulent colleagues "a tub of rancid ignorance."

CRUSTY CRITICS OF WAR

Mr. Morse entered the Senate in 1945 as a liberal Republican and left it in 1968 as a liberal Democrat. His last term was notable for his crusty criticism of President Johnson and the Vietnam war, which started with a succinct "nay" that recorded his opposition to the Gulf of Tonkin resolution of Aug. 7, 1964. Only one other Senator, the late Ernest Gruening of Alaska, voted against the measure, which President Johnson used as a functional declaration of war in Southeast Asia. Mr. Morse's intransigent opposition to the war was a factor in his defeat in 1968.

From 1964 until he left office, he voted against every measure, including appropriations, that had the effect of keeping American troops in Vietnam. He also carried his campaign against the war through the country in speeches, and he supported Senator Eugene J. McCarthy when the Minnesota Democrat sought the Presidency on an anti-war platform in 1968.

Once aroused, Mr. Morse could be a fiery, though prolix, speaker. His long-windedness did not sting nearly so much as his epithets; but he considered his outspokenness a virtue.

"It is true that I use langauge that people can understand," he remarked a couple of years ago. "And if I think a course of action is outlawry, I say so.

"If I say that the United States is the greatest threat to world peace, I say so simply because it is true. If the truth is intemperate, then I will continue to be intemperate."

Mr. Morse was so often in the minority and so frequently cutting in his remarks that he was known as "The Lone Ranger" or "The Tiger of the Senate." These views of him were softened yesterday as Senator Mike Mansfield of Montana, the Democrat leader spoke of him as a "man of fierce independence" and Senator Mark O. Hatfield, Republican of Oregon, said that his "early prophecies and warnings about Vietnam were such that we all owe him a great debt."

Mr. Morse, who was a lean, trim man with a clipped mustache, sharp nose and bushy black eyebrows, was an extraordinarily hard-working Senator. He was accounted knowledgeable in labor and education matters, in conservation and in the farm problem. He was himself a breeder, raiser and trader of Devon cattle and a horseman who won many competitions.

Mr. Morse's Populism had its roots in Wisconsin, the home state of the LaFollettes, where he was born, a farmer's son, on Oct. 20, 1900. From his father, a livestock man, he learned a fear of debt and of hard times, when the cattle had to be fed on cornstalks and straw mixed with molasses. His father, Mr. Morse recalled, strongly counseled him on the evil of becoming beholden to others.

TAUGHT LAW AT COLUMBIA

The young man was educated at the University of Wisconsin and took law degrees from both the University of Minnesota and Columbia. He taught briefly at Columbia and the University of Oregon and then, in 1931, became dean of the Law School at Oregon. Because of his position he was often called upon to arbitrate labor disputes on the West Coast, establishing a reputation for settling controversies with dispatch and fairness.

His record commended him to President Franklin D. Roosevelt, who named him a public member of the War Labor Board in 1942. He left in something of a storm in 1944, asserting that the board was too considerate of John L. Lewis, then head of the United Mine Workers.

In that year he was elected to the Senate as a Republican, but no sooner had he taken his seat in 1945 than he was jousting with party conservatives. One of his betes-noires was Senator Robert A. Taft of Ohio, who was for Mr. Morse "a symbol of reaction and defeatism." Among other things, the Oregonian vociferously objected to the Taft-Hartley bill as hamstringing trade unions. He voted against the bill, which became law in 1943 over President Truman's veto. (For most of his political life Mr. Morse enjoyed strong labor support. It diminished in 1968, when Vietnam was a crucial issue.)

In the Republican jockeying in 1952, Mr. Morse swung to General Eisenhower in order to block Senator Taft's aspirations for the nomination. But he chilled toward the general when he designated Senator Richard M. Nixon of California as his running mate, and in the campaign he spoke for Adlai E. Stevenson, the Democratic candidate.

When the Senate convened in January, 1953, Mr. Morse announced that he had shucked the Republican party and was now an independent. With a pixie sense of humor he went into the Senate chamber with a folding chair and asked where he should sit. He was eventually assigned to the Republican side of the aisle, but was stripped of his committee posts.

Three years later, after having harried the Republicans over the Korean war settlement and cold-war brinkmanship, as well as over domestic matters, Mr. Morse became a Democrat and was handily reelected to the Senate in 1956. He still, however, thrived on adversaries, including Democrats who failed to measure up to his principles.

And he did not neglect Republicans, notably Clare Booth Luce, whose confirmation as Ambassador to Brazil he fought unsuccessfully in 1959. Mr. Morse pronounced her unfit, and she retorted that her "difficulties go back some years and began when [Mr.] Morse was kicked in the head by a horse." She was alluding to an episode in 1951 when a horse broke the Senator's jaw with a kick. Mr. Morse won his contest with Mrs. Luce, however, for she resigned the Brazil post without serving.

In the early nineteen-fifties, Mr. Morse was a strong supporter of civil rights legislation, and he continued to espouse liberal voting and other rights for blacks. He also supported increases in price-support payments to farmers and other agricultural legislation. Additionally, Federal support for education had his warm backing.

Mr. Morse irritated some of his fellow Senators by the length of his speeches. An hour for him was a mere warm-up—in one session his speeches covered 400 pagse of The Congressional Record. Once, in 1953, he talked for 22 hours and 26 minutes against an offshore bill that gave title to coastal states. At the time his remarks were described as the longest continuous oration in the Senate's history.

His defeat by Mr. Packwood in 1968 was close, the margin being a little more than 3,000 votes. Mr. Morse essayed a comeback in 1971, but Mr. Hatfield was an easy winner. This year, despite his age, he was said to have had a good chance of returning to the Senate for his last hurrah.

Mr. Morse was campaigning until last Wednesday, when he was stricken with an infection of the urinary tract. He had responded to antibiotic therapy until Sunday, when his condition worsened and he slipped into a coma.

Surviving are his widow, the former Mildred Downie; three daughters, Nancy Campbell, Judith Eaton and Amy Bilich; two brothers, a sister and six grandchildren.

[From The Washington Post, July 23, 1974]

FORMER SENATOR WAYNE MORSE DIES IN PORTLAND HOSPITAL AT 73

(By David S. Broder)

Former Sen. Wayne L. Morse of Oregon, a maverick who switched parties twice and fought with five Presidents, died yesterday in a Portland hospital at the age of 73.

Morse, whose characteristic independence of judgment made him one of only two senators to oppose the 1964 Gulf of Tonkin resolution that launched America into the Vietnam war, succumbed to kidney and heart failure following a urinary tract infection that hospitalized him last Wednesday.

Until then, he had been campaigning for another term in the Senate against Sen. Bob Packwood (R-Ore.), who defeated Morse in 1968 after a 24-year tenure as a Republican, independent and Democratic senator.

A new senatorial candidate is to be chosen by the Democratic state central committee.

Morse is survived by his widow, Mildred, three daughters—Nancy Campbell, Judith Mary Eaton and Amy Ann Bilich—six grandchildren, two brothers and a sister. Funeral arrangements are pending.

In his 30 years in public life, Morse, whose intellectual brilliance was acknowledged by even his most bitter critics, at various times served, supported and scorned every President of both parties from Franklin D. Roosevelt through Lyndon B. Johnson.

His feuds were proverbial, and over the years came to include almost every colleague in the Oregon congressional delegation and many of the newsmen who covered him.

Yet among those same legislators and journalists, he was respected as a gifted lawmaker, with a genuine mastery of the fields for foreign policy, education and labor legislation he made his own.

At the same time that President Johnson was in almost daily verbal combat with Morse over the Vietnam war, he chose the Oregonian to floor-manage his landmark aid-to-education bill, and when it was passed, Johnson said, "No one else could have done it."

Long before it became fashionable for other politicians, Morse espoused the view that he would not bend his personal philosophy to the needs of party regularity. He bolted the Republican party in 1952 in disgust with the Eisenhower-Nixon campaign, served for two years as an independent, then joined the Democrats, only to fight John F. Kennedy for the nomination of his new party, and to take the early lead against the Vietnam policies of President Johnson.

Describing his own philosophy as one of "constitutional liberalism," Morse said in a 1953 article that he believed his course of personal independence was "the best way I can challenge the political expediency of both parties."

It was his fiercely cultivated and bristling independence—as well as his prescience on Vietnam—that senators noted in their eulogies yesterday.

Sen. Mark O. Hatfield (R–Ore.), a man Morse jumped party lines to endorse in 1966 and against whom he ran in 1972, called Morse "a politician from a unique mold and an enigma to many people. When convinced of a position on an issue, he was not swayed . . ."

Sen. Packwood said, "Wayne Morse was a man of integrity and courage. He was never afraid to fight for his convictions." Senate Majority Leader Mike Mansfield (D–Mont.) called him "a man of fierce independence."

Wayne Lyman Morse was born on a farm outside Madison, Wis., on October 20, 1900, and as a boy came under the spell of the great Wisconsin independents, the LaFollettes. He attended the University of Wisconsin, studied law at the University of Minnesota and Columbia University, and moved west in 1929 to join the University of Oregon law school faculty. Less than two years later, at 30, he became the youngest law school dean in the nation.

His debut in national life came in 1941, when Roosevelt chose Morse, already a skilled labor arbitrator, as chairman of an emergency board created to head off a nationwide railroad strike.

A marathon 38-hour final bargaining session after six weeks of hearings produced a compromise settlement on Dec. 6, 1941—the eve of Pearl Harbor.

Roosevelt then named him a public member of the War Labor Board, where he served for two years until he resigned with a characteristically sharp attack on Roosevelt and Secretary of Interior Harold L. Ickes over the settlement of a coal dispute. A letter to Ickes, complaining about him and Under Secretary Abe Fortas, showed even then Morse's mastery, of the acerbic style for which he became famous:

"Dear Mr. Secretary. Thank you very much for your letter of June 11, 1943. It is in keeping with and supports my low esteem of you. The attempt of you and Mr. Fortas to try to convict me, without justification, of deceiving the President in order to divert attention from your gross mishandling of the coal case should be beneath you as a Cabinet officer . . . I deeply resented the 'off-the-record' statements which you made at your press conference at the time you announced your scuttling truce with [John L.] Lewis . . ."

"I am perfectly aware of the fact that for one in my subordinate position to express his complete lack of respect for and confidence in men in such high positions as you and Mr. Fortas is not in accordance with government protocol, but I could not have done less and kept faith with my self-respect," Morse concluded.

In 1944, he was back in Oregon to win his first term in the Senate, as a Republican. He came back to Washington from the campaign by car, towing his two champion saddle horses, the forerunners of a string of horses and cattle he kept at his farms in Maryland and Oregon.

In his first term, he conducted a 10-hour filibuster on behalf of President Truman's veto of the Taft-Hartley labor act—a record he more than doubled in another speech in 1953 lasting 22 hours and 26 minutes.

But despite his support of the Democratic President on that highly partisan issue, Morse was no ally of Truman's. He accused Truman of "showboating" on another labor issue and denounced him from the platform in 1946 as the "head of one of the most corrupt political machines in this country."

But after his re-election in 1950, Morse joined seven other Senate Republicans in decrying Sen. Joseph R. McCarthy's tactics in investigating alleged Communists in the Truman administration, and became a major Republican advocate of Truman's civil rights program.

In 1951 Morse suffered a broken jaw when kicked by a horse he was showing at a Virginia fair. Years later, the incident was revived in the course of a memorable fight he had with Clare Booth Luce.

Morse led a Senate battle against her confirmation as ambassador to Brazil in 1959, and when she prevailed, by lopsided 79–to–11 margin, the playwright could not refrain from saying that her difficulties all occurred because "some years back . . . Wayne Morse was kicked in the head by a horse."

Morse indignantly returned to the Senate floor to denounce "this slanderer," and three days later Mrs. Luce withdrew from the post.

Morse's transformation from maverick Republican to maverick Democrat began in 1951, when he announced early for Dwight D. Eisenhower, but warned that "if my political party offers me a President and a platform in 1952 of only isolationist candidates, I will take a long walk . . . I have no intention of placing party above country."

Eisenhower was, of course, nominated, but on Oct. 18, 1952, Morse announced he would vote for Adlai Stevenson, because "never have I been so completely disillusioned about any man as I am about Eisenhower."

A week later, he resigned from the Republican Party, and when he returned to the Senate in January, 1953, he brought along a folding chair, saying, "Since I haven't been given any seat in the new Senate, I decided to bring my own."

The Republicans quickly stripped Morse of his seniority on the Armed Services and Labor committees and he was made a junior member of Public Works and the District of Columbia committees.

His independence, vigor and combativeness quickly made Morse a leading figure in District affairs, and he emerged as one of the strongest congressional advocates of home rule for the nation's capital.

He applied his strong concern for civil rights and civil liberties to Washington's problems, vowing to do his utmost to eliminate racial segregation and deliver self-government to the people of the city.

Only days after his reelection in 1956, Sen. Morse—by then one of the hardest-working of Washington's "city councilman" in the Senate—announced that he wanted to stay on the District Committee because it provided him a special opportunity for public service.

Even in his later years in the Senate, when

he became absorbed in the Vietnam war opposition, he continued to devote long hours to hearings and speeches on District legislation.

As chairman of the Senate District subcommittee on health, education and welfare matters, the senator constantly—and often bluntly—reminded colleagues on both sides of the Capitol of his firm belief that the bulk of Washington's problems were traceable to the absence of self-government.

But Morse's battle on behalf of home rule for Washington did not keep him from criticizing the leadership at the District Building when he felt improvements could be effected there.

In the field of education, he pressed for many improvements in the public school system and was the Senate sponsor of legislation establishing Federal City College and the Washington Technical Institute.

In 1954, Morse campaigned hard for the election of Richard L. Neuberger (another man with whom he was later to carry on a personal feud) as Oregon's first Democratic senator of modern times.

He joined the Democratic Party himself in 1955 and for the next decade was the center of a series of battles over environmental, natural resources, education and labor issues, including the tideland oil fight, the Hells Canyon Dam case, the Landrum-Griffin labor reform bill and a series of struggles over federal aid to education.

In 1956, he won what was perhaps his sweetest personal victory when he ran for re-election as a Democrat and trounced Eisenhower's Secretary of Interior, Douglas McKay, who had returned to Oregon in an effort to purge the renegade Morse.

But four years later, in 1960, Oregon Democrats rejected Morse in favor of John F. Kennedy in their presidential primary.

In 1964, Morse cast the vote of which he said he was most proud when he joined the late Ernest Gruening of Alaska as the only opponents of the Gulf of Tonkin resolution, the measure that President Johnson took as congressional sanction for American intervention in Vietnam.

For the next eight years, in office and out, Morse traveled the country, tirelessly arguing against the war.

In his 1962 biography of Morse, called "The Tiger in the Senate," Portland Oregonian correspondent A. Robert Smith (who himself was periodically barred by an irate Morse from entering the senator's office) recalled that Morse had once told a Detroit reporter, "I sometimes wonder if I'm going at this a little too hard."

"But then," the senator continued, "I think of all the men and women who wish there were just one politician in Washington who would speak his mind and cast his vote honestly and freely with only his conscience to guide him."

"Maybe it's a bit brash to assume that I'm that man," Morse said, "but believe me, I'm trying to be."

(NOTE.—This obituary was prepared with the research assistance of Elisabeth Donovan and Robert L. Asher.)

NUCLEAR EXPERTS ADMIT FIASCO IN ILLINOIS

Mr. GRAVEL. Mr. President, an astonishing story appears in the July 15 issue of Weekly Energy Report, a trade journal edited by Llewellyn King in Washington, D.C. The story says that General Electric has admitted that its nuclear fuel reprocessing plant in Morris, Ill., is "inoperable."

According to the story, GE's brand-new, $65 million plant "may have to be abandoned entirely." The trouble with the plant is apparently so fundamental that GE says the only solution would be "a new process flowsheet and new plant configuration." New configuration may be impossible because massive concrete walls, which have been built, are required to shield workers from high levels of radioactivity in the plant.

The failure at Morris is another warning to Congress that nuclear engineers and architects can make major mistakes of almost incredible size. This community of experts, nevertheless, is constantly trying to assure the public that nuclear power catastrophes will never happen because not only have they imagined all the possible problems which could cause major accidents, but they have also solved those problems for us.

That foolish claim is the basic argument of all nuclear power advocates—and it is basically dangerous for this country. The fiasco at Morris is an important reminder that nuclear experts do not imagine and solve all their problems in advance. For all anyone knows, America's next reminder may be a nuclear power disaster.

Mr. President, I ask unanimous consent that the article entitled "GE Fuel Recovery Plant 'Inoperable,'" from the Weekly Energy Report of July 15, 1974, be printed in the RECORD.

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

[From Weekly Energy Report, July 15, 1974]

GE FUEL RECOVERY PLANT "INOPERABLE"

(By Llewellyn King)

The General Electric Company's Midwest Fuel Recovery Plant (MFRP) at Morris, Illinois is a fiasco. The 300-ton, $65 million installation, does not work and probably never will. That, in essence, is what an embarrassed GE told the Atomic Energy Commission last week, although the company couched its report in rather obscure language.

The immediate result is one of upset and, in some cases, consternation to utilities that were expecting to ship spent fuel to the plant. It is not yet clear what will be the full impact on the utility industry or what General Electric's final determination of what to do about the plant will be. Industry speculation is that it may have to be abandoned entirely. All that General Electric will say is that it is "inoperable" in its present configuration. Reports of trouble with the plant have been circulating for some time. Then, early this month, GE wrote to its utility customers telling them not to count on the availability of the plant. Last Monday GE met with the Regulatory Division of the AEC and on Tuesday it told the full story to the commissioners. In a statement GE said: "The Nuclear Energy Division of General Electric Company submitted a report to the Atomic Energy Commission this week describing the difficulties encountered by its Midwest Fuel Recovery Plant . . . The report detailed the plant's process difficulties assessed during a four-month study by a team of technical experts; difficulties such as materials handling technologies incorporated in the plant's process flow sheet that were not adaptable to remote operating and maintenance requirements. 'The only technically feasible solution to this problem seems to be the development of a new process flow sheet and new plant configuration,' the report states. General Electric management is assessing the implications of the MFRP Report on its plans for the fuel processing business. Meetings with customers are being planned to review spent fuel storage and other possible problems arising out of the inability of the MFRP to commence operation in 1974 as previously planned."

The GE plant is one of three commercial plants for spent fuel recovery in the United States, none of which is operational at present. Nuclear Fuel Services has a 300-ton plant at West Valley, New York and a 1500-ton plant is planned by Allied Gulf Chemical Corporation at Barnwell, S.C. The NFS plant, after a long period of successful operation, has been shut down while additions are made and it is not expected to come back on line until early 1979. The Barnwell plant is not due to go into operation until 1977 and that may be delayed. The only other reprocessing capacity in the country is owned by the Atomic Energy Commission and was installed as part of the weapons program for separating out plutonium.

Nuclear fuel recovery takes place after the core of a nuclear power reactor has been burned up, is clogged with fission products, and loses its fissionability. However, in the course of initial burnup only a small part of the fissionable uranium in the core is spent and by means of chemical separation, this is recovered along with plutonium. At this point high level radioactivity wastes are captured and sparated for disposal. The conventional system for fuel recovery is the use of the purex method developed by the AEC. The GE plant employs an advanced technique known as Aquafluor and it is with this process that the company has run into trouble, although fuel reprocessing is recognized to be one of the most difficult aspects of the nuclear fuel cycle. GE's reference to a "new configuration" has been received skeptically in the industry because of the nature of the reprocessing plant which employs massive protective concrete walls. Present in the reprocessing cycle are massive quantities of high level radiation and for successful operation a fuel reprocessing plant needs to run continuously and requires remote maintenance. The process does not lend itself to frequent start-ups and shut-downs.

While it is hard to access the impact of the GE problems, it has immediately highlighted fuel reprocessing as one of the weakest links in the fuel cycle. Two specific problems result immediately for utilities that were planning to use the GE facility: first, there will be a considerable storage problem for utilities whose storage pools are already full or filling up; second, it will change the economics of nuclear power by delaying plutonium recycle and removing quantities of uranium from inventory. Nonetheless, it is not sufficiently severe a perturbation in cost to affect the overall economics of generating electricity from nuclear power. By the end of last week, the AEC was beginning to look at the possibility of providing storage facilities for spent fuel that might accumulate at utility plants as a result of the problems at Morris, Illinois.

STOP THIS CRONY POLITICS

Mr. MONDALE. Mr. President, several days ago Mr. Morris Nooner was appointed Director of the Veterans' Administration Office at Fort Snelling, Minn. His appointment met with immediate and strong opposition from members of the Minnesota congressional delegation.

In a letter to the President, I protested Mr. Nooner's appointment on several grounds. Mr. Nooner is, in my opinion, unqualified to assume the supervisory au-

thority over VA field work. He has no experience in pensions, insurance, home loans, and other important VA programs. In addition, Mr. Johnson, who appointed Mr. Nooner, is leaving the VA under intense public and congressional pressure. On the eve of his departure under these circumstances, it is totally inappropriate for Mr. Johnson to appoint Mr. Nooner to this critically important post.

On Sunday, the Minneapolis Tribune editorially called for the withdrawal of the Nooner appointment. Yesterday, the Minneapolis Star editorially criticized this unfortunate appointment.

I ask unanimous consent that the editorial from the Minneapolis Star of July 22, 1974, entitled "Stop this Crony Politics" be printed in the RECORD.

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

STOP THIS CRONY POLITICS

Minnesota's four Republican congressmen plus Democratic Reps. Joe Karte and Don Fraser and Sen. Walter Mondale all agree in the most positive terms that the appointment of Morris Nooner, Jr., as the $33,899-a-year director of the Fort Snelling VA Center is the rankest kind of crony politics.

We find that pretty persuasive. We hope that President Nixon, to whom the four Republicans appealed in a joint letter will agree.

The discredited, lame duck VA administrator, Donald Johnson, tried to justify Nooner's appointment on the grounds that Nooner is a deserving "career employee." That is simply not so.

Nooner has neither regional office nor insurance experience, and the Fort Snelling facility, among other duties, runs the VA insurance program for the Western half of the country. Nooner is an old buddy of Johnson, a former American Legion national commander. Apart from a shared interest in Legion politics, Nooner's background was in Illinois school administration. He joined Johnson only in 1971 as an assistant. In 1972 Johnson, now hanging on only until a successor is named, created a new education division to be headed by Nooner. When the Civil Service Commission branded Nooner unqualified, Johnson used a loophole to squeeze him in by naming him acting head of the unit, thereby "qualifying" Nooner through experience.

Johnson ignored the customary courtesy of consulting with the Minnesota congressmen, but more important, his ploy is part of an attempt to take care of several friends by shifting them to secure jobs before a new national VA administrator takes over. This is unfair not only to veterans and the staff at Fort Snelling, but to Nixon. We agree with Rep. John Zwach, a Veterans Affairs Committee member, that a "top quality" director is essential at Fort Snelling. Johnson was accused of maladministration; why let him foist an unqualified administrator on an important facility now that he's on the way out?

PRODUCTION OF OPIUM IN TURKEY

Mr. NELSON. Mr. President, recently the Government of Turkey decided to resume the production of opium. This action has caused much concern in this country, resulting in passage by the Senate of the Turkish opium amendment to the Comprehensive Drug Prevention Act. I ask unanimous consent that Stephen Rosenfeld's article on this matter, appearing in the Washington Post on July 19, 1974, be printed in the RECORD.

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

TURKEY: THE OPIUM ISSUE

(By Stephen S. Rosenfeld)

The United States' dispute with Turkey over its lifting of its opium poppy ban dramatizes the hard but necessary question of whether a tie cultivated on the basis of "national security" serves the real interests of the United States.

For it is plain that, in trying to persuade the Turks not to grow opium—much of which has ended up in the veins of American heroin addicts—American diplomats have been severely inhibited by their predisposition to maintain the strategic tie regardless of the strains put on it by Turkey's poppy policy.

But what is the value of that strategic tie? Is it great enough to justify the misery and human degradation which its maintenance may entail? And how is any citizen to decide?

To diplomats, of course, grand strategy is what diplomacy is all about; fighting drugs is important but secondary. Turkey's part in the American strategic competition with the Soviet Union has been accepted as an article of faith. (Note how quickly the phrase "NATO's flank" has come into use in the current Cyprus crisis.) To diplomats, the foreign play's the thing. They tend to think that politicians who worry about drugs have a point but must overplay their concern for political purposes and in any event do not understand the real world.

Politicians, on the other hand, especially if they are in close touch with the drug problem, find it hard to imagine how any strategic consideration short of Armageddon could be more important. They tend to regard diplomats as single-minded, narrow and unfeeling in their definition of "national security." They do not share the premises of the cold war or the "mind set" of putting strategic factors first.

So it was that in urging an aid cutoff the other day, Sen. Walter F. Mondale (D-Minn.) declared: "We are certain to hear the same tired national security arguments about how we cannot do anything to jeopardize our strategic position in Turkey, about the importance of our military bases and intelligence facilities there. I think it is time to reconsider both the strategic value of those installations and, even more importantly, the priority we give abstract concerns about strategic position over the concrete and in this case brutal costs to be borne by the American public in the name of national security."

Added Rep. Charles B. Rangel (D.-N.Y.): "It should be recognized that under the existing treaty with Turkey, we cannot use our bases except when Turkey is at war with the Soviet Union. During the recent Arab-Israel war, we were not able to use our bases to refuel our reconnaissance aircraft. Obviously, these bases contributed nothing to our strategic deterrence. Their real value is to deter local agression against Turkey."

"What about our intelligence facilities there?" asked Mondale. "Well, it is very easy to raise the specter of indispensable secret intelligence assets. But I believe that those who are truly knowledgeable in this area will support my contention that advances in satellite reconnaissance and other facilities are fully adequate to take care of our priority concerns without the use of those in Turkey."

In his reply, Turkey's foreign minister chose not to try to rebut any of the Mondale-Rangel arguments. He merely asserted that American military aid serves the "joint defense needs" of Turkey and the U.S. "We in Turkey see American friendship as linked not to the opium poppy but to more serious causes, among which lie great ideals and strategic factors," he said.

To be sure, crises like the one in Cyprus tend to reinforce the standard diplomatic view that what counts in the world is the game of nations on the global chessboard. To the extent that the United States' purpose is to use its influence to urge restraint, good political relations with Turkey—relations unencumbered by a dispute over opium popplies—are obviously to be preferred.

But if the United States is prepared to see Cyprus unite with Greece and thereby become available to the Pentagon as a base, then good political relations with Turkey become less essential. This is admittedly, a cynical argument though it is at least debatable whether it is any more cynical than arguments used by those who discount the opium factor.

My own view is that there is no call for anyone troubled by the drug issue to be intimidated by the strategic issue. The cold-war conditions which made it seem important to Americans to knit Turkey into an anti-Soviet chain have changed. Mondale is on the mark in suggesting that American citizens have a right to expect specific benefits from their government's foreign policy.

The Turks, who are traditionally anti-Russian, are not such namby-pambies that they cannot make an intelligent choice of what side their bread is buttered on. Whether an aid cutoff would achieve the goal its congressional sponsors insist it would may well be debatable, given the peculiar dynamics of Turkish politics. But there is no reason to be in thrall to the totems of "national security."

RETIREMENT OF BRIG. GEN. GERALD G. FALLS, JR.

Mr. McGEE. Mr. President, at the end of this month, a most distinguished military career will come to a close.

Brig. Gen. Gerald G. Fall, Jr., Commander of the USAF 4th Air Division, will end 32 years of service to his country. General Fall will retire at Francis E. Warren AFB, located at Cheyenne, Wyo. He has expressed to me several times his love of Cheyenne and Wyoming, and I can assure the general that Wyoming returns his esteem.

General Fall chose Warren as his base of operations, over all the other air bases in the Rocky Mountain States that came under his command. We are honored by that choice, although we know why. Wyoming in general is a fine place in which to live, and Francis E. Warren AFB is one of the best in the Nation. The personnel at Warren have taken a close interest in the affairs of Cheyenne since the 1800's, when Warren was then known as Fort D. A. Russell, one of the Cavalry posts in the old West.

Missiles are the steeds the Air Force commands there now, and General Fall was intimately acquainted with the defense of our Nation through strategic air power. But his concerns also included the men and women of the Air Force he commanded. And his concern did not stop at the base gate. He has been most active in Cheyenne's civic matters, opening the base to visits by residents and

tourists alike, all eager to savor a most historic place.

General Fall also earned the undying respect of the Wyoming Civil Air Patrol, when he located a fine building for them on the base, rather than their continuing to meet in the Naval Reserve building in Cheyenne. He was most adamant on that point and has continued to strongly support CAP and other civic organizations.

In short, Mr. President, Wyoming will always honor Gerald Fall as an adopted son, and we wish him well in his retirement. I share his hope, as he expressed to me in a recent letter, that his services will continue to help his country.

THE REPRESSION OF DEMOCRATIC RIGHTS IN SOUTH KOREA

Mr. METZENBAUM. Mr. President. I wish today to call the attention of this body to the outrageous situation in South Korea, a nation which has received over $12 billion in American economic and military aid since World War II and for whose freedom and independence 54,246 of our men died and 103,284 were wounded.

Despite this extraordinary commitment of American blood and treasure, South Korea has failed to assure its own people of the democratic rights which our country fought to defend.

In fact, South Korea has become an efficient police state, complete with a domestic and international surveillance apparatus, the Korean Central Intelligence Agency, whose methods smack of the infamous Soviet K.G.B.

At this moment, four leading critics of President Park Chung Hee and his regime are on trial in Seoul on clearly trumped-up charges of subversion. By no stretch of the imagination can these men be described as Communists or as Communist sympathizers. One is Yun Po Sun, 77-year-old former President of South Korea; another is Kim Dong Gil, professor of American history and an authority on Abraham Lincoln. The remaining two are Presbyterian ministers, Rev. Park Hyong Kyn and Rev. Kim Chan Kook, both educated in this country at the Union Theological Seminary.

These four men stand accused of the heinous crime of criticizing the constitution, a document which President Park revised in 1972 in order to increase his own power and to permit him to succeed himself in office indefinitely. The defendants have spoken openly against Park's growing authoritarianism and admit that they encouraged university students to demonstrate nonviolently against the regime in April of this year. Fourteen persons have already been sentenced to death in connection with these demonstrations, including Kim Chi Ha, the country's best young poet, whose sentence has recently been commuted to life imprisonment. Fifteen other people received life sentences, twenty drew 20 years, six received 15 years, and 30 more were sentenced to 5 to 15 years. Two hundred persons are yet to be tried, among them Roman Catholic Bishop Daniel Chi, whose offense is that he gave $2,500 to Kim Chi Ha, the poet, some of which found its way to the anti-Park student organizations.

In addition to all of this, the regime has moved against Kim Dae Jung, the man who ran against President Park in the 1971 Korean presidential elections. Kim Dae Jung was kidnapped from his hotel in Tokyo by South Korean agents last year and forcibly returned to the country. He is now charged with election law violations. Presumably, running against Park is considered a violation in and of itself.

Mr. President, I submit that it is our right and our duty as a free nation to condemn these sweeping violations of democratic liberties and human rights on the part of a country with which we are so closely identified. For too long, we have looked the other way while dictators, be they in Greece, Vietnam, Korea, or Latin America, trample on everything we hold dear. I say that it is time for us to stand up for decency, both at home and abroad. We have had enough of cynicsm, of naked power, of contempt for people and their rights.

In pursuit of this objective, I call upon the Secretary of State to communicate our extreme displeasure at these scandalous events to the South Korean authorities in the strongest terms.

Furthermore, I call upon my colleagues in the Congress to support initiatives by Senator ABOUREZK and Representative FRASER to tie foreign aid to the end of repressive practices in countries which receive our assistance. In the Korean case, I would support a drastic and immediate cut in American military aid from the current level of $177 million to half that amount. This aid could be restored only when the President notified Congress that he has received assurances from the South Korean Government to the effect that these flagrant violations of human rights have ceased and that political prisoners have been freed.

Mr. President, we have a long-standing interest in Korea and there are many warm ties between our two peoples. I have the greatest respect and admiration for those Koreans who have so bravely born witness to the ideals of democracy in the face of brutal repression. Their fight is our fight and if we do not support them, we shall ultimately place our own freedoms in jeopardy.

THE CITADEL COMMENCEMENT DAY ADDRESS

Mr. HOLLINGS. Mr. President, commencement time each year brings with it hundreds, even thousands, of speeches and exhortations. Only precious few of these break new ground, and fewer still do so with eloquence. One of the truly outstanding speeches of this commencement season was delivered on May 18 at the Citadel in Charleston, S.C.

The speaker was Dr. Prystowsky, provost of the Hershey Medical Center and dean of the College of Medicine at Pennsylvania State University. Dr. Prystowsky, a native of Charleston, returned to his home city to accept the honorary degree of doctor of science from the Citadel. From the days of his study at the Citadel and at the Medical College of South Carolina, Harry Prystowsky has had a distinguished career already, fully justifying his 1960 selection as one of America's 10 outstanding young men by the U.S. Junior Chamber of Commerce.

In his commencement day address, Dr. Prystowsky addresses himself to the role of the university in scholarship, research, and creative understanding. He warns that we will all be the losers if the research functions of scholarly life are subordinated to the mechanics and techniques of teaching. While the best classroom presentation is both neecessary and admirable, overemphasis on presentation at the expense of what is being taught will bring us to that point where we have the finest in teaching methods—but nothing to teach.

The university has as its guiding precepts the accumulation and transmission of knowledge. Each of these missions is absolutely vital. When one is subordinated, both will eventually suffer. While recent years have seen renewed stress upon the transmission of knowledge, the pendulum shows sign of perhaps swinging too far, and the corrective is to recall the vital function of knowledge research. This is the focus of Dr. Prystowsky's address. As he says:

> Scholarly activity, in general, and the creation of new knowledge, in particular, are strongly entrenched in the University tradition—not to the exclusion of skilled teaching, but an essential precondition for it.

The speech goes on to make several other salient observations on university research, its relationship to government sponsorship, and its direct impact upon the well-being of each and every one of the world's citizens. Anyone desiring to keep abreast of the most forward-looking university thinking ought to be conversant with the themes developed in this very fine address.

For that reason, Mr. President, I ask unanimous consent that Dr. Harry Prystowsky's Citadel Commencement Day speech be printed in its entirety in the RECORD.

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

GRADUATION ADDRESS, THE CITADEL, MAY 18, 1974

President Duckett, Governor West, Senator Hollings, members of the Board of Visitors, distinguished guests, graduates, ladies and gentlemen.

I. INTRODUCTION

By way of introduction, I ask your permission to allow me a footnote or two.

First, permit me to congratulate you, the graduation class, your friends and your families. This day stands out as a marker of your accomplishing an important objective.

Second, President Duckett, to be asked to participate in this academic ceremony is a great honor for me. I shall never forget your kindness.

II. THE SOCIAL VALUE AND ROLE OF SCHOLARLY ACTIVITY

I express deep concern for what appears to be a growing erosion of understanding about

and support for the University's fundamental role in scholarship, research, and creative activity. As a result of many factors within and without the University, measurable aspects of the teaching function are being emphasized to the extent that scholarly activity appears to be jeopardized. Increasingly, the emphases are on who and how many are being taught and how they are being taught. Far too little attention is being given to the substance of what is being taught and to the expansion and enrichment of the knowledge and skills which might be taught.

At the national level this trend is illustrated by the Carnegie Commission reports on higher education between 1968 and 1972. For example, the digest and index of these reports are contained in 191 pages. Most of these pages are devoted to the structure, personnel, clientele, and financing of higher education. One half of one page is devoted to the topic of research. And yet, none of the other attributes of higher education are important if the substance of the endeavor, i.e. man's knowledge and creative forward movement, stagnates or ceases to grow.

At the state level many legislatures have directed much attention to faculty teaching loads and have given little recognition to the fundamental relationships between effective teaching and scholarly and creative activity.

At both national and state levels the economic squeeze produced by inflation and by attenuation of financial support has begun to produce serious restriction of the scholarly functions and to alter the atmosphere of universities.

Why has and should American society continue to permit and support scholarly activity? It seems to me to be a fundamental characteristic of human nature that people are curious to explore their world and seek variability and creativity in their experience. Since learning and creating are characteristic of all human existence, a society which does not cultivate these qualities in its people violates their very nature and restricts their potential. Moreover, such a society restricts its adaptability. I stress the point that the cultivation of individual creativity increases society's adaptability.

We all believe that a fundamental goal of American society is to help each individual realize the fullest and most satisfying personal development. This accomplishment requires a social and environmental context which promotes the highest possible quality of individual and group living. This general goal finds its expression in many more specific objectives. For example, how can we insure that every baby is born healthy, free from vulnerability, and free to achieve her or his potential? How can we increase our essential food supplies and the effectiveness and equality of their distribution? How can we insure significant and creative living opportunities for elderly citizens? How can we develop organizations to accomplish a variety of social and economic purposes in a way that protects the integrity of the individual? How can we shape and control our natural environment to increase the health and well being of society and the individual?

I observe that the specific objectives of dominating concern in a society vary from generation to generation. In the recent past such concerns have included economic depression, inflation, war, civil rights, environmental pollution, crime, health care, civil disorder, and corruption in government. Frequently, issues assume crisis proportions before significant efforts are mounted to do something about them. Then, the urgency of the situation requires action and solutions using whatever knowledge and technology are available at the time. If necessary knowledge and technology are not available, I maintain that effective action and solutions are not possible.

It has been a basic assumption of American Society that the more man knows about himself and his world, the more flexibly and successfully he can work toward the kinds of personal and social objectives mentioned above; in addition, the more effectively he can cope with personal and social crises of living which arise from time to time—some of which indeed may threaten his very survival. The future improvement and well-being of individuals and society as a whole have been assumed to rest on the cornerstone of the educational level of the citizenry. Formal education is considered a key avenue to knowledge and skill acquisition, and, therefore, to effectively coping with life. Toward this end the opportunity for education has increasingly come to be accepted as a constitutional right of each citizen; it has been legally mandated as a requirement for all children and adolescents up to certain ages. We have tried to ensure a minimum level of knowledge and competence for everyone in this country. Equal social and economic opportunity has been seen, in part, as a product of equal education and educational opportunity.

It has been assumed that increased knowledge would lead to more effective personal and social action. While this assumption can still be presumed to be correct, history tells us that we must distinguished between knowledge and hypothesis and between well established facts and incomplete observations. Partial and/or inaccurate knowledge frequently leads to erroneous action which can have undesired, damaging, or even disastrous consequences. Human history is replete with illustrations of the phenomenon.

A corollary to my first assumption has been emerging which has obtained considerable social acceptance and validation. The corollary is that, while at any moment of time we must act upon what we know, you and I must recognize there is much that we do not yet know and that some of our knowledge is partial or inaccurate. Appreciating this fact, we must cultivate processes, methods, and skills in individuals and society which will continually increase what we know, expand our creativity, and reduce our inaccuracies of knowledge and action.

Stated in other words, if knowing is a key means to the basic social objective of the fullest and most creative personal, social, and environmental development, and if partial or inaccurate knowledge frequently leads to erroneous actions which inhibit or prevent making progress toward that fundamental objective, then it follows that you and I must continually strive to increase the accurateness and completeness of what we know, and the richness of our creativity. This is absolutely essential if we are to achieve one of our most fundamental social values.

I cite illustrations of the expression of this principle in American society to emphasize the growing social acceptance of its validity, and the extent to which scholarly, creative, and research activities have permeated society in America.

How can one continually increase what he/she knows? One fundamental means is by frequent interchange of information with other people and the environment. The tools of literacy are the first keys to this: the ability to read (and to judge the logic and sensibility of what one reads); the ability to write and to speak clearly (and to judge the logic and sensibility of what one hears others say); the ability to use quantification as an important means of organizing and making judgments about some types of information; the ability to observe accurately what is going on and to recognize the distinctions between observations and the inferences and judgments one draws from them. There is and must continue to be a longstanding and widespread public support for the view that reading, writing, and arithmetic are the cornerstones of education.

A second illustration might be thought of as both a product of and a stimulus to the industrial revolution. The research and development efforts of American industry have grown enormously during the present century. The industrial revolution has been fueled, in part, by major advances in knowledge and technology. It became increasingly apparent to industrial leaders that to be equal to or ahead of their competitors, they could not simply keep marketing the same old products manufactured in the same way year after year. They needed to improve old products and to develop new ones. As the validity of this principle was increasingly demonstrated in industry, their leaders began devoting a significant percentage of funds to research and development of new or improved products. Stated in other words, there was appreciation for the need to expand knowledge and technology.

Since the 1930's, the American government has been increasingly utilizing the research and development function to help it deal with policymaking problems and to help government contracts with outside sources for this function. Sometimes "in house" efforts have developed, such as in the National Institutes of Health.

Some public, nonprofit groups have adopted also research and development as a primary thrust. Perhaps one of the most dramatic examples in recent decades is The March of Dimes which sought funds to eradicate poliomyelitis. Partly as a result of research funded by this effort, the capability of preventing polio was developed. There were only five new cases in the entire United States in 1973. Few youngsters and young adults now know what an "iron lung" is.

Finally, men and women from all walks of life have for centuries been exploring new ideas in books or manuscripts, creating new art forms, and capturing human experience in differing musical forms. Most communities in this country have public libraries available in permanent or mobile form, and many have evolved their own symphonies, choruses, art galleries, and theatrical groups.

These illustrations make it clear that there have been increasing validation and social acceptance of the need for knowing as a process, i.e., for continuing efforts to elaborate our creativity, what we know and how we use it. The value of the research and development function is now widely accepted. There are some limitations, however, in many of the ways in which these functions are presently implemented in our society.

When research and development are carried out as a corporate or governmental enterprise, its primary purpose is to serve the economic interests of the company, or the programs of a government agency. As a result, the problems or issues which can be addressed and pursued are limited by cost-benefit or political necessity. This approach means that the primary focus is usually on specific, practical, immediately pressing problems (such as how to improve the gas mileage of an engine or how to fuel a ship with an atomic reactor). Corporate or government executives, legislators, and the general public are concerned about their problems and objectives of today. They want solutions to them today or yesterday at the latest. They are willing to fund research and development activities which they think will produce the result. To be sure, such research has considerable social utility.

The sort of thinking is well and good, but the ability to solve such practical pressing problems when they arise rests upon a much broader general base of knowledge pains-

takingly accumulated over a period of decades or even centuries. For example, this country succeeded magnificently in its space exploration program in less than a decade. Such was possible only because there already existed a huge fund of knowledge of astronomy, of our solar system and the physical principles which control it, of engineering principles which govern the strength and other characteristics of materials and physical bodies of the properties of heat, electricity, communication, and the development of the electronic computer. These are only a few of the many knowledge reservoirs which were at hand and could be utilized.

Man's ability to solve his practical problems is no greater than the general knowledge reservoirs he can draw upon. An approach which gives most of its attention to the solution of practical problems will one day find the general knowledge reservoirs drained of thier utility. As a result, mankind shall be severely handicapped. For example, the moment of a fuel crisis does not permit the time to develop fundamental knowledge which could immediately open up possibilities of alternative fuel sources. Such information must exist at the time the crisis occurs if it is to be resolved in a time span which will avoid serious consequences. The recently announced social policy objective of making this country energy self-sufficient in a decade assures the availability of and illustrates the faith in the national research capabilities of the United States.

A second limitation in some current goal oriented projects is that knowledge held by a few is not available for general use. Accordingly, special advantage is given to those few who hold it. Both industry and government have developed many security arrangements to protect the knowledge which gives them this special advantage, whether it be in a product market or in national defense. While the necessity for such information control is valid, no society can place primary reliance for the continuing expansion of its total knowledge base on arrangements which inhibit or prevent complete and free sharing of newly developing data.

A third limitation in many scholarly, research, or creative activities is that there is no direct relationship between knowledge development or the creative process and teaching this information to the next generation. Students should be learning the most up-to-date facts available to mankind. As one scholar put it, to teach the student the physics of 30 years ago is to teach him much that we now know to be in error. A serious time lag between the generation of new knowledge and its dissemination to the public handicaps both individuals and society.

At the very highest level of education is the modern University. It is essential that research be promoted and pursued systematically in order to generate new information. In this manner it shall discharge its teaching function responsibly and shall contribute toward more effective solution of the technical and social problems of society.

What is the special role of the University if it be true that one of the most distinctive characteristics of humankind is its constant striving to know more and more about itself and the universe in which it is immersed?

There is need for an institution that can be free of the pressures of immediate crises, where the primary focus is on the elaboration and dissemination of what mankind knows and can create, and where there is a community of people competent to stimulate, challenge and evaluate one another's efforts. A context is required where the primary commitment is to serve not just particular interests, but the general public interest by extending the boundaries of basic information and supporting creative work in the arts and humanities in order to extend man's imagination and potential. An environment is needed where the functions of knowing as learning what is known, and knowing as searching for new knowledge are closely related. Each generation preparing to take over the leadership of our society must be taught in a context where the active scholarship of the teachers provides the main assurance that what is taught is reliable and up to date. The student must be exposed to the impact of an original mind. In turn, this mind must be trained to advance knowledge by questioning accepted facts and ideas or by dissolving old concepts and casting them into fresh patterns. Such activity makes it unlikely that the student will be misled by the teacher's ignorance.

The University is a special institution which societies have been evolving since medieval times to serve these purposes. Within the United States, this concept has reached its most productive expression in the form of the major public Universities. Scholarly activity, conducted within a University context, is, therefore, a cornerstone of a creative, adaptive, productive, free, and humane society. The University has operated for years under what may be called a code of ethics. This principle inhibits the single-mindedness of effort toward personal economic gain or secretive deliberation as a means of developing personal advantage.

It has been in the historical tradition of academic freedom that University research should be public. I mean open to unrestricted observation and discussion by members of the academic community and to publication without restrictions. It is also accepted that research is for the ultimate benefit of all people. Accordingly, the results of investigation and experimentation are made known freely and promptly. In the academic realm, all University research should be of such a nature and should be carried on with such purposes and in such a manner that it contributes to the University's educational program.

Research in its formal sense is only one type of creative activity. The faculty in any collegiate institution must be involved in some kind of scholarly activity to keep their knowledge and competence, and therefore their teaching, current and up to date. Scholarly activity, in general, and the creation of new knowledge, in particular, are strongly entrenched in the University tradition—not to the exclusion of skilled teaching, but an essential precondition for it. Moreover, dissemination of information to students and others is essential to provide feedback which helps improve and shape future scholarly activity.

A function of the University may be focused on adding to mankind's basic reservoir of knowledge without concern for potential utility (basic research), or on elaborating knowledge and methods for the purpose of gaining some new utility for mankind (applied research). Both are essential, for each contributes to the other. The University's scholarly activity may include the acquiring of new factual data from which new concepts of human and environmental phenomena may be induced, the seeking of a new synthesis of available factual data, the formulation of new hypotheses for inquiring and consideration, the analysis of pressing problems of individual and social importance along with the development of tools or methods for dealing with same, and the creation of art such as painting, poetry, and music.

In summary, the welfare of mankind is served by insuring a significant and continuing human investment in the creative process. The University as the locus of this effort can greatly enhance its value to mankind and to America, in particular, by making possible a constant and articulate press on the frontiers of knowledge. The University ought to lead society in the identification of problems and the advances to their solution, rather than being primarily an organ of response to problems as perceived by others.

III. ENDING

To my way of thinking, civilization is the development of man and not the history of the material things which he accumulates or constructs. Many people wonder if a scientific material age—like the present one—can keep alive any civilization. I believe it to be yours and my first task to meet this challenge and to be worthy custodians and transmitters of all the beauty and truth which the human spirit has struggled so long to create.

It has been stated that the search for truth should be the goal of our activities. When I speak of truth, I refer to scientific truth and moral truth.

And at this moment I believe it to be quite appropriate for all to recognize the contributions and achievements of the cadets as well as those of the veteran students and of those receiving the advanced degrees. It ought be noted that these will be the first MBA degrees awarded by the College.

I believe The Citadel to be a society of learned men. The goal—since its origin—has been the incessant, quiet, search with conviction for new truth and the affirmation of old truth. This is the condition for the intellectual progress of our nation. Many years from today the record will be read. It will then be manifest to all that The Citadel has carried out its responsibilities. We, her students, will give thanks that The Citadel was founded.

SENATOR WAYNE MORSE

Mr. HART. Mr. President, eulogies in which attempts are made to assess the life of a man or woman have a way of becoming more flowery than accurate, more guesswork than research. Perhaps that is unavoidable as we seek to anticipate the judgment of history.

Of Senator Wayne Morse, of Oregon, who died yesterday, it will be noted that he fought hard for the people of Washington, D.C., that he was perhaps the Senate's most knowledgeable member in the area of education, that he correctly warned the Nation of the folly of making war in Vietnam.

It will also be noted that of equal importance to the many causes for which he chose to fight were the skills, energy, and independence of mind he brought to those efforts.

History is already proving Senator Morse correct on Vietnam, and I, for one, will leave other judgments of his career to history.

However, I would like to make one contemporary observation which perhaps is obvious, but one which future generations should consider in assessing Senator Morse.

In the words of the poet Dylan Thomas, Senator Morse did not go gentle into that last good night. He continued to fight for what his conscience led him to believe was right, through victory and defeat, rejecting quiet retirement as a viable option.

For the present then, let it be said that his voice of reason and perception will be missed in a society which must have thoughtful and vigorous dissent if it is to remain free and strong. I suspect that of all the tributes contemporaries will pay Senator Morse, he would value that comment above all others.

GAO REPORT ON FEDERATION OF EXPERIENCED AMERICANS

Mr. CHURCH. Mr. President, in recent years important new programs have been enacted for older Americans, including Operation Mainstream, RSVP—retired senior volunteer program, a national Senior Service Corps, Foster Grandparents, Senior Opportunities and Services, a hot meals program for the elderly, and others.

Time and time again these programs have amply demonstrated their value, not only for aged participants but also the communities served.

It is essential that this Federal effort be continued and, where needed, broadened.

Here, the Senate Special Committee on Aging—of which I am chairman—has a vital function. It must review programs for older Americans to insure that they are, in fact, administered effectively, impartially, and professionally.

Last year Senator EAGLETON, the chairman of the Subcommittee on Aging of the Labor and Public Welfare Committee, and I requested the Government Accounting Office to conduct an inquiry concerning the award of Federal funds to the Federation of Experienced Americans, an organization created on March 29, 1972.

Specifically, we asked the GAO to investigate:

First. A Department of Labor contract under Operation Mainstream for $1.54 million to provide new job opportunities for 350 low-income persons aged 55 or older; and

Second. An OEO grant for $400,000 to assist in the development of new approaches and methods for overcoming special problems of the Spanish-speaking elderly poor.

Recently, the GAO submitted the report requested by the committee and subcommittee. Its findings and conclusions, I strongly believe, should be brought to the attention of Members of Congress.

One particularly alarming finding was:

> The grant and contract awards were processed outside normal procedures. Officials of Labor and OEO said that both the grant and the contract had substantial White House backing.

Equally disturbing, there is much concrete evidence that the contract and grant represented a determined effort by officials in the White House to siphon off Federal funds from organizations considered "unfriendly" to the administration.

In effect, the report portrays a vindictive White House using every resource at its disposal to punish so-called "enemies" or those who would not march to the administration's drum beat.

DEPARTMENT OF LABOR CONTRACT

By way of background information, President Nixon recommended a $13 million funding increase for Operation Mainstream at the 1971 White House Conference on Aging. Of this amount, Department of Labor officials initially recommended $3.4 million for the National Council of Senior Citizens and $1.1 million for the National Council on the Aging. This decision was based upon the time-tested expertise and competence of these two organizations in conducting older worker pilot projects: the Senior Aides program in the case of the National Council of Senior Citizens and the Senior Community Service Project by the National Council on the Aging.

Both of these national contractors—as well as other leading organizations on behalf of the elderly, including the National Retired Teachers Association-American Association of Retired Persons and the National Farmers Union—had been independently evaluated and received favorable commentary.

However, the GAO report revealed:

> The former executive assistant told us the White House wanted Labor to cut back and/or terminate funding for two of the Operation Mainstream national contractors—the National Council on the Aging and the National Council of Senior Citizens. He stated that Labor had no intention of reducing or terminating funding with these groups, primarily because an evaluation report had stated that the nationally run contracts were the best segment of the Operation Mainstream program in terms of accomplishments and meeting of program objectives.

Because of White House pressure, the additional funding for the National Council of Senior Citizens was pared from $3.4 million to $1.8 million—for a 47 percent reduction. The National Council on the Aging's funding was cut back by 36 percent, from $1.1 million to $700,000.

The bulk of this money was then diverted to the newly created Federation of Experienced Americans, an organization with no prior experience or proven expertise in aging. Moreover, the FEA had been only in existence for about 4½ months when the Department of Labor awarded the contract.

After an extensive review, the GAO has concluded that FEA's operations were, in significant respects: ineffective, deficient, or in violation of its contract.

Among the major findings:

> The Oakland component was not effective in achieving its primary objectives—training and placing disadvantaged elderly persons in unsubsidized jobs.
>
> Many of its enrollees, claimed as unsubsidized placements by the Oakland component, actually had been working for the same employer or industry before, during, and after their employment. They had also earned amounts above the poverty level income criteria used by Labor in determining eligibility.
>
> Neither the enrollees claimed as placements by the Oakland component nor their employers had been made aware of the program's objectives.

OEO GRANT

The White House also exerted similar pressure on behalf of the OEO grant, despite a courageous civil servant's conclusion that FEA was totally unqualified to perform the services. The former Chief of the Older Persons programs stated in a November 17, 1972, memorandum that he was "shocked at the weakness" of the FEA proposal. He gave this very candid assessment:

> The proposal as now written is an extraordinary weak, unfocused, uninformed and unprofessional job. It is without a doubt the weakest proposal of this magnitude that I have ever received. It is really an unbroken chain of mundane cliches, uninformed statements of purported fact and immoderate condemnation of all existing agencies and programs as they relate to the Spanish-speaking elderly.

Nonetheless, FEA was funded for $400,000, after being ordered by a White House staff member. Additionally, the GAO report reveals:

> OEO officials told us that Mr. Evans also instructed OEO to limit its forthcoming contract extension with the National Council on Aging to six months after which OEO would be expected to award a grant or contract to FEA to provide a full range of professional training and technical assistance for OEO aging programs that had been provided by the National Council on the Aging for many years with funds from OEO and other agencies.

Finally, the GAO concluded that FEA's accounting system and internal controls were inadequate. As a result of these deficiencies, GAO questioned expenditures totaling $184,000 under the Department of Labor contract and $30,000 under the OEO grant. One striking example is travel to Hawaii by the FEA president and his wife, although no contract or grant activity was conducted there. Total expenditures for this trip amounted to $1,325. The GAO report said:

> He did not prepare a report on the business he conducted. When we questioned him about the trip, he advised us that he went to Hawaii to observe a day care center for the elderly and that his wife provided secretarial service and accepted transportation in lieu of salary.

Both the Department of Labor and OEO have since notified FEA that it would be in the best interest of the Government not to refund the present programs.

WATERGATE COMMITTEE REPORT

Similar findings and conclusions were reached in the draft report by the Select Committee on Presidential Campaign Activities. This report was based in part on information supplied by the Senate Committee on Aging.

In the chapter on the "Use of Incumbency Responsiveness Program," the committee declared:

> The evidence gathered indicates that Federal resources were employed to secure the support of older Americans.

Additionally, the report described efforts to use Government pamphlets to puff up the administration's record on behalf of the elderly

One memorandum on this subject by a member of the Committee To Reelect the President said:

> We are all in agreement that brochures produced and distributed by government departments and agencies will be important in persuading older voters to reelect the President. These brochures will be nonpartisan enough to break through the election year aversion to political rhetoric, but will be strongly supportive of the President.

CONCLUSIONS

All in all, the circumstances surrounding the contract and grant awards to FEA constitute an outrageous lack of integrity on the part of high officials in Government.

No one benefits—least of all the elderly—if Federal resources are exploited for narrow partisan advantage.

Fortunately, the evidence clearly suggests that such practices are the very rare exceptions for Federal programs serving the elderly.

But even if one instance exists, it must be terminated immediately. Otherwise, it can become a cancerous growth, undermining confidence in our institutions, and eventually resulting in the destruction of our democratic system.

Mr. President, I wish to announce that the Committee on Aging will consider a number of alternatives—legislative, administrative, and others—in the months ahead to insure that Federal programs for elderly persons are not compromised for partisan advantage.

In this regard, we shall welcome suggestions from Members of Congress, national aging organizations, administration officials, and the general public to fulfill this responsibility.

Mr. President, I commend the GAO report on "Award of a Contract and a Grant to the Federation of Experienced Americans, Inc., and Related Activities" to my colleagues. Additionally, I ask unanimous consent that a digest of the report's findings and conclusions be printed in the RECORD.

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

[Comptroller General's Report to the Special Committee on Aging and the Subcommittee on Aging, Committee on Labor and Public Welfare, U.S. Senate]

DIGEST ON AWARD OF A CONTRACT AND A GRANT TO THE FEDERATION OF EXPERIENCED AMERICANS, INC., AND RELATED FINANCIAL AND PROGRAM ACTIVITIES—DEPARTMENT OF LABOR, OFFICE OF ECONOMIC OPPORTUNITY, B-163922

WHY THE REVIEW WAS MADE

At the request of the Committees, GAO

Reviewed the bases on which a contract and a grant were awarded to the Federation of Experienced Americans (FEA) by the Department of Labor and the Office of Economic Opportunity (OEO);

Identified persons involved in the awards and their activities; and

Reviewed financial and program activities of FEA through June 30, 1973.

FEA administered a program for the Department of Labor under a cost-reimbursement contract amounting to $1,540,000. The program was designed to enroll and provide subsidized work to 350 individuals who were at least 55 years of age and who had been certified as "poor," by Labor's definition. Seventy-five percent of the 350 were to be placed into unsubsidized employment.

FEA also administered a program for the elderly poor under an OEO grant amounting to $399,839. This was designed to assist in the development of new approaches and methods for overcoming special problems of the Spanish-speaking elderly poor.

GAO discussed its findings with officials of Labor, OEO, and FEA. However, these officials and other affected parties have not been given an opportunity to formally examine and comment on this report, as agreed with the Committees.

FINDINGS AND CONCLUSIONS

Preaward activities

The grant and contract awards were processed outside normal procedures. Officials of Labor and OEO said that both the grant and the contract had substantial White House backing.

Program activities and results

GAO did not review FEA's program activities under the grant since OEO was in the process of doing so.

Under Labor's contract FEA operated an Operation Mainstream program in California—Oakland and San Francisco—and Florida. The Florida component was managed effectively. Some minor deficiencies were brought to the attention of the project director who agreed to correct them.

The Oakland component was not effective in achieving its primary objectives—training and placing disadvantaged elderly persons in unsubsidized jobs.

Many of its enrollees, claimed as unsubsidized placements by the Oakland component, actually had been working for the same employer or industry before, during, and after their enrollment. They had also earned amounts above the poverty level income criteria used by Labor in determining eligibility.

Neither the enrollees claimed as placements by the Oakland component nor their employers had been made aware of the program's objectives.

Almost all the enrollees participating in Oakland were placed in private for-profit concerns—primarily in the garment industry—which was not in accordance with contract provisions that subsidized placements be with public or private nonprofit institutions.

At the FEA component in San Francisco, program goals generally were being accomplished, although the recordkeeping activities and internal control procedures needed improvement. The project's director subsequently advised GAO of actions taken to overcome these problems.

Financial activities

Lack of appropriate checks and balances rendered FEA's accounting system and related internal controls inadequate.

Appropriate controls had not been established to encourage compliance with contract and grant requirements, to insure that contract and grant funds were used only for authorized purposes, or to check the accuracy or reliability of accounting records.

As a result of the deficiencies noted, GAO questioned expenditures of about $184,000 under the contract and about $30,000 under the grant.

In several instances FEA used contract funds for expenditures under the grant and vice versa. Contract and grant funds were also used for personal expenditures of FEA's president.

FEA employees traveled outside program areas without authorization from Labor and OEO officials. Trips were made without documenting the purposes. No reports were made of the business conducted. GAO questioned about $23,700 of travel expenses for these and other reasons.

FEA made a large number of equipment and supply purchases amounting to $3,807 through private suppliers without first obtaining written permission from the contract officer as required under its contract with Labor.

AGENCY ACTIONS

Both Labor and OEO have notified FEA that after weighing all pertinent available facts and considerations, it would be in the best interest of the Government not to refund present programs with FEA.

Labor and OEO will make the final determination of the allowability of costs questioned by GAO under the contract and grant, respectively. In addition, Labor auditors will audit FEA's financial transactions for the period from July 1, 1973, to the end of the contract and the grant periods.

HUMAN RIGHTS VIOLATIONS IN CHILE

Mr. KENNEDY. Mr. President, the Senate Subcommittee on Refugees held a hearing this morning on U.S. policy toward Chile and on the continuing human rights, refugee and humanitarian problems in that country following the military overthrow of the previous government.

I can only say that the testimony we received from members of the study mission which I dispatched to Chile following an invitation from the junta confirms previous reports by a series of respected international groups, including Amnesty International and the International Commission of Jurists, of the deplorable condition of basic human rights in that country.

Ralph Dungan, former Ambassador to Chile, and Dr. John Plank, a former State Department expert on Latin American affairs, told the subcommittee that on the basis of their interviews of detainees, of defense attorneys for political prisoners, of the families of prisoners, and of respected church and political leaders, they concluded that a systematic use of torture and a continuing pattern of violation of human rights exists in Chile.

Their statements, along with the testimony of former Attorney General Ramsey Clark and Judge William Booth of the Criminal Court of New York City, also confirmed that a system of repressive military rule has replaced the traditional democratic and constitutional system in Chile.

Despite the strong public and private statements by other governments, the United States has not issued a single official statement condemning the violation of human rights taking place in Chile. There appears to be nothing on the record of an active and vigorous concern evidenced by our representatives. I find this lack of concern for human rights—which we have seen in the past in Bangladesh, in Vietnam, in South Korea, in Greece, and in other countries—to be a failure of U.S. foreign policy.

The most apparent evidence of U.S. policy toward the military government is our continued support of economic and military assistance toward that country. I believe that while some justification can be offered for the humanitarian elements of economic aid, since they are designed to alleviate the problems of the people of Chile, I believe there is no justification for continued military assistance to that country. I intend to seek an end to military assistance while the violation of human rights continues.

Mr. President, I ask unanimous consent that my statement at the hearing along with the statements of the study mission be printed in the RECORD.

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

SENATOR KENNEDY'S OPENING STATEMENT BEFORE THE SUBCOMMITTEE ON REFUGEES HEARING ON HUMANITARIAN PROBLEMS IN CHILE

The hearing today resumes the Subcommittee's public inquiry into U.S. policy toward Chile—and the continuing human rights, refugee, and other humanitarian problems which resulted from the overthrow of the Allende Government last September 11.

Shortly thereafter, on September 20, this Subcommittee heard testimony from officials in the Department of State and several American citizens who had just returned from Chile. Our concern was not only over the end of Latin America's longest tradition in democratic rule—but also over the human tragedy produced by the violent overthrow of the Allende Government. Mass arrests—the jailing of thousands—the execution and mistreatment of prisoners—the repression of the press and political dissent—book-burning—and other violations of human rights—marked the aftermath of the military coup. And judging by recent field reports, there is good cause for continuing concern over the people problems of Chile.

Since last September, the Subcommittee has maintained close contact with international organizations attempting to assist in the movement of refugees and the protection of human rights in Chile. We have also exchanged views with the new Chilean Government, the Department of State and others.

We have sought through private and public means to emphasize the urgency which the Subcommittee attaches to the care of refugees and the protection of human rights. To some degree, we hope that our efforts have contributed responsibly—at least to the safe conduct of several thousand political refugees out of Chile in recent months. And we shall continue our efforts in behalf of the growing number of Chileans now taking refuge in neighboring Argentina and Peru.

Today's hearing is undertaken in the firm belief that the plight of these new refugees, and the continuing violation of human rights by the junta, must remain an essential factor in the evaluation of American policy toward Chile—particularly when the current military government receives both economic and military assistance from the United States.

The Administration has proposed for FY 1975 the first new development loans to Chile since 1967, some $25 million, and an increase in gran' assistance to more than $1 million, compared to $330,000 in FY 1974. While in the last full year of the Allende Government, FY 1973, the Administration felt the food needs of the country required only $2.5 million in food for peace assistance, it now proposes food for peace grants and loans of $37 million. In addition, a month after the coup, a commodity credit loan of $24 million was extended and a month later, an additional commodity loan of $28 million was extended.

Some of these programs are clearly humanitarian in nature. But it is difficult to understand why the humanitarian rationale that the Administration is putting forward today, was not equally relevant prior to the overthrow of the previous government, when Chile was denied similar programs.

There is, however, no humanitarian justification to support military aid to Chile. The Administration has recommended a near doubling of its FY 1974 budget proposal for military assistance. Originally, the Administration proposed a $10 million military credit sales program for FY 1974. Following the coup, that figure was increased to $15 million, a 50% increase. In December, the Senate adopted my amendment to the Foreign Aid Appropriations bill to halt all military aid to Chile. Unfortunately, it was dropped in Conference. Despite that evidence of Senate concern, for the coming fiscal year, the Administration proposes another jump in military aid to $20.5 million. Also, the Administration proposes to maintain the training of Chilean military officers at an $800,000 level.

Given the virtually unanimous reports—by respected international organizations and individual jurists—of continuing violations of human rights, I find the military assistance program to be an unjustified and inexcusable policy. It contrasts with the decision of Britain to withhold new military aid. And, contrary to the Administration's public rhetoric of concern for human rights, it represents a deeply disturbing lack of commitment to basic human values. The United States should not be providing military assistance to Chile, or any other nation, with a record of flagrant and consistent repression of its citizens.

Nor has the Administration chosen to adopt a low profile policy in its relations with the current Chilean regime.

In international agencies, particularly the Inter-American Development Bank (I.D.B.), pressure from the United States in support of the Chilean regime has been evident. It was widely reported that intervention of U.S. Government officials produced an unusual speedup in the I.D.B. process in order to assure a loan announcement in Santiago at the opening of the I.D.B. meeting there this spring. Similarly, at the United Nations, the United States was noted for its opposition to action by the Commission on Human Rights against Chile.

The latest sign of the willingness of this Administration to be viewed as the uncritically of the Chilean junta—despite the flow of political refugees and the continuing reports of torture and repression—is the current trip of the Secretary of the Army to Chile.

I find it somewhat difficult to understand the justification for sending the Secretary of the Army to hobnob with Chilean military officials when repression continues to be characteristic of the Chilean Government.

Since our previous hearing, Amnesty International, the International Commission of Jurists, the International Labor Organization, and other international agencies and organizations, have reported publicly and privately on the continuing repression in Chile. The United Nations Commission on Human Rights sent a stiffly worded telegram of concern to the junta, and the Inter-American Commission on Human Rights has directed an investigating team to Chile this week.

The previous history of events, and the continuing disclaimers of Chilean representatives of any conditions approaching those described by these international organizations, prompted me to respond favorably to the invitation of the President of the junta, now Supreme Chief of the Nation, General Augusto Pinochet Ugarte, to send a Study Mission to Chile. The Study Mission included the Honorable Ralph Dungan, a former Ambassador to Chile; Dr. John Plank, a former Director of Research and Analysis for the State Department's Latin America Intelligence and Research Bureau; and Mark L. Schneider, a member of my staff.

The Study Mission spent April 20–27 in Chile, and on its return reported its findings to me in private. That report unfortunately demonstrated, contrary to the assurances of Chilean government officials, that a continuing and systematic disregard for human rights existed in Chile. The mission found that arbitrary arrest and indeterminate detention without charge continued. The Chilean habeas corpus had been suspended. Torture and mistreatment of prisoners continued. Some prisoners were held incommunicado for months. Others were permitted to see their families on a regular basis, but briefly. Most never had a chance to see a lawyer. Due process appeared limited in all instances; totally absent in some. Schools and colleges were under military control. Freedom of the press did not exist. Many thousands of individuals were fired arbitrarily for their political beliefs from public and private employment. Labor unions were barred from striking and restricted in their normal activities. Traditional institutions of a political democracy had been suspended. And the number of Chilean refugees in neighboring countries was growing.

Following the Study Mission's return to Washington, and with the understanding of Chilean officials, I communicated the Study Mission's findings and suggestions to the junta.

The Study Mission's report reflected a deep concern over the continuing violation of human rights in Chile—a concern which is shared by many in the international community. It also raised troubling questions over the course of American policy toward the junta.

The power to change conditions in Chile—now evidenced in a growing flow of refugees—clearly rests with the junta. But there is little evidence of much change. And I am deeply distressed over the junta's lack of response to legitimate international concerns.

The power to alter United States policy, clearly rests with us. And our government has a responsibility to the American people and its Representatives in the Congress, to insure that every effort is being made to make our policy live up to the standards and ideals for which our nation stands.

Today, the members of the Study Mission will be making the first public report of their findings.

In addition, since their visit, other prominent Americans have visited Chile. Two of them will also testify today. They are the former Attorney General of the United States, Ramsey Clark, and Judge William Booth of the Criminal Court of the City of New York.

We will also hear in response the Acting Assistant Secretary of State for Inter-American Affairs, the Honorable Harry W. Shlaudeman. In conclusion, I can only share the sentiments expressed by the Archbishop of Santiago, His Eminence Cardinal Raul Silva Henriquez, who stated in speaking for all the Bishops of Chile: ". . . there are rights that touch the very dignity of the human person, and they are absolute and inviolable . . ." I believe the United States must examine its policy and its attitude toward other nations with a recognition of that fact.

SUMMARY OF TESTIMONY OF RALPH A. DUNGAN

The situation in Chile as we observed it in April of this year and which apparently continues more or less unchanged today was marked by substantial violations of human rights, violations of Chilean constitutional guarantees, and repression of basic civil freedoms such as freedom of the press and free assembly. On the whole the measures being taken at the time of our visit almost nine months after the coup d'etat were completely out of proportion to any real threat against the internal security of the nation; were vindictive and cruel and are violative of every canon of accepted international practice as well as inconsistent with Chilean constitutional law and traditional practice.

Specifically as a result of direct contact with an estimated 400 political prisoners and interviews with scores of them in about a dozen prisons or places of detention we concluded that a variety of methods of torture repugnant to any human being were systematically being employed in interrogations to substantial numbers of detainees;

Almost universally prisoners were held incommunicado for as long as seven months without charges, without family visitation and without legal counsel;

Summary arrest and the most violent police methods were carried out systematically so that an atmosphere of fear and anxiety was deliberately and cynically created in the population with the heaviest burden being placed on the poor and those of modest capacity to defend themselves;

Conditions in the prisons we visited varied considerably; some crowded and unsanitary; others crude but meeting minimum standards. Because of time limitations and the distances involved we did not observe large newly established detention centers. But the protracted detention without charges, with virtually no outside contact and especially the tortures associated with the interrogation made these efforts seem somewhat beside the point;

Some prisoners we met had received summary military trials in the early days of the new government without being represented by counsel and were serving long sentences without rights of appeal; and

Credible witnesses estimated that as many as 12,000 persons were killed during the months immediately following the coup.

In addition to the many prisoners to whom we spoke, we also availed ourselves of the opportunity to speak to many persons of low and high station from all sides of the political spectrum. In particular I had extensive conversations with old friends in all walks of life—businessmen, journalists, churchmen, educators and politicians. While there were many—the preponderant portion I would say—who accepted the coup d'etat as an unavoidable consequence of the deterioration of all aspects of national life under the Allende government, all without exception rejected the use of the systematic use of torture and intimidation which we have cited. Many it should be said expressed ignorance of some of the conditions which we observed.

It seems to me that the case has been clearly made and verified by many international observers that substantial violations of human rights have and are now occurring in Chile. With full respect for the principles of self-determination and non-intervention which I strongly support, it seems to me that a continuation of these conditions demand a reassessment of U.S. policy. The principle of non-intervention does not imply a neutrality with respect to violations of human rights much less an accelerated effort in support of a regime which is insensitive to the decent opinion of mankind. If modern history teaches us anything it is that violations of human rights at home and abroad are ignored at our common peril.

Walter Lippman, I think it was who wisely observed that the problem of dictatorships is that they leave no way to go except to become more dictatorial. The way is clear for the Chilean Junta not because we think so but because it is right. No amount of invoking the crimes of the Allende regime or the conjuring up of an international communist conspiracy can justify the violation of human rights, the repression and the harsh economic measures which are the fate of the Chilean people today.

TESTIMONY OF JOHN N. PLANK

Thank you, Mr. Chairman. Your able staff member Mr. Schneider has given you a full account of the trip that he, Ambassador Dungan and I made at your request. What I want to do here is to complement that report, perhaps to supplement it in some respects.

In your capacity as chairman of the subcommittee, you asked us to go to Chile to explore the situation with regard to reported violations of fundamental human rights. I know I speak for all three members of the group when I tell you that none of us undertook the trip with firmly set notions of what we would find. Of course we had all read and heard the reports that had alarmed you and that had prompted your inquiries. We went to Chile, however, without a predetermination either to confirm or to disprove those reports, but rather to see, to investigate, to explore.

What we found in Chile you know from Mr. Schneider's account; and you know that what we found is deeply disturbing when seen from the perspective of anyone who values individual freedoms and the procedures of constitutional democracy. Chile today is a police state with all that that characterization entails in respect of restrictions on freedoms of speech, press and assembly, freedom of inquiry and instruction, freedom of association and organization; with all that it entails in respect of arbitrary arrest and detention; with all that it entails in respect of condemnable modes of interrogation and imprisonment and lack of conventionally accepted standards of due process under law.

Our observations and conclusions differ in matters of focus and detail from those of other outside groups that have visited Chile with human rights concerns; but we agree with spokesmen for such groups—the International Commission of Jurists, Amnesty International, the Women's International League for Peace and Freedom, for instance—in our assessment of general trends and prevailing climate in Chile under its current military government.

I am not persuaded that much good purpose would be served by yet another recital of statistics relating to violations of human rights. Therefore, Mr. Chairman, with your permission I shall try to do two other things. First, I want to give you some first-hand impressions and observations about Chilean conditions. Second, I want to try to present to you what I understand to be the Chilean Government's position regarding human rights violations under current conditions.

While in Chile we saw direct evidence of torture of detainees, and from the prisoners and detainees with whom we talked we heard almost countless stories of mistreatment and torture. More important, we got from the prisoners and detainees—as well as from members of their families and others with whom we talked—an almost Kafkaesque description of an atmosphere of uncertainty, arbitrariness. The basic right of *habeas corpus*—or as it is known in its Chilean form, *amparo*—was not observed, and persons could remain detained for from five to seven months without knowing the charges against them, without access to legal counsel. Anonymous or spiteful telephone calls were presumably sufficient cause to ensure the arrest of persons, some of whom with whom we talked having been arrested, released in the absence of grounds for holding them, and then re-arrested on the basis of another relation. Families of detainees and prisoners had little regularized communication with them, and governmental capriciousness in this respect was evident—there were no standard, uniformly applied regulations or procedures regarding visitation or communication privileges.

At the time we were there, there were approximately 6,000 officially recognized detainees and prisoners, a substantial number of whom were being held without specific charges. We saw several hundred of these detainees and prisoners during our stay as we visited a variety of detention centers in and near Santiago and Valparaiso. I shall be glad to respond to your specific questions about what we saw and heard in these centers.

6,000 is not in absolute terms a large number; but the violation of basic human rights is not a matter to be calculated or evaluated in statistical terms—we are talking about persons, of human beings. Even as a matter of statistics, however, the detention of such a number is by no means insignificant. 6,000 detainees in Chile, with its overall population of 10,000,000, would correspond to the detention of 128,000 in the United States with its population of 210,000,000.

Now, though, I should like to talk about a different range of human rights and their violation in Chile. I have in mind restrictions on freedom of speech, press, inquiry, instruction, assembly and association. Regimes that practice repression in these matters are always deplorable; that the Chilean regime should practice them makes that regime particularly deplorable, given Chile's long and proud history of respect for human rights and freedoms in the civil sphere.

Again I will be happy to respond to specific inquiries about what we saw and heard regarding these kinds of violations, if you wish. Here I want to stress only that the apparent tranquility one observes in Chile today has been purchased at an extremely heavy price and that that tranquility may be superficial. Visitors to Germany and Berlin in 1936 also found an apparently tranquil population, an orderly one; and many of our own United States citizens were much and favorably impressed by what they saw.

I am rushing by these subjects rapidly because I do want to spend some time on the regime's rationale for behaving as it does. Our group, I think, was favored over some others that have visited the country by being able to talk at length with high-ranking Chilean officials, including General Pinochet. I am not going to quote from individual conversations, nor am I going to ascribe viewpoints to persons. But I think my colleagues, Messrs. Dungan and Schneider, will confirm the thrust of what I am about to say.

First, as to allegations of torture, regime spokesmen insist that torture does not occur, or that if it does, it occurs only sporadically and never with official sanction. It is striking that regime spokesmen hold steadfastly to this insistence in the face of observable evidence the explanation for the insistence probably is to be found in the ways the regime sees and defines the situation in Chile, both the situation it believed it confronted on September 11, 1973 and the situation it believes it confronts today.

Recall that the Chilean military has declared that Chile is in a "state of internal war" as well as in a "state of siege." This position of course allows the authorities to behave in arbitrary ways that would not be, could not be, sanctioned under Chile's normal constitutional procedures. More important, however, is what the declarations reveal of the mental sets, the attitudes, of the ruling military representatives.

Chileans who are at present detained are regarded by the military as being quite literally "enemies"—enemies of the state and enemies of the Chilean nation. They are, therefore, seen to be traitors; and in the view of the Chilean military they are being treated more benignly than they have any right to expect.

The Chilean Government is dominated by a group of committed anti-Marxists, and in the purest sense (that is, in an altogether non-self-seeking spirit) they are embarked upon an almost holy campaign to extirpate the Marxist virus from the Chilean body politic.

If, then, and for example, a young Chilean socialist student is arrested and during interrogation is subjected to such torture as having hot needles inserted beneath his fingernails—my colleagues and I can attest on the basis of personally viewed evidence that needles have been inserted beneath fingernails—that might be justified or explained as being the result of overzealous

behavior in the anti-Marxist crusade by a subordinate official. But top-ranking officers gave us another explanation for the evidence that we saw of this particular variety of torture: we were told that Chilean Marxists were so committed, so dedicated, so fanatical, that they literally tortured themselves in order to bring discredit upon the present Chilean regime. You can see that dispassionate discussion with officers of the regime of the question of torture in Chile is difficult.

Second, members of the regime are persuaded that anyone who does not see both the necessity for and the rightness of the regime's actions from September 11 until the present is to be regarded as being either a Marxist himself (keep in mind that Marxism, Communism and Socialism tend to be synonymous terms in the lexicon of today's Chilean military, and that all the terms connote something odious) or is a Marxist-Communist dupe. Again, so convinced are regime members of the absolute rightness of their cause—and so persuaded are they that any sane observer must agree with their assessment after viewing the evidence as they present it—that dialogue and discussion are almost impossible with them. They are, in the now popular phrase, "true believers."

Third, they are convinced that by acting as harshly as they did in the weeks and months after September 11, they spared Chile a monumentally bloody and costly civil war. The deaths and imprisonments that followed upon their takeover are a small price to have paid for saving Chile from either communism or internecine strife. And in fact the military in Chile regard themselves—and are puzzled and upset when they are not so regarded by others—as being Chile's saviors.

Fourth, the members of the regime disdain—perhaps even despise—politics as being divisive, as providing too much opportunity for demagoguery and error, as being inherently corrupt and corrupt and corrupting. Political parties as agencies for the articulation of issues and the formulation of proposals for radical change, social and economic change, are viewed as disruptive. Educational institutions at all levels—primary, secondary, university—are viewed as particularly susceptible targets for Marxist infiltration and for subversion in the interest of contaminating young Chilean minds: Hence, they have been purged, their direction taken over by military officers.

Since the regime's rulers are soldiers who have spent their active lives as non-political, highly specialized and well-qualified professional officers, they tend to have a very inadequate acquaintance with the history of western political thought and organization as it has developed through the history of western civilization; and they appear to know little of democratic political processes or of the purposes of democratic politics. They have not yet acquired a coherent political organizational theory of their own—their regime, for instance, is not, at least it is not yet, appropriately to be called a fascist one; but they do tend to apply the label "Marxist" with little or no discrimination to any pattern of thought or organization of which they disapprove. They will insist that freedom of thought and expression exist in Chile today—"anyone is free to believe in Marxism if he wishes"—but they will resolutely deny anyone the right or the opportunity to try to translate his beliefs into action.

Fifth, the military now believes—or appeared to believe when we were there—that in its 6,000 detainees it had managed to capture the "hardcore" of potential troublemakers . . . and it was my strong impression that these 6,000 were, in the eyes of the military, "non-persons" unentitled even to recognition as human beings. It was suggested that the 6,000 be expelled from the country; but this suggestion was pushed aside by high-ranking officers on the ground that the 6,000 would simply regroup on the outside and would then re-enter Chile to foment discontent and disorder, if not to engage in overt armed insurrection. The conclusion of the military was that it was better to keep them imprisoned.

I have tried in these last paragraphs to convey what I thought to be the mood, the style of thinking, the premises that underlie the behavior of the current Chilean regime. I think that unless we recognize the Chilean military as having truly totalitarian pretensions—if not till now totalitarian instruments and achievements—we will be unable to understand them. They are bothered by adverse world public opinion regarding their behavior, but they have persuaded themselves that public opinion is the product of a well-orchestrated Marxist-Communist campaign. They claim to be unable to understand the reasons for criticism of their governance on any other grounds. They are upset when the Chilean Cardinal speaks out in Chile against violations of human rights, but they insist that the Cardinal has been paying too much heed to Marxist advisers.

The operational question that confronts the United States in this situation is a difficult one. Our concern must be with and for the welfare of the Chilean people. It is most unlikely that any direct pressure by the United States upon the military would have the effect of ameliorating current Chilean conditions in respect of human rights.

What might we do? Here are my urgings:

1. Do not cut off assistance that can be made directly available to the Chilean people and particularly to Chile's needy. I have in mind of course assistance in kind, assistance in the form of food, kerosene, tools and the like.

2. Do not provide military assistance to Chile.

3. Until the administration and governance of Chile's educational institutions has been returned to civilian control and has been freed from the severe ideological constraints under which it operates today, do not provide assistance to Chilean education.

One matter needs to be stressed: What the United States does in its Chile policy cannot be viewed in isolation. Our actions vis-á-vis Chile are seen and evaluated elsewhere, particularly elsewhere in Latin America.

There is a climate of cynicism abroad in today's world, and cynicism marks the attitude of many peoples toward the United States. I must urge that the United States restate its commitment to the standards of democracy and adherence to the great principles of western civilization regarding responsible governance and social and political decency. The United States cannot long remain a strong society in the absence of something more than a rhetorical commitment to the basic human and social values upon which it was founded. Nor can the United States long maintain a position of political leadership in the world in the absence of its real commitment to constitutional democracy and the rule of law.

I do not call upon the United States to intervene in any active way in Chile's internal affairs—such intervention would be in any event counter-productive regarding the goals I believe we should seek. But the United States is certainly under no obligation to help the present Chilean Government pursue goals we find objectionable or incompatible with the fundamental values we prize. I find the example of our private sector investors worth taking into account here: they do not invest in countries whose climate they regard as being undesirable, nor are they forced to invest in such countries. Why, then, should the United States taxpayer's dollar go to support a regime whose behavior constitutes a standing affront to the principles of human rights and decency for which we stand?

AN UNWISE VA APPOINTMENT

Mr. MONDALE. Mr. President, several days ago the outgoing Administrator of the Veterans' Administration, Mr. Donald Johnson, named Mr. Morris Nooner, Jr. to head the VA Regional Center at Fort Snelling, Minn. Mr. Nooner is currently Director of the Education and Rehabilitation Service at the VA. Prior to coming to the VA in 1971, he was with the Illinois Education Department.

In a letter to the President dated July 16, 1974, I strongly objected to the appointment of Mr. Nooner. I believe Mr. Nooner woefully unqualified to assume this important position. As head of the Fort Snelling office, Mr. Nooner will exert important and pervasive control over the lives of Minnesota veterans and veterans throughout the upper Midwest. While he may, as a result of his experience in Illinois and his work since 1971 with the VA, be qualified to deal with the educational aspect of VA work, I can detect nothing in his background or experience which will qualify him for VA field work—work on pensions, home loans, insurance, and other VA programs.

Furthermore, Mr. Johnson has recently submitted his resignation. I believe his resignation was motivated by intense pressure from the public and from Members of Congress and by valid criticism of the performance of Mr. Johnson as Administrator of VA. On the eve of his departure, it seems both inappropriate and unwise to permit Mr. Johnson to make this appointment. Given recent criticism of the VA, public confidence and VA performance are not well served by this unfortunate appointment.

Yesterday, the Minneapolis Sunday Tribune called upon Mr. Donald Johnson "to withdraw Nooner's appontment." In an editorial, the Tribune reviewed the "bitter bipartisan opposition from the State's congressional delegation" to Mr. Nooner's appointment and concluded:

The VA in Washington would be wise to reconsider Nooner's appointment to what is considered one of the most important and best-run VA offices in the country.

Mr. President, I ask unanimous consent that the editorial from the Minneapolis Sunday Tribune of July 21, 1974 entitled "An Unwise VA Appointment" be printed in the RECORD.

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

AN UNWISE VA APPOINTMENT

Rarely has an appointment to a U.S. government job in Minnesota aroused such bitter bipartisan opposition from the state's congressional delegation as that of Morris Nooner to head the Veterans Administration Center at Fort Snelling. Local VA officials, for obvious reason, decline to comment, but are disappointed that the job has not been given to someone more qualified and less controversial. The VA in Washington would be wise to reconsider Nooner's appointment to what is considered one of the most important and best-run VA offices in the country.

Nooner, who will be paid $34,000 for the

local post, is an old American Legion buddy of VA Administrator Donald Johnson, a former national commander of the Legion. Johnson has been under heavy fire from Congress and Vietnam War veterans and soon will be leaving the VA. Some of the most intense criticism has been aimed at the VA's Education and Rehabilitation Service, which processes veterans' student claims and benefits. Heading that service in Washington has been Nooner, who was given the job after serving as Johnson's confidential assistant. Before joining the VA in 1971. Nooner was an Illinois school official.

"I want to know for sure that he wasn't shoved out there (Fort Snelling) so that he wouldn't be moved out (of his current job) by a new administrator," Rep. Zwach said Thursday. This is strong language for Zwach, who as a member of the House Veterans' Affairs Committee generally goes along with VA policy. Zwach, along with the three other Minnesota Republicans—Quie, Frenzel and Nelsen—have asked President Nixon to hold up the appointment while Nooner's qualifications are investigated. Minnesota's Democratic Sen. Mondale and Rep. Fraser are equally disturbed. Fraser, for example, describes Nooner as a "political crony" of Johnson without previous VA regional office experience and no insurance background. One of the reasons the Fort Snelling VA center is so important is that it is one of only two VA offices in the country handling VA insurance programs.

We share Zwach's concern. An appointment to such a key position ought to be made by the new head of the VA; the departing administrator ought to withdraw Nooner's appointment.

WAYNE MORSE

Mr. PASTORE. Mr. President, amid all the political pressures of present day Washington, many of us in the Senate turned our attention from time to time to the Far West where a former colleague of ours was in the thick of a fight to return to these halls where he served for 24 years.

That figure was Wayne Morse—seemingly with all the fire—as he campaigned only a week ago with those oratorical powers with which he made this Chamber echo—while his contribution to the Nation's history filled countless pages of the CONGRESSIONAL RECORD.

Now that voice is silenced. Wayne Morse has passed from us. He belongs to the ages.

The Senator from Rhode Island did not always agree with the Senator from Oregon—but the Senator from Rhode Island never lost respect for the character and convictions and the deep humanity of Wayne Morse.

I value the editorial epitaph from the New York Times of Tuesday, July 23, entitled "The Senate's Loss." And I prize these lines:

Senator Wayne Morse of Oregon was too much the maverick . . . too much the gadfly . . . to be a hero of the Senate establishment—too much the independent to be predictable even in his proved liberalism. He was a superb public servant—not in spite of these attributes but because of them.

The death of Wayne Morse is, indeed, the Senate's loss. For we remember the deep humanity and sympathetic nature beneath and beyond the persistence of the debator—the soul of kindness and thoughtfulness.

We have known him to postpone a principal address on this floor that he might first speak words of appreciation and comfort to a Senate staff member who chanced to be hospitalized at that moment.

And if it were a colleague temporarily affected, Wayne Morse would be the first with his visit and his sympathy.

A student of the law, a teacher of the law, a maker of the law, the three score years and ten of his life Wayne Morse dedicated to service and to his fellow men.

He was a great American.

And the sympathy of all America goes to his loved ones—the wife and children of his heart and home.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business be closed.

The PRESIDING OFFICER. Without objection, it is so ordered; and morning business is closed.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 3164, which the clerk will report.

The second assistant legislative clerk read as follows:

A bill to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending question is on the amendment by the Senator from Wisconsin (Mr. PROXMIRE), for which there will be 2 hours debate.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask that the time not be charged to either side.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. PROXMIRE. Mr. President, I yield myself such time on my amendment as I may require. I understand my amendment is the pending business. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that Kenneth McLean, of the staff of the Committee on Housing, Banking and Urban Affairs, and Eleanor Bachrach, a member of my staff, have the privilege of the floor during the debate and the vote on my amendment.

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

Mr. PROXMIRE. Mr. President, this amendment would strike section 10(c) of the bill and would thereby retain authority held by the Secretary of HUD and the Administrator of the VA under present law to set standards governing the amount of settlement costs allowable under FHA and VA mortgages. This authority to regulate settlement costs on FHA and VA mortgages was enacted in section 701 of the Emergency Home Finance Act of 1970.

S. 3164, as reported, would repeal the section 701 authority. This would be a major blow to the consumer interest. It would remove from the books the only statutory deterrent to further escalation of settlement costs—costs which are already excessive in many areas of the country. When I say "excessive," I think I can document that, and I will. The average home buyer is already burdened by the inflation of housing prices and rising interests rates. As a matter of fact, the home buyer rarely, if ever, has been in such a dilemma as he is in today. The evidence has been in the drop in housing starts, the enormously high interest rates, and the great difficulty that people who want to buy a home are in now. And on top of this a high settlement cost bill—payable immediately—and that can spell the difference between his being able or unable to buy a house.

As a matter of fact, the average closing cost is 10 percent of the cost of the House. So in addition to a downpayment on the house, the home buyer has to come up with another 10 percent, which is a great burden, to pay for closing costs.

I oppose the repeal of section 701. If section 10(c) remains in the bill, S. 3164 will be an anticonsumer bill, not a proconsumer bill.

We have had a lot of talk about no-fault. The fact that this would be a bigger gouge—this is a bigger gouge—to the consumer than no-fault.

The disclosure and other provisions in S. 3164 are not objectionable, but they will be meaningless if the only real authority to control settlement costs is repealed. All the consumer groups who have testified on this legislation before the Senate and House committees have opposed the repeal of section 701.

It has been claimed that the retention of the section 701 authority is not necessary because FHA and VA already have the power to act on a case-by-case basis where settlement fees charged are in excess of the "reasonable and customary" charges for that area. Aside from the fact that customary charges in many areas are far from "reasonable," for the services provided, it is obvious that occasional intervention in particularly flagrant cases will do nothing to solve the basic problem—excessive and unjustified settlement costs overall. Let me describe the dimensions of the settlement cost problem.

DIMENSIONS OF THE SETTLEMENT-CHARGE RIPOFF

The most thorough and comprehensive study of settlement charges is contained in the HUD-VA report released on February 17, 1972. The data from the HUD-VA study was taken from over 50,000 FHA and VA transactions during the month of March 1971. The data was acquired from each FHA and VA insuring

office located in all 50 States. The study found that the average total settlement charge was $1,937 on homes with an average sales price of $19,397. In other words, settlement charges accounted for 10 percent of each residential transaction.

One of the main findings of the HUD–VA study is that there is an incredible variation in settlement charges between metropolitan areas and even within the same area. For example, for homes in the $20,000 to $24,000 price range, the HUD–VA study revealed the following variations:

Total settlement charges varied nationwide from a low of $200 to a high of $5,000;

Closing charges which are a component of total settlement charges varied nationwide from a low of $50 to a high of nearly $2,000;

Total settlement charges in Los Angeles County varied from less than $1,000 to nearly $4,400;

Closing charges, that is, part of settlement charges that are closing, in Los Angeles County ranged from about $200 to almost $1,000;

Closing charges in Washington, D.C. ranged from $487 to $1,030; and

Closing charges in Cook County, Illinois ranged from a low of $102 to a high of $723.

How much fat is there in the $14 bil- the same price, between $20,000 and $24,000. It was not houses which were different in price.

Similar variations were found in all of the areas that were studied in detail for the report.

The principal conclusions of the HUD-VA study were summarized in Secretary Romney's testimony before the Senate Banking Committee on March 1, 1972. These conclusions are quoted in part as follows:

Settlement costs and practices vary widely within the same geographic area.

State regulation of title insurance and other title related costs is largely ineffective.

In most cases, competition in the conveyancing industry is directed toward other participants in the industry and not toward the home buying public.

It is evident from these findings that serious problems exist in the conveyancing industry, and that such problems demand immediate attention in order to assure that the public is not charged more for settlement costs than is reasonable.

In response to questioning about the size of the overcharge per year on closing costs, Secretary Romney said:

I don't think there is any question but what it is hundreds of millions of dollars. That is the overcharge.

Secretary Romney's conclusions were strongly supported by Assistant Secretary Gulledge. When asked whether there was any rational reason for the great disparity in closing costs, Mr. Gulledge made the following observation:

We found . . . within the same metropolitan area you have a great disparity between the costs being charged which would tend to give some credence to your point that there is not a great deal of rational relationship. It is almost a question of what the traffic will bear.

THE TOTAL SETTLEMENT BILL

From the figures developed in the HUD-VA study, it is possible to compute the total amount of settlement charges paid by home buyers and sellers in an average year. When these figures are adjusted to include settlement charges on conventional mortgages and updated to reflect the increase in prices since 1971, the average total settlement charge on today's typical transaction comes to $2,816. There are approximately 5 million sales of one-to-two-family homes in a normal year. At an average cost of $2,800, the total settlement charge bill paid by home buyers and sellers comes to a staggering $14 billion a year.

The HUD-VA study also provided data on closing charges and settlement charge by State. When these figures are adjusted to include conventional mortgage transactions and updated for inflation, the average closing charge varies from a low of $476 in South Dakota to a high of $1,278 in New York, a variance of nearly 3 to 1 for essentially the same service. Total average settlement charges range from a low of $1,573 in South Dakota to $6,458 in Alaska, a variance of better than 4 to 1.

Now, these were on houses of virtually lion settlement bill? How much are consumers being overcharged? How much could be saved if charges were limited or the industry made competitive? I estimate at least $1.5 billion a year could be saved, or roughly 10 percent of the total settlement bill.

Mr. President, I think on the basis of all the study and the documents, that is a conservative estimate, I think it could be substantially more than that.

These potential savings are considerably in excess of the savings estimated from the no-fault insurance bill on which consumer organizations have centered much of their attention.

The largest element of the $14 billion settlement bill are real estate commissions. These total $5.6 billion a year. In today's market, the typical real estate agent's commission is 6 percent of the sales price and in some areas 7 percent compared to a more or less standard 5 percent just a few years ago. It is difficult to understand why the percentage commission paid to a real estate agent should be increasing since the average sales price of housing is also increasing faster than the rise in the general cost of living. If real estate agent commissions were rolled back to the 5 percent level, consumers would save nearly $1 billion a year.

The second largest element of the $14 billion settlement bill are closing charges. These charges total $4.5 billion a year with most of the money going to lenders, title insurance companies and attorneys. Title insurance companies alone receive a billion dollars a year in premiums. Less than 3 percent of this amount is paid out in losses. So it seems to me this could almost be construed as a 97 percent ripoff.

High closing charges are concentrated in six jurisdictions—New York, New Jersey, the District of Columbia, Virginia, Maryland, and California. These six jurisdictions account for 23 percent of all residential real estate transactions. The average closing charge in these six jurisdictions is $1,185 compared to $760 for the rest of the country. If closing charges in these six jurisdictions were to be reduced to the average for the rest of the country, the savings would be almost $500 million.

WHY S. 3164 WOULD NOT DO THE JOB

The committee report expresses the belief that the additional disclosures, the prohibition against kickbacks, and the limitation on escrow account payments contained in S. 3164 will, by themselves, eliminate excessive or unnecessary settlement charges. Aside from the assertions made by the settlement industry, there is no evidence to suggest that these reforms will be very effective in reducing excessive settlement charges.

One reason why settlement charges will not be appreciably reduced through disclosure is that the real estate settlement process is an inherently uncompetitive situation. The average person buys or sells a home only once or twice in his lifetime. He is a captive customer in the hands of the lender, the real estate agent or the attorney. He has no basis for judging whether a particular fee or charge is reasonable, particularly when the amount of the fee or charge is small relative to the total purchase price of the house. Once a buyer is committed to a particular purchase, he is in no position to question individual charges which may be tacked on by various partial participants in the settlement process. It is unrealistic to assume that consumers will suddenly begin shopping for settlement services. A few sophisticated buyers might. However, the vast bulk of consumers will go along with whatever charges are imposed as they do today.

A second reason why disclosure is inadequate is that those who provide settlement services discourage price competition. Local and State bar associations have established minimum fee schedules for settlement attorneys. The 6 percent real estate commission has become virtually standard on residential transactions.

Title insurance companies charge virtually the same premiums for title insurance. There is no reason to assume that these habits of noncompetition, built up over a lifetime, will be transformed by a disclosure law.

The proponents of S. 3164 made much of the fact that minimum fee schedules for attorneys were declared to be in violation of the antitrust laws in a 1972 decision. However, since the committee ordered S. 3164 reported, this decision was overturned by the court of appeals on the grounds that the practice of law is a "learned profession" and not subject to the antitrust laws.

The prohibition against kickbacks or other unearned fees contained in section 7 of S. 3164 is a worthwhile reform. However, there is no evidence that closing charges are lower in the States which have already declared kickbacks to be illegal. Indeed, the Maryland State Bar prohibits kickbacks and yet closing charges in Maryland are among the highest in the Nation.

In the absence of effective regulation, the net effect of the antikickback provision will be to transfer income from one segment of the settlement industry to another and possibly increase total settlement charges.

That may seem impossible, but it is a fact, and I am going to explain why it is possible that the antikickback provision may actually result in higher charges to the consumer.

For example, one of the most common type of kickback arrangements occurs when title insurance companies rebate a portion of the title insurance premium to the attorney or lender or realtor who referred the business. Prohibiting kickbacks will result in a bonanza to these title insurance companies, since there is no method for forcing the savings to be passed on to the consumer. Nor is there any provision in S. 3164 to prevent the previous recipients of kickbacks from raising their charges to the public to compensate for the reduced kickback income. If this occurs, the net effect would be to increase the total settlement bill paid by the public. This may explain why title insurance companies have been the most enthusiastic supporters of the anti-kickback provision.

STRONGER ACTION NEEDED

Given the size, scope and nature of the settlement charge problem, it is evident that the weak remedies provided in S. 3164 are simply inadequate to do the job. Stronger measures are needed. The committee has two bills before it which deal directly with the settlement charge problem—S. 2288 which I introduced on July 30, 1973 and S. 3232 which I introduced on March 25, 1974.

S. 2288 would require HUD to issue regulations limiting settlement charges on all mortgage transactions within 6 months. Some have argued that the regulation of settlement charges is inherently unworkable, that too many separate services are involved, and that local differences in record-keeping practices are too great for HUD to develop fair and meaningful regulations. Others have expressed the fear that in the long run, regulations might raise settlement charges, should the settlement industry dominate the regulatory process as regulated industries so often do.

Whatever the merits to these arguments, the fact remains that the commitee has not held in-depth hearings to explore their validity. There have been examples of reasonably successful price regulation at the Federal level. For example, the Securities and Exchange Commission, under the authority of the Investment Company Act of 1940, has issued regulations limiting the maximum commission which can be charged in connection with the sale of mutual fund shares. While real estate settlement charges are more complicated, the problem does not seem incapable of administrative solution.

An alternative to the price regulation approach is contained in S. 3232. This bill would require mortgage lenders to pay for all settlement charges which they require as a condition for making the mortgage loan. For example, many lenders require borrowers to purchase a title insurance policy which protects the lender. If the policy is required by the lender for his protection, why should not he pay for it?

If lenders were required to pay for settlement charges, they would use their superior economic leverage and sophistication to force prices down. Assuming a reasonable degree of competition between lenders in the mortgage loan market, these savings would then be passed on to the general public. Another advantage of the lender-pay approach to the home buyer is that the cost of settlement charges paid by the lender would be included in the finance charge which is tax deductible.

WHY HUD'S REGULATORY AUTHORITY SHOULD NOT BE REPEALED

It is a serious mistake to repeal HUD's regulatory authority to regulate settlement charges as is done under section 10(c) of S. 3164, which my amendment pending now would knock out. First of all, it is premature to abandon the regulatory approach before Congress has thoroughly examined all the alternative methods for reducing excessive settlement charges.

Congress has not held in-depth hearings to examine under what circumstances and under what conditions regulations might or might not be feasible. All we have are the self-serving allegations of the settlement industry that regulations are inherently unfair and unworkable.

Second, until Congress does make a final judgment on the best way for limiting settlement charges, HUD's regulatory authority under section 701(a) serves as a deterrent to prevent a further escalation in settlement charges. It also prods State and local governments into reforming real estate settlement practices. The repeal of HUD's regulatory authority will signal settlement attorneys, title insurance companies, and others that the Federal Government is no longer seriously interested in curbing excessive settlement charges. As a result, settlement charges are likely to rise to record highs, especially on FHA–VA transactions.

Third, even if we concede the argument that the disclosure and other provisions in S. 3164 might somehow lower settlement charges, the authority to regulate settlement charges should still be kept on the books to be used in the event the disclosure reforms do not work. In theory, Congress could always pass a new law at a later date if it became convinced that the regulation of settlement charges was necessary. As a practical matter, it would be most difficult to enact such a bill in a timely manner given the depth of opposition to regulation on the part of the settlement lobby.

Mr. President, I think this is clear in view of what is happening today, right now on this bill, in the very, very great difficulty we have in getting action on this amendment because of the opposition in depth of the banks, of the title insurance companies, of the title companies, and of the lawyers. With the mail that they have been able to organize that goes to Senators and their calls on Senators, I think it is clear that it would be relatively easy for them to get 34 Senators—that would be all they need—to block the possibility of our providing such legislation, this protection for the consumer, once we repeal it. That is what the bill would do unless my amendment passes.

Such legislation would be subjected to numerous delays at various points in the legislative process and these delays could cost home buyers hundreds of millions of dollars.

It is not too difficult to understand why the settlement lobby is so anxious to repeal HUD's regulatory authority. Given the negative position taken by the present Secretary of HUD, the settlement lobby cannot be worried that tough regulations are imminent. However, the mere existence of the authority on the books does constitute a threat and probably constrains the providers of settlement services from raising their charges by as much as they would like to. The repeal of HUD's regulatory authority is thus likely to cost the consumer. Even a 5-percent increase in settlement charges could cost consumers $700 million a year. These are some of the likely consequences if the Brock bill is enacted.

I ask the Senators as a matter of commonsense and as a matter of political experience why it is that this industry should be so concerned, go to all the great effort they have gone to to fight my amendment, if they are not concerned about it. If the only objection to the amendment—and this is what most Senators tell me—is that it has not been used, then we would not get the industry fighting it this way. They obviously want to preserve that $700 million that they reckon as their take and which, in my view, is a wholly unjustified and completely unnecessary "ripoff" of the home buyer, who is in such a very difficult position right now.

WHY THE BROCK BILL SHOULD BE DEFEATED

There is little controversy over the disclosure and other provisions in the Brock bill. However, if section 10(c) repealing HUD's regulatory authority is retained, the Brock bill should be defeated. The increase in settlement charges which could be triggered by the repeal of HUD's authority would substantially outweigh any marginal benefits accruing to consumers from the disclosure and other provisions. As a practical matter, most of the so-called reforms in the Brock bill are already contained in other legislation or in administrative regulations either proposed or existing. For example, the Senate has already passed a bill, S. 2101, which calls for the comprehensive disclosure of settlement charges 10 days in advance of settlement. HUD has announced its intention to implement administratively almost all of the reforms in the Brock bill. The limitations on payments into escrow accounts are already contained in the standard mortgage contracts promulgated by the Federal National Mortgage Association and the Federal Home Loan Bank Board. Thus, the so-called benefits of the Brock bill are marginal and largely cosmetic, while the potential cost to consumers arising from the repeal of HUD's regulatory authority is enormous. The Brock bill is not in the best interests of consumers and should be defeated if it cannot be amended to strike the section repealing HUD's regulatory authority.

Mr. President, I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BROCK. Mr. President, I suggest the absence of a quorum, with the time to be equally divided.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the pending amendment by Mr. PROXMIRE, on which the yeas and nays have previously been ordered, occur today at the hour of 12:15 p.m.

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

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

Mr. BROCK. Mr. President, will the Senator withhold that?

Mr. ROBERT C. BYRD. I withdraw my suggestion.

Mr. BROCK. Mr. President, before answering the specific points raised by the Senator from Wisconsin, I would like to clarify several questions that have come before this body during these debates.

First, there seems to be considerable misunderstanding over the purpose of section 701 of the Emergency Home Finance Act which the Senator from Wisconsin would preserve on the books.

Contrary to the impression left from statements made by the Senator from Wisconsin, both the language of the statute and the legislative history support the view that section 701 was in no way intended to confer on HUD and VA the authority to regulate the rates and charges made for closing and settlement services.

By authorizing and directing HUD and VA in section 701(a) "to prescribe standards governing the amounts of settlement costs allowable" in connection with FHA and VA assisted mortgage transactions, Congress was simply providing explicit congressional approval and authorization for the administrative practice that FHA and VA had developed under very general statutory authority to disapprove FHA insurance or VA assistance in a particular transaction where the charge for a particular settlement service was in excess of the "reasonable and customary" charge for that service in the area.

The language of section 701 simply does not support the conclusion that rate regulation was intended in section 701 (a). After authorizing HUD and VA in subsection (a) to prescribe "standards governing the amounts of settlement costs allowable" in FHA and VA assisted transactions, the Congress directed these two officials in subsection (b) to conduct an extensive study and to "make recommendations to the Congress with respect to legislative and administrative actions which should be taken to reduce mortgage settlement costs and to standardize these costs for all geographic areas." The implication is clear that subsection (a) was not intended to confer any authority "to reduce" or "to standardize" settlement costs.

Moreover, if there had been any intention that subsection (a) was to be utilized as a means of reducing settlement costs, at the very least subsection (b) would have been drafted to authorize a report on the further "legislative and administrative actions which should be taken to reduce mortgage settlement costs." This interpretation of the statutory language is confirmed by the legislative history of the provision.

The legislative history of the provision indicates that what was intended by this authority was that HUD and VA continue to prescribe the type of standard—that is, that charges for settlement services in FHA and VA assisted transactions be "reasonable and customary"—historically utilized by HUD and VA in examining closing costs in particular transactions.

The language of what ultimately became section 701 was first introduced in the 91st Congress by Senator SPARKMAN to carry out the recommendations of the Commission on Mortgage Interest Rates to the President of the United States. Essentially, the recommendations of that Commission were: First, HUD and VA should continue their practice of reviewing closing costs in particular FHA and VA assisted transactions to insure that the charges are "consistent with the accepted standard in each local area;" second, regulations and procedures should be developed to ensure that borrowers received reliable estimates of closing costs a reasonable time prior to closing; and third, HUD and VA should undertake a joint study recommending to the Congress steps that could be taken "to reduce and standardize" closing costs. The Commission on Mortgage Interest Rates in no way recommended that HUD or VA be given authority to regulate closing costs or to adopt any regulations that would have the effect of reducing or standardizing closing costs around the country.

It is equally significant that the report of the Senate Banking Committee reiterated that section 701, would implement the recommendations of the Commission on Mortgage Interest Rates with respect to settlement costs in FHA-VA assisted housing.

The report continues that—

> It would direct the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs, after consultation with each other, to prescribe standards governing the amounts of settlement costs allowable in any area in connection with the financing of FHA-VA assisted housing.

Equally significant is the fact that no attention was paid to this section of the bill when it was debated on the Senate floor on April 16, 1970.

Mr. President, giving a Government agency authority to regulate the rates charged by small businessmen and professional people throughout the country is not a matter to be undertaken lightly. Certainly, if this was the intention something to that affect would have been said in the committee reports or on the Senate and House floors. Statements made lead to the contrary conclusion. In addition, it seems inconceivable that if the section were intended to provide broad ranging authority to regulation and reduce these charges, such a provision would be placed in a miscellaneous section of an emergency bill and receive virtually no opposition or discussion.

POTENTIAL BENEFITS OF RATE REGULATION UNDER SECTION 701 INFLATED

Second, I wish to point out that the potential benefits of rate regulation under section 701 of the Emergency Home Finance Act have been inflated by the Senator from Wisconsin. He has estimated that at least $1.5 billion a year could be saved or roughly 10 percent of the total settlement bill of $14 billion.

This is absolutely ridiculous because the types of charges that would be covered under section 701 account for only a small portion of total settlement costs incurred in residential real estate transactions.

The Senator from Wisconsin has pointed to the 1972 HUD–VA study on closing costs as demonstrating that the average total amount of settlement costs paid in the 50,505 FHA–VA transactions examined in the study was $1,937 and that this is a relatively large sum for a home buyer to raise in addition to the down payment. Then he argues that Federal regulation of these costs under section 701 could save home buyers millions of dollars. But there are certain crucial facts that are conveniently not pointed out.

First, the majority of the costs that make up the $1,937 figure would not be covered by rate regulation under section 701—even assuming that section gave the Secretary of HUD rate regulatory authority. The language of section 701 authorizes the Secretary only "to prescribe standards" governing costs incurred "in connection with the financing" of FHA and VA assisted transactions. As HUD's July 1972 proposed regulations indicated, the types of charges covered by such regulation would be limited to such charges as credit reports, surveys, title examination, title insurance, closing fees and termite inspections. These charges account for a very small portion of the $1,937 total settlement charge figure. In fact, the HUD–VA statistics themselves indicate that on average, such charges amount to only about $207. Other settlement items, such as recording fees, transfer taxes, sales commissions, prepaid items such as real estate taxes and insurance, and points—which are a function of the interest rates—that account for the great portion of settlement costs, would not and perhaps could not be regulated.

Thus, we ought to be very clear that all we are talking about, at best, is regulating a very small portion of total settlement charges.

Second, as the HUD–VA study indicated, nationwide approximately half of the total costs that might be subject to regulation are typically paid for by the seller, not the buyer. To the extent that supporters of Federal rate regulation are arguing that settlement costs ought to be regulated because they constitute a massive initial hurdle to homeownership that must be paid by the buyer-borrower at the time of closing in addition to the down payment. the HUD–VA statistics clearly refute this argument. For example, the charts on pages 39 and 40 of the HUD–VA report indicate that in the State of Alabama, the buyer pays for only 22 percent of total closing costs; in

California only 37 percent; in Montana, 42 percent; in the State of Washington, 37 percent.

The plain fact is that the types of charges that would be subject to regulation under section 701 do not constitute a major initial burden to home ownership. Anyone who has purchased a house in suburban Maryland, for example, knows that 50 percent to 75 percent of the total charges paid at settlement by the buyer are accounted for by governmentally imposed charges, such as transfer and real estate taxes and recording fees.

For these reasons, I believe that rate regulation under section 701 of the 1970 act does not offer the promise of any real savings to home buyers. I believe the Banking Committee acted wisely in voting to remove this provision from the statute books and to adopt legislation that offers a far better prospect of dealing with the basic problems in the settlement area in a way that will effect real savings to home buyers.

SECTION 701 IS ARBITRARY—LIKE "SHOOTING IN THE DARK"

Mr. President, a third reason that I support repeal of section 701 as recommended by the Banking Committee is that I fear that if this section remains on the books it might some day be used as a basis for arbitrary and unreasonable Government regulation to harass small businessmen and individuals.

Let us look for a moment at the history of the use of the regulations under section 701 by HUD.

In July of 1972, HUD issued proposed regulations under section 701 that would have proposed maximum limits on certain charges for settlement services in FHA and VA transactions in six metropolitan areas. Regulations for other areas were to be forthcoming. Supporters of Federal rate regulation of settlement services were elated because these regulations would have forced reductions in charges by 25 percent or more. Those who would have been regulated expressed their deep concern to Members of Congress and to HUD and argued that these regulations were very unfair and, in fact, were not authorized by section 701.

Rather than examine costs and profits, what HUD apparently did was to determine maximum limits based on the charges prevailing in the low-cost and low-price areas. It was like saying that the retail price of a Cadillac in New York City ought to be based on the retail price of a Chevrolet in Detroit.

FHA Commissioner Lubar, who testified before the House Banking Committee, was very clear in stating that—

The expenses that the providers of these services incurred in order to provide the services were not ascertained and therefore were not factored into the proposed maximums.

The reasons for this were detailed by Mr. Lubar:

Attempting to regulate settlement costs nationwide—in 50 States and over 3,000 counties instead of in the fewer than 100 jurisdictions involved in the 6 metropolitan area proposal—would be virtually impossible in view of the wide variances in settlement practices, especially if due process required verification of the individual costs of all providers of services ranging from one-man law firms to giant title companies. We would need to ascertain—for each of these jurisdictions—actual settlement charges and the costs incurred in the performance of settlement services. Then we would have to determine, again on a jurisdiction-by-jurisdiction basis, what constitutes reasonable charges. Accordingly, it is apparent that, even if it could be concluded that Federal regulation of settlement costs was workable at all, such regulation could be achieved only at a very high administrative cost, widely out of proportion to the benefits that would be received by consumers.

Prof. Dale Whitman, who was intimately involved in the development of these regulations and who testified as an independent expert was equally candid about the problems with rate regulation under section 701:

Let me first deal with the potential for successful rate regulation by HUD. I struggled with this matter for a year at HUD, and I can assure you that it is not an easy problem. Prevailing practices, customs and laws vary widely. Many are inefficient, but they can not be changed instantaneously. A rate which is fair and profitable to one provider may appear confiscatory to another. In addition, the information needed to set rates intelligently is simply not available to HUD, and is unlikely to become so. HUD has virtually no data whatever on the internal costs of operating a lawyer's office, a title insurance company, or a surveying firm, and it is not easy to see any feasible means of collecting such information. Without it, HUD is essentially shooting in the dark in setting rates.

In the face of this testimony, it is clear to me, as it was to a majority of the members of the Banking Committee, that there are two equally objectionable alternatives if section 701 stays on the books as authority for Federal rate regulation in this area:

Either HUD must "shoot in the dark" in establishing maximum charges because such charges would not be based on the costs or profits of rendering the services regulated, or

A bureaucracy of potentially immense proportions must be developed to set rates on the basis of a fair and thorough examination of these costs and profits of hundreds of thousands of attorneys and businessmen who provide settlement services.

Mr. President, most Federal rate regulation in the past has been directed at the large firms—the railroads, the utilities, and the airlines. With their lawyers and accountants they are able to cope with the regulatory requirements of producing cost figures. But here we are dealing with small firms and individuals—surveyors, real estate brokers, lawyers, and title companies. It would place an intolerable burden on these people to require cost justification for their services. And, more important, the cost of the vast bureaucracy which would have to be established could not be justified by the amount of potential savings to the consumer in rate regulation. For this reason, I urge rejection of the Proxmire amendment.

SECTION 701 IS NOT THE "CLUB IN THE CLOSET"

The Senator from Wisconsin has urged that section 701 be retained on the books as a "club in the closet" to prevent a further escalation of settlement charges. But, keeping section 701 on the statute books would in no way deter increases in settlement charges or prod State and local governments into reforming real estate settlement practices. What kind of "club in the closet" is a statute that threatens arbitrary governmental action and which in no way will lead to basic reforms? Such a club will only lead to continuing efforts of the part of small businessman to insure that such unreasonable action is never implemented. Indeed, consumers should likewise fear the type of regulation proposed by HUD in 1972 under section 701 since it promises to drive virtually all attorneys, title companies and others out of the FHA–VA market if they are forced to arbitrarily reduce their charges even though the reductions are not based on any determination of their costs or profits.

Similarly, keeping section 701 on the books can only have the effect of preventing State and local governments from undertaking basic reforms and will have a particularly adverse effect on those States that may be considering effective State regulation of title insurance. If these State legislatures believe that at some time in the future HUD may be regulating title insurance charges, it is obvious that they would not seek to enact legislation that would subject title insurance companies to duplicate regulation at the State level. Time and again, we have seen how once the Federal Government moves into an area, the State and local governments draw back from exercising overlapping jurisdiction.

It is interesting to note that States which have been experimenting with settlement cost reforms, such as New York, Maryland, Massachusetts, and Connecticut, have only been dealing with the problem of payment of interest on escrow accounts. With section 701 on the books, the States simply have not passed additional laws providing for State regulation of title charges. I venture to say if section 701 is repealed we will have pressure on State legislators to enact additional title rate regulation laws. This is as it should be.

On the other hand, enactment of S. 3164 and repeal of section 701 would very definitely signal settlement attorneys, title insurance companies, and others that the Federal Government is very seriously interested in curbing excessive settlement charges. With the prospect of HUD reporting to the Congress 3 to 5 years from now on how effective the reforms of S. 3164 have been, it is likely that those who provide settlement services will be very wary about increasing their charges unnecessarily. This is particularly true since section 10 of S. 3164 directs HUD to report back to us on what further legislative measures are needed, including the possibility of rate regulation or having lenders bear certain settlement costs. In the face of serious Federal consideration of these possibilities, the enactment of S. 3164 would be much more effective in curbing excessive settlement charges than keeping an unworkable section 701(a) on the books.

I would add nothing further, Mr. President. The matter has been debated extensively. I feel very sincerely that the

Committee on Banking, Housing and Urban Affairs has presented to the Senate an enormously important and productive consumer protection bill, that can result in savings of hundreds of millions of dollars to the American home buying public. I urge the support of the legislation, and urge that this particular amendment be defeated, because I think it adds nothing; as a matter of fact, I think it is a detriment to the true reform effort which we are endeavoring to make at this point in time.

With that, Mr. President, I am prepared to vote. I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. BROCK. To be equally divided.

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

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. PROXMIRE. Mr. President, I yield such time to the Senator from Idaho as he may wish.

CORRECTION OF A VOTE

Mr. CHURCH. Mr. President, yesterday the distinguished Senator from Wisconsin (Mr. NELSON) offered an amendment. A motion was subsequently made to table that amendment. I was present at the time the motion was made, and at the time the vote on the motion was made. I voted on the motion to table in the affirmative. The motion carried.

The RECORD, however, fails to disclose that I voted on that motion. Therefore, I ask unanimous consent that the official RECORD of the Senate relating to the vote (No. 322) may be corrected to show that I was present and did, in fact, vote in the affirmative on the motion to table the amendment offered by the distinguished Senator from Wisconsin yesterday afternoon.

The PRESIDING OFFICER. Without objection, the RECORD will be so corrected to reflect the affirmative vote.

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

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

Mr. PROXMIRE. Mr. President, I yield whatever time the Senator from Washington may require.

Mr. MAGNUSON. Mr. President, I am pleased to join with Senators PROXMIRE, MATHIAS, CASE, KENNEDY, HART, TUNNEY, METZENBAUM, and HATFIELD in cosponsoring this most important proconsumer amendment.

For years, consumers have awaited significant Federal legislation in the real estate settlement costs area. Real estate settlement costs remain a flagrant area of consumer abuse—one where the consumer does not get fair prices. In the State of Washington, the settlement costs are only slightly above the national average, and yet the average closing costs to a consumer is $873 for a property transaction and the average realtor's fee is $3,351. Consumers in the State of Washington pay over $388 million each year to sustain the settlement and closing cost industry. And the State of Washington is only slightly above average for the Nation.

The six States with the highest settlement charges alone total $498 million over the national average each year. Frankly, I do not believe the consumer is getting what he is paying for in this area.

These figures demonstrate the underlying need for significant Federal reform of the settlement-closing cost industry. Many of us looked forward to the present bill with anticipation that we would finally have a chance to vote on significant consumer legislation in this area. Unfortunately, the bill on which we must address today is not all that many of us would wish.

I am pleased to see many of the provisions in S. 3164. The antikickback section, the disclosure of settlement costs to consumers, the special information booklets required of HUD, and the limitations on advance deposits in scrow amounts are all steps forward in this area. None of these provisions are revolutionary. Some have been discussed for many years. Most of them have been outlawed already in one form or another in existing statutes. On balance these provisions are worth enacting today and, in a bill by themselves, are entitled to the Senate's support.

However, S. 3164 includes another provision which has not been widely debated, which has not been widely publicized, and which represents a major step backward for the average home buyer. The committee's bill would repeal the only existing authority presently found in Federal law to regulate closing costs and fees.

I have studied the committee's report for a justification for this repealer section. The committee seemed to feel that the Federal Government should not be involved in fixing or regulating the rates charged for real estate settlement costs. Yet the committee, in another section of the same bill, states that it is important that the Secretary of HUD investigate the possibility of Federal rate regulation. The report states at one place:

> While there is undoubtedly a Federal interest in insuring settlement costs, particularly in FHA or VA transactions, are not unreasonably high, it does not follow that the Federal Government should place tens of thousands of individuals or businesses . . . Under Federal ratemaking simply because there are abuses or problems in certain areas of the country.

This statement in the report is an excellent rationale for retaining discretionary authority in the Secretary of the Department of Housing and Urban Development. Frankly, there is not adequate record to demonstrate the need for repeal of this discretionary authority in the Department of HUD. The committee itself admits that it has adequate information at this time to make any final recommendation in the rate regulation area. Yet the bill mandates final a most significant change in the status quo of Federal regulation. The case has simply not been made.

I believe there are significant adverse potential effects on consumers if we act today on a bill which retains the repealer provision. No one can deny that the present discretionary authority in HUD, although never actually implemented, has had a significant "jawboning" effect on settlement closing costs. There is significant testimony in the House and Senate hearing record by consumer advocates to indicate that settlement and closing costs have been in fact held down by the threat of Federal regulation. The most severe abuses have been restrained because of this discretionary authority residing in the Secretary of Housing and Urban Development. Repeal of this provision, enacted in 1970, can only be interpreted as a green light for accelerating inflation in the settlement costs industry.

The existing discretionary authority in HUD has provided a major stimulus for States to begin policing their own localities. Many States have made great strides in recent years in this area. The hearing record again reflects that the stimulus for this State action was the threat of Federal preemption of the area unless the States began to act in consumers' behalf. Repeal of the discretionary authority in Federal officials will remove this stimulus for States to continue internal reform.

The Federal Government should be acting to protect homeowners who depend on Government insured loans. Enactment of this repealer will be a step in the opposite direction. The Government as guarantor of home loans should be concerned about the welfare of the mortgage industry. It should also be concerned about the welfare of the home purchaser. Unfortunately, we have not taken strides to adequately protect the home purchaser. This repealer section would further tilt the Government's guarantees away from the home buyer and toward the financial institutions.

There simply is no reason at this time to change the status quo. The discretionary authority enacted in 1970 has never been used. In 1972, the HUD did make a tentative proposal. But it was quickly withdrawn because it came under violent attacks from the financial industry and the White House. Alternative proposals were never given a chance or treated seriously.

The case for standby price controls has been strongly made in recent months. Consumers who must purchase services in a noncompetitive industry have no defense. Their only hope is adequate governmental supervision of the industry. Standby controls can serve this function. The fact that the White House has indicated that it would never allow the standby control power to be used by the Secretary of HUD is not adequate reason to repeal that control. Even President Nixon has found, on occasion, that standby controls enacted by Congress were needed and should be imposed. The Senate may recall that the President was strongly opposed to the standby wage-price con-

trols of several years ago. Yet, the President, despite much rhetoric that he would never use such controls, did find it necessary to finally implement them. I believe the same situation may prevail today in the area of real estate settlement costs.

No reasons have been advanced to change the status quo. The bill mandates a 3-year study with recommendations by the Secretary of HUD. There will be adequate opportunity for Congress to consider repeal at that time if the facts accumulated by HUD reflect the need. On the other hand, if the facts accumulated by HUD demonstrate the need for direct Federal intervention, enactment of new Federal regulatory legislation may be nearly impossible.

Although supporters of the bill label it a "consumer protection bill," not one significant national consumer oriented organization endorses the bill as long as it retains the repealer section. The harm to consumers from the repealer section far outweighs the benefits gained from the rest of the bill. I ask the Senate to join with me in striking the repealer section from the bill, then we can move on to final passage.

Mr. PROXMIRE. Mr. President, I want to thank the distinguished Senator from Washington very much for his statement and for his support.

Mr. TUNNEY. Mr. President, I would like to commend the distinguished Senator from Wisconsin for his efforts on behalf of the American consumer, and offer my support to his amendment to S. 3164, the real estate settlement procedures bill. This amendment deletes section 10C of the bill which would repeal the authority of the Secretary of Housing and Urban Development to regulate settlement charges.

Although I have expressed support for most of the provisions of the settlements bill, I feel that to repeal HUD's authority to regulate settlement rates would strip the consumer of an important protection against exorbitant settlement costs. The repeal this authority would give the settlement industry the green light to raise its charges without restraint. Many of the provisions of S. 3164 are new and untried, and it therefore seems most prudent to retain the one statutory provision that does ultimately insure the consumer a fair shake. This one sure provision is the authority to put ceilings on settlement charges. Let us truly protect the consumer by passing the Proxmire amendment to delete the repeal of the HUD authority to regulate settlement rates.

Mr. SPARKMAN. Mr. President, S. 3164, the Real Estate Settlement Procedures Act of 1974, was recently reported by the Senate Banking Committee by an 11-to-2 vote. One provision of this bill, section 10(c), has been the subject of some controversy in that the section would repeal section 701 of the Emergency Home Finance Act of 1970. It has been claimed that section 701 authorizes HUD and the VA to regulate the rates and charges of persons who provide settlement services in federally assisted transactions and that the repeal of section 701 would take away this rate regulatory authority.

As the Senator who introduced the original bill containing section 701, I think the Members of the Senate ought to be aware that section 701 was never intended to provide such rate regulatory authority and the legislative history of the provision clearly bears this out. The statutory language is to "prescribe standards governing the amount of settlement costs." This language clearly did not intend HUD and VA to be rate regulatory bodies. There is a big difference between HUD issuing standards under which settlement charges should be allowed and HUD being set up as a regulatory body to set arbitrary ceilings on such things as lawyers' fees and other similar professional and service charges. It is because section 701 has been subject to such misinterpretation that I felt constrained to support its repeal when the issue was considered by the Senate Banking Committee.

Section 701 was originally introduced by me on February 16, 1970, as section 2 of S. 3442, the Mortgage Credit Act of 1970. At that time, I stated quite clearly on the floor of the Senate that in introducing the bill, I was acting to carry out the recommendations of the Commission on Mortgage Interest Rates, which had published its report in August of 1969. That Commission, of which I was a member, was charged with the responsibility of recommending ways to meet the mortgage credit crunch that prevailed at the time. The report also included the following findings and recommendations in regard to closing costs:

CLOSING COSTS

The Commission believes that special attention should be given to the question of closing costs associated with mortgage transactions. These costs at times add significantly to the burden of acquiring a home since they come on top of whatever downpayment must be made.

The Commission recognizes that institutional practices in different states and localities are the primary determinant of many of the charges made at a mortgage loan closing. Past studies have shown, however, that charges for such things as title insurance, attorney's fees, property surveys, and the like do vary considerably across the country. Buyers sometimes do not learn of these costs until quite late, and then have no time to shop around for a less expensive deal.

FHA and VA presently do pay some attention to closing charges, and attempt to protect individual borrowers from having to pay more for a particular service than is generally customary in the local area involved. The Commission believes that this practice should be continued and that procedures should be developed to provide helpful information about such charges to prospective borrowers along the lines discussed above in connection with information on borrowing costs. The Commission further urges the Congress to call on the Department of HUD and the Veterans Administration to undertake jointly a special study exploring what additional steps might be taken to standardize and reduce such costs, and to report their findings by the middle of next year.

With respect to closing costs and other fees collected in connection with mortgage financing, the Commission recommends that FHA and VA: (a) continue the present administrative practice of reviewing such costs to see that they are consistent with the accepted standard in each local area; (b) develop regulations and procedures to assure that prospective borrowers have reliable estimates of such costs within a reasonable time prior to the loan closing; and (c) undertake a joint study for submission to the Congress by mid-1970 recommending steps to reduce and standardize such costs.

The language of this report is perfectly clear that the Commission was in no way recommending that Congress give FHA and VA rate regulatory authority in this area. What the Commission did recommend was that HUD and the VA prescribe standards under which they would continue their administrative practice of insuring that FHA and VA borrowers did not pay more for settlement services than was customary in the local area involved. HUD and VA regulations provided then, and still provide now, that Federal assistance or insurance can be denied if the items of closing costs are in excess of the "reasonable and customary" standard. Section 701 was simply intended to carry out the Commission's recommendation that the Congress reconfirm this administrative practice. Moreover, the Senate Banking Committee Report specifically stated (S. Rept. No. 91–761, 91st Cong., 2d Sess.) that the section "would implement the recommendations of the Commission on Mortgage Interest Rates with respect to settlement costs on FHA- and VA-assisted housing."

I cannot understand how and why section 701 has now been so misconstrued as to be interpreted as authorizing a massive scheme of Federal rate regulation of settlement changes in federally assisted transactions. But I wish to assure my colleagues that this was clearly not intended, and that in repealing section 701 we are not taking away any rate regulatory authority from HUD but simply removing from the statute books an ambiguous section that has already been subject to too much misinterpretation.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS TO 12:15 P.M.

Mr. PROXMIRE. Mr. President, I move that the Senate stand in recess until 12:15 p.m.

The motion was agreed to; and at 11:43 a.m. the Senate took a recess until 12:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ABOUREZK).

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

The Senate continued with the consideration of the bill (S. 3164) to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement service provided in fed-

erally related mortgage transactions, and for other purposes.

The PRESIDING OFFICER. The Senate will now proceed to vote on amendment No. 1556. The yeas and nays have been ordered. There is no time for debate.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may be allowed 1 minute, and I yield one-half minute to the Senator.

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

One minute of debate.

Mr. PROXMIRE. I ask unanimous consent that Nick Miller from Senator MAGNUSON'S staff be permitted the privilege of the floor.

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

Mr. MANSFIELD. Are we voting on the Proxmire amendment?

The PRESIDING OFFICER. That is correct.

Mr. MANSFIELD. And that will be followed by the inflation cost-of-living resolution?

The PRESIDING OFFICER. That is correct.

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 Indiana (Mr. HARTKE), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. BELLMON) is absent to attend the funeral of a relative.

I further announce that, if present and voting, the Senator from New York (Mr. JAVITS) and the Senator from Maryland (Mr. MATHIAS) would each vote "yea."

The result was announced—yeas 55, nays 37, as follows:

[No. 325 Leg.]

YEAS—55

Abourezk	Hatfield	Moss
Bayh	Hathaway	Muskie
Beall	Huddleston	Nelson
Biden	Hughes	Pastore
Brooke	Humphrey	Pearson
Buckley	Inouye	Pell
Burdick	Jackson	Proxmire
Byrd, Robert C.	Johnston	Randolph
Cannon	Kennedy	Ribicoff
Case	Magnuson	Schweiker
Chiles	Mansfield	Stennis
Church	McClure	Stevens
Clark	McGee	Stevenson
Eagleton	McGovern	Symington
Eastland	McIntyre	Thurmond
Gravel	Metcalf	Tunney
Griffin	Metzenbaum	Weicker
Hart	Mondale	
Haskell	Montoya	

NAYS—37

Aiken	Dole	Nunn
Allen	Domenici	Percy
Baker	Dominick	Roth
Bartlett	Ervin	Scott, Hugh
Bennett	Fannin	Scott, William L.
Bentsen	Fong	Sparkman
Bible	Goldwater	Stafford
Brock	Gurney	Taft
Byrd, Harry F., Jr.	Hansen	Talmadge
Cotton	Helms	Tower
Cranston	Hollings	Williams
Curtis	Hruska	Young
	McClellan	

NOT VOTING—8

Bellmon	Hartke	Mathias
Cook	Javits	Packwood
Fulbright	Long	

So Mr. PROXMIRE'S amendment (No. 1556) was agreed to.

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

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

The motion to lay on the table was agreed to.

SENATE RESOLUTION 363

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to vote on Senate Resolution 363. The yeas and nays have been ordered.

As soon as there is order in the Chamber, the clerk will call the roll. The Senate Chamber will please come to order.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Indiana (Mr. HARTKE), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senator from Maryland (Mr. MATHIAS), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. BELLMON) is absent attending the funeral of a relative.

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

The result was announced—yeas 88, nays 5, as follows:

[No. 326 Leg.]

YEAS—88

Abourezk	Fong	Montoya
Allen	Gravel	Moss
Baker	Griffin	Muskie
Bartlett	Gurney	Nunn
Bayh	Hansen	Pastore
Beall	Hart	Pearson
Bentsen	Haskell	Pell
Bible	Hatfield	Percy
Biden	Hathaway	Proxmire
Brooke	Helms	Randolph
Buckley	Hollings	Ribicoff
Burdick	Hruska	Roth
Byrd, Harry F., Jr.	Huddleston	Schweiker
Byrd, Robert C.	Hughes	Scott, Hugh
Cannon	Humphrey	Scott, William L.
Case	Inouye	Sparkman
Chiles	Jackson	Stafford
Church	Javits	Stennis
Clark	Johnston	Stevens
Cotton	Kennedy	Stevenson
Cranston	Magnuson	Symington
Curtis	Mansfield	Taft
Dole	McClellan	Talmadge
Domenici	McClure	Thurmond
Dominick	McGee	Tower
Eagleton	McGovern	Tunney
Eastland	McIntyre	Weicker
Ervin	Metcalf	Williams
Fannin	Metzenbaum	Young
	Mondale	

NAYS—5

Aiken	Brock	Nelson
Bennett	Goldwater	

NOT VOTING—7

Bellmon	Hartke	Packwood
Cook	Long	
Fulbright	Mathias	

So the resolution (S. Res. 363) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 363

Resolution calling for a domestic summit to develop a unified plan of action to restore stability and prosperity to the American economy

Whereas the American economy has in recent months reached an alarming state of instability and uncertainty combining reduced economic growth, corrosive inflation, high unemployment, unprecedented high rates of interest, the decline of available loan and venture capital, serious changes in energy supply and pricing, unanticipated and destabilizing commodity shortages, and growing international economic and financial uncertainties; and

Whereas the complexity, magnitude and persistence of these difficulties has occasioned substantial disagreement as to their causes and remedies; and

Whereas no agreed program for effective specific Government programs, levels of Fed- administration, and the Federal Reserve Board, acting independently, have not yet been able to overcome these problems; and specific government programs, levels of federal spending and activities in all economic sectors continue to contribute to these difficulties; and

Whereas the American people in the face of this persistent economic deterioration are growing more dismayed and uncertain as evidenced by the widespread labor unrest and the declining financial markets of recent weeks; and

Whereas this deepening lack of confidence could magnify an already serious economic situation into a national crisis should these difficulties continue unabated: Now, therefore, be it

Resolved, That it is the sense of the Senate that the leadership of the Nation responsible for our economic well being meet together immediately in a spirit of unity to design a set of policy actions to achieve the common goal of restoring stability and growth to the American economy and confidence and prosperity to the American people.

It is imperative as in previous moments of great national need, that the two political parties, the Congress and the President, labor and management, put aside their domestic and political differences and work together in a spirit of discipline, compromise, and sacrifice for the common good.

SEC. 2. It is further the sense of the Senate that this domestic summit be convened forthwith comprised of the President, the majority and minority leadership of both Houses of the Congress, the chairmen and ranking minority members of the Appropriations Committees of both Houses, the Chairmen and ranking minority members of the Senate Finance Committee and the House Ways and Means Committee, and the Chairman of the Federal Reserve Board, together with leaders of labor and business, and such other participants as they may agree upon. They shall meet and devote such time as necessary until a plan of action is decided upon which, by its demonstration of renewed unity, direction, and purpose will gain the public support and confidence necessary to be effective in overcoming these difficulties.

SEC. 3. It is further resolved by the Senate that it stands ready to cooperate fully in the spirit of commitment and unity which the solution of this truly national problem will require of all elements of American society.

Mr. HUDDLESTON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that name of the Senator from Hawaii (Mr. INOUYE) be added as a cosponsor of the resolution just adopted.

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

Mr. NELSON. Mr. President, I would like to make a brief comment on the resolution that was just agreed to. A staff member of mine came to me yesterday and said that a resolution was being sponsored by 50 or 60 Senators for a summit meeting on the economy, and would I endorse the idea. I said, "Yes, I would be glad to sponsor such a resolution."

Then I read the resolution and discovered it was really just a little summit on top of a molehill. I do not think that is a high enough summit. Therefore, I voted against the resolution. It has long been the established practice of the Senate to do nothing about important, urgent problems. This resolution establishes a new precedent for doing less than nothing, and I think that is a very bad precedent for the Senate to establish.

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

Mr. NELSON. I yield.

Mr. HUDDLESTON. I would like to say to the Senator from Wisconsin that the purpose of this resolution is not just to ask for another meeting, another conference, another session where a group of economists sit down and expound on their theories as to the problems of our economy and what we ought to do to solve them.

It does not call upon the Members of Congress to sit down alone and to try to develop a solution; it does not simply call upon the executive branch to come forward with a plan of their own, because those who sponsored this resolution believe that a solution developed by any one element—whether it be Government or labor or industry—would be doomed to failure to start with.

Instead, we think it is important that there be a unified effort made at the formulation stage. Certainly, nobody can question that we do need a plan, a plan of action, and that is what this resolution is calling for—not just another meeting or even a meeting of the highest levels of Government, of business, and of labor but a session and a lengthy session—if the Senator has read the resolution, he noted that this group is to stay in session—until an action plan is developed. I think that is doing something.

Mr. NELSON. Mr. President, let me say everybody endorses the objective. It is a lovely, lovely motherhood resolution, but it really does not do anything. We tell George Meany, we tell the head of General Motors, and the leadership and economists, "Now, you fellows go some place, some place and sit there," as it says:

They shall meet and devote such time as necessary until a plan of action is decided upon which, by its demonstration of renewed unity to action and purpose will gain the public support and confidence necessary and effective in overcoming their difficulties.

I just say this is a lot of baloney, and I will apologize to the Senator if they come up with anything half as high as a molehill.

Mr. HUDDLESTON. I might say that the Senator from Wisconsin (Mr. NELSON) can obviate the necessity for such a meeting by bringing to the Senate within a reasonable time a comprehensive solution to the problems we are faced with.

Mr. NELSON. A group of us did sponsor such a resolution. It would require some specific action. The Joint Economic Committee would call before it a cross section of economists for their suggestions for congressional action. These proposals would then be introduced for congressional consideration. That approach or something similar to that would make some sense. But this thing is one everybody can vote for because it really does not do anything, and let us not kid ourselves.

CONSUMER PROTECTION AGENCY ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the unfinished business, S. 707, and the clerk will report.

The assistant legislative clerk read as follows:

Calendar No. 857, S. 707, a bill to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

The Senate resumed the consideration of the bill (S. 707).

Mr. MANSFIELD. Mr. President, first I want to say I am in accord with the purpose of the resolution we just passed this afternoon, and I want to commend the junior Senators who got together on a bipartisan basis and endeavored to do something about the No. 1 issue facing this country today.

I also hope that the President will read this resolution, recognizing the intent behind it, and come forth with some initiative of his own when he addresses the Nation on the state of the economy tomorrow night in California.

This is a step in the right direction, and I think those who are responsible for it, the five junior Senators, are entitled to nothing but praise and commendation from their colleagues in this body and the people of the Nation.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

(The nominations received today are printed at the end of the Senate proceedings.)

FORMER SENATOR WAYNE MORSE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that three obituaries, published in the Washington Star, the Washington Post, and the New York Times of today, having to do with our late colleague, Wayne Morse, Oregon's great dissenter, be incorporated at an appropriate point in the RECORD. I thank the distinguished Senator.

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

[From the New York Times, July 22, 1974]

WAYNE MORSE DIES; A SENATOR 24 YEARS

(By Alden Whitman)

Former Senator Wayne Morse of Oregon, a strong early critic of the Vietnam war and a longtime Congressional liberal, died yesterday of kidney failure in Good Samaritan Hospital, Portland, Oreg. He was 73 years old.

Mr. Morse had entered the hospital last Wednesday in the midst of an arduous campaign in which his chances to regain the Senate seat he lost in 1968 were considered good. He had won the Democratic nomination in a primary two months ago and was opposing Senator Robert W. Packwood, the Republican incumbent.

A Populist in the tradition of George W. Norris, Robert M. La Follette and William Jennings Bryan, Wayne Lyman Morse spoke up for many transiently unpopular causes. He opposed American military involvement in Vietnam; he fought for trade unionism and for civil rights.

As a champion of the common people, he was often raspy and blunt, but he regarded himself as a man who refused to compromise his principles or mute his voice. Many of his critics, though, saw him as an opportunist and a threat to the Establishment.

At various times in his 24 turbulent years in the Senate, Mr. Morse was a Republican, an independent and a Democrat. Neither party was wholly pleased with him, nor was he ever wholly compatible with a party label. He was impartially scornful of both Democratic and Republican Presidents, up-braiding them with his rich talent for invective.

He described an address to Congress by President Harry S. Truman as "one of the cheapest exhibitions of ham acting I have ever seen"; he denounced President Dwight D. Eisenhower as a "hypocrite"; he accused President Lyndon B. Johnson of being "drunk with power." Nor did Mr. Morse spare his fellow Senators, once calling one of his corpulent colleagues "a tub of rancid ignorance."

CRUSTY CRITICS OF WAR

Mr. Morse entered the Senate in 1945 as a liberal Republican and left it in 1968 as a liberal Democrat. His last term was notable for his crusty criticism of President Johnson and the Vietnam war, which started with a succinct "nay" that recorded his opposition to the Gulf of Tonkin resolution of Aug. 7, 1964. Only one other Senator, the late Ernest Gruening of Alaska, voted against the measure, which President Johnson used as a functional declaration of war in Southeast Asia. Mr. Morse's intransigent opposition to the war was a factor in his defeat in 1968.

From 1964 until he left office, he voted against every measure, including appropriations, that had the effect of keeping American troops in Vietnam. He also carried his campaign against the war through the country in

speeches, and he supported Senator Eugene J. McCarthy when the Minnesota Democrat sought the Presidency on an antiwar platform in 1968.

Once aroused, Mr. Morse could be a fiery, though prolix, speaker. His long-windedness did not sting nearly so much as his epithets; but he considered his outspokenness a virtue.

"It is true that I use language that people can understand," he remarked a couple of years ago. "And if I think a course of action is outlawry, I say so.

"If I say that the United States is the greatest threat to world peace, I say so simply because it is true. If the truth is intemperate, then I will continue to be intemperate."

Mr. Morse was so often in the minority and so frequently cutting in his remarks that he was known as "The Lone Ranger" or "The Tiger of the Senate." These views of him were softened yesterday as Senator Mike Mansfield of Montana, the Democratic leader, spoke of him as a "man of fierce independence" and Senator Mark O. Hatfield, Republican of Oregon, said that his "early prophecies and warnings about Vietnam were such that we all owe him a great debt."

Mr. Morse, who was a lean, trim man with a clipped mustache, sharp nose and bushy black eyebrows, was an extraordinarily hard-working Senator. He was accounted knowledgeable in labor and education matters, in conservation and in the farm problem. He was himself a breeder, raiser and trader of Devon cattle and a horseman who won many competitions.

Mr. Morse's Populism had its roots in Wisconsin, the home state of the Lafollettes, where he was born, a farmer's son, on Oct. 20, 1900. From his father, a livestock man, he learned a fear of debt and of hard times, when the cattle had to be on cornstalks and straw mixed with molasses. His father, Mr. Morse recalled, strongly counseled him on the evil of becoming beholden to others.

TAUGHT LAW AT COLUMBIA

The young man was educated at the University of Wisconsin and took law degrees from both the University of Minnesota and Columbia. He taught briefly at Columbia and the University of Oregon and then in 1931, became dean of the Law School at Oregon. Because of his position he was often called upon to arbitrate labor disputes on the West Coast, establishing a reputation for settling controversies with dispatch and fairness.

His record commended him to President Franklin D. Roosevelt, who named him a public member of the War Labor Board in 1942. He left in something of a storm in 1944, asserting that the board was too considerate of John L. Lewis, then head of the United Mine Workers.

In that year he was elected to the Senate as a Republican, but no sooner had he taken his seat in 1945 than he was jousting with party conservatives. One of his betes-noires was Senator Robert A. Taft of Ohio, who was for Mr. Morse "a symbol of reaction and defeatism." Among other things, the Oregonian vociferously objected to the Taft-Hartley bill as hamstringing trade unions. He voted against the bill, which became law in 1948 over President Truman's veto. (For most of his political life Mr. Morse enjoyed strong labor support. It diminished in 1968, when Vietnam was a crucial issue.)

In the Republican jockeying in 1952, Mr. Morse swung to General Eisenhower in order to block Senator Taft's aspirations for the nomination. But he chilled toward the general when he designated Senator Richard M. Nixon of California as his running mate, and in the campaign he spoke for Adlai E. Stevenson, the Democratic candidate.

When the Senate convened in January, 1953, Mr. Morse announced that he had shucked the Republican party and was now an independent. With a pixie sense of humor he went into the Senate chamber with a folding chair and asked where he should sit. He was eventually assigned to the Republican side of the aisle, but was stripped of his committee posts.

Three years later, after having harried the Republicans over the Korean war settlement and cold-war brinkmanship, as well as over domestic matters, Mr. Morse became a Democrat and was handily reelected to the Senate in 1956. He still, however, thrived on adversaries, including Democrats who failed to measure up to his principles.

And he did not neglect Republicans, notably Clare Boothe Luce, whose confirmation as Ambassador to Brazil he fought unsuccessfully in 1959. Mr. Morse pronounced her unfit, and she retorted that her "difficulties go back some years and began when [Mr.] Morse was kicked in the head by a horse." She was alluding to an episode in 1951 when a horse broke the Senator's jaw with a kick. Mr. Morse won his contest with Mrs. Luce, however, for she resigned the Brazil post without serving.

In the early nineteen-fifties, Mr. Morse was a strong supporter of civil rights legislation, and he continued to espouse liberal voting and other rights for blacks. He also supported increases in price-support payments to farmers and other agricultural legislation. Additionally, Federal support for education had his warm backing.

Mr. Morse irritated some of his fellow Senators by the length of his speeches. An hour for him was a mere warm-up—in one session his speeches covered 40 pages of The Congressional Record. Once, in 1953, he talked for 22 hours and 26 minutes against an offshore bill that gave title to coastal states. At the time his remarks were described as the longest continuous oration in the Senate's history.

His defeat by Mr. Packwood in 1968 was close, the margin being a little more than 3,000 votes. Mr. Morse essayed a comeback in 1971, but Mr. Hatfield was an easy winner. This year, despite his age, he was said to have had a good chance of returning to the Senate for his last hurrah.

Mr. Morse was campaigning until last Wednesday, when he was stricken with an infection of the urinary tract. He had responded to antibiotic therapy until Sunday, when his condition worsened and he slipped into a coma.

Surviving are his widow, the former Mildred Downie; three daughters, Nancy Campbell, Judith Eaton and Amy Bilich; two brothers, a sister and six grandchildren.

[From the Washington Post, July 23, 1974]

FORMER SENATOR WAYNE MORSE DIES IN PORTLAND HOSPITAL AT 73

(By David S. Broder)

Former Senator Wayne L. Morse of Oregon, a maverick who switched parties twice and fought with five Presidents, died yesterday in a Portland hospital at the age of 73.

Morse, whose characteristic independence of judgment made him one of only two senators to oppose the 1964 Gulf of Tonkin resolution that launched America into the Vietnam war, succumbed to kidney and heart failure following a urinary tract infection that hospitalized him last Wednesday.

Until then, he had been campaigning for another term in the Senate against Sen. Bob Packwood (R-Ore.), who defeated Morse in 1968 after a 24-year tenure as a Republican, independent and Democratic senator.

A new senatorial candidate is to be chosen by the Democratic state central committee.

Morse is survived by his widow, Mildred, three daughters—Nancy Campbell, Judith Mary Eaton and Amy Ann Bilich—six grandchildren, two brothers and a sister. Funeral arrangements are pending.

In his 30 years in public life, Morse, whose intellectual brilliance was acknowledged by even his most bitter critics, at various times served, supported and scorned every President of both parties from Franklin D. Roosevelt through Lyndon B. Johnson.

His feuds were proverbial, and over the years came to include almost every colleague in the Oregon congressional delegation and many of the newsmen who covered him.

Yet among those same legislators and journalists, he was respected as a gifted lawmaker, with a genuine mastery of the fields of foreign policy, education and labor legislation he made his own.

At the same time that President Johnson was in almost daily verbal combat with Morse over the Vietnam war, he chose the Oregonian to floor-manage his landmark aid-to-education bill, and when it was passed, Johnson said, "No one else could have done it."

Long before it became fashionable for other politicians, Morse espoused the view that he would not bend his personal philosophy to the needs of party regularity. He bolted the Republican party in 1952 in disgust with the Eisenhower-Nixon campaign, served for two years as an independent, then joined the Democrats, only to fight John F. Kennedy for the nomination of his new party, and to take the early lead against the Vietnam policies of President Johnson.

Describing his own philosophy as one of "constitutional liberalism," Morse said in a 1953 article that he believed his course of personal independence was "the best way I can challenge the political expediency of both parties."

It was his fiercely cultivated and bristling independence—as well as his prescience on Vietnam—that senators noted in their eulogies yesterday.

Sen. Mark O. Hatfield (R-Ore.), a man Morse jumped party lines to endorse in 1966 and against whom he ran in 1972, called Morse "a politician from a unique mold and an enigma to many people. When convinced of a position on an issue, he was not swayed . . ."

Sen. Packwood said, "Wayne Morse was a man of integrity and courage. He was never afraid to fight for his convictions." Senate Majority Leader Mike Mansfield (D-Mont.) called him "a man of fierce independence."

Wayne Lyman Morse was born on a farm outside Madison, Wis., on Oct. 20, 1900, and as a boy came under the spell of the great Wisconsin independents, the LaFollettes. He attended the University of Wisconsin, studied law at the University of Minnesota and Columbia University, and moved west in 1929 to join the University of Oregon law school faculty. Less than two years later, at 30, he became the youngest law school dean in the nation.

His debut in national life came in 1941, when Roosevelt chose Morse, already a skilled labor arbitrator, as chairman of an emergency board created to head off a nationwide railroad strike.

A marathon 38-hour final bargaining session after six weeks of hearings produced a compromise settlement on Dec. 6, 1941—the eve of Pearl Harbor.

Roosevelt then named him a public member of the War Labor Board, where he served for two years until he resigned with a characteristically sharp attack on Roosevelt and Secretary of Interior Harold L. Ickes over the settlement of a coal dispute. A letter to Ickes, complaining about him and Under Secretary Abe Fortas, showed even then Morses mastery of the acerbic style for which he became famous:

"Dear Mr. Secretary. Thank you very much for your letter of June 11, 1943. It is in keeping with and supports my low esteem of you. The attempt of you and Mr. Fortas to try to convict me, without justification, of de-

ceiving the President in order to divert attention from your gross mishandling of the coal case should be beneath you as a Cabinet officer . . . I deeply resented the 'off-the-record' statements which you made at your press conference at the time you announced your scuttling truce with [John L.] Lewis . . ."

"I am perfectly aware of the fact that for one in my subordinate position to express his complete lack of respect for and confidence in men in such high positions as you and Mr. Fortas is not in accordance with government protocol, but I could not have done less and kept faith with my self-respect," Morse concluded.

In 1944, he was back in Oregon to win his first term in the Senate, as a Republican. He came back to Washington from the campaign by car, towing his two champion saddle horses, the forerunners of a string of horses and cattle he kept at his farms in Maryland and Oregon.

In his first six months in the Senate, he made more speeches than all the other freshmen combined. The Senate reporters nicknamed him "the Five O'Clock Shadow," in grudging tribute to his habit of taking the Senate floor each day when all other business was finished to deliver himself of some views.

In his first term, he conducted a 10-hour filibuster on behalf of President Truman's veto of the Taft-Hartley labor act—a record he more than doubled in another speech in 1953 lasting 22 hours and 26 minutes.

But despite his support of the Democratic President on that highly partisan issue, Morse was no ally of Truman's. He accused Truman of "showboating" on another labor issue and denounced him from the platform in 1946 as the "head of one of the most corrupt political machines in this country."

But after his re-election in 1950, Morse joined seven other Senate Republicans in decrying Sen. Joseph R. McCarthy's tactics in investigating alleged Communists in the Truman administration, and became a major Republican advocate of Truman's civil rights program.

In 1951 Morse suffered a broken jaw when kicked by a horse he was showing at a Virginia fair. Years later, the incident was revived in the course of a memorable fight he had with Clare Boothe Luce.

Morse led a Senate battle against her confirmation as ambassador to Brazil in 1959, and when she prevailed, by a lopsided 79-to-11 margin, the playwright could not refrain from saying that her difficulties all occurred because "some years back . . . Wayne Morse was kicked in the head by a horse."

Morse indignantly returned to the Senate floor to denounce "this slanderer," and three days later Mrs. Luce withdrew from the post.

Morse's transformation from maverick Republican to maverick Democrat began in 1951, when he announced early for Dwight D. Eisenhower, but warned that "if my political party offers me a President and a platform in 1952 of only isolationist candidates, I will take a long walk . . . I have no intention of placing party above country."

Eisenhower was, of course, nominated but on Oct. 18, 1952, Morse announced he would vote for Adlai Stevenson, because "never have I been so completely disillusioned about any man as I am about Eisenhower."

A week later, he resigned from the Republican Party, and when he returned to the Senate in January, 1953, he brought along a folding chair, saying, "Since I haven't been given any seat in the new Senate, I decided to bring my own."

The Republicans quickly stripped Morse of his seniority on the Armed Services and Labor committees and he was made a junior member of Public Works and the District of Columbia committees.

His independence, vigor and combativeness quickly made Morse a leading figure in District affairs, and he emerged as one of the strongest congressional advocates of home rule for the nation's capital.

He applied his strong concern for civil rights and civil liberties to Washington's problems, vowing to do his utmost to eliminate racial segregation and deliver self-government to the people of the city.

Only days after his reelection in 1956, Sen. Morse—by then one of the hardest-working of Washington's "city councilmen" in the Senate—announced that he wanted to stay on the District Committee because it provided him a special opportunity for public service.

Even in his later years in the Senate, when he became absorbed in the Vietnam war opposition, he continued to devote long hours to hearings and speeches on District legislation.

As chairman of the Senate District subcommittee on health, education and welfare matters, the senator constantly—and often bluntly—reminded colleagues on both sides of the Capitol of his firm belief that the bulk of Washington's problems were traceable to the absence of self-government.

But Morse's battle on behalf of home rule for Washington did not keep him from criticizing the leadership at the District Building when he felt improvements could be effected there.

In the field of education, he pressed for many improvements in the public school system and was the Senate sponsor of legislation establishing Federal City College and the Washington Technical Institute.

In 1954, Morse campaigned hard for the election of Richard L. Neuberger (another man with whom he was later to carry on a personal feud) as Oregon's first Democratic senator of modern times.

He joined the Democratic Party himself in 1955 and for the next decade was the center of a series of battles over environmental, natural resources, education and labor issues, including the tideland oil fight, the Hells Canyon Dam case, the Landrum-Griffin labor reform bill and a series of struggles over federal aid to education.

In 1956, he won what was perhaps his sweetest personal victory when he ran for re-election as a Democrat and trounced Eisenhower's Secretary of Interior, Douglas McKay, who had returned to Oregon in an effort to purge the renegade Morse.

But four years later, in 1960, Oregon Democrats rejected Morse in favor of John F. Kennedy in their presidential primary.

In 1964, Morse cast the vote of which he said he was most proud when he joined the late Ernest Gruening of Alaska as the only opponents of the Gulf of Tonkin resolution, the measure that President Johnson took as congressional sanction for American intervention in Vietnam.

For the next eight years, in office and out, Morse traveled the country, tirelessly arguing against the war.

In his 1962 biography of Morse, called "The Tiger in the Senate," Portland Oregonian correspondent A. Robert Smith (who himself was periodically barred by an irate Morse from entering the senator's office) recalled that Morse had once told a Detroit reporter, "I sometimes wonder if I'm going at this a little too hard."

"But then," the senator continued, "I think of all the men and women who wish there were just one politician in Washington who would speak his mind and cast his vote honestly and freely with only his conscience to guide him."

"Maybe it's a bit brash to assume that I'm that man," Morse said, "but believe me, I'm trying to be."

[From the Washington Star-News]

WAYNE MORSE DIES AT 73; OREGON'S GREAT DISSENTER

(By Richard Slusser)

Former Sen. Wayne L. Morse, 73, as unpredictable as he was incorruptible during his 24 years in the Senate as a liberal Republican, independent and then as a Democrat from Oregon, died yesterday of kidney failure in a Portland hospital.

Morse had been campaigning in Oregon for the Senate seat he lost to Robert W. Packwood in 1968. After winning the Democratic primary two months ago he was given a good chance to defeat Packwood.

He entered the hospital five days before his death and was being treated for a urinary tract infection. He was responding to antibiotics until Sunday when the kidney failure put him on the critical list.

A man of uncommon courage in opposing policies of his party or his country when he felt the policy was wrong—which he often regarded as wrong in an immoral sense—Morse is particularly remembered for his joining with the late Sen. Ernest Gruening, D-Alaska, in casting the only two votes in Congress opposing the Gulf of Tonkin resolution which allowed the Johnson administration to widen the war in Vietnam.

Morse's intemperate remarks received many interpretations; he could surprise presidents with his tirades, and they realized, in the words of Lyndon B. Johnson, that he was a "man who has never been afraid to say what he thinks."

In one of his most publicized outbursts of opposition, Morse fought the nomination of Clare Boothe Luce for ambassador to Brazil. Although she eventually was confirmed—but resigned before ever serving in the post, Mrs. Luce said that her troubles with Morse ran back to the time when he was kicked in the head by a horse.

Morse, who was kicked by a horse in 1951 and suffered a broken jaw, retorted that her remark was "part of an old pattern of mental instability on her part."

Morse long battled for home rule for the District and during his years on the Senate District Committee took a particular interest in the city's affairs, especially in education.

He was assigned to the District Committee as a penalty assignment after bolting the Republican party and becoming an independent. Although he was one of the early senators backing Dwight D. Eisenhower for their party's presidential nomination—partly because he felt that nomination of the late Sen. Robert A. Taft of Ohio would be a backward step for the party—Morse refused to support Eisenhower after the convention. His beliefs as a Republican, he said, "no longer prevail in a Republican Party dominated by reactionaries running a captive general for president."

For punishment, Republicans stripped him of two important Senate committee posts—Labor and Armed Services—and placed him on the District Committee, where he was to become the loudest advocate of home rule, a cause in which he would not compromise to watered-down versions.

However, he did gain for the District a public college by compromising with House members who wanted a vocational institution. And in the final bill that compromise resulted in the city having both—Federal City College and Washington Technical Institute.

He next got land grant status and federal endowment for Federal City College and an assignment for the college to run a federally financed extension service in the community.

Morse also was successful in fighting for higher teacher salaries here as well as an elected school board and was a watchdog over the police and the District's licenses and inspections department.

Often he would rise early and drive from his apartment in the District to his Poolesville, Md., farm and feed his prize livestock. He also liked to go to the farm after an exhausting day in the Senate for relaxation.

Morse was a descendant of John Morse, who came to America from England in 1639 and later was a founder of New Haven, Conn. Born on a farm near Madison Wis., he was a product of that part of the country which has given the nation a number of outstanding populists like the Progressive, Robert M. LaFollette, and Democrat William Jennings Bryan and Republican George W. Morris.

Morse attended the University of Wisconsin where he majored in labor economics but also won a medal in debating. He also was the coach of the university's debating team and an instructor in argumentation.

He continued studying and teaching at Wisconsin until receiving his law degree in 1928, when he went to Columbia University on a teaching fellowship. At Columbia he was the fourth person to receive a doctor of jurisprudence degree.

He began his long association with Oregon in 1929 when he went there as an assistant professor of law at the University of Oregon. Within two years he was a full professor and dean of the law school; at the age of 31 he was the youngest dean of a standard law school in the country.

He helped raise the law school's standing so much that in 1932 he was appointed dean and director of law for Oregon's higher education system.

In the late 1930s he was a special assistant to the U.S. attorney general, supervising a staff of about 2,000 employees in a study of criminal law administration in the United States.

With his training in labor economics and law Morse became a labor arbitrator, first in Oregon and from 1938 to 1942 as the Labor Department's Pacific Coast arbitrator of disputes between shipowners and the International Longshoremen's and Warehousemen's Union.

Morse became one of the country's leading arbitrators and was prominent on mediation boards settling a number of important disputes. When the National War Labor Board was created in 1942 he was named to the board as the public member.

He resigned from the board in 1944 because he felt John L. Lewis and his United Mine Workers received too many concessions. As public member of the board Morse vigorously opposed any settlement of a labor dispute which in his judgment compromised the standing of the board.

He soon returned to Oregon and entered the Republican senatorial race and, surprising many, defeated Sen. Rufus C. Holman in the primary. Morse said Holman was a "dangerous isolationist" and Holman countered that Morse, with his organized labor support, was a "New Deal carpet bagger."

During his first term he supported the United Nations Charter, the Bretton Woods monetary agreement bill, aid to Greece, Turkey and to Europe, the North Atlantic Security Pact and federal aid to education. He opposed a $100 million loan to Spain and the Taft-Hartley labor bill.

Although he voted for an anti-filibuster ruling of Vice President Alben W. Barkley in 1949, Morse set an all-time record of 22 hours and 26 minutes of continuous speaking in the Senate in 1953 in his opposition to the tidelands bill. "I stopped when I did because I finished all I wanted to say," he explained.

Morse was known for his verbosity and could speak for great periods of time without manuscripts. "When I was teaching school," he said, "I learned that one of the best tools I had was repetition. And I found that I had to adjust the amount of repetition to the capacity of the class to learn.

"You may have noticed I sometimes seem to repeat myself a great deal in my speeches to my Senate colleagues."

Morse's slogan when he first ran for the Senate was "principle above politics," a slogan that he maintained basically the same during his last campaign:

"I shall work and fight for the restoration of integrity in our government."

Morse believed that Americans had lost their faith in Congress as well as in the executive branch's leadership. He lost faith in the executive branch himself, particularly in President Johnson's policy in Southeast Asia.

In 1966 Morse said he personally would lead a fight against Johnson's renomination in 1968 unless Johnson took a sharp turn in foreign policy. "The U.S. should stop playing its unilateral role around the world," he said. "We can't police the world."

He had campaigned for Johnson in 1964 in 14 states and was surprised by Johnson's war policy: "I didn't have the slightest idea he would out-Goldwater Goldwater."

Morse blamed "nobody but Johnson for our predicament in Vietnam." "He's power-mad," he said, "He wants to be all things to all men, and he can't and he's worried."

Opposed to U.S. involvement in the Vietnam war as being immoral and against international law, Morse remarked after the American Bar Association's house of delegates passed a resolution declaring the U.S. position in Vietnam legal:

"Apparently what the ABA needs is a freshman refresher course in international law."

His opposition to the war was credited with helping Packwood defeat him in 1968. He later ran against Sen. Mark Hatfield, R-Ore., and was defeated.

Yesterday when Hatfield announced Morse's death to the Senate he said that the late senator's "early prophecies and warnings about Vietnam were such that we all owe him a great debt."

After his last term ended in the Senate Morse was the guest of honor in a Wayne Morse appreciation night here. After many tributes were paid him Morse spoke of his future away from the Senate: "I still dedicate myself to those causes so long as I live . . . When taps sound, I will die with my boots on; I will never know the meaning of retirement."

He leaves his wife, the former Mildred Donwie, and three daughters, Mrs. Nancy Campbell, Mrs. Judith Eaton and Mrs. Amy Bilich, two brothers, a sister and six grandchildren.

Mr. JAVITS. On yesterday I was necessarily absent from the Senate when a number of Senators expressed their feelings in terms of a memorial about Wayne Morse.

Mr. President, he was one of the most gifted men I have ever known, one of the most dedicated and patriotic. He literally expended his life in the public service, especially because of the effort he threw into his opposition to the Vietnam war, in which he really had a sense of prescience as well as a sense of national dedication.

I worked with Wayne Morse also in a particular matter which he felt cost him his seat here, and that was an effort to deal with the national paralysis resulting from strikes, or the threat of it in given transportation strikes. He knew the cost in political terms and was ready to pay it. In his case, he actually did pay it, in his own estimation.

Mr. President, I rise, in friendship and in sorrow and in tribute to his memory and to his family, to express my admiration and my affection for my colleague in arms here, who served as the chairman of the Committee on Labor and Public Welfare, of which I was the ranking member, and for whom I had the deepest regard and the highest admiration.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House has passed the bill (H.R. 6485) to amend the tobacco marketing quota provisions of the Agricultural Adjustment Act of 1938, in which it requests the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 6485) to amend the tobacco marketing quota provisions of the Agricultural Adjustment Act of 1938, was read twice by its title and referred to the Committee on Agriculture and Forestry.

CONSUMER PROTECTION AGENCY ACT

The Senate continued with the consideration of the bill (S. 707) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

The PRESIDING OFFICER (Mr. McINTYRE). The Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, does the distinguished floor leader desire to call up an amendment before my remarks?

Mr. RIBICOFF. Mr. President, as I understand, the order of business would be committee amendment No. 3. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. RIBICOFF. If the Senator will yield, I will explain the amendment in 30 seconds and then yield to the Senator.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 67 strike out lines 20 and 21 and on line 25 strike out the word "and"; renumber the succeeding sections; and insert the following new section (3):

(3) if the complainant requests that his identity be protected, his complaint shall not be maintained for public inspection and copying.

Mr. RIBICOFF. Mr. President, this amendment will prohibit the CPA from making available to the public a consumer complaint wherein the complainant has requested that his identity be kept secret. Before the committee amendment, CPA could publicly disclose a complaint submitted in confidence, although the complainant's identity was not disclosed.

I believe this amendment had the unanimous support of the entire mem-

bership of the Committee on Government Operations, and I support the amendment.

I thank the distinguished Senator from Virginia.

Mr. CANNON. Mr. President, will the Senator yield 2 minutes to me in order to call up a conference report?

Mr. WILLIAM L. SCOTT. I yield.

ANTIHIJACKING ACT OF 1974—CONFERENCE REPORT

Mr. CANNON. Mr. President, I submit a report of the committee of conference on S. 39, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. McINTYRE). The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 39) to amend the Federal Aviation Act of 1958 to provide a more effective program to prevent aircraft piracy, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of July 15, 1974, at pages H6497–H6504.)

Mr. CANNON. Mr. President, I am pleased to report to the Senate that, after almost 2 years of tedious and sometimes fruitless efforts, the Senate and House have agreed on an antihijacking measure designed to more fully protect the public from aerial crime, aircraft piracy, and terrorism.

My subcommittee on aviation began working on this serious problem in the summer of 1972 as a new wave of hijacking and extortion attempts gripped the world's air transportation system. It should be noted that only after our committee had created new and tough antihijacking legislation which passed the Senate on September 21, 1972, that the administration finally adopted its own program to deal with the dangerous situation. The administration was finally stirred to action after months of lethargy by the spectacular and nearly catastrophic hijacking of a Southern Airways jet in November of 1972 which almost ended in tragedy.

Briefly, Mr. President, the conference report before us today enacts into law the tough antihijacking program that has been in effect at our Nation's airports since early in 1973 and which seeks to assure that dangerous criminals do not carry deadly weapons aboard aircraft with which they could accomplish a hijacking.

Second, the bill modifies U.S. law to bring it into conformity with the terms of The Hague Antihijacking Treaty to which the United States is a party. The treaty provides for the return of hijackers to the nation in whose territory a hijacking has occurred regardless of where in the world the hijacker is found or, in the alternative, for prosecution of the offender by the nation in which he is found.

Mr. President, S. 39 represents the first legislation to pass the Congress in more than a decade dealing with the hijacking phnomenon. We can take comfort in the fact that since the administration belatedly acted in 1973, the program in effect at the Nation's airports has been effective in preventing hijackings. This program is the heart of our bill.

With passage of S. 39 into law, I am confident that the recent record of success will continue.

Mr. KENNEDY. Mr. President, in February of 1973, I voted for S. 39, now called the Antihijacking Act of 1974. At that time, the bill contained no death penalty provision. It was my conviction then, as it is today, that strong law enforcement measures are needed to curb the incidents of hijacking and avoid the terrible risk to human life which such acts create.

However, after the bill was passed by the Senate and sent to the House, a capital punishment provision was included in the bill. This provision resembles S. 1401, the death penalty bill passed by the Senate in March of this year. My vote against that bill and my opposition now to S. 39 reflect my belief that the death penalty is wrong both in principle and as it is imposed in the United States today.

In addition to the mental suffering which the death penalty inflicts on defendants, its imposition constitutes a public denial of the sanctity of human life which can only have a brutalizing effect on our society. Not only is the death penalty wrong in principle, in my view, but its imposition has resulted in the execution of a disproportionate number of poor people and minority members, a situation which I believe to be untenable and unavoidable as long as the death penalty remains in existence. Even under the provision included in S. 39, I believe the danger exists that a jury would make a different interpretation of what facts constitute a mitigating or aggravating factor when a rich white person was involved than when a poor black person was the defendant. Statistics have shown that throughout the history of the death penalty in the United States it has, by and large, been the poor and minorities who have been executed.

It is my belief that provisions such as those contained in S. 39 which provide for jury discretion in determining what facts constitute mitigating and aggravating factors, also raise serious constitutional questions in light of those opinions in Furman against Georgia which held that discretionary imposition of the death penalty constituted cruel and unusual punishment in violation of the eighth amendment to the Constitution.

In March of this year, when S. 1401 came before the Senate, I introduced a number of amendments to it, several for the purpose of diminishing the possibility of error in the imposition of the death penalty and one for the purpose of saving the lives of individuals held as hostages in the commission of kidnapings and hijackings. None of these provisions, which passed in the Senate, are included in S. 39. It is my hope that those of my colleagues who are in favor of capital punishment but who supported my amendments to S. 1401, will today cast their votes against S. 39, because of the absence of those safeguards.

Although I realize that sentiment in Congress today favors some form of the death penalty, I would hope that in the future, those who looked to it as a simple solution to our law enforcement problems will come to realize that the brutalizing effect it has on society far outweighs whatever deterrence it might provide.

Mr. HART. Mr. President, today the Senate is considering the conference report on S. 39, the so-called Antihijacking Act of 1974. Obviously, all of us in this Chamber strongly support efforts to protect passengers on airplanes from terrorists' kidnapings. Stringent measures are needed to prevent such dangerous crimes whenever possible and to punish appropriately those who do manage to commit them.

Unfortunately, however, the conference report includes the death penalty provision provided for in the House version of this bill. As my colleagues know, I am firmly convinced that capital punishment is wrong, that it is unjustified and bad legislative policy, whatever the constitutional arguments which might be mustered for or against a particular bill.

The Senate has recently had occasion to review the entire question of capital punishment, several months ago, when we passed S. 1401, which provides for the punishment of death in a variety of situations.

It would probably serve little point here to rehearse all the arguments against the death penalty which those of us opposed to capital punishment presented to the Senate on that occasion.

Briefly, as we indicated then, there is simply no evidence that the death penalty deters any criminal behavior more than a life sentence would. Of course, any punishment has some deterrent value. No one argues that the death penalty does not deter. But the question is whether the uniquely harsh and irreversible impact of execution provides sufficiently more deterrence than imprisonment to justify the ultimate penalty.

As I stated when we considered S. 1401, we know that mistakes will be made and that innocent men will be condemned to death through human error. We know that those who have been sentenced to death overwhelmingly have been the poor, members of minorities, and the unpopular.

In America, rich, white Americans simply are not given the death penalty. In America, racial hostility and anxiety over personal safety are tragically intertwined by both events and design. Each of us can ask ourselves whether we really believe this discriminatory imposition in practice would be eliminated by any bill other than an absolutely mandatory

one—which is unacceptable for other reasons.

Third, premeditated execution itself undermines our efforts to teach the sanctity of life. In addition, the brutalizing effect of the barbaric suffering executions still involve is recognized by our insistence that the condemned be killed in private. The logical way to insure a deterrent effect would be to execute them publicly in the city square.

Mr. President, I ask unanimous consent that at the conclusion of these remarks, the introductory portion of my separate views in the report of the Committee on the Judiciary for S. 1401 be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is ordered.

(See exhibit 1.)

Mr. HART. Although the Senate did pass S. 1401, it was amended in several respects to make it somewhat less onerous. It reduces at least slightly, the chances of executions by mistake or where the circumstances called for a lesser punishment, even assuming the propriety of the death penalty in some situations.

For example, under S. 1401, there are detailed provisions for appellate review of the death sentence procedure. Further, the "aggravating circumstances," which must be present before the death penalty can be imposed, must be found beyond a reasonable doubt.

On the other hand, the provisions of S. 1401 specifying those "mitigating circumstances" which preclude the death penalty are to be "liberally construed." S. 1401, as amended, also contains the provision to permit the Attorney General to seek the safe release of hostages by indicating that such release should be considered a mitigating factor.

S. 39, as reported by the conference committee, does not even contain these slight concessions to the terrible risks of playing God with the lives of our fellow human beings.

But these differences, Mr. President, only underline the more fundamental problems I and many of my colleagues have with both measures. I only take some small confort in my conviction that the day is not far off when America will decide that we are a mature and rational enough nation to relegate executions to the dust bin of history.

EXHIBIT 1

ADDITIONAL VIEWS OF MR. HART

(To accompany the Report of the Subcommittee on Criminal Laws on S. 1401, a bill to provide a revised federal death penalty)

I. INTRODUCTION

The Supreme Court decision in *Furman* v. *Georgia*, 408 U.S. 238 (1972), casts severe doubt on the constitutionality of existing death penalty statutes. In response, the President has proposed a new death penalty.

The constitutionality of S. 1401, itself, is unclear. If constitutional, S. 1401 would still be bad legislation—unwise and unjustified.

While I favor abolition of capital punishment, I appreciate that some of my colleagues favor retaining a carefully circumscribed death penalty. *But even assuming* that a well-drafted bill might be capable of imposing death only in appropriate circumstances, S. 1401 is not such a bill. It is likely to produce *both* unjust executions, in some cases, and jury acquittals of guilty murderers, in others. Moreover, it would weaken the ability of police to rescue hostages.

For all these reasons, I oppose passage of S. 1401.

Part II of these views summarizes the background of S. 1401 and its proposed scheme. Part III examines the general case made for retaining capital punishment. Part IV, *assumes* that some form of acceptable death penalty might be drafted to apply in appropriate cases, and examines the defects of the particular approach taken by S. 1401.

II. BACKGROUND AND OPERATION OF S. 1401

The Committee report outlines the decision in *Furman*. Briefly, a five-four majority held that the death penalty, as imposed under the procedures before the Court, constituted "cruel and unusual punishment" in violation of the Eighth and Fourteenth Amendments.

The full import of the decision is unclear. Each justice in the majority wrote a separate opinion. Justices Brennan and Marshall found execution a *per se* violation of the Eighth Amendment. Justice Douglas found he did not have to reach that question and held only that the present system's discriminatory impact made the punishment "cruel and unusual." But there are strong indications he would join Justices Brennan and Marshall in striking down any death penalty.

Accordingly, attention has focused on Justices Stewart and White as the critical votes for any statute which the Court might uphold. Both stressed the rarity of imposition and the arbitrary manner in which it was imposed.

Following *Furman*, the search commenced for a death penalty which might be made acceptable to a majority of the Court. Several States have taken the straightforward approach of a "mandatory" death penalty. Execution would be automatic for an enumerated list of offenses; anyone convicted of one of these offenses would be killed, regardless of the circumstances.

The problem with this approach is obvious. There is no room at all for the jury to consider mitigating circumstances or to exercise any mercy. Such a Draconian law not only revolts our sense of justice, but also would produce jury "nullification" through either conviction for a lesser-included offense or outright acquittal. Indeed, it was because of this nullification problem at the turn of the century—as society's sense of justice evolved—that mandatory death penalties largely were abandoned for the modern discretionary approach.

Apart from the impact of jury nullification on law enforcement, the barbaric nature of strict mandatory death penalties was well summed up by Justice Blackmun in his *Furman* dissent.

Such legislation is regressive and of an antique mold, for it eliminates the element of mercy in the imposition of punishment. I thought we had passed beyond that point in our criminology long ago. (Id. at 413.)

S. 1401, then, is an answer offered to both *Furman* and the criticism of mandatory penalties.

Provisions of S. 1401

How would S. 1401 work? The bill specifies a list of mitigating and aggravating factors the jury may consider, but does not permit discretion to weigh those factors or to consider others. If any mitigating factor is found, death is precluded. If no mitigating factor is found and any one of the aggravating factors is present, the sentence must be death.

S. 1401 permits consideration of only five mitigating circumstances; the offender is under 18 years of age; his participation was peripheral; his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the law is "significantly impaired"; he acted under unusual and substantial duress; or (where death actually results) the risk of death was not foreseeable.

Two groups of aggravating circumstances are enumerated.

In the case of "national security" crimes, they are that the defendant has been convicted of a similar capital crime; or knowingly created a grave risk of substantial danger to the national security; or knowingly created a grave risk of death to another person.

For other capital offenses, there must be a homicide and a finding that

The homicide was committed in the course of committee treason, espionage, sabotage, skyjacking, kidnaping, arson, escape from custody; or

The homicide was committed in an especially heinous, cruel or depraved manner;

The homicide was committed for gain;

The victim was a President, Vice President, President-elect or Vice President-elect, Supreme Court Justice, visiting head of state or high foreign official, federal law enforcement officer (broadly defined) or federal corrections officer, killed while performing his duties or because of his official status.

The Committee Report defends S. 1401 on two levels. First, the report reasserts the traditional grounds for retaining the death penalty; that it is necessary (1) to deter other murders; (2) to indicate society's condemnation of heinous acts; and (3) to incapacitate murders so they cannot strike again.

Proponents of S. 1401 also claim it meets the constitutional and policy pitfalls raised in *Furman*. They suggest that unlike other approaches, it is a fair, rational system which would permit execution only in appropriate cases and would avoid the dangers of jury nullification. I believe S. 1401 would do neither. And, of course, I challenge the basic case advanced for retaining the death penalty.

III. THE CASE AGAINST CAPITAL PUNISHMENT

The reasons why I find the arguments for capital punishment unconvincing can be briefly summarized. They are examined in more detail in the appendix to these views.

What do we know about capital punishment? We do know that mistakes will be made through human error and innocent men condemned to die. The Committee claim that this danger has passed is unconvincing.

Second, we know that those who have been sentenced to death have overwhelmingly been the poor, the minority member, and the unpopular. Rich, white Americans simply are not given the death penalty. In America, racial hostility and anxiety over personal safety are tragically intertwined by both events and design. Each of us can ask ourselves whether we really believe this discriminatory imposition in practice would be eliminated by any bill other than an absolutely mandatory one—which is unacceptable for other reasons.

Third, the very act of premeditated execution is itself a denial of the sanctity of life to which appeal is made by proponents of capital punishment. While we teach people that life should not be taken, executions, at bottom, teach that the state will sanction killing if the benefits are sufficient. Moreover executions today still involve barbaric suffering.[1] Indeed, the brutalizing effect of such horror is recognized by our insistence that men be executed privately, rather than publicly in the city square. That would be the logical way to ensure the purported deterrent effect.

Footnotes at end of article.

There have also been cases of "suicide murders" induced by the existence of the death penalty; that is, persons who wanted to take their own lives, but were unable to do so and therefore killed so they would in turn be killed by the state.[2]

Surely, in light of these considerations, this awesome ultimate penalty by which we play God can be justified only by some significant demonstration that it is needed to protect human life where other punishments would fail. While those who favor the death penalty ask *for conclusive proof* it is not necessary, *we need only ask for any substantial evidence that it is;* none can be provided.

Deterrence

The Administration concedes that deterrence is the principal rationale for the death penalty.[3] But is it a *necessary* deterrent? An affirmative answer to that question requires more than the simplistic observation that since people fear death most, it must be an effective deterrent.

This appeal to "intuitive logic" often obscures the real issue. No one disputes that capital punishment has *some* deterrent effect. Presumably all penalties do. That simply is not the question. The point is whether it has a *sufficiently greater deterrent effect than life imprisonment*. In other words, is there any substantial demonstration that a significant number *of those murders who would be deterred by any punishment* would be deterred by death, but not by life imprisonment? If not, how do we justify imposing the ultimate penalty with its risks of irreversible injustice and its other costs to society?

No compelling case has been made that death is a greater deterrent. The evidence simply is not there. With rare unanimity, the studies show no higher criminal homicide rates in states without the death penalty than in those which retain it. In response to the possibility that figures of this kind may reflect divergent social and cultural factors other than capital punishment, more sophisticated studies have compared the rates in contiguous states where history, geography and social and economic conditions are similar. The results are the same. There is no indication the death penalty affects the rate of criminal homicide. Similarly states show no rise in murders once they abolish the penalty, nor a decline if they reinstate it. The Committee critique of the studies is fallacious.[4]

Acknowledging the absence of any data to support the death penalty, both the Justice Department and the Subcommittee Report emphasize instead "empirical evidence" based on the personal impressions of law enforcement officials and statements by individual offenders. These prove little upon closer examination.

One Administration witness, testifying before the House Judiciary Committee cited an American Bar Association study showing instances in which criminals did not carry guns, or kill potential victims because of the death penalty. In fact, no such study exists or was ever made.[5]

In a recent statement of the Department's position, Attorney General Richardson admitted that it is impossible to show with the available statistics that capital punishment has a greater deterrent effect than life imprisonment, but added:

"Statements by offenders concerning the effect of the availability or non-availability of the death penalty upon their actions *do demonstrate* that in certain instances the death penalty is, in fact a greater deterrent." [6]

With all due respect to the Justice Department, there have been no such reported statements by offenders, to our knowledge, which actually "do demonstrate" that the death penalty is a superior deterrent to life imprisonment. Not only is the motive of such statements suspect. They do not preclude the possibility that those offenders also would have been deterred from carrying loaded weapons, or taking life by the threat of life imprisonment if that had been the highest penalty then available in their state.[7] And, of course, the experience of officials is based primarily on the statements of offenders.

The Attorney General's statement goes on to add:

"Moreover, logic demonstrates that the death penalty will have a material deterrent effect on some potential offenders in some instances."

Examples are then given of such premeditated crimes as kidnapping and skyjacking. But this is to lapse into the irrelevant issue of whether it is a deterrent at all, rather than the pertinent question of whether it deters more than life sentences.

Incapacitating offenders

Obviously, death does incapacitate, with finality, both those guilty of murder and those who might later have been found to have been innocent. But it often costs the government more to conduct a capital trial, keep a man in the special facilities on death row, and defend appeals, and then execute him, than it would have cost to have imprisoned him for life.

Moreover, despite popular myths to the contrary, the facts show that those sentenced to life imprisonment are no more likely to commit another killing than are members of the general population. Therefore, however much our emotional reactions might tug in the opposite direction, there is no more rational basis for executing someone convicted of homicide, so that he won't *kill again*, than there is to execute a bank robber or someone who has committed assault and battery, so that he will *not kill the next time*.

Retribution

It is easy to be unfair to advocates of capital punishment and to characterize their "retribution" argument as a primitive desire for blind vengance. The claim is more sophisticated. Their first point is that the death penalty offers strong condemnation by society of the most heinous criminal actions, without which expression of revulsion there would be great pressure for private reprisals and vigilante justice. Proponents also suggest that providing the most stringent penalty is necessary in order to demonstrative the intensity with which the act is condemned and thereby reinforce the internalized social restraints which help prevent others from such behavior.

There is no greater evidence of resort to private reprisal or vigilante justice in abolition states than in those with capital punishment. Moreover, the argument is a *non-sequitur*. To say society can express its utmost condemnation only by imposing its most severe penalty does not necessarily tell us what the upper limit of severity should be—or that it must be the death penalty. If life sentence with no parole were reserved for the most heinous culpable acts, then imposition of that penalty would likewise reinforce the community's internalized sanctions. Finally, the most brutal murders are quite often committed by precisely those deranged or incapacitated persons who are unlikely to be executed in any event.

This, in summary, is the case against retaining capital punishment. It rebuts the Subcommittee's assertion that "necessity" justifies the death penalty in the interest of protecting society.[8]

But a further word is in order in light of the Administration's defense of S. 1401. Even if there is more merit than I have found in the deterrence and retribution accomplishments of the death penalty, one thing is clear. Neither is plausible unless there is a substantial likelihood it will be imposed. Yet most homicides will not be capital offenses under S. 14041. The Justice Department has repeatedly emphasized that it would only apply in an extremely small number of instances.[9]

In the case of deterrence, we are concerned with homicides committed by rational persons who do premeditate and who include in their calculations the possibility of capture and punishment. Are those individuals not likely to believe that if caught, they can establish one of the mitigating circumstances in S. 1401 and escape the death penalty? [10] Similarly, we have noted that many of the most shocking homicides will not elicit the maximum condemnation of the law under any but an absolutely mandatory death penalty. In short, even the inadequate efforts in S. 1401 to prevent executions offensive to our conscience weaken further the claims of deterrence and retribution.

Thus, S. 1401 underlines the question whether advocates of capital punishment can simultaneously achieve its retention in a form which is *effective*, and *constitutional*, and *just*. An examination of S. 1401 suggests the answer may well be in the negative: that our colleagues either will have to abandon the death penalty or will have to pass a law which is constitutionally defective or one which disregards the palpable injustices that may result.[11]

But this question need not be answered conclusively before acting on S. 1401. A substantial number of our colleagues still favor retaining the death penalty for narrowly circumscribed situations if a workable, just bill can be devised. *The remainder of these views are particularly addressed to those Senators and assume such a statute is both desirable and attainable*. Even within that framework, it is clear that S. 1401 is not the appropriate vehicle.

IV. LEGISLATIVE DEFECTS OF S. 1401

There are serious policy defects in S. 1401. It excludes considerations relevant to determining whether execution is appropriate and poses a substantial risk of unjust executions. For that reason, it also encourages juries to acquit in the face of clear evidence of guilt. And it poses added dangers for those taken hostage by criminals.

Precluding considerations of mitigating circumstances

The Committee states that to "preclude the consideration of any mitigating circumstances that might justify a lesser punishment in a particular case [would be] *clearly unacceptable*". P. 14. (Emphasis added.) I agree. Yet by permitting the jury to consider only five mitigating factors, S. 1401 would do just that.

What additional mitigating factors might be relevant in a particular case? We need look no further than S. 1, the comprehensive criminal code reform bill introduced by three distinguished members of the Subcommittee, Senators McClellan, Ervin and Hruska. The death penalty in that bill, Section 1–4E1, includes several circumstances which go beyond those in S. 1401.

S. 1401 only permits the jury to consider whether the defendant acted "under unusual and substantial duress." S. 1 permits the jury to determine if:

(i) The offender acted under unusual *pressures or* influences *or* under the domination of another person. (Emphasis added.)

Duress involves coercion. The provision in S. 1, which includes the impact of influence or domination, as well as "pressure," clearly permits the jury to consider far more than it may under S. 1401.

Second, while S. 1401 only permits a showing the defendant was less than 18 years of age at the time of the offense, S. 1 would permit a showing that he was emotionally immature.

Footnotes at end of article.

Third, S. 1 permits the jury to consider the fact the offender has no "significant history of prior criminal activity." This may not be considered under S. 1401. (Prior conviction for certain offenses *may be an aggravating factor under S. 1401,* but no prior record is required to trigger the death penalty if another aggravating factor is found.)

Commenting on the greater flexibility in S. 1 for the jury to consider these mitigating circumstances, the Attorney General did not dispute their relevance in some cases. Rather, he replied that since such considerations do not preclude the death penalty under S. 1, they "can be drawn with greater breadth," than can those in S. 1401.[12] It is true that under S. 1, the jury's findings on these considerations do not automatically dictate the sentence. But that is not the point here. The important fact is that when they introduced S. 1, Senators McClellan, Ervin and Hruska indicated their appreciation that these considerations might be relevant in some circumstances to whether the death penalty was too harsh or unjust. And the Justice Department apparently does not disagree.

Yet these considerations would be *excluded* from the jury's consideration in the sentencing proceeding under S. 1401.

In addition to S. 1, it is instructive to consider the *Report of the National Commission On Reform Of The Federal Criminal Laws,* commonly known as the "Brown Commission" after its chairman, former Governor Pat Brown of California. The Brown Commission Final Report offered alternative approaches on capital punishment: abolition of the death penalty, and a proposed death penalty statute should Congress opt for its retention. Their proposal *required* the court to impose a life sentence rather than death, whatever the jury recommendation, if the judge found:

"(c) Although the evidence suffices to sustain the verdict, it does not foreclose all doubt respecting the defendants guilt."[13]

Why was such a provision included? First, it must be remembered that jurors are instructed they may find the prosecution's case "proved beyond a reasonable doubt", even though they are not absolutely certain of the defendant's guilt and retain some ill-defined nagging doubt that the Government's version of events is the truth.

The elements of a capital offense not only may involve proof of objective facts by circumstantial evidence, but also may involve determinations about subjective states of mind and motive: To what degree were the defendant's mental capacities impaired? Did he have treasonous intent? What threat to his own life or limb did he perceive? To say the least these questions involve terribly subjective determinations for the fact finder. Even when a judge believes there is "proof beyond a reasonable doubt," in the sense that he cannot articulate clearly any specific question which remains unanswered, he may still feel a very strong sense of uneasiness that the defendant's assertions have substance. In those few cases, should the court be compelled to send the defendant to his death?

It seems clear that this is the distinction made in the Brown Commission's proposed section on grounds which would preclude the death penalty. There is no comparable provision in S. 1401.

Next we come to several mitigating circumstances which are expressly provided for in both the Brown Commission proposed statute and in S. 1 but which do not expressly appear in S. 1401. Under the Brown Commission proposal and S. 1, the jury could consider a variety of factors relating to the offender's state of mind at the time of his crime:

If he believed the circumstances morally justified or extenuated to conform his conduct to the law was impaired as a result of mental disease or defeat or intoxication;

If he was under the influence of extreme emotional or mental disturbance;

If he believed the circumstances morally justified or extenuated his act and that belief was plausible by ordinary moral standards.

Together, the provisions would cover not only ongoing mental conditions but also momentary passion, extreme provocation, emotional distress, or justification. The only comparable consideration in S. 1401 is a variation on the first of these. Section (f)(2) of S. 1401 permits the defendant to show that:

His capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.

Since this does not require that the impairment result from a mental disease or defect or intoxication, the Justice Department claims it is broader than the corresponding provisions in other proposed statutes. It suggests that Section (f)(2) comprehends provocation, emotional disturbance, actions of passion, and a defendant's belief his action was morally justified; each might be sufficient, in appropriate cases, for the jury to find his ability to appreciate or conform his behavior had been "significantly impaired."[14] In short, the Department acknowledges these factors, too, would sometimes be relevant to a decision on the death penalty, but prefers they be weighed in the process to determining the defendant's capacity to appreciate and conform his conduct. This approach raises several problems.

Though modified, the provision closely parallels the formulations used for legal insanity and other tests of mental condition. Is it likely that defense counsel will be apprised of its intended breadth from a plain reading of the statute? And what other factors, which we may have failed to raise in our letter to the Attorney General, could defendants establish in order to invoke Section (f)(2)? Moreover, assuming defense counsel somehow learns of its intended coverage, how easy will it be to obtain a jury charge from the court based on this kind of informal legislative history, which does not, for example, appear in the Report. In fact, the Report, itself, states that the provision requires a showing the defendant's "mental capacity" was impaired. The phrase "mental capacity" connotes an ongoing mental condition even more; it hardly suggests that a plausible belief of moral justifiaction might be sufficient, as the Justice Department contends.[15]

Finally, even assuming a jury charge which spells out the factors the Attorney General says may be considered under Section (f)(2), how is the juror to perform the mental gymnastics such determinations would require? Under this approach the juror must decide not merely whether the defendant plausibly believed the homicide was morally justified. He must simultaneously determine whether that belief was sufficient to "substantially impair" the defendant's capacity. Does that depend on the intensity with which the belief was held? On the nature of the presumed moral justification? On how "plausible" the belief was by common moral standards? Or may the jury consider a mixture of all three aspects? The complexities are overwhelming.

This last mitigating circumstance would best be left a separate element. If the standard, in the Attorney General's phrase, is "too loosely drawn", then we would revise it to read as follows: "The offense was committed under circumstances which the defendant believed to provide a moral justification, or extenuation, reasonable, in fact, by ordinary standards or morality, for his conduct."

Eliminating the reference to "plausible" and changing the standard to "reasonable" should make that consideration, in and of itself, a sufficient ground to preclude the death penalty. After all, this would not mean the offender would go free. He would face life imprisonment. It would merely mean that if he reasonably thought his behavior was morally justified or extenuated, we would not kill him.

As of the other types of considerations not expressly listed in S. 1401, they should be spelled out as examples of circumstances which might justify a finding under Section (f)(2) of impaired capacity. So amended, Section (f)(2) would read: "His capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired by (a) emotional or mental disturbance or distress; (b) provocation; (c) intoxication; (d) mental disease or defect; (e) other causes; but not so impaired as to constitute a defense to prosecution."

A third omission from the list of mitigating circumstances is the absence of any provision that the death penalty may be inappropriate because of the defendant's cooperation in releasing hostages unharmed. Death is mandatory if a homicide occurs in the course of a kidnaping, skyjacking or prison break, unless one of the five mitigating circumstances is present. Thus, any person already substantially involved in such a homicide and to whom none of the present mitigating factors apply, literally has nothing to lose. If caught, he faces automatic death.[16] It must be remembered, the bill is premised on the offender's awareness of the penalties.) There is no incentive for him to let any hostages free or permit a plane to land safely. If acts which threaten innocent lives seem to serve his escape, there is no leverage for the police to convince him to release them unharmed.

The Justice Department rejects any consideration in this area, because it "appears desirable on its face [but] might serve to encourage certain types of offenders to act with impunity, knowing that if they later . . . release a hostage, regardless of what they may have done before, the provisions of S. 1404 would require that the death sentence not apply to them."[17]

But again, one must consider a rational murderer, not subject to some other mitigating factor. Is he really likely to kill persons he otherwise would not have slain merely because he can then "gain" life imprisonment by taking and then releasing hostages? We find a different scenario far more likely: Someone is killed at the start of a prison break attempt, or a skyjacking; the perpetrators subsequently hold guards or passengers hostage and face the questions whether to kill them, too—in order to delay or avoid capture—since apprehension means certain death. We leave it to our colleagues to ask themselves which situation poses the greater danger to innocent human life.

Next, there is the more fundamental question whether any enumeration can exhaust the factors which may be very relevant in a given case. Chief Justice Burger's dissent in the *Furman* case, joined by all his dissenting colleagues, emphasized the difficulty of trying to encapsulate all the mitigating circumstances a jury might properly take into account:

However, Mr. Justice Harlan's opinion for the Court in *McGautha* convincingly demonstrates that all past efforts "to identify before the fact" the cases in which the penalty is to be imposed have been "uniformly unsuccessful," 402 U.S. at 197. One problem is that "the factors which determine whether the sentence of death is the appropriate penalty in particular cases are too complex to be compressed within the limits of a single formula. . . ." (citation omitted) 408 U.S. at 401.

I appreciate that the constitutional theory of S. 1401 requires an effort to spell out those circumstances insofar as possible. But Congress still can recognize its inability to cover

Footnotes at end of article.

in a short list all the factors which may cry out for mercy in some future case, even though such situations do not now come to mind. Under the Brown Commission statute, in addition to the specified list of factors, death would be precluded upon a finding: "there is some other compelling circumstance which would make sentence of death unjust."

For it to apply, a specific circumstance would have to be raised explicitly by the defense and there would have to be adequate information in the record to support a finding that the factor was present. Moreover, the jury would have to agree upon such a finding and agree that it, alone, rendered the death penalty inappropriate. This would have to be articulated in a special verdict. In contrast, the procedures involved in *Furman* provided no way of telling what factors had influenced any particular juror, to what degree it influenced him or whether the other jurors agreed.

Finally, as to the aggravating factors listed in S. 1401, there is no requirement that they be proved beyond a reasonable doubt before the jury or judge could return a special verdict. The Attorney General rejected this suggestion on the ground that the standard presently in the bill—"preponderance of the information"—is the one used in all Federal sentencing proceedings,[18] I hope my colleagues are more willing to recognize the unique nature of a proceeding which might produce an execution.

Capital punishment is terribly irrevocable; men may be sentenced to death for murders they did not commit, *or for murders they committed under circumstances different from the good faith findings of the jury.* The possibility of error, present even when proof beyond a reasonable doubt is required, multiplies incalculably when findings which condemn a man to death need only seem more likely than not.

The same kinds of subjective determinations already noted in regard to mitigating circumstances are also involved in any finding of some aggravating factors in S. 1401. Nor is the guaranty of appellate review a significant safeguard, since findings can be overturned only if "clearly erroneous." Should we take a man's life if the fact finder is not at least sure to a moral certainty that the aggravating factor which we say warrants death is, in fact, present?

Danger of jury nullification

In its present form, S. 1401 also poses a risk of jury nullification. Where the ability of the jury to weigh mitigating circumstances is sharply restricted, any jurors determining guilt who are concerned about a possible death sentence will feel greater pressure to hang the jury, convict on a lesser charge, or even acquit despite strong evidence of guilt.

This concern could occur for two reasons: (1) jurors willing to find proof beyond a reasonable doubt according to the court's charge, may still have some malaise about the correctness of that verdict; (2) jurors confident about the verdict of guilt may feel strongly, on the basis of what they have seen and heard at the trial, that a death penalty would be unjust.

The Justice Department claims this danger is eliminated by the separate trials on guilt and punishment. It argues that since the evidence on punishment would not be offered until the second hearing stage, "this should be enough to avoid the inducement of [jury nullification]."[19]

But would it be enough? The trial jury would usually be aware it was a capital case. Either they would also be aware of the nature of the sentencing proceeding under S. 1401, or they would not.[20]

If the jury *is* aware of the sentencing procedure, then it knows it may not even sit at the second stage, given the options under Section (b). And the jurors know that if they do sit on the question of punishment, their ability to show mercy will be curtailed by the quasi-mandatory scheme of S. 1401. Thus, there would be an inducement to implement any qualms about the appropriateness of the death penalty for that particular defendant by preventing a murder conviction at the trial stage.

If the trial jury *is ignorant* of the sentencing procedures when they commence their deliberations on guilt, then there is still a danger of nullification. For that is the only way a juror who strongly feels death is inappropriate can be sure that his view will prevail and he can avoid complicity in what he regards as an unjust execution. The fact that jurors should not vote on guilt for that reason, under the law, is not the point. Jurors do.[21]

Conclusion

For those who seek a carefully drawn death penalty statute which would avoid unjust results, and provide an effective deterrent, without distorting the criminal justice process or endangering innocent lives, S. 1401 raises many serious problems. I hope my colleagues will consider the advice of a witness at the subcommittee hearings *who is an advocate of capital punishment and was an advisor to the Florida Commission created to draft a post-Furman statute.* He concluded that S. 1401 would not accomplish its own professional aims and suggested that the Committee "go back to the drawing boards" to see if a better bill was not possible.[22]

FOOTNOTES

[1] There is both the mental anguish of anticipation and the physical pain of the execution, itself. We hope our colleagues do not assume that modern executions are momentary and painless. I urge them to read the responsible accounts of several recent executions in the appendix to these views.

[2] See appendix at 4.

[3] Letter from Attorney General Richardson to Senators Hart and Kennedy (October 8, 1973) P. 1. (The questions sent to the Attorney General and his response are reprinted in full in the appendix to these views.)

[4] These studies, and the Subcommittee Report's comment on them are examined more fully in the appendix at 2–3.

[5] Upon close examination, one learns this reference, by now misleading reproduced in several sources, refers to assertions made without documentation by a state district attorney at an ABA symposium on the death penalty. See testimony of Henry Peterson in Hearings on Capital Punishment before Committee on the Judiciary, U.S. House of Representatives, 92d Cong., 2d sess. (1972) at 33–34; and H. Bedau, "The Nixon Administration and the Deterrent Effect of the Death Penalty," 34 Pitt. L. Rev. 557 (1973) (tracing the emergence of this "study").

[6] Richardson letter, *supra* note 4 (emphasis added) at 2.

[7] The significance of these personal "testimonials" is discussed in the appendix at 3–4.

[8] "In providing its members protection, *society must do what is necessary* to deter those who would break its laws and punish those who do so in an appropriate manner." Subcommittee Report, p. 7 (emphasis added).

[9] E.g., Richardson letter, *supra,* note 4, at 2.

[10] It cannot be argued in response that such persons will be unaware of the sentencing scheme of S. 1401. Certainly after the first sentencing proceeding under S. 1401, and perhaps upon its enactment, widespread media comment on its operation would alert most of those who are likely to calculate their crimes in advance.

[11] It is doubtful that S. 1401 skirts the constitutional swamp posed by *Furman.* For example, Justice White objected not only to arbitrary imposition, but also to a death penalty "so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice." 402 U.S. at 313. Moreover, it is by no means clear that Justice Stewart and White would uphold any death penalty which turned on finding by the jury, with the attendant possibility of arbitrary or discriminatory imposition.

[12] Richardson letter, *supra* note 4, at 4. (Answer to question 2.)

[13] National Commission on Reform of Federal Criminal Laws, Final Report, Provisional Section 3603 (p. 314) (1971).

[14] Richardson letter, *supra,* note 4, at 6–7.

[15] Subcommittee Report, p. 16.

[16] *For these purposes,* we have accepted the assumption death in a greater deterrent, on which S. 1401 is premised.

[17] Richardson letter, *supra* note 4.

[18] Richardson letter, *supra* note 4, at 9.

[19] Richardson letter, *supra* note 4, at 4.

[20] It is unclear what inquiries the trial jury might make of the court regarding the sentencing proceeding to follow, or what instructions would include on this point if S. 1401 were enacted. But in any event it is likely that some jurors would be familiar with the scheme of the statute from its discussion in the media.

[21] Only in a single stage proceeding at which both guilt and punishment are decided, can a juror vote his true feelings on the question of guilt and still be sure he can prevent a recommendation on the death penalty. After the jury agrees on guilt, he can still force a hung jury or an agreement not to recommend the death penalty. Where there is a split proceeding and the jury had broad discretion on the question of punishment, the danger is still present but substantially less than where, as under S. 1401, the determination is automatic.

[22] Testimony of Prof. L. Harold Levinson, Reform of the Federal Criminal Laws, Hearings before the Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U.S. Senate, 93d Cong., 1st sess. (1973) at p. —.

Mr. CANNON. Mr. President, I thank the Senator for yielding, and I ask unanimous consent that the matter be deferred for the time being.

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

CONSUMER PROTECTION AGENCY ACT

The Senate continued with the consideration of the bill (S. 707) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from Virginia yield to me, without losing his right to the floor and without his yielding counting as a second speech against him?

Mr. WILLIAM L. SCOTT. Mr. President, I ask unanimous consent that I may yield from time to time today to colleagues for such purposes as they choose, without losing my right to the floor or without my remarks later on being considered a second speech.

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

Mr. WILLIAM L. SCOTT. Mr. President, I am glad to yield to the distinguished majority whip.

Mr. ROBERT C. BYRD. I thank my friend, the distinguished Senator from Virginia.

Mr. President, I have had numerous constituents contact me with reference to the acronym CPA. Most of these constituents are certified public accountants, and they feel that the adoption of this acronym for the new agency, in the event the bill is enacted into law, would be somehow harmful to them, by virtue of the fact that they would be confused in the public mind with the new agency.

I have discussed this matter with the distignuished manager of the bill, Mr. RIBICOFF, and with other Senators who are likewise interested. Mr. RIBICOFF has indicated, I believe, that he would be receptive to an amendment which would change the name of the agency, in the event the legislation becomes law, to "The Agency for Consumer Protection," rather than "The Consumer Protection Agency." Thus, the acronym would be ACP, rather than CPA.

Therefore, on behalf of myself and Mr. RIBICOFF, Mr. RANDOLPH, Mr. CANNON, Mr. PERCY, and Mr. ROTH, I send an amendment to the desk, and I ask unanimous consent that I may offer this amendment at this time, notwithstanding the fact that a committee amendment is pending.

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

Mr. ROBERT C. BYRD. Mr. President, I ask the clerk to state the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the appropriate place throughout the text of S. 707 change the words "Consumer Protection Agency" to read the "Agency for Consumer Protection."

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the name of the distinguished junior Senator from Louisiana (Mr. JOHNSTON) may also be added as a cosponsor of the amendment.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the name of the Senator from Virginia (Mr. HARRY F. BYRD, JR.) may also be added as a cosponsor.

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

The Senator from Virginia has the floor.

Mr. ALLEN addressed the Chair.

Mr. WILLIAM L. SCOTT. Does the Senator from Alabama desire to speak?

Mr. ALLEN. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were not ordered.

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

The PRESIDING OFFICER. Does the Senator from Virginia yield?

Mr. WILLIAM L. SCOTT. Mr. President, I am glad to yield to the Senator from Alabama for that purpose.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ALLEN. I ask for the yeas and nays.

The yeas and nays are ordered.

Mr. HRUSKA. Mr. President, I rise to speak in favor of the amendment to change the name of the proposed Consumer Protection Agency to Agency for Consumer Advocacy. Mr. R. G. Hinrichs, of Lincoln, Nebr., who is president of the Nebraska Society of Certified Public Accountants, recently wrote to me about his profession's concern with preserving the established identity of the abbreviation CPA. His letter states clearly the matter at issue. I ask unanimous consent that it be inserted at this point in the RECORD.

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

JULY 10, 1974.

ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: I am writing to you on behalf of the members of the Nebraska Society of Certified Public Accountants to express our strong concern regarding the title proposed for the agency which would be created to protect consumer interests.

The proposed agency title "Consumer Protection Agency" when abbreviated, "CPA", is identical to the description which has come to be recognized universally as a respected, professional attainment in accounting. Recognizing the importance of protecting the user of accounting services from misrepresentation by non-qualified persons, the legislatures of all fifty states have passed laws restricting the use of the "CPA" designation only to those who have met the requirements to be licensed as a certified public accountant.

We wish to emphasize that we are not attempting to sway the substance of the legislation one way or the other. Our only concern in this matter stems from the confusion which will result in the use of the initials "CPA" to identify the proposed consumer protection agency and the identification of those initials with a certified public accountant.

Since as early as 1971, our American Institute of Certified Public Accountants has been expressing our views to the sponsors of the consumer protection legislation. In fact, we have repeatedly brought this matter to the attention of the former General Counsel of the Subcommittee on Reorganization, Research and International Organizations. Each time we have done so, we have been told that nothing could be done since our views "should have been made known earlier". This seems to us to be an unreasonable and unrealistic approach to the evolution of legislation which has seen many significant changes since consideration of it began.

We find it even more disturbing since we have offered a suggestion for a change in the name of the proposed new agency which cannot be considered substantive, nor would it remove the importance attached to the words "consumer protection". We have suggested in the past, and again strongly urge, that the name of the new proposed agency be titled "Agency for Consumer Protection" instead of "Consumer Protection Agency". This minor editorial change in the title should not adversely affect consideration of the principles underlying the consumer protection legislation. On the other hand, it will have a major impact on certified public accountants throughout the country who will greatly appreciate the sensitivity which would be shown by you and your colleagues to the importance of the preservation of a respected professional designation.

Very truly yours,

R. G. HINRICHS,
President, Nebraska Society of CPAs.

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

The PRESIDING OFFICER. The clerk will state it.

The legislative clerk read the amendment, as follows:

Amend Byrd amendment by: striking the word "Protection" and substituting the word "Advocacy".

Mr. ALLEN. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the rollcall vote on the amendment by Mr. ALLEN occur at the hour of 2 p.m. today.

Mr. ALLEN. Reserving the right to object, Mr. President, since the distinguished Senator from Virginia has the floor, when would there be an opportunity to discuss this amendment?

It is a very important amendment and deserves legitimate discussion.

Would an opportunity be given to discuss the amendment?

Mr. ROBERT C. BYRD. If the distinguished Senator from Virginia would respond.

Mr. WILLIAM L. SCOTT. I would like the opportunity to complete my remarks.

Mr. ALLEN. Mr. President, might I suggest that the vote on the amendment come at 4 o'clock with an hour for discussion equally divided prior to the vote?

Mr. RIBICOFF. I am amenable to anything that is desired by the Senator from Alabama. I see no need for a long discussion, and whatever suits the Senator from Alabama is perfectly all right with me.

Mr. ALLEN. Well, in view of the Senator's generosity, suppose we cut it down to a 30-minute discussion?

Mr. RIBICOFF. It is perfectly all right.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, if it meets approval of the distinguished Senator from Virginia (Mr. WILLIAM L. SCOTT), that at the hour of 3:30 p.m. today the Senate proceed with the debate on the Allen amendment to the Byrd amendment and that the rollcall, which has been ordered, occur on the Allen amendment at the hour of 4 o'clock p.m., and that the vote on the Byrd amendment, as amended, if amended, occur immediately thereafter.

Mr. ALLEN. That is fair.

The PRESIDING OFFICER. Is there objection?

Mr. WILLIAM L. SCOTT. Mr. President, reserving the right to object, would the Senator amend that so that it would be at the conclusion of my remarks or 3:30, whichever occurs later?

I may keep the floor beyond the 3:30 hour and I just want the right to do this, if necessary.

Mr. ROBERT C. BYRD. Well, all right, I think the Senator is going to do the best he can.

Mr. WILLIAM L. SCOTT. Why, of course, I am, but I do not want, if I am interrupted from time to time, to be

precluded from finishing my remarks before we get on the other matter.

Mr. ROBERT C. BYRD. The Senator states a reasonable proposition. I would hope he would not yield to too many Senators in that event, because if he does, the vote can be 6 o'clock p.m. today, or could even be put over until tomorrow.

Mr. WILLIAM L. SCOTT. I would say to the distinguished Senator, I have been attempting to get the floor since Thursday, perhaps Wednesday, and now that I have it, I want to keep it until I finish my remarks.

Mr. ROBERT C. BYRD. I hope the Senator will do that, and I hope that he will not yield too often.

Mr. WILLIAM L. SCOTT. I thank the Senator.

Mr. ROBERT C. BYRD. I ask unanimous consent that the time on the Allen amendment be divided between Mr. ALLEN and Mr. RIBICOFF.

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

The Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, in the rush of congressional business, we may from time to time act on measures with which we are not fully familiar. Therefore, I would like to take this time today to go over this proposed Consumer Protection Act, S. 707, and comment on the various sections of the bill.

It is interesting to note that the certified public accountants do not like to have the letters CPA refer to this bill, and that is certainly understandable. The distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) wants to change the title to Agency for Consumer Protection and then, as I understand it, the distinguished Senator from Alabama (Mr. ALLEN) wants to change the name to Agency for Consumer Advocacy.

It is my recollection that the Senator from Michigan (Mr. GRIFFIN) yesterday called it the special interest protection bill. I frankly like the phrase, "common law barratry bill", because certainly the administrator would stir up strife and litigation within the Government and among the business community.

It might also be called a Frankenstein monster, because I believe it would create an agency which would destroy the effectiveness of many existing programs.

Let us look at the effectiveness of the bill. As you know, the committee struck the first 50 pages, starting with a clean bill, beginning at the bottom of page 50, which states in section 2:

> The Congress hereby finds that—
> (1) Federal agencies administer many laws, programs and activities which substantially affect the health, safety, welfare, and other interests of consumers.

Now, Mr. President, we are talking about existing agencies of government which are charged with protecting the public interest. The next paragraph reads:

> (2) Federal agencies often fail to consider adequately the interests of consumers, in part because consumers lack effective representation before such agencies.

This appears to be an unwarranted smear on all existing Government agencies and officials. In fact, it appears to be an insult to Congress in suggesting that we will not exercise proper congressional oversight.

Paragraph (3) reads:

> Each year, as a result of this lack of effective representation before Federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences in the course of acquiring and using goods and services available in the marketplace.

This reminds me of the fairy tale we heard as children, the story of the genie in the bottle, or Aladdin and his wonderful lamp, where the possessor of the lamp or the bottle could merely rub it and a creature would appear, willing to grant every wish to the possessor of the lamp or the magic bottle. Somehow, we have gotten around, in many sectors, to a new genie called government. All we need to do is to pass a new law, create a new agency of government, or spend additional money to solve any problem that exists.

That is not the American system of government that was handed to us by our forebears. I do not like to believe that each individual citizen needs of the services of the Federal Government to protect him in all the ways that are mentioned in this paragraph. Our country was developed upon the premise of the worth and dignity of the individual: that the individual, to the extent possible, would look after his own interests, and that when government was needed, to provide a given service because an individual could not best provide it for himself; then, the local government would first be called upon.

If local government could not act in a specific case, then the State government would attempt to meet the needs of the citizens which could not be met at a lower level, and this, in accordance with the constitutional concept of limited Federal authority.

Year by year, citizens have been obtaining a higher degree of education, of knowledge, of sophistication. Yet the Federal Government is being called upon more and more to look after the needs of the individual citizens.

The next paragraph of the bill states that it is necessary to have a governmental organization to represent the needs of the consumers before Federal agencies and courts. Why do we need a new level of government, a new group to become involved in every issue before government regulatory bodies? Certainly, lawyers do not need a Consumer Protection Agency to provide work for them, as this bill would.

If we concede, as the bill alleges, that Federal agencies are not adequately protecting the interest of the consumer or the public, what assurance do we have that another layer of government, a new agency, would do any better than the existing bodies? Who would police the new agency?

What do we mean by "the interest of the consumer?" This consumer advocate might intervene and allege that every person in America should drive a smaller car. Of course, some people would prefer to drive smaller automobiles. They cost less initially; they use less gas; maintenance may be cheaper; and their operation may result in less pollution. But some people like the luxury of a large automobile. They may feel more comfortable, especially when traveling on long trips.

The consumer advocate might indicate that everyone should have both AM and FM radiobands. We had this matter before the Senate just a few weeks ago, and the membership of the Senate was almost equally divided as to whether we should have a Federal law compelling the manufacture of radios costing more than $15 to have both AM and FM bands

What I am saying, Mr. President, is that consumers are people with a wide variety of interests and opinions, often conflicting with one another. I cannot conceive of any individual not being considered a consumer at one time or another.

Mr. President, I wish to quote in part an editorial that seems pertinent at this point from the Roanoke Times, an editorial dated June 20. It is entitled, "A Monster All the Same." Beginning with the second paragraph, it reads:

> All of this would be in the name of Consumer, a magic name these days. And who is the consumer? Well, he is everybody, and not the same person all the time. Mr. Jones at the supermarket is a consumer; but in the TV repair shop or on the cattle range, he is one of these non-consumers to be regulated on behalf of the consumer. The "consumer" sometimes hasn't caught on to the fact that he's quite often in a job subject to regulations and that no matter whether he is Mr. Hyde or Dr. Jekyll, he is subject to taxation. One more super agency would be just one more layer of bureaucracy for him to support.

Mr. President, I think this is an excellent editorial. But returning to the proposed bill, this new agency would speak out in the interest of the entire population of the country and represent all of us as if we had a unanimity of views.

Going back to the example of the automobile, we might think about it within the concept of the American competitive free enterprise system. Undoubtedly, this country manufactures more automobiles than any country in the world. We have more diversification of makes and models than any country in the world. If we had only one make and model automobile, the American automobile, would it be better than having General Motors, Chrysler, Ford, American Motors, and some of the smaller automobile manufacturers, competing among themselves? Even within each company and division, models are competitive with one another for the American and world markets. Competition results in improvement of products. I do not believe that any administrator can speak for all the American citizens on a given issue because our country is diversified. That is one of its strengths. People have different tastes and desire different products and place different emphasis on those products. There is a free choice in the marketplace and this results in the manufacturer attempting to improve his products. Who would buy a shoddy product in preference to a well made one if they are in competition in the marketplace? I believe this personal decision, or free choice in a competitive

market, makes for better products and for greater satisfaction among the American people.

Now, looking at the bottom of page 51 which indicates that Congress declares it to be the purpose of the act to "protect and promote the interest of the people of the United States as consumers of goods and services which are made available to them." Then, looking at the top of page 52, we find one of the purposes Congress declares under this bill is a Consumer Protection Agency "to represent the interest of consumers before Federal agencies, and courts, receive and transmit consumer complaints, develop and disseminate information of interest to consumers, and perform other functions to protect and promote the interests of consumers." It does appear that the Administrator of the Consumer Protection Agency would appear before Federal agencies and courts and tell them what is and what is not in the interest of all of the American people. Apparently, he would be omnipotent, knowing at all times what is in the public interest and what is not, what the individual citizen needs or desires, even though their needs and desires are very diverse.

At the present time there are Government agencies working in all of the fields mentioned in this bill charged with protecting the public interest and in a few minutes, I want to talk about how the Administrator unler this act would duplicate the functions of the various branches of Government. But, the mere appearance in every situation, of this Administrator, or his lawyers, attempting to advise every other Administrator, every other agency, as to how they should perform their responsibility to serve the public, in my opinion, would tend to divide and harass all existing governmental units. We need unity in government in order to protect the public interest. In fact, I would like just to discuss for a minute common law barratry because I believe this bill could very well be known as the common law barratry bill. The third edition of Bouvier's Law Dictionary, in quoting Blackstone, indicates, or rather describes those who indulge in barratry as "pests of civil society that are perpetually endeavoring to disturb the repose of their neighbors and officiously interfering in other men's quarrels;" and elsewhere describes as barratry "the trafficking and merchandising in quarrels; the huckstering in litigious discord."

Mr. President, I ask unanimous consent to include at this point in the RECORD a description of the crime of barratry and the criminal aspects of champerty and maintenance as found in the annotations of volume 139, American Law Reports Annotated, beginning at page 620, including only the text, Mr. President, omitting the notes and citations.

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

[From American Law Reports, Annotated]

ANNOTATION

Offense of barratry; criminal aspects of champerty and maintenance.

[Champerty and Maintenance, §§ 1, 2.]

I. Offense of barratry:
a. Introduction; definitions, 620.
b. Nature and requisites of the offense:
1. In general, 622.
2. Number of acts required, 624.
3. Grounds of defense, 625.
c. Form and sufficiency of indictment or information; notice of particular acts, 625.
d. Acts constituting or not constituting barratry, 629.
e. Punishment, 631.
II. Criminal aspects of champerty and maintenance:
a. Introduction, 631.
b. History; champerty and maintenance as constituting offenses:
1. In general, 632.
2. Under common law, 632.
3. Transition; curtailment of ancient common-law principles, 635.
4. Extent of adoption of common law, 640.
5. Under statute, 642.
c. Definitions; what constitutes offense:
1. In general, 648.
2. Essentials of offense, 650.

I. OFFENSE OF BARRATRY

a. Introduction; definitions.

Barratry within the purview of this annotation is that offense known as such in the field of criminal law, and does not include barratry as it is known in maritime or insurance law, where it has been defined to be an unlawful or fraudulent act, or very gross and culpable negligence, of a master or the mariners of a vessel in violation of their duty as such, directly prejudicial to the owner, and without his consent.

The origin of the term "barratry," or "barretry," as it is sometimes called, is somewhat obscure, but it was known early in the common law, and it seems that the term is derived from two Norman words—"barraté" and "barat," which came to mean contentions and quarrels, and eventually developed in England into the words "barratry" and "barrator." Barratry, or common barratry, has been defined to be the offense of frequently exciting or stirring up suits and quarrels between individuals, either at law or otherwise.

Barratry was a criminal offense at common law, and it is made a criminal offense by statutes of many, if not all, the states of the United States. While some statutes have adopted the common-law definition of barratry, others define the offense as the practice of inciting groundless judicial proceedings.

One guilty of the crime of barratry is known as a barrator or common barrator, which has been defined to be a common mover or exciter or maintainer of suits and quarrels, either in courts or elsewhere in the country.

b. Nature and requisites of the offense

1. In General

It has been said that maintenance is a species of barratry, and that champerty and conspiracy belong to the same class of offenses. It has been held, however, that the provisions of a statute defining the offenses of barratry and maintenance do not embrace champerty.

Barratry is an indictable offense both at common law and under statutes. However, it is not an act of like character with cheating and swindling.

It has been held that one may be properly tried and convicted of the offense of an attempt to commit barratry upon an indictment charging the common-law offense of barratry.

Barratry, being a substantive and distinct offense, is not affected by the fact that it is committed by one in public office, and is not, therefore, merged in an offense committed in that office.

The offense of barratry may arise from inciting public prosecutions as well as private suits, persons taking a public-spirited interest in public prosecutions being protected from a charge of barratry by the motive prompting them to interfere. And the offense may exist whether the suits excited or stirred up are just or unjust, well or ill founded.

Without an intention or a malicious design to oppress and harass another by exciting and stirring up suits, there can be no barratry. So, the offense of barratry does not consist in promoting either private suits or public prosecutions when the sole object is the attainment of public justice or private rights, but on the prostitution of these remedies to mean and selfish purposes. It has been held that a statute denouncing common barratry in vexing others with unjust and vexatious suits applies to one who brings vexatious actions in his own name and right. And it has been said that if the design is not to recover in one's own right but only to ruin and oppress one's neighbor, that is barratry. A man may, however, lay out money on behalf of another, because of such person's poverty, in suits at law to recover a just right; but if he lends money to promote and stir up suits, he is a barrator. Under some barratry statutes, it has been held that proof of a corrupt or malicious intent to vex or annoy is required. It is not required that in barratry there should be any false representations with an intent to defraud, or the obtaining of money or other valuable thing, or that the frequent suits stirred up should be fraudulent.

While the meaning of barratry included the activities of attorneys at common law, and apparently independently of any statute, it has been applied to one soliciting a large number of claims of the same nature and charging a fee for his services in connection with the claims contingent on the amount recovered, statutes in some jurisdictions specifically make solicitation of employment by and for attorneys, as well as solicitation of claims for the purpose of prosecuting, defending, or collecting the same by persons generally, an offense of barratry. Such a statute has been declared to be constitutional.

2. Number of acts required

The offense of barratry consists in the practice or habit of stirring up strife. It does not consist of one act, but of many acts; and it may not, therefore, be predicated upon a single instance or act. In this connection, it has been held or stated that at common law at least three acts of a barratrous nature were necessary to constitute the crime of barratry, although basic authority for this view has been found to be somewhat doubtful and uncertain. Under some statutes it has been held that three distinct acts are necessary to constitute the offense of barratry.

3. Grounds of defense

The fact that acts of barratry are done under color of official office, such as that of a magistrate, will not preclude a defendant's liability to be indicted for barratry.

And a statute limiting the commencement of indictments and informations for bracery, champerty, maintenance, and kindred offenses to one year after the offense has been committed, is not applicable, either in terms or in principle, to the offense of barratry, the offenses mentioned therein consisting of a single act, the time of which may be readily ascertained, whereas barratry is made up of many acts committed at different times.

c. Form and sufficiency of indictment or information; notice of particular acts

At common law it has been held that it is essential to the validity of an indictment for barratry that it should charge the defendant with being a common barrator, which is a term of art appropriated by law to this crime, and cannot be supplied by words which may import as much, such as a common oppressor and disturber of the

peace, or a stirrer up of strife among neighbors. Accordingly, an indictment without the word barrator is not good. On the other hand, it has also been held that an indictment charging an accused with being a common barrator, without concluding that the offense was against the peace or form of the statute is not sufficient. But an indictment charging the accused with being a common barrator in violation of, or against the form of, the statute, is good, notwithstanding that the offense is a common-law offense.

As being an exception to the general rule in criminal cases that an indictment must charge in detail as to all essential particulars constituting the offense, a general charge in an indictment that the accused is a common barrator sufficiently defines the offense, without setting out therein the particular acts or instances constituting the offense, or the venue or place where the accused offended as a common barrator, the reason for this exception to the rule being that it is the general practice, and not the particular acts, which constitutes the offense.

Accompanying the above principle, however, arising out of the peculiar nature of the offense, it early became the settled practice to require the prosecutor to give the accused before trial notice of the particular acts, or a bill of particulars, upon which he relied to prove the offense, so that the accused could prepare his defense. And if the prosecutor failed to give such notice, the court would not suffer the trial to proceed. In this connection it has been held that in the absence of notice no evidence of particular acts should be admitted at the trial, and that notice given after the commencement of the trial of the particular acts of barratry intended to be proved is not a reasonable notice. It has also been held that the prosecutor may not give the evidence of any particular acts other than those of which he has given notice. It has been held, too, that the evidence of the acts of barratry relied upon for conviction need not be the same acts upon which the indictment was based.

The fact that it is the customary practice in cases of barratry to require the giving of notice containing a specification of the particular acts of barratry intended to be given in evidence in support of the prosecution, filed along with the indictment, does not, however, make such notice a part of the record, or indictment, so that the notice or bill of particulars is not open to demurrer, nor does it furnish a ground for a motion in arrest of judgment. The proper mode of objecting to such notice is to show that the defendant has been misled or surprised, as a ground for postponing the trial until a more sufficient specification is furnished. In a jurisdiction in which a bill of particulars in criminal cases is not recognized, a general charge in an indictment that the accused is a common barrator and that on each and every one of certain specified days did move and stir up divers quarrels, strife, suits, and controversial controversies, is insufficient. Under a statute penalizing persons who engage in the practice of soliciting employment for attorneys, it has been held that the criminal act is not sufficiently identified to enable an accused to prepare his defense where the indictment does not state from whom the accused sought to obtain employment. It has been held, however, that an information in barratry against an attorney under such a statute need not set out the nature or character of the suit allegedly solicited by the accused, it being sufficient to refer to the suit as being a suit at law, alleging its number, the court in which it was filed and the parties thereto.

Under a barratry statute having coordinate clauses relating to independent and distinct criminal acts, it is not necessary to allege in an indictment under one clause that the criminal acts in question were done for profit or with the intent to distress or harass, as required by another clause of the statute.

d. Acts constituting or not constituting barratry.

It has been stated that the commencement of three suits by a creditor against a debtor when one suit would have served might constitute barratry, if it appeared that the creditor had been given particular directions therefor with a malicious design to harass and oppress the debtor.

The acts of a magistrate in moving and exciting the commencement of various criminal prosecutions on informations made before, and warrants issued by, him for the purpose and as the means of extorting money from parties in such prosecutions have been held to constitute acts of barratry within the purview of the offense.

It has been intimated that circumstances whereby a plaintiff brought suit against a fellow townsman before a justice of the peace in a town thirty miles distant from the city of their residence, with summons returnable at an unreasonable time if repeated, might constitute barratry under a statute defining barratry as annoying others "with unjust and vexatious suits."

It has also been said that the common-law offense of barratry includes within its scope the conduct of an attorney in soliciting employment by means of assistants, office boys or "runners." So also, independently of statute, the term "barratry" has been applied to one soliciting a large number of claims of the same nature, and charging a fee for his services in connection with the claims contingent on the amount recovered. And the common-law offense of barratry has been held to apply to the solicitation of suits by an individual who is to receive compensation for his assistance in such suits from the collections made by virtue thereof.

Under a statute making attorneys and other persons who solicit employment in suits, or for the rendition of legal services, guilty of barratry, the solicitation of cases constitutes barratry.

On the other hand, other circumstances have been held not to constitute the offense of barratry. Thus, it has been held that the sale of information relating to an outstanding title to a tract of land, which was in the adverse possession of another, or the rendition of services in the acquisition of such title for a consideration does not constitute barratry. And an agreement, in consideration of liberal compensation, to furnish information to a bank concerning an overpayment to a depositor so that the bank might recover it, is not against public policy as being violative to common barratry. So, an agreement under which a person takes an assignment of a claim, in which he has no interest, against another and institutes and prosecutes an action against such other for a consideration has been held not to be barratry.

It has been held that performance by an attorney of a contract under which he authorized his name to be published in a commercial law list, and the acceptance of legal matters forwarded to him by virtue of his name being so listed do not constitute a violation of a statute penalizing barratry.[68] Similarly, a contract between a firm of attorneys and its client compensating such firm for services rendered in the collection of certain notes and containing a provision for further compensation in the event that further legal service was required to collect them has been held not to violate a barratry statute.[69] And it has been held that a power of attorney given to an attorney to enter suit for and to recover certain land at his own expense for which he was to receive, as compensation for his services, an undivided one-half interest in the land recovered is not a violation of the provisions of a barratry statute.[70]

The offer of a bar association to represent free of charge persons caught in the toils of usurious money lenders in defending against illegal exaction, and to represent them in bringing actions to recover amounts illegally paid under loan contracts, does not constitute a violation of the statute relating to the offense of barratry.[71]

It has also been held that a barratry statute is not violated by an agreement between a citizen of a municipality and the municipality under which the former advanced the legal expenses necessary to appeal litigation testing the validity of a municipal ordinance forbidding the sale of intoxicating liquors.[72]

The maintenance of a copyright protection bureau for the purpose of protecting the copyrights of a group of motion picture producers and distributors does not constitute the offense of barratry.[73]

e. Punishment.

Barratry as a common-law offense and misdemeanor may be punished by fine and imprisonment at the discretion of the court, and where the offender is an attorney or solicitor he may be disbarred.[74] And under statute making one adjudged a common barrator guilty of a misdemeanor, it has been provided that if any attorney shall violate the provisions of the statute he shall also be disqualified from practicing his profession.[75]

II. CRIMINAL ASPECTS OF CHAMPERTY AND MAINTENANCE.[76]

a. Introduction.

Champerty and maintenance appear but infrequently in modern jurisprudence as substantive criminal offenses, even under statutes specifically making them, or some particular phase of them, criminal offenses, * * *.

Mr. WILLIAM L. SCOTT. This point is made for the purpose of further comparing or contemplating the activities in this bill and activities considered a crime at common law and contrary to public policy over the ages.

Let me just lift out a few of the highlights of the crimes of barratry, champerty, and maintenance that have such a close relationship to the provisions of this bill. The annotation indicates that a government official may commit this offense of barratry by frequently inciting or stirring up quarrels between individuals either at law or otherwise.

Maintenance is a species of barratry, and champerty and conspiracy belong to the same class of offenses. The offense may arise from inciting public prosecution as well as private suits and can be committed by one in public office as well as a private citizen.

It could be committed by attorneys and is actually independent of any statute. It does not consist of one act, but many acts and, in fact, is the practice or the habit of stirring up strife.

The annotation indicates that at common law at least three acts of a barratrous nature were necessary to constitute the crime and the fact that acts of barratry are done under the color of official office such as that of a magistrate will not preclude the defendant's liability to be indicted for barratry. As you know, Mr. President, it has been considered against public policy to encourage individual citizens or groups to cause con-

Footnotes not printed in RECORD.

flict or unwarranted strife or litigation and I believe having a Government barrator is also against the public interest.

We have some Government agencies now which attempt to harass the businessman and OSHA—the Occupational Safety and Health Administration—readily comes to mind, but this bill would harass Government officials and agencies in the performance of their statutory duties when Government unity is needed to protect the public interest.

I note further on page 52, that the purpose of the act is to protect consumers with respect to the "(A) safety, quality, purity, potency, healthfulness, durability, performance, repairability, effectiveness, dependability, availability, and cost of any real or personal property, or tangible or intangible goods, services or credit." It sounds like a pretty big order. In fact, I asked a staff member to check the Government manual to determine what existing agencies now perform these functions. He determined that there were 40 departments, independent agencies or branches thereof already working in this field and at least in part, their functions would be duplicated by the Consumer Protection Agency. Rather than reading this long list of agencies, Mr. President, I ask unanimous consent that they be included at this point in the RECORD.

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

CPA DUPLICATION OF FEDERAL AGENCIES

Federal Agencies that would be duplicated by CPA functions as stated in Sec. 3(3)(A):
Consumer Product Safety Commission.
Agriculture:
Agricultural Marketing Service.
Animal and Plant Health Inspection Service.
Commerce: National Bureau of Standards.
Department of Transportation:
Office of Hazardous Materials.
Office of Pipeline Safety.
Office of Transportation Security.
U.S. Coast Guard.
Federal Aviation Administration.
Federal Highway Administration.
Federal Railroad Administration.
National Highway Traffic Safety Administration.
National Transportation Safety Board.
Health, Education and Welfare:
Public Health Service.
Food and Drug Administration.
Health Resources Administration.
Health Services Administration.
Social and Rehabitation Service.
Housing and Urban Development: Interstate Land Sales.
Interior:
Office of Oil and Gas.
Office of Coal Research.
Office of Water Resources Research.
Office of Research and Development.
Bureau of Mines.
Bureau of Land Management.
Mining Enforcement and Safety Administration.
Treasury: Bureau of Alcohol, Tobacco and Firearms.
Civil Aeronautics Board.
Security and Exchange Commission.
Environmental Protection Agency.
Farm Credit Adminstration.
Federal Home Loan Bank Board.
Federal Power Commission.
Federal Reserve System.
Federal Deposit Insurance Corporation.
Federal Trade Commission.
Interstate Commerce Commission.
Postal Rate Commission.
U.S. Tariff Commission.
Atomic Energy Commission.
Federal Maritime Commission.
Tennessee Valley Authority.

Mr. WILLIAM L. SCOTT. And, then paragraphs B, C, D, E, and F appear to duplicate the functions of various other agencies of Government.

B relates to the preservation of consumers choice and a competitive market. In other words, it includes part of our antitrust laws, and it would appear to be primarily a function of the Federal Trade Commission and the Department of Justice. C relates to unfair and deceptive trade practices which are clearly a primary function of the Federal Trade Commission.

The next paragraph relates to "truthfulness and fairness in the advertising, promotion and sale by a producer, distributor, lender, retailer, or other supplier, of such properties, goods, services, and credit." This could relate to a great variety of Government agencies, the Federal Trade Commision, the Food and Drug Administration, the Department of Agriculture.

In fact, I understand in the debate on this bill in the House of Representatives, a proponent admitted that this act related to functions of 33 agencies and 400 bureaus and subagencies, managing consumer programs.

In an editorial of the Richmond News Leader, on June 25, 1974, the writer quoted tax foundation reports that the Federal Government now administers more than 1,000 consumer protection programs through 57 agencies at a cost of $3 billion a year.

That, in addition, 23 States have set up consumer protection agencies, 29 States have consumer fraud agencies operating through the offices of their State attorneys general. Consumer protection units operated by more than 40 cities and 20 counties can be added to the list. The editorial concludes:

American consumers, among the smartest in the world, are paying handsomely to protect themselves. If the Senate decides to establish yet another consumer protection gimmick through the CPA, consumers will get more—much more—than they bargained for.

Mr. President, I ask unanimous consent that the editorial in its entirety opposing the adoption of this measure be included at this point in the RECORD.

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

WHOSE CONSUMING INTERESTS?

Before long the Senate will be asked to consider a bill, already passed by the House, bearing the innocuous title of the Consumer Protection Agency Act (S. 707). Consumerism has become the equivalent of mom, the flag, and apple pie, and any legislation carrying some promise of helping consumers usually wins swift and unequivocal support.

That should not be the case with this bill, which goes far beyond any previously considered "consumer legislation." It provides for an agency with powers superseding all other federal agencies or departments—an agency headed by an administrator not subject to supervision by any elected official. This administrator would be appointed to serve during a presidential term. He could be removed from his post only for inefficiency, neglect of duty, or malfeasance of office. He, and he alone, would have the power to determine what is in the best interest of consumers. The agency's actions would not be subject to judicial review.

The dangers implicit in establishing such an autonomous arbiter of consumer interests are not imaginary. They are real. No element of American enterprise that deals with the consumer in any way would be free from the Consumer Protection Agency's scrutiny or displeasure. Even other federal agencies and departments would have to answer to the CPA. As Virginia Senator William Scott points out, the proposed act defines a consumer as "any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services, or credit for personal, family, or household purposes." By this definition, consumer interest also is the public interest, which all government officials and employees are already sworn to uphold. So why the need for a CPA?

The proposed measure, if enacted into law, also would pose serious threats to First Amendment guarantees of a free press. Senator Charles Percy of Illinois, one hardly considered hostile to consumer interests, testified before a Senate committee, "The threats [in this bill] to a free and vigorous press are very real . . . I have no doubt that this country feeds on an active, probing, inquiring, inquisitive press that never wavers or hesitates because of implicit or explicit governmental intimidation." Columnist Jeffrey St. John supported Senator Percy's view in subsequent testimony.

The proposed measure would give the CPA power to intervene in all radio and television license renewals whenever the CPA might choose, on the grounds that stations applying for license renewals do not carry enough consumer news. Advertising revenues are the economic basis for both print and electronic media; the CPA could undermine this economic base through constant harassment. The proposed measure would give the CPA responsibility for "maintenance of truthfulness and fairness in advertising with powers broadly interpreted by the executive branch." This means that the CPA would have sweeping powers to harass advertisers and media that print or broadcast advertisements; in demands for counter-advertising, the CPA could make the Federal Trade Commission look like a piker.

The CPA also would have the right to "require any person engaged in a trade, business, or industry which substantially affects interstate commerce" to furnish the CPA with whatever information the CPA might deem to be of concern to consumers. Naturally, this provision applies to reporters and editors, who would be stripped of their rights to protect their confidential sources; they would be denied even the right to adversary hearings in court. This provision strikes at the very heart of editorial freedom that is vital to a free press. The measure contains no provision for legal challenge to CPA rulings, giving it extraordinary powers to abridge the due process and First Amendment rights of any business—including the press.

The Senate should exercise skepticism on any measure that would create a new agency with such unprecedented authority. The language of the measure is so broad and so unlimited that a CPA created under it would be a virtual czar over all commerce and government. In response to militant lobbying efforts by Ralph Nader-inspired consumer fire-eaters, the proposed CPA would wreck industries at will, no matter how arbitrary and capricious the CPA might be.

Consumer activists think that the creation of a CPA would do everyone a favor.

In the interest of truth-in-advertising, these activists ought to point out that the high costs of a CPA would be borne by all consumers-as-taxpayers. Taxpayers already are paying dearly to serve their consuming interests: The Tax Foundation reports that the federal government now administers more than 1,000 consumer protection programs through 57 agencies at a cost of $3 billion a year. In addition, 23 states have set up consumer protection agencies, and 29 states have consumer fraud agencies operating through the offices of state attorneys-general. Consumer protection units operated by more than 50 cities and 20 counties can be added to the list.

American consumers, among the smartest in the world, are paying handsomely to protect themselves. If the Senate decides to establish yet another consumer protection gimmick through the CPA, consumers will get more—much more—than they bargained for.

Mr. WILLIAM L. SCOTT. Now, returning to paragraph E on page 53, the proposal indicates that the purpose of the act is to include protection of consumers with respect to the "furnishing of full, accurate, and clear instructions, warnings and other information by any such supplier concerning such property, goods, services and credit;". It appears that the Administrator would also be a business czar. Most products today, Mr. President, have instruction labels and warnings. In fact, there are many laws on the books with regard to this. But I wonder what rules and regulations might be promulgated under pressure from the Administrator, if he is given the authority to protect consumers in this specific field. The next paragraph would protect consumers with respect to their legal rights and remedies. This section again seems to be very much akin to common law barratry or more modern "ambulance chasing."

A staff member has also compared the functions of the proposed new Consumer Protection Agency with those performed by the existing Government units and found a considerable duplication for paragraphs B, C, D, and E.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a list of agencies performing functions that would be duplicated by this bill.

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

Federal Agencies that would be duplicated by CPA functions as stated in Sec. 3(3)(B):
Justice Department.
Federal Trade Commission.
Agriculture: Agricultural Marketing Services.
Commerce: Economic Development Administration.
Civil Aeronautics Board.
Federal Power Commission.
Interstate Commerce Commission.
Securities and Exchange Commission.

Federal Agencies that would be duplicated by CPA functions as stated in Sec. 3(3)(C):
Federal Trade Commission.
Civil Aeronautics Board.
Interstate Commerce Commission.
Securities and Exchange Commission.
Agriculture: Packers and Stockyards Administration.
Food and Drug Administration.

Federal Agencies that would be duplicated by CPA functions as stated in Sec. 3(3)(D):
Federal Trade Commission.
Civil Aeronautics Board.
Interstate Commerce Commission.
Agriculture:
Agricultural Marketing Service.
Animal and Plant Health Inspection Service.
Commodity Exchange Authority.
Packers and Stockyards Administration.
Food and Drug Administration.

Federal Agencies that would be duplicated by CPA functions as stated in Sec. 3(3)(E):
Federal Trade Commission.
Consumer Product Safety Commission.
Food and Drug Administration.
Agriculture:
Agricultural Marketing Service.
Animal and Plant Health Inspection Service.
Securities and Exchange Commission.
Source: U.S. Government Manual 1973/74.

Mr. WILLIAM L. SCOTT. Mr. President, regardless of whether the figures used in the debate in the House, the figures used in the editorial or the list of duplicating agencies compiled from the Government Manual by my staff, are correct, there is obviously a considerable amount of duplication of functions.

Now, Mr. President, there are a series of definitions in section 4, beginning on page 53. One defines agency action to include "an agency rule, order, license, sanction, relief, or the equivalent or the denial thereof, or failure to act." This seems rather broad to me and to include almost any kind of action. At the same time, the bill endeavors to define agency activity to mean any "agency process, or any phase thereof conducted pursuant to any authority or responsibility under law, whether such process is formal or informal." Agency proceeding "means agency rulemaking, adjudication or licensing as defined in section 551 of title 5 of the United States Code." A reference to the Code indicates that this definition once again is very broad in scope and is part of the Administrative Procedure Act.

Then it is interesting to note that "Federal court" is first defined to include any court of the United States and then the definition identifies each court specifically. This fact should be read along with page 64 relating to judicial review which indicates that:

The Administrator may intervene as of right as a party or otherwise participate in any civil proceeding in a federal court which involves the review or enforcement of a federal agency action if he determines such action substantially affects the interests of consumers.

I assume we are not abolishing the Department of Justice by this act, but I have always understood that the Attorney General had plenary authority, under law and executive order, to represent the Government in all cases before all of the courts in the country. If we divest the Attorney General of the authority to represent the consumer interest or the public interest, there will be little for him to do.

Or, if we let him represent the United States and the Administrator of the Consumer Protection Agency represents the consumer, it may well result in having two different points of view before the courts. The case of the United States versus the United States, with one group of Government attorneys opposing another group of Government attorneys, presenting an entirely different point of view. To me such a proposal is untenable.

Mr. President, the more I read this act and the more I think about it, the more I am convinced that the proposal should be decisively defeated. We look at the last section on page 55. The definition of an individual means a human being. Now, that is very enlightening. An individual means a human being. We have known that for some time without it being specified in this proposal. Paragraph 11 on page 55 defines the interest of consumer to mean any health, safety, or economic concern of consumers involving real or personal property, tangible or intangible goods, services, or credit or the advertising or other description thereof, which is or may become the subject of any business, trade, commercial or marketplace offer or transaction affecting commerce, or which may be related to any term or condition of such offer or transaction.

Now it appears to me that this gobbledygook would permit the Administrator to put his nose into all phases of both Government and business. He can stir up strife and litigation in almost any field under this act, even though it may be in violation of the crime of common law barratry or any of the 36 State statutes on the subject of barratry. When we look at the definition of participation, he appears to be able to do this in any manner he chooses.

Turning to page 56 of the bill, Mr. President, paragraph 5(b) indicates that the "Administrator shall be appointed by the President by and with the advice and consent of the Senate for a term coterminous with the term of the President, not to exceed 4 years." It also provides that he may be reappointed, but can only be removed by the President for "inefficiency, neglect of duty, or malfeasance in office."

In effect, we are giving extremely broad authority to an appointed consumer advocate without any control of his decisions for a period of 4 years. Most officials of the executive branch of Government, even those apponted for a definite term can be removed at the pleasure of the President. While I doubt the wisdom of this action, I am sure by now, the Senate knows of my opposition to almost every paragraph of this bill. The new Agency to be created at a time when we have an estimated deficit between this year's Government income and outgo of roughly $12 to $15 billion.

The Government also has an indebtedness of $471,662,200,407.05 as of July 11, according to the Treasury Department Daily Report and estimated interest for the fiscal year which ended on June 30 of $29,350,000,000. Recent polls show that the general public is more concerned about inflation than any other issue confronting the country and one of the major features contributing to the inflationary spiral is excessive Government spending and deficit financing. It seems to me that we can save the taxpayer some money by shelving this bill.

Let us look at some of the provisions relating to personnel.

It provides for a Deputy Administrator, General Counsel, five Assistant Administrators, and authorizes the Administrator on page 76 to "appoint, assign the duties of, and fix the compensation of, in accordance with civil service and classification laws, such officers and employees, including attorneys, as are necessary to perform the functions vested in him."

It specifically authorizes him to "employ experts, expert witnesses, and consultants," and to "compensate such persons at rates not in excess of the maximum daily rate prescribed for GS–18," currently $36,000 per year.

He may also "appoint advisory committees composed of such private citizens and officials of Federal, State, and local governments as he deems desirable to advise him, and to compensate such persons, other than those employed by the Federal Government, at rates not in excess of the maximum daily rate prescribed for GS–18," or not in excess of this $36,000 annual ceiling.

In other words, we are creating a new, independent major Government agency with authority on behalf of the Administrator to appoint as many consumer advocates before various branches and agencies of government as his appropriations will permit. Somehow the phrase "Frankenstein monster" comes back to mind. Then, we look at the functions of the Administrator beginning on page 58 and it authorizes him to "(1) represent the interests of consumers before Federal agencies and Federal courts in accordance with this Act;" in duplication of the role of the Attorney General before the courts and the statutory duties of the various existing agencies to protect the public interest.

He is authorized to receive complaints from consumers, to conduct research and other information-gathering activities relating to the interest of consumers and to disseminate public information of concern to consumers.

I would submit, Mr. President, that we have a sufficient number of Government pamphlets and in fact, have an office within the National Archives charged with the responsibility of getting rid of unnecessary Government forms and papers.

It is somewhat difficult to understand paragraph 5 on page 58 which authorizes the administrator to "publish, in language readily understandable by consumers, a consumer register which shall set forth the time, place, and subject matters of actions by Congress, Federal agencies, and Federal courts, and other information useful to consumers." Does that mean that this proposed new agency would disseminate information on a national basis of all committee hearings, of all acts of the House and the Senate, and not only in the Congress, in Federal agencies, in Federal courts, but other information useful to consumers?

This could authorize the agency to print and distribute any kind of material, because certainly everything printed has some value to somebody somewhere. It is difficult for us who serve here in the Congress to know at all times when the committees on which we serve and each subcommittee is meeting, but I believe it would be impossible for any Administrator to know and to publish information about all activities in the Congress, all the activities within the courts and all activities within the executive branch of the Government. The Federal Register attempts to perform at least a portion of this function. But mistakes are made and frequently changes are made in the time and the place of meetings of all branches of the Government. In my opinion, it would be humanly impossible for any agency to keep the public advised in this respect and attempting to do so is a substantial duplication of the work of existing agencies. It is interesting to note on page 59 that the Administrator will "inform the appropriate committees and Members of Congress of the activities of the Agency and testify, when asked or on his own initiative, before the committees of Congress on matters affecting the interests of consumers;". Would this act create a consumer lobbyist to contact each Member of the Congress and suggest how he should vote on a particular bill? My constituents are not the slightest inhibited in letting me know of their feelings without having an appointed official or one of the staff members stop by the office and visit for that purpose. I am very doubtful that a national consumer lobbyist would know the viewpoint of the citizens of Virginia. Certainly, the ability to be more familiar with the viewpoint of constituents than the Congressman or Senator elected to represent them is a big task.

We have had considerable discussion about the labor provision on page 59 of the bill, and I will not dwell on this provision. I understand that the committee amendment on this phase of the bill has been defeated.

It is difficult to understand why any labor disputes should be exempted and Government agencies, business and industry should be harassed. Frankly, I am opposed to the harassment of labor, management, or government by a tax-paid consumer lobbyist and intend to vote against the entire bill, but in all fairness, it does not seem reasonable that one segment should be treated differently from another. They should all be on the same footing and none exempted without compelling reasons. Insofar as I know, no compelling reasons have been given for the exemption of labor.

On pages 59, 60 and 61 of the bill, it is provided that the Administrator shall prepare and submit an annual report which need not be coordinated with any officer or agency of the Government but shall include a statement of the extent of participation by consumers and effectiveness of representation of consumers before Federal agencies. The Administrator is also authorized to rate the performance of Government agencies and the adequacy of their resources in enforcing consumer protection laws and in otherwise protecting the interest of the consumers. We now have an Office of Management and Budget to perform this function and the new agency would be within the executive branch of Government operating under the President. Congress is charged with congressional oversight; and the General Accounting Office, as an arm of Congress, has responsibility to make investigations and recommendations on the effectiveness of Government agencies. These provisions appear to me to provide another example of duplication of functions, another layer of Government, and more cost to the overburdened taxpayer.

Thinking of the taxpayer, Mr. President, I understand this bill authorizes the appropriation of $60 million over a 3-year period; and while this is only a small item, compared with the overall Federal budget, it appears to be one expenditure which can be avoided. In my opinion, the monetary cost of this bill would be far more than the authorization because various provisions of the bill require existing Government agencies to perform functions, provide services and personnel, do a considerable additional amount of paperwork and hold hearings at the request of the consumer advocate which might not otherwise be necessary and which may not be in the public interest. The stirring up of controversy and dissension undoubtedly will cost the American taxpayer far more than the amount of the authorized appropriation.

There is an article on page 47 of the July 22 issue of U.S. News & World Report entitled, "Those 'Rip-offs' That Irritate Taxpayers." It indicates that increasing numbers of taxpayers around the country are sending a message to Washington stating, "Don't waste our money on foolish items." It lists a number of items, such as a study of the impact of rural road construction in Poland; a study on teaching mothers how to play with their children; a study of wild boars in Pakistan; a study of lizards in Yugoslavia; a study of the American and Indian whistling ducks; a study of bisexual Polish frogs; a study of how the frisbee toy spins through the air; a study of why children fall off their tricycles and numerous others—all at the expense of the taxpayer and totaling several million dollars. The article concludes by quoting Congressman H. R. GROSS of Iowa, who is completing 26 years of service in the House of Representatives and who blames Congress for appropriations and Government expenditures continuing to increase.

I might add that Mr. GROSS has saved many millions of dollars, perhaps going up into the billions of dollars, during the time that he has served in the House of Representatives. He is quite frequently called the watchdog of the budget.

According to Mr. Gross, the remedy is simple, we must learn to say "no." He states that Congress is a sad place, that the taxpayer cannot look here for any help on spending.

Mr. President, this entire bill provides for an unnecessary new Government agency. Unnecessary expenditures by that agency; harassment of existing Government agencies through a consumer advocate; harassment of the busi-

ness community and State and local governments. Frankly, I find little or nothing in this bill that is not being performed by existing agencies or cannot be performed by existing Government agencies. Rather than saddle the administrative bodies of Government with a consumer lobbyist at taxpayers' expense, I believe we should, through legislative oversight, find specific instances in which a given governmental unit is not performing the functions for which it was created, and call that to the attention of the agency, or, through cooperation with the executive branch, cause the head of the agency to be removed and a suitable person substituted in his place.

There was an advertisement in this week's issue of U.S. News & World Report by the manufacturer of heavy earth moving equipment entitled, "The Cheering Section, too, helps win games" and concludes with a question, "How many games would your home team win if all the spectators did nothing but smear and jeer them at every game?" Rather than harass the business community, rather than harass existing Government agencies, I believe we should find a way to encourage them to make their best efforts and certainly having a consumer lobbyist looking over their shoulders or criticizing their every movement is not the way to bring about the best in Government.

Looking at the bottom of page 61, et seq., it is provided that the Administrator may intervene as of right as a party or otherwise participate for the purpose of representing the interest of consumers in any proceeding covered by the Administrative Procedure Act. But further on, the Administrator is authorized to participate in any agency activity which he determines may substantially affect the interest of consumers when it is not covered by the Administrative Procedure Act. Looking at section (c), it provides each Federal agency shall review its rules of procedure of general applicability, and, after consultation with the Administrator, issue additional rules which may be necessary to provide for the Administrator's orderly intervention or participation in accordance with this section, in its proceedings and activities which may substantially affect the interest of consumers. Now, Mr. President, if this does not add to the duties of existing Federal agencies, cause them to expend additional funds and take away the time which might otherwise be spent in the regular performance of their duties, then I do not understand the provisions.

It appears that the thrust of this measure is to have the consumer lobbyist intervene in as many hearings before administrative agencies as possible and to express his views on as many issues before administrative bodies as possible. Not only will this delay the decisionmaking process but the delays can be costly to both the Government and the private sector seeking Government decisions. A consumer lobbyist intervening to express his views with the authority from Congress to appeal a decision to the courts means pressure and may not be as fair to all parties as the present procedure. Certainly a hearing officer, commission or board will be influenced by the point of view of a government official given authority by the Congress to appeal any decision made by the officer, commission or board to the courts. I would prefer the decision of the regulatory agency to be final unless it is arbitrary or capricious and for the Department of Justice to continue to make the decision regarding any appeal within the court system.

I would add, Mr. President, that I have a variety of amendments to offer to this bill at the appropriate time. One such amendment provides that the Attorney General would continue to represent the Government including the Consumer Protection Agency if this measure is enacted into law, or would choose the lawyer who would represent the Consumer Protection Agency if for some reason he chose not to do so.

As you may know, no appeal can be taken within any of our Federal courts without the personal approval of the Solicitor General of the United States who serves under the Attorney General within the Department of Justice, and yet this bill would let the Administrator of the Consumer Protection Agency represent the consumer in court or choose the attorney who did which could result in lawyers representing two different points of view, arguing against one another within the Federal courts, and all at taxpayers' expense.

Section (d), on page 63, indicates that if any Federal agency does not initiate a proceeding or activity upon the request of the consumer lobbyist, he must advise the Administrator in writing why he has not taken the requested action.

Section (e) authorizes the Administrator to request a Federal agency to issue orders, summon witnesses, keep documents, papers and records, produce books and papers and information in writing and states that such Federal agency shall issue such orders unless it reasonably determines that such an order is not relevant to the matter at issue or would be unnecessarily burdensome to the person specified or would unduly interfere with such Federal agency's discharge of its own statutory responsibility. This section's type of activity might well be called a fishing expedition and could be used to harass any agency of the Government.

But, looking at the following section (f), the Administrator is authorized to represent the interest of consumers upon petition in writing by a substantial number of persons or by any organization which includes a substantial number of persons. Would this not have the effect of calling upon the taxpayer to subsidize any grievance, which any group of any nature might have and also have the effect of stirring up strife and litigation within the executive branch of Government. Then we have the question of judicial review in section 64. In effect it indicates that if the consumer lobbyist is not satisfied with the action taken by any agency of Government or if there is any suit pending in any of the courts of the country, he may intervene as of right as a party or otherwise participate in any civil procedure which involves the review or enforcement of a Federal agency action if he determines that such action substantially affects the interest of consumers. Now, it is provided that before instituting a proceeding in a Federal court he shall file a petition before such agency for a rehearing or for reconsideration and the agency shall act upon his petition within 60 days. Would this not have the effect of saying that if you do not do what I want you to do, I will take you to court? Would it unduly affect the decision to be made by a regulatory Government agency?

We should reflect, Mr. President, upon the nature of these regulatory agencies whether we are talking about the Federal Power Commission, the Federal Trade Commission, the Civil Aeronautics Board, the Federal Food and Drug Administration, or some other administrative body, these agencies were created for the purpose of specialization, for the purpose of holding hearings, listening to all sides of a given matter and arriving at a decision in the public interest which would not be upset by the courts except for an abuse of authority or arbitrary and capricious action on behalf of the heads of the agencies. They are quasi judicial in nature and I do not believe it would be wise for the Congress to have a consumer lobbyist or special interest Administrator looking over the shoulders of these experts charged with the responsibility of protecting the public interest who could not possibly have the expertise already present in specialists in a great variety of fields and tell both the administrative agency and the courts what should be done in a specific case. Somehow I continue to think about barratry, the stirring up of strife and litigation contrary to good administration and general public policy.

Mr. President, in reviewing this material, I have covered about 15 pages and there are 25 additional pages remaining. It is a bad bill; I urge its defeat but would reserve the right to discuss the remaining 25 pages and to offer a variety of amendments at a later time during the debate on this bill.

Mr. President, I look at the minority views of the committee, the dissenting report sets forth the views of the senior Senator from North Carolina (Mr. ERVIN), by the Senator from Alabama (Mr. ALLEN), the Senator from Tennessee (Mr. BROCK), and the Senator from Georgia (Mr. NUNN), all members of the Committee on Government Operations.

They indicate that this proposal is a bad idea whose time has come and gone. They urge that the bill be rejected or at least that extensive revisions be made in it before it is passed.

The four Senators suggest this for a number of major reasons, and I would like to read some of the reasons so we will be sure that it is in the RECORD.

They say that it "is bad in theory, being conceived out of a paranoid fear of businessmen and farmers, a patronizing attitude toward consumers, and a paradoxical view of the government."

They say that it is bad because it "grants powers to a political appointee who would be responsible to no one,

powers which no responsible official would use and which no irresponsible official should have."

They say that it is bad because it would "result in the subversion of the public interest to the often conflicting special interests of consumers, as these special interests are defined by a corps of bureaucrats."

These Senators say that this bill is bad in that it is "a fraud upon consumers who have been led to believe it is the answer to their day-to-day problems and frustrations."

They say that if enacted, it would "lead inexorably to the creation of other special advocacy agencies representing interests just as important as those of the consumer which are threatened by the existence of a powerful CPA."

Then, Mr. President, they go into some detail on these various items that have just been mentioned.

They say: "We are asked to believe that most, if not all, businessmen are scheming swindlers whose every action must be subject to review and attack by consumer protection agents who have been untainted by any business experience more responsible than a paper route."

They add: "We are asked to believe that all consumers are mental midgets who must look to Washington to find out how to manage their personal lives from some bureaucratic consumer 'representative' who will have neither the time nor the knowledge to shop for and cook a decent supper."

They speak of an idea which they designate as the "capture" theory; that the proponents of this bill would have us believe that the regulatory agencies designed to protect the public are always "captured" by the very interests they are supposed to regulate, bending to the will of these special interests with whom they are in constant touch.

By the same analogy, Mr. President, why would not the Administrator of the Consumer Protection Agency become a captive of the interests he is supposed to be protecting? The provisions of this bill provides a duplication, over and over again; another layer of government. It is an oversimplification of the complicated problem.

I believe that protection for the consumer rests in his own careful selection of the products he buys. I believe his protection lies in the competitive, free American market, whereby one businessman is trying to manufacture, produce, or make available a better product than another, each of them, while doing this, attempting to make a profit.

The businessman is imbued more today, I believe, with the public interest perhaps more than he was in days past. The American consumer, the average American citizen, is better educated than his forefathers were. And I believe, Mr. President, that this bill is just an added burden upon the taxpayers. I believe it adds to the deficit financing that is helping to create the inflationary pressure that we have today.

Mr. President, I conclude my remarks by urging that the Members of the Senate analyze the various provisions of this bill very carefully and that they reject it. It could well come back to haunt us if we pass it without knowing the contents of each specific section of the bill.

We call it a consumer protection bill. We have an amendment before us for consideration, offered by the Senator from West Virginia, to turn these words around, so that the agency will not constitute a confusion with the certified public accountants by being known as "CPA." He would have it called the Agency for Consumer Protection. It has been suggested by the Senator from Alabama that we call it the Agency for Consumer Advocacy, and by the Senator from Michigan that we call it the special interest protection bill.

It would appear more proper to call it the "Common Law Barratry bill," because it seems to me that we are creating an agency to stir up strife and litigation within the existing governmental agencies.

In my opinion, it is not in the public interest. I believe it should be soundly defeated. If Congress does see fit to pass this bill, I hope that the President will, veto the bill, as he has told us that he will, and that Congress will sustain the veto of the President.

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. BUCKLEY. 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. BUCKLEY. Mr. President, as we continue to debate the establishment of the so-called Consumer Protection Agency, it is very clear to me that this body, and the public at large, have an inadequate understanding of the implications of this proposal. I use the phrase "so-called" because there is a real problem with the title. No doubt it is the intent of the sponsors of S. 707 to establish a government mechanism to protect consumers. Everyone is moved by reports where those in commerce have failed to meet reasonable standards of performance or where individuals have been frustrated in seeking redress for products which fail to perform up to the expectations of the consumer and promises of the seller. However, the simple act of labeling a measure "consumer protection" does not make it so. Therefore, the fundamental objective of the legislative debate must be to go beyond the title to determine what is truly being proposed. Simple reliance on the legislative title is, unfortunately, insufficient because the title does not explain the true nature of the legislation.

The initial conceptual problem is obvious to any who might look for a reasonable definition of the interests this agency intends to represent. It should be clear to all that there is no single, identifiable, monolithic consumer interest. In section 4(11) of S. 707, "interest of consumers" is defined as "any health, safety or economic concern of consumers involving real or personal property, tangible or intangible goods, services, credit or advertising of description thereof, which is or may become subject to any business, trade, commercial, or marketplace offer or transaction, or which may be related to any term or condition of such offer or transaction, whether or not payment or the promise of consideration is involved." It is very important to note that despite the sweep of this language, there is nothing in it to help us to identify qualitatively where the highest interest of consumers lies. What we are given is a jurisdictional definition which tells us what acts within the world of commerce affect the interests of consumers. Mr. President, I would suggest that there is a large, crucial difference between a jurisdictional definition and an attempt to enunciate what are the true interests of consumers, in other words what is best for them.

The language in the House bill, H.R. 13163, is only slightly better, yet it makes no attempt to provide guidelines for the Administrator as to the specific nature of the interests of consumers that are to be protected. The reason for this failure is obvious: It is definitionally impossible to come up with language which would reflect what the Congress considers to be in the interests of consumers. Once one goes beyond the phrase "consumers' interests" he is confronted with contradictions and conflicts within the aggregate community of consumers. In automobiles, for example, speed, economy, safety and cost are often conflicting interests. To cite another example, because of the consumer's interest in secure sources of energy, the U.S. Congress rushed through legislation to expedite the construction of the Alaskan pipeline. Yet a representative of the National Consumer Congress recently declared that construction of the pipeline was contrary to the consumer interest.

It is extremely disquieting that the Congress, even under a legislative title so comforting, would consider it prudent or even possible to set up an economic agency within the Government to articulate the final word for all consumers, which is exactly what the Administrator is told to do. I find the notion, no matter how superficially appealing, simplistic and dangerous. For the fact is, Mr. President, that no Administrator of the Consumer Protection Agency, no agency no matter how sophisticated, could possibly express the complexity of interests which are consumer interests. This I believe is the single most important question which we address: Is it possible for the Government to establish an agency to represent the "consumer interest" which can possibly do justice to its own mandate? If it is not possible, as I am suggesting, then the Congress cannot allow this proposal to become law, for its enactment would constitute nothing less than a fraud on the consumer.

It is interesting to note that the Senate Commerce Committee did appreciate the difficulty, in fact the inherent impossibility, of asking a single agency to represent at the same time the total complex of often conflicting consumer interests. The committee report admits the impossible situation. The committee's response? When there are numerous views as to the nature of the consumers' in-

terests, the Administrator will decide. Mr. President, the Congress is being asked to approve legislation which would provide for the appointment of a single man who will speak, ex cathedra, and inform all consumers of the true nature of their interests. Surely the Senate does not and should not want to do any such thing. Surely this body understands that the true nature of the American system is pluralistic, and monistic proposals to allow for a "consumer czar" are alien and unwise.

Mr. President, it is important that the Senate look for a moment to the reasons which have been offered to justify the establishment of this "Consumer Protection Agency."

Mr. WILLIAM L. SCOTT. Mr. President, will the Senator yield?

Mr. BUCKLEY. I yield.

The PRESIDING OFFICER (Mr. BARTLETT). The Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, I was interested in the comment the distinguished Senator from New York was making with regard to determining what was the interest of the consumer.

Would not the Senator agree—and perhaps he could express his views—on the diversity we have within our country, the diversity of backgrounds of individuals, the diversity of economic levels, social levels, the diversity in educational levels, the diversity of preference for a given product? The analogy of an automobile was mentioned, with one individual wanting a large car for comfort and one individual wanting a small car for its economy. We have different views.

Does not the diversity that we have within this country, perhaps, in the marketplace as well as elsewhere, strengthen the country? Does not the diversity result in additional automobiles being manufactured to meet the desires of the people?

Is it possible for anyone, even someone all knowing, to come up with a consumer point of view that 211 million or 212 million people would agree with and which is their point of view? Do we have such a people in this country?

Mr. BUCKLEY. As the Senator from Virginia expresses it, Mr. President, the situation is obviously preposterous. There is no single consumer best interest. If there were, we would only have one brand of toothpaste on the market, one automobile, one kind of bicycle, one kind of condensed milk, and one kind of medicine. You name it.

One of the glories of our system is the diversity of the products that are produced by corporations and companies, small firms, and family units trying to meet the diversity of consumer demands. To the extent that we create a czar who can arbitrarily declare that this item or that item is not good for you and for me, to that extent we limit choice. To that extent I think we harm the true consumer interest.

Mr. WILLIAM L. SCOTT. If the Senator will yield further, again going back to the example of the automobile, does not the fact that General Motors, Chrysler, and Ford compete with one another, and American Motors and some of the smaller people are attempting to enter the field, result in a better automobile than if we just had one American automobile? Is not this part of the foundation of our competitive free market?

Mr. BUCKLEY. That is very definitely at the heart of it.

Also the fact that we have imported automobiles as a part of the overall provision of choice to the consumer. As a matter of fact, if some of the most strident consumer advocates had had their way—and this is clear from the evidence—the Volkswagen would have been forbidden entry into the United States as not being safe for the average American driver.

What this would have done is it would have deprived many, many Americans of a cheaper automobile, of a more economical automobile, and would also have removed that competitive influence on domestic manufacturers which has led to a whole generation of American-made compacts and subcompacts.

In other words, choice is a good thing for the American consumer. Yet, to establish a czar who would ultimately make his own decision as to what was in your interest and mine would circumscribe choice, to that extent.

For example, one thing that I believe most Americans would agree on as consumers is that it is not in their interest to have the ignition interlock seatbelt system. This is an atrocity imposed upon all American buyers in the interest of consumer protection. I say that Americans are adult enough to analyze a product and determine for themselves what is in their own interest.

Mr. WILLIAM L. SCOTT. If the Senator would yield on that point, I am quite aware that he sponsored a bill to give this freedom of choice with regard to the interlocking devices. I have been privileged to cosponsor the bill with the Senator from New York. The desirability of having this measure was brought very graphically to my own mind this weekend because I have an automobile that cannot be started without the seatbelt being fastened.

Over the weekend my wife and I were on a trip and stopped some 200 miles from home to get some gasoline. When the tank was filled with gasoline we did buckle our seatbelts but the car would not start. Something had happened to the automobile.

I do not know whether it was too hot or just what the difficulty was. I did not know at that time that there is a button underneath the hood one could push in an emergency situation. But we appeared to be stranded in a new automobile 200 miles from home. Some 20 minutes later we were able to start the car, but it illustrates what can happen.

I believe that we should find a bill coming before the Senate to which we can attach this proposal as an amendment and get this regulation of the Department of Transportation changed that when one has a seatbelt he can decide whether he wants to buckle it or not.

I am not speaking against seatbelts. I think they are a desirable safety feature. I believe we should have seatbelts on automobiles, and people should buckle them. But to say that you cannot start the motor of a car unless your seatbelt is buckled is something quite different. My own car also has the steering wheel lock. You cannot start the car; you cannot even push it, except straight ahead or straight back. You cannot turn the wheels.

It took us over 20 minutes to get the car started. It was a new automobile with 3,000 or 4,000 miles on it. I still do not know why it would not start, but the difficulty was connected with the locking device.

Would not the Senator agree that we are taking away too many individual choices from the American people. This is a prime example of what the Consumer Protection Administrator could advocate in our interest.

I appreciate the Senator yielding.

Mr. BUCKLEY. Mr. President, I thank the Senator from Virginia for helping to clarify and put a spotlight on this aspect. There are other aspects about this legislation which make it totally inadvisable, which I shall go into in my statement.

ORDER OF BUSINESS—ELEMENTARY AND SECONDARY EDUCATION ACT—CONFERENCE REPORT

Mr. PELL. Mr. President, will the Sentor from New York yield to me in order that I might present a conference report on a privileged matter?

Mr. BUCKLEY. I am glad to yield to the Senator from Rhode Island without losing my right to the floor.

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

Mr. President, I ask unanimous consent to take up at this time the conference report on H.R. 69, and I ask for its immediate consideration.

Mr. WILLIAM L. SCOTT. Mr. President, reserving the right to object, will the Senator tell us what the conference report is?

Mr. PELL. Certainly. Actually I do not believe it requires unanimous consent to be taken up because it is a privileged matter.

This is the conference report on H.R. 69, the ESEA conference on which we arrived at a conclusion last night.

Mr. WILLIAM L. SCOTT. Is that the education bill?

Mr. PELL. The Senator is correct.

Mr. WILLIAM L. SCOTT. Mr. President, I wish to ask the Senator whether, and I do intend to object if it requires unanimous consent, but I suggest that the Senator——

Mr. PELL. Mr. President, does this require unanimous consent?

The PRESIDING OFFICER (Mr. HELMS). It does not require unanimous consent.

Mr. WILLIAM L. SCOTT. Mr. President, will the Senator yield?

Mr. PELL. I yield to the Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, many of us have not studied this conference report, and we would like to have an opportunity to study it. I would ask the distinguished Senator to withhold this matter.

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

Mr. PELL. I shall take it up later this afternoon.

Mr. RIBICOFF. There is a unanimous-consent agreement pending at the desk entered by the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) that there was to be a vote on the Allen amendment to the Byrd amendment to S. 707; and it was understood, I believe, subject to the Senator from Virginia finishing his speech, that that would occur at 3:30 p.m.

I would suggest we wait for the distinguished majority whip to come to the floor before the Senator enters into any understanding because there is a unanimous-consent agreement at the desk now.

Mr. PELL. Mr. President, I appreciate the courtesy of the Senator from New York. With that understanding, I will withdraw my request but I wish to put the Senate on notice that I do intend to take it up later.

Mr. JAVITS. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. HANSEN. Mr. President, a parliamentary inquiry. Who has the floor?

The PRESIDING OFFICER. The junior Senator from New York has the floor but he has yielded.

Mr. PELL. Mr. President, will the Senator yield to me without losing his right to the floor?

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, will the Senator yield for that purpose?

Mr. PELL. I yield for that purpose.

Mr. JAVITS. Mr. President, is a motion to take up a conference report privileged or does it require unanimous consent?

The PRESIDING OFFICER. It is privileged.

Mr. JAVITS. At any time a Member can get the floor. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. I thank the Chair.

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

Mr. JAVITS. Mr. President, if I may just finish my remarks, I have been recognized by my colleague, and I would like to finish my remarks.

I am the ranking minority member of the committee which deals with this conference report, and I agree with my colleague from Rhode Island that we should not incommode members by an hour or two. But I think it is perfectly fair to advise the Senate that we will seek consideration of that report on a preferential basis as soon as he can get the floor, and that we will seek application of the rules for that purpose, so that there is no mistake about it in the Senate. I hope that will not be necessary, but I think the Senator is absolutely correct. The Senator is being very courteous to everyone, but we do intend to seek consideration of the conference report.

Mr. PELL. I thank the Senator. I wish to add that I would like to get this conference report through today. Out of appreciation and courtesy to the junior Senator from New York, I shall not take up his time any more, but I shall bring it up later.

The PRESIDING OFFICER. The Senator from New York has the floor.

The Senate will be in order. The Senator is entitled to be heard.

CONSUMER PROTECTION AGENCY ACT

The Senate continued with the consideration of the bill (S. 707) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

Mr. BUCKLEY. Mr. President, it is contended, in section 2(2) of S. 707, that the interests of consumers are inadequately represented within the operation of the regulatory agencies that the Congress has established over the years. It is found, implicitly, that the agencies established to carry forth the public interest, or if you will the consumers' interest, have failed to do so. But rather than recommending that the procedures before these agencies be changed so as to assure a greater consumer input in the particular area of jurisdiction, the committee concludes that what is needed is yet another agency. Only this time we will call it a Consumer Protection Agency and all the reasons for the failure in the other instances will disappear. In other words, what section 2(2) asserts to be true about all agencies presently existing will not be true about the Consumer Protection Agency. I find the reasoning astonishing.

To return to the major point offered by the sponsors of S. 707: the U.S. Senate is asked to create another agency, this one quasi-regulatory, because the ones already established are unable adequately to represent the public interest. Does not the self-evident contradiction bother anyone?

The sponsors observe a failure in the operation of existing agencies, but rather than analyzing the failure in any meaningful way, they have brought forth for the Congress consideration the old, failed solution. Why should we place any faith in a second generation of agencies set up to represent the public interest where the first generation has failed?

If the conceptual problems and historical lessons were not enough to produce great reluctance on the part of the Senate to enter into a variation on the old theme, then every Senator should simply direct his attention to the way in which the proposed agency would be structured. Section 5 of S. 707 informs us that all authority, duties and functions of the Agency are vested in the Administrator. As far as it goes, this is the standard language of the standard form of bill designed to be the standard Federal solution to the most recently discovered problem. It has become expected that the Congress simply acknowledges or asserts the existence of a problem, and responds to it by directing the executive branch, some new quasi-judicial agency or an independent corporation to do what in some bureaucrat's estimation is necessary to solve the problem.

But in the case of the ACA, the authors propose to endow the Administrator with powers that are positively dazzling in their scope. It is the Administrator and the Administrator alone who will determine what is in the interest of consumers, and his determination is not reviewable by any court of law. He can intervene in any proceeding before any Federal agency, and can go to court to reopen proceedings and decisions hitherto considered final. The Administrator, possessing wide discovery authority in the legislation, may in his sole discretion release information about a company, product or practice, including trade secrets, when he deems it "necessary to protect the health or safety of the public." And if the Administrator commits error he is obliged under the proposed law to do no more than apologize to the firm which may have experienced severe or even fatal injury. Mr. President, I ask the members of this body whether such permissive requirements meet even the most modest demands of due process?

The point has been made often by the legislation's sponsors that the proposed Consumer Protection Agency is not a regulatory body. Its function in life, we are told, will be to advocate a position, which as a matter of law is that of the consumers. I suggest, Mr. President, that in practice this would prove to be a distinction without a difference. By virtue of the Agency's existence, its staff and funding, it is not hard to imagine that the Consumer Protection Agency will be able to exercise a vicarious regulatory power. That the ACA can appeal whatever are the conclusions of other Federal agencies in which the ACA has a permissible interest is going to mean something to the decisionmakers in those other agencies. In other words the ACA will have a de facto power to regulate without the responsibility for doing so. The idea of powers or rights given without correlative responsibilities to serve as countervailing factors reflects unsound public policy. And this is exactly the case with a consumer advocacy agency.

There are a number of practices authorized under the proposed act over which I have serious concern. First, the Administrator is authorized to make grants and enter into contracts for research and other supportive functions which are worthwhile in the sole judgment of the Administrator. What this means is that the Administrator is given rather sizable sums of Federal money to distribute to private organizations that are allied with his own causes and views. If any taxpayer has ever wondered how the Government creates a vested interest, it is in just this manner. Is it proper for the Federal Government to tax the people in order to allow an Administrator who cannot be dismissed to utilize his sole judgment in supporting advocacy groups with whom he happens to be in sympathy?

A second activity of extremely dubious merit is the authorization of comparative testing of products along guidelines which are not included in the bill. The Administrator will establish the test criteria, select the products to be compared and after the test is conducted, announce the results. At first glance one might wonder what could possibly be wrong with the comparison testing of products which are readily available in the marketplace. Well, two things. Very often products although similar in many ways are designed to emphasize high-performance capabilities in certain specialized functions which are necessarily ignored in a comparative test. Performance grading, then, is something which could be reflected positively or negatively solely by the test design.

Further, even with agency personnel doing their utmost to construct a model for the comparative tests which reflects a disposition toward fairness and sophistication, there will necessarily have to be tradeoffs which will either treat none of the products fairly or will actually favor one product over another. However, I seriously doubt whether this proposed Federal agency will have available to it the ability to replicate the complexities which are necessarily required to reflect the aggregate demands of the marketplace. The reason for this is that only in the marketplace is one likely to find all the nuances. The test models will necessarily be simplistic. The consequences to a business, tested under a design which will reflect a bias in favor of a competitor's emphasis, may well be devastating.

Certainly all Members of this body are familiar with the institutional problems when he wishes to communicate a point or distinction over a matter of some interest to him.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the yeas and nays on the Allen amendment to the Byrd amendment be vitiated; that the Allen amendment to the Byrd amendment be accepted, and that the rollcall vote on the Byrd amendment, as amended by the Allen amendment, occur now, with the understanding that the Senator from New York (Mr. BUCKLEY) not lose his right to the floor, that it not be counted as a second speech against him.

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

The question is on agreeing to the Byrd amendment, as amended by the Allen amendment. 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 Indiana (Mr. HARTKE) and the Senator from Louisiana (Mr. LONG) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Florida (Mr. GURNEY), the Senator from Oregon (Mr. PACKWOOD), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. BELLMON) is absent attending a funeral of a relative.

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

The result was announced—yeas 87, nays 5, as follows:

[No. 327 Leg.]

YEAS—87

Abourezk	Fong	Montoya
Aiken	Fulbright	Moss
Allen	Gravel	Muskie
Bartlett	Griffin	Nelson
Bayh	Hansen	Nunn
Beall	Hart	Pastore
Bennett	Haskell	Pearson
Bentsen	Hatfield	Pell
Bible	Hathaway	Percy
Biden	Helms	Proxmire
Buckley	Hollings	Randolph
Burdick	Hruska	Ribicoff
Byrd, Harry F., Jr.	Huddleston	Roth
Byrd, Robert C.	Hughes	Schweiker
Cannon	Humphrey	Scott, Hugh
Case	Inouye	Scott, William L.
Chiles	Jackson	Sparkman
Church	Javits	Stafford
Clark	Johnston	Stennis
Cotton	Kennedy	Stevens
Cranston	Magnuson	Stevenson
Curtis	Mansfield	Symington
Dole	Mathias	Taft
Domenici	McClellan	Talmadge
Dominick	McGee	Thurmond
Eagleton	McGovern	Tower
Eastland	McIntyre	Tunney
Ervin	Metcalf	Williams
Fannin	Metzenbaum	
	Mondale	

NAYS—5

Baker	Brooke	Weicker
Brock	McClure	

NOT VOTING—8

Bellmon	Gurney	Packwood
Cook	Hartke	Young
Goldwater	Long	

So Mr. ROBERT C. BYRD's amendment, as amended by Mr. ALLEN's amendment, was agreed to.

The PRESIDING OFFICER. The Senator from New York has the floor.

Mr. CANNON. Mr. President, will the Senator from New York yield me 30 seconds?

Mr. BUCKLEY. Mr. President, I yield to the distinguished Senator from Nevada without yielding my right to the floor.

ANTIHIJACKING ACT OF 1974—CONFERENCE REPORT

Mr. CANNON. Mr. President, I ask unanimous consent that the conference report on S. 39 be made the pending business.

Mr. President, earlier today this matter was covered and was completed except for the agreement of the Senate. It was temporarily laid aside, in the belief that a Senator wanted to speak on the matter.

That is not the case; therefore, I ask that the Senate approve the conference report.

The conference report was agreed to.

Mr. CANNON. Mr. President, I thank the distinguished Senator for yielding.

LEGISLATIVE PROGRAM

Mr. BUCKLEY. Mr. President, I would yield to the distinguished Senator from Michigan without sacrificing my right to the floor.

Mr. GRIFFIN. Mr. President, with that understanding, I take this time for the purpose of asking the majority leader if he can advise us concerning the program for the rest of the day and for whatever information he may be able to give us.

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished acting Republican leader, it is anticipated that we will be on the pending business, Agency for Consumer Advocacy, for the rest of the day.

Tonight, the distinguished Chairman of the Subcommittee on Education will lay down the conference report, but it will not be taken up until the first thing tomorrow.

At this time, I ask unanimous consent, on another item of unfinished business, Calendar 838, S. 3164, that there be a time limitation of 30 minutes on all amendments.

The PRESIDING OFFICER. Is there objection?

Mr. MANSFIELD. And 1 hour on the bill, under the usual rule.

Mr. ALLEN. Mr. President, reserving the right to object, which is the bill?

Mr. MANSFIELD. Real estate settlement services.

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

Mr. GRIFFIN. Mr. President, I would just state that this has been cleared with the Senator from Tennessee (Mr. BROCK), who is handling the bill on our side, so I know of no objection to the request.

Mr. MANSFIELD. And may I say that we will not return to S. 3164 today, but Senators should be on notice that it might be taken up tomorrow or Thursday.

The PRESIDING OFFICER. Without objection, the Senator's unanimous consent request is agreed to.

THE TEXT OF THE UNANIMOUS-CONSENT AGREEMENT IS AS FOLLOWS:

Ordered, That, effective on Wednesday, July 24, 1974, at the conclusion of routine morning business, during the further consideration of S. 3164, the so-called "Real Estate Settlement Procedures Act of 1974," debate on any amendment, debatable motion, or appeal shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the Senator from Tennessee (Mr. Brock): *Provided*, That the Senator from Maine (Mr. Hathaway) be recognized to call up four amendments in succession when the bill is reported: *Provided further*, 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 no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Tennessee (Mr. Brock) and the Senator from Wisconsin (Mr. Proxmire): *Provided*, That the said Senators, 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, debatable motion, or appeal.

CONSUMER PROTECTION AGENCY ACT

The Senate continued with the consideration of the bill (S. 707) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

Mr. YOUNG. Mr. President, on this last vote, I understood it was supposed to come at 4 o'clock. Someone called my office a little bit ago saying I would have a minute and a half to make it, but there was no waiting for it.

After this, when a vote is called for 4 o'clock, I think the offices should be notified that a vote is coming earlier. The vote was not that important, but I like to be present.

Mr. MANSFIELD. Mr. President, the Senator has a point. If a vote is called for a definite hour, Senators hereafter will be notified.

Would the Senator care to make a statement as to how he would have voted if he had been here a minute sooner?

Mr. DOMINICK. Mr. President, will the Senator use his microphone?

Mr. YOUNG. I would have voted "yea" had I been present.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. MANSFIELD. Yes, indeed.

Mr. HARRY F. BYRD, JR. I notice on the calendar S. 3792, a bill to amend and extend the Export Administration Act. May the Senator from Virginia be notified if any unanimous-consent requests are made in regard to that measure?

Mr. MANSFIELD. Yes, indeed.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I yield.

Mr. ROBERT C. BYRD. Now that an agreement has been reached on the real estate settlement bill, I wonder if the Senate will agree to allowing the Senator from Maine (Mr. HATHAWAY), when the Senate next takes up that bill, to call up his four amendments in succession. I ask unanimous consent to that effect.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. He has four amendments which he could call up under the bill, and there would be 30 minutes on each of them.

Mr. GRIFFIN. Mr. President, may I ask the Senator from Maine whether or not he has discussed that with the Senator from Tennessee (Mr. BROCK)? Is that agreeable to him, does the Senator know?

Mr. HATHAWAY. Yes, the Senator from Maine will state to the Senator from Michigan that I have discussed it with the Senator from Tennessee, and he is agreeable to that.

Mr. GRIFFIN. To that procedure?

Mr. HATHAWAY. Yes.

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

Mr. MANSFIELD. Mr. President, I thank the Senator from New York for his usual graciousness.

Mr. BUCKLEY. I am glad to oblige the distinguished majority leader.

Because of the authority attributed by the public to an "official" finding by Government, Government ought to be extremely cautious about entering the too often subjective business of product comparisons. As a rule, the marketplace, which reflects a multiple of individual judgments reflecting a host of consumer preferences, has provided a more reliable test of design and performance than an ACA. Testing is better left to private organizations whose findings are greeted with a healthy skepticism. A Government announcement is often treated as gospel by an unsuspecting consumer who is most unlikely to think in terms of distinctive test models.

Mr. ALLEN. Mr. President, will the Senator yield for a question?

Mr. BUCKLEY. I am glad to yield to the Senator from Alabama.

Mr. ALLEN. Would the Senator mind, when he refers to this inchoate agency, referring to it as something besides the CPA? Because that has been abolished by the Senate. The Senator might refer to it by other initials. Would that be asking too much of the Senator?

Mr. BUCKLEY. I recognize that halfway through my statement we have changed the name of what we are speaking about. I ask unanimous consent that initials "CPA" be considered to have been changed to "ACA" wherever they appear in my statement.

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

Mr. ALLEN. I thank the Senator.

Mr. BUCKLEY. Mr. President, it has been suggested that a more appropriate name would be "National Agency To Disrupt Economic Rights"; the acronym would be "NADER."

Mr. ALLEN. I will accept that.

Mr. BUCKLEY. Continuing my statement:

A third practice which the Administrator is authorized to undertake is the development of informal dispute settlement procedures which one assumes will include the Administrator's right to seek consent agreements with private citizens and industry. I note this because it has been a point of the bill's sponsors that the Consumer Protection Agency will not be a regulatory agency.

However, the likelihood of the persistence, made possible by the provision of Government funding without any practical or institutional limitations on the amount of resources to be concentrated by the Agency to a given matter, puts a private party in the position of consenting to an agency agreement or facing long, serious, and expensive involvement with the Consumer Protection Agency. The result, in all probability, will be that the private party, assessing the assured costs versus the potential profit, will give in on the point and direct his business enterprise elsewhere. That Government should be allowed to wield a stick of the kind being offered to an administrator without meaningful restrictions is frightening. It suggests the ultimate in regulation by intimidation.

This is the very kind of legislation which has made it increasingly difficult for smaller enterprises to survive. It is not that the Congress is going to do anything more than offer to the voters "consumer protection" and to the Administrator the authority to seek solutions to consumer problems. Certainly, if this bill passes, that will be the total of our intent.

However, at one point the Agency created to do the job comes face to face with a private party who is totally unable by any practical measure to compete with an agency of Government which has its point to make.

Mr. President, I have, thus far, merely sketched some of the problems and dangers that lie within the seductive title of the bill that is before us. I would like to quote extensively from a detailed study of both the Senate and House versions of the proposal to establish a Federal Consumer Protection Agency prepared by Stanley T. Kaleczyx, Jr., consumer affairs attorney for the Chamber of Commerce of the United States.

I believe it is important for us to be aware of what is in the House version as well as our own because of the mistaken idea that the former is substantially weaker. No one should vote for the Senate bill, in other words, in the mistaken assumption that the mischief can be remedied in conference. The Kaleczyx study details the full horrors of what both Houses of the Congress seem hellbent to inflict on the consumer and on the businesses that serve his needs—and all in the name of consumerism.

Now I shall quote extensively, Mr. President, from the study referred to:

> On April 3, 1974, the House of Representatives passed the proposed Consumer Protection Act of 1973, H.R. 13163. This bill would establish a Consumer Protection Agency (CPA) which, in the language of the bill, would provide "vigorous representation and protection of the interest of consumers" (Section 2). As the report of the House Committee on Government Operations, No. 93-962 states at page two, the CPA would have four principal roles:
>
> (1) consumer advocacy;
> (2) complaint handling;
> (3) information development;
> (4) advising Congress and the President.
>
> The Senate version of the Consumer Protection Act, S. 707, was referred jointly to the Senate Commerce Committee and Senate Government Operations Committee. On April 11, 1974, the Senate Commerce Committee reported out the bill; the Senate Government Operations Committee, on May 28, 1974. The stated purposes and roles of the House-passed measure may be used to characterize the Senate bill. Although the Senate bill is a much more dramatic example of a philosophy of consumerism which pits business against the consumer, neither the House nor the Senate version of this legislation represents a point of view which may be characterized in any way as balanced, fair or impartial to the interests of business or to the interests of consumers. Indeed, one pundit has compared the two bills as follows:
>
> "The difference between the House and the Senate versions of the CPA bill is the difference between an eight-foot and a nine-foot rattlesnake. Both are poisonous and both are deadly."
>
> One need only look to the definitions of "consumer" and "consumer interest" contained in both bills to conclude that anything and everything is fair game for the CPA—unless it concerns organized labor.

Which the Senate voted to totally exempt from the impact of this legislation.

To continue with the study:

It is not, however, the special treatment of labor unions which has engendered so much hostility toward this legislation. Rather, the consequences which would flow from the enactment of this legislation and the operaion of CPA itself should be the cause of grave concern on the part of all consumers as well as business. This legislation is both anti-consumer and anti-business. Neither the House nor the Senate bill is representative of legislation enacted in the public interest. Both bills should be rejected by all responsible legislators and their constituents.

In the following analysis, the impact and the underlying philosophy of the two bills will be discussed and the differences and similarities of the two bills highlighted. A thumbnail chart summarizing in brief ten of the provisions of the two bills is included as an appendix. It should be noted that the appendix does not represent an attempt to list all the differences or even all the salient provisions of the two proposals.

THE UBIQUITOUS "CONSUMER INTEREST"

The proponents of the CPA bill, both in the House and in the Senate, have argued that the underlying philosophy of the bill is to provide a voice for consumers before Federal agencies. The proponents argue that the CPA bill provides an Administrator and an Agency who will act in the "consumer interest." What the advocates of H.R. 13163 and S. 707 overlook, however, is the fact that their underlying philosophy is fundamentally unsound. The basic infirmity with the approach to these bills is that there is no such thing as a single consumer interest. In short, the consumer interest is not monolithic but is composed of a number of consumer interests, some of which are at times competing interests. For example, in the area of packaging, who is to say that all consumers have a greater interest in the standardization of packages than in the convenience of the use of these packages? Or that consumers are more concerned with packaging that provides an extra measure of protection for the product or the retail cost of the product? Where is the line to be drawn when one consumer interest leaves off and another prevails? Whether we consider the House or the Senate version of the bill, the conclusion is the same: There is no one consumer interest.

Both the House and Senate versions of the bill, however, provide for an Administrator of this Consumer Protection Agency who will have the ultimate authority to choose what consumer interest will be represented by the Agency. In effect, this means that one individual will select the consumer interest which will be subsidized by the taxpayers' money, whether or not the individual taxpayer has elected that particular consumer interest as the consumer interest which he supports. Indeed, S. 707 provides in Section 14(e)(2) as follows:

"A determination by the Administrator that the result of any agency proceeding or activity may substantially affect the interests of consumers or that his intervention in any proceeding is necessary to represent adequately the interests of consumers shall be deemed not to be a final agency action."

The import of this provision is simply this: The CPA Administrator's determination of what is in the interest of consumers is not reviewable in court by anyone. Indeed, comparisons to the concept of finality employed in judicial proceedings are inapposite. While a determination of a party's standing to sue may not be subject to interlocutory appeal, such a decision is made by a dispassionate court. Similarly, it is the Federal agency which, in accordance with due process standards articulated in its rules of procedure, determines the extent of participation of intervenors seeking access to its proceedings. The CPA, itself a biased party which believes it has an interest in the proceeding, however, determines its own right to intervene in an agency activity under the provisions of both bills.

H.R. 13163 does not contain the specific language found in the Senate version of the bill. It is no less certain, nonetheless, that the effect of the House bill is identical to that of the Senate bill. The CPA Administrator does have complete discretion in determining what is the consumer interest—and that determination is not reviewable by the very body which has oversight responsibility, the Congress. The Honorable Don Fuqua addressed this particular issue in the additional views which he submitted in response to the House Committee Report on H.R. 13163. Congressman Fuqua wrote as follows:

"Remember, we are, among others, delegating to this CPA the duty to define what is or is not in the consumer interest. Congress will have no say in any such definition.

"In theory such a delegation may seem sound, but some very thorny questions are going to be presented when the CPA starts operating in the vast and often contradictory area of consumer interest. What is the primary consumer interest in automobiles—safety or cost? What is the primary consumer interest in gasoline—cost, availability or octane rating? We cannot reasonably expect the CPA, as an advocate, to argue both sides of a question. And, we cannot really expect the CPA to hold its own hearing on an issue prior to intervening in another agency's hearing on the same issue. In a very real sense, we have created here a prestigious Federal lawyer with itself as a client."

In sum, there is fundamentally no difference in philosophy between the House and the Senate versions of this legislation. Both bills assume that an omniscient Administrator, who possesses a vast reservoir of knowledge which encompasses every conceivable consumer interest, shall determine for all citizens—and all citizens are consumers—what is in their best interest. There is no room for individual choice; there is only one unchallengeable consumer interest.

THE PROPOSED ABDICATION OF OVERSIGHT AUTHORITY

An analysis of the House and Senate bills permits only one unavoidable conclusion: The CPA Administrator is responsible to no one in deciding for consumers what is in their best interest. Further, once that initial determination is made, the Administrator can, in practical effect, do as he pleases within the broad confines of both bills.

The Senate bill, in particular, gives the Administrator of CPA virtually unbridled authority to conduct his agency's affairs without any direction or oversight from the Executive branch. Section 5(b) of S. 707 reads in pertinent part as follows:

"The Administrator shall be appointed by the President by and with the advice and consent of the Senate for a term coterminous with the term of the President, not to exceed four years.

"On the expiration of his term, the Administrator shall continue in office until he is reappointed and qualifies. The Administrator may be removed by the President for inefficiency, neglect of duty, or malfeasance in office."

The effect of this Section is three-fold. First, it provides for an Administrator with a fixed term of office, a provision which is unprecedented in other non-regulatory government agencies. Second, the Administrator, unlike most cabinet-level officers, does not serve at the discretion of the President. Third, the grounds for removal are more stringent than the requirements for the removal of heads of other regulatory agencies within the government. This last observation is particularly important because it may be seen as inconsistent with the argument advanced by the proponents of this legislation. The supporters of the CPA have argued that the existing regulatory agencies are the "captives" of the industries which they supposedly regulate. If such were, in fact, the case, then, under existing law, the President has the authority to remove agency heads who fail to act in the public interest. Under this provision of the Senate bill, however, the President does not have the same latitude to discharge the CPA Administrator if he fails to act in the amorphous "consumer interest."

In addition, the Senate bill in Section 6(c) further hinders the Executive branch in the performance of its legitimate oversight authority. Section 6(c) has two basic provisions. First, the Administrator shall concurrently transmit a copy of any budget estimate or request to the President, the Office of Management and Budget and the Congress. Second, whenever the Administrator submits any legislative recommendations, testimony, or comments on legislation to the President or OMB, he shall concurrently transmit a copy to the Congress. While these provisions ostensibly inform Congress of the activities of the CPA, they do so at the expense of limiting the Executive in developing its programs and budgets for the coming fiscal year. The effect of these provisions is to limit the capacity of the Executive to balance the interests of all agencies with respect to legislative preferences and resource needs. As a result, the Executive will be significantly impeded in its ability to present uniform and coherent programs to the Congress.

The "captive" agency theory, so popular with the proponents of this legislation, was alluded to above. The necessary corollary to the proposition that regulatory agencies are the captives of the industries which they purportedly regulate is that Congress has failed in its oversight responsibility. Since each regulatory agency is charged to act in the public interest, it is the responsibility of Congress to insure that the agencies which it does create do discharge their statutory obligations. It is not logical to believe that the CPA will be insulated from this "captive agency" theory. In fact, if the proponents of the legislation are to be believed, then the CPA, like other agencies of the Federal government, will eventually be under the clandestine control of special interests. At this juncture, of course, it is impossible to determine whether the CPA would be co-opted by the industries which allegedly "control" the existing regulatory agencies or whether the CPA will be dominated by and receive direction from the most radical consumer advocates. In any event, both the Senate and the House bills do not provide the Congress with the authority it requires to properly and effectively exercise its legitimate oversight responsibility.

Section 6(b)(3) of the Senate bill provides that the Administrator shall include in his report "the assistance given the Agency by other Federal agencies in carrying out the purposes of this Act." In Section 6(b)(4) it is provided that the Administrator shall recount "the performance of Federal agencies and the adequacy of their resources in enforcing consumer protection laws and in otherwise protecting the interests of consumers, and the prospective results of alternative consumer protection programs." Similarly, Section 4(d) of H.R. 13163 provides that the Administrator shall submit to Congress and the President each year an annual report which "shall include a summary and evaluation of selected major consumer programs of each Federal agency, including, but not limited to, comment with respect to the effectiveness and efficiency of such programs as well as deficiencies noted in the coordination, administration or enforcement of such programs."

What both bills clearly do is delegate the authority of Congress to engage in oversight of government agencies to this new entity. This is clearly duplicative of the work of the

GAO which Congress has created as its investigatory arm to help determine whether existing agencies are acting in the public interest. At the very least, this would suggest that Congress is creating a new agency, a new Federal watchdog, which will have not the public interest in mind but the interest of a special group within the larger category of the public interest.

In addition to this delegation of oversight responsibility to a new Federal agency, the language of both the Senate and the House bills provide that there shall be no effective oversight of the workings of the CPA until three years after the enactment of the legislation. The fatal flaw in this proposal is perhaps most articulately summarized by the minority report filed in opposition to S. 707 by Senators Ervin, Allen, Brock and Nunn. The Senators state:

"If we are to believe the proponents of this bill that legislative oversight is totally ineffective in controlling agency actions, then we shall have a CPA which is absolutely free of any control and responsibility. Until fiscal year 1977, when new authorizations must be sought from the Senate Committees on Government Operations and Commerce, it answers to no one but its appropriations committee, whom it is authorized to lobby along with other Members of Congress."

If the unbridled authority of a CPA Administrator who acts in an amorphous, self-proclaimed "consumer interest" is to be doubted by anyone, one need only look to the position of organized labor on this bill. While the specific labor exemption provision in both the House and the Senate bills will be discussed below, it is instructive to review the position of labor on this bill. *The Washington Post* of Wednesday, June 19, 1974, reported the following:

"A provision added by the Senate Government Operations Committee giving the proposed Consumer Agency the power to intervene in certain labor cases nearly pushed the AFL–CIO into the opposition camp. However, labor lobbyists now believe that they have the votes to kill that amendment on the Senate floor and are supporting the bill."

Organized labor is so fearful of the authority and power of the CPA Administrator and the deleterious effect the Administrator's intervention in labor disputes may have that this powerful lobbying block had, at the very least, seriously contemplated opposing the legislation when it became apparent that, in the Senate version of the bill, labor would be partially under the scrutiny of the CPA Administrator. This double standard of organized labor is perhaps the best testimony that the CPA bill is, in fact, legislation which is meant to operate in the public interest.

REPRESENTATION OF THE CONSUMER INTEREST

The proponents of this legislation, as has been noted above, have repeatedly cited the need for a federally funded consumer advocate who would have the authority to intervene in virtually all agency activities. To insure that the CPA would be fully appraised of any agency activity—whether formal or informal—with an impact upon consumers (i.e., all agency activities), both the House and Senate bills place an affirmative obligation on existing agencies to inform the CPA of all their activities. Section 13 of the House bill states that "any Federal agency action . . . including, but not limited to, the issuance or adoption of rules, regulations, guidelines, orders, standards, or formal policy decisions" shall be reported to the CPA when notice is also given to the public. While Section 9 of the Senate bill contains a similar provision, the Senate version also requires that the individual agencies provide the Administrator status reports when so requested by the CPA. One can only speculate why the proponents of this legislation believe that the CPA should receive special notification of agency activities above and beyond the forms of notice (including, but not limited to, Federal Register notice) available to the general public. The only rationale is that the CPA has more rights than the private consumer.

For purposes of analysis, CPA intervention in formal and informal agency proceedings shall be considered separately. It is important to remember, however, that the CPA can participate in all types of proceedings and may, in fact, appear, leave, then reappear in one on-going proceeding like a phantom presence.

Formal proceedings

Section 6 of the House bill and Section 7 of the Senate bill give the CPA the authority to intervene as a party or otherwise participate in all Federal agencies proceedings whenever the CPA determines that such proceedings will affect the interests of consumers. Although both bills state that, when intervening in formal proceedings, the CPA must follow agency rules of practice and procedure governing the conduct of the proceeding, the Senate version also states that the Federal agencies shall review their rules of procedure and change them in any way necessary to accomodate the Consumer Protection Agency.

Both bills make it clear that the CPA may determine, in its own unchallenged discretion, which proceedings are of interest to consumers. Further, the CPA may intervene in proceedings on behalf of consumer groups when so requested. The net effect of both the House and Senate provisions is that the CPA, in essence, will determine its own right to intervene in a particular proceeding before another agency. Under normal practice, each Federal agency determines who may appear before it as a party. Indeed, agency rules prescribe in detail who will be recognized as a party in a proceeding. For example, the Federal Trade Commission's rules state that intervenors must show "good cause" before they will be allowed to intervene or appear before the Commission in a particular proceeding. With the enactment of the Consumer Protection Agency legislation, existing regulatory agencies will lose their discretion to determine intervention rights.

Although the forum agency will still be able to prescribe the extent of participation to be afforded individuals representing a particular interest, the CPA will determine the extent of its participation when it determines that a consumer interest is involved. The probable effect of this broad-sweeping authority will be a complete inability on the part of the forum agency to control its proceedings in a manner which guarantees an orderly process with all voices being heard.

The determinative factor governing the right of parties to intervene in formal agency proceedings has been the extent to which such parties have had a personal stake and a direct interest in the outcome of the proceedings. In the case entitled *In the Matter of Campbell Soup Company*, for example, a group of students petitioned the Federal Trade Commission to hold a formal, adjudicatory hearing concerning a matter which was the subject of a pending consent degree negotiated by the FTC. That request was denied, principally because the case did not justify the expenditure of additional resources which an adjudicative hearing would have entailed. This determination was intertwined with the Commission's concern that the agency should not be unnecessarily loaded down with adjudicative matters involving a multiplicity of parties and issues, particularly when the intervenors lack a personal stake in the final decision. The Commission did, however, grant the students a hearing and allowed them to file statements of their views and advice.

It is precisely this type of agency discretion which would be lacking in matters involving the CPA. Whether the Administrator were "advocating" a CPA-inspired cause or had taken up the banner of a consumer advocacy group would be of no consequence. In either event, the CPA could intervene with full party status as a matter of right. The dictates of the CPA would, in the final analysis, prevail.

It should be noted that both bills express the hope that the CPA will refrain from assuming full party status except where necessary to adequately represent consumers. It is the CPA, however, rather than the forum agency, which will decide the necessary extent of its intervention in a proceeding before a regulatory agency.

Informal proceedings

The House bill states that the CPA "may participate or communicate in any manner that any person may participate or communicate" in all other activities. (Section 6(a)(2).) The Senate version states that in all other activities the CPA may "participate by presenting written or oral submissions, and the Federal agency shall give full consideration to the submissions" by the CPA. (Section 7(b).) Although the language of these two sections is somewhat different, the effect is the same. The CPA may fully involve itself in the myriad of activities in which the Federal agencies may engage. The House bill does not define the word "activity". The Senate bill, however, defines "activity" to mean "any agency process or phase thereof conducted pursuant to any authority or responsibility under law". (Section 4(4).) Consequently, both bills give the CPA the mandate to monitor the activities of the various regulatory agencies. The breadth of this mandate is most clearly demonstrated by the following statement in the House Report:

"There is no attempt in the bill to define "agency activity" because of the multiplicity and variety of activities in Federal agencies. . . . [T]he term overcomes any possible arguments and assumed precedents to the effect that . . . preliminary matters are not a part of "agency process" for rulemaking and adjudication, and, therefore, not within the compass of "agency proceedings". *One way or another, the CPA is entitled to be involved if consumer interests are affected and other persons have access to the Federal agency.*" [Emphasis added.]

As has been stated many times, the bulk of the work done by regulatory agencies is of an informal nature. Negotiations leading to a consent decree would be classified as an informal activity under both the Senate and the House bills. The CPA could demand to become a part of such negotiations and could prevent a consent-degree from being finalized. In this situation, the regulatory agency would then be forced to resort to an expensive and time-consuming formal adjudicative hearing. The net result of such broad CPA authority may be to formalize informal activities and thus require agencies to divert resources from planned activities. Consequently, the existing regulatory agencies would be compelled to restructure their priorities to meet the demands of the CPA.

JUDICIAL REVIEW

Both bills give the CPA authority to intervene in or initiate judicial review of agency decisions whether or not it participated in the orginal proceedings or activity. Section 6(d) of H.R. 13163 states that the CPA may seek review in those cases in which an aggrieved person would have standing and which, in the opinion of the Administrator, involve a consumer interest. Section 8(a) of S. 707 gives the CPA standing "to obtain, in the manner prescribed by law, judicial review of any agency action reviewable under law". In those situations in which the CPA did not take part in the original proceeding before the agency, both bills require it to seek reconsideration before the forum agency prior to instituting a suit.

As was pointed out earlier, the CPA alone determines its jurisdictional mandate with respect to the "consumer interest". Conse-

quently, when the CPA seeks judicial review, the CPA Administrator, rather than a court of law, makes the threshold determination concerning CPA's standing to sue. In light of the very broad definition of the "interest of consumers" found in both the House and Senate bills, the judicial review sections effectively provide that any agency decision that may conceivably have an effect on consumers—no matter how indirect this effect may be—may be subject to a judicial challenge instigated by the CPA.

Further, one can hardly take solace from the requirement included in both bills that the CPA seek reconsideration of an agency decision before initiating a suit against another Federal agency. This provision, in essence puts the expert regulatory agency on notice that unless it accedes to the CPA's wishes, the agency will be required to expend its resources in litigation in order to defend its expert determination.

The Minority Report accompanying S. 707 summarizes the effects of these provisions of both bills as follows:

"Considering the scope of the CPA's jurisdiction and its rights to interpret its own jurisdiction, this is the most far-reaching right to judicial review ever conceived by Congress, stripping the courts of any shred of discretion to control their own calendars.

* * * * *

"In practical terms, the courts will be faced with two congressionally ordained expert agencies; one agency being mandated to balance all special interests and come to a final decision on the basis of the public interest, and another agency challenging that public interest decision on the basis of its explicit right to seek judicial review of such decisions as a representative of a special interest."

There is one significant difference between the House and Senate bills with regard to judicial review. Section 8 of S. 707 gives the CPA eplicit authority to intervene as a party in enforcement proceedings. In other words, the CPA will function as a second prosecutor. In this situation, the company involved will be facing two government attorneys who will simultaneously prosecute the case. Not only does the dual prosecutor provision of S. 707 offend traditional notions of fairness and due process, but its inclusion may also virtually destroy the ability of the agency with primary enforcement jurisdiction to exercise the control and discretion necessary for presenting an orderly case.

On the other hand, the House bill provides that the CPA shall intervene as a party only in cases seeking judicial review. In case primarily involving enforcement, or imposing a fine or penalty, the CPA may participate as an amicus curiae. The House bill, however, leaves the CPA's status doubtful in those cases which involve both enforcement and judicial review of an agency determination. In these cases the CPA could persuasively argue that Section 6(d) of H.R. 13163 gives it ample authority to intervene as a party.

The full import of these judicial review provisions is persuasively revealed by the Honorable Clarence J. Brown in his additional views which were filed with the House Committee Report. Congressman Brown wrote:

"Even worse, if the decision of the host agency does not suit the CPA, the Government (CPA) will appeal that "final Government decision to the courts—and force the original prosecuting agency to, in effect, defend the businessman. This is hardly a blow struck for decisive, effective and consistent administration of our laws. And, even more irrationally, under this bill, the Consumer Protection Agency can appeal the final decisions of other Federal agencies even when it had not acted as an advocate of the consumer interest in the proceedings which led up to the final decision. Should the CPA be thus permitted to sleep on its rights (and the rights of the consumer) and then delay the exercise of governmental decisions by an appeal to the agency for a rehearing by the agency or an appeal of the agency decision to the courts? Such a "justice delayed" process hardly seems designed to advance the interests of consumers, taxpayers or the public—or anyone who may be all of these rolled into one."

INFORMATION GATHERING

The information gathering provisions of the two bills represent the most impressive array of power granted to the CPA. The full import of these provisions can only be comprehended properly when they are considered in the context of the CPA's authority to involve itself in both formal and informal activities. It is the ability of the CPA to gather vast amounts of information outside the context of a formal proceeding, in particular, that makes the CPA much more than the mere advocate which it is touted as being by its proponents.

For purposes of simplicity, the three major facets of the information gathering process—subpoena power, interrogatory power, and access to agency files—will be considered separately. What should be remembered, nevertheless, is that the CPA will use all these powers in combination.

Subpoenas

Both Section 7(e) of S. 707 and Section 6(g) of H.R. 13163 give the CPA authority to use the subpoena power of a Federal agency in formal agency proceedings. Section 7(e), however, gives the CPA a unique right which no other advocates will enjoy: namely, the Senate bill would extend this subpoena authority to informal agency activities. Indeed, no other person—not even advocates for alternative or competing consumer interests—will be able to demand that an agency use and enforce subpoenas in virtually every conceivable agency activity. Other advocates will be able to use an agency's compulsory process only in formal adjudicatory situations.

As noted above, H.R. 13163 does not give the CPA subpoena power in informal activities. Although this is an improvement, its significance should not be over-emphasized for these reasons. First, Section 10(a) of H.R. 13163 gives the CPA authority to use the interrogatory powers of another agency with virtually no limitation on the subject matter of the requested information. Second, Section 10(b) gives the CPA authority to obtain information from other agencies. (Included in the information which the CPA may obtain are prosecutorial recommendations and related investigatory materials.) Third, under the provisions of Section 6(g) of the House bill itself, "requests" of the CPA that another agency use its subpoena power on behalf of the CPA are mandatory and not precatory. The "host agency" has no discretion to refuse the Administrator's request. All the Administrator need do is file a general statement indicating the "general relevance and reasonable scope of the evidence sought." As a result, the House bill authorizes the CPA to develop information through these alternative means so that the net effect is similar to giving the CPA the right to subpoena evidence in informal proceedings.

Interrogatories

Under the House bill, the CPA may request that an agency which possesses interrogatory authority utilize that power whenever the CPA determines that it requires information "to protect the health or safety of consumers, or to discover consumer fraud or substantial economic injury to consumers". (Sec. 10(a)(1)(A).) The term "substantial economic injury", however, is so broad and vague that it is an almost all-inclusive standard. The fact that some agencies do not have interrogatory authority does not effectively check the CPA's broad authority in this area. For example, the jurisdiction granted the Federal Trade Commission permits the FTC to issue interrogatories covering a virtually unlimited subject area. Consequently, such broad-ranging information gathering authority would be available to the CPA except under very limited circumstances.

The House bill places few restrictions upon the CPA's ability to use the interrogatory powers of a host agency. For example, the House bill states that the CPA can not use interrogatories if the information is for use in a pending proceeding against the addressee. Obviously, then, interrogatory information can be used in any proceeding commenced after issuance of the interrogatory or in a proceeding against someone other than the addressee of the interrogatory. The requirements that the information sought be relevant and not unduly burdensome, of course, restate existing law.

The Senate bill also contains an interrogatory provision. Section 11 provides that the CPA will have independent authority to issue interrogatories and need not rely upon another agency. Further, the Senate bill does not use "substantial economic injury" as a standard for issuing the questionnaire, but applies a more concise and understandable "unconscionable conduct" standard. However, the Majority Report of the Senate Government Operations Committee transforms the standard into one of substantial economic injury (the House language) when it states:

"Consumer fraud, in this circumstance, is not restricted to technical violations of law but is intended to refer to all deceptive, unfair, or fraudulent practices *which result in substantial economic injury to consumers.*" [Emphasis added.]

The same objections to the use of the interrogatory authority which apply to the House bill apply with at least equal force to the Senate bill. Indeed, the Senate version does not even provide the check of a third agency's review of the reasonableness of the request.

Most significantly, the proponents of broad interrogatory authority have never satisfactorily justified the grant of the authority to a non-regulatory agency which ostensibly has an advocacy function. Interrogatory authority is an investigatory power. It is appropriate only in the hands of a regulatory agency, not in the hands of a supposed non-regulatory advocate of a special interest. It is difficult to justify granting the CPA rights to compulsory process which have never been available to other advocates who do not enjoy party status in administrative proceedings. There is only one conclusion which can be drawn from the adamant insistence of the proponents of this legislation who view the interrogatory power—and all the information gathering provisions—to be of paramount importanec: The CPA is not supposed to be a mere advocate of all consumers which has the rights of any one consumer advocate. The CPA is a new entity with powers that far surpass the authority or right of individual citizens.

Access to Government files

Both the House bill (Sec. 10(b)) and the Senate bill (Sec. 11(c)) give the CPA access to virtually any information in the files of other government agencies which the CPA deems necessary to carry out its functions. This power is subject to several extremely

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[1] There are two differences between the exceptions found in the Senate and House bills. The Senate bill states that the CPA may not compel access to prosecutorial recommendations made by other agencies. This exception is not in the House bill. However, under the Senate bill, the CPA can obtain the factual information found in the investigatory files which are the bases for prosecutorial recommendations.

The Senate bill exempts bank examinations and similar financial reports from the information which Federal banking agencies must supply to the CPA. The House bill has no comparable exemption.

narrow exceptions.[1] In fact, the exceptions in the Freedom of Information Act, which determines public access to government information, are broader than those found in the CPA legislation. The result is that the CPA, and only the CPA, will have access to information not available to other advocates. Consequently, a certain unfairness would attach to any agency proceeding or activity in which the CPA participated since the CPA would be able to command greater information than the rest of the parties or participants who must use the Freedom of Information Act and the normal discovery processes.

Further, the rights given the CPA in this area are greater than those now available to other Federal agencies. Independent regulatory agencies do not have authority to compel the release of information. The other agencies and departments can obtain information only after channeling the request through the Office of Management and Budget. Consequently, the legislation gives the CPA access to information which is unavailable not only to other advocates but also unavailable to the rest of the government.

What this means, as the Senate Government Operations Majority Report makes clear, is that the CPA will be able to compel access to a variety of sensitive data, including privileged communications, attorney's work product, test results, investigatory files, trade secrets and other confidential financial information. Indeed, under both bills the CPA has authority to make itself the repository for much of the sensitive data in the government. In light of criticisms regarding government over-exertion in compiling dossiers on private citizens, it is hard to understand why sponsors of the legislation wish to give the CPA this unique ability. One need only recall the lack of Congressional oversight inherent in this legislation (discussed above) to conclude that the CPA will have unbridled authority to "advocate" from a position uniquely superior to any other litigant or intervenor—whether it be another Federal agency or a private citizen.

EXEMPTIONS

In a strange twist of logic, both bills exempt certain agencies and activities from the purview of the CPA. Under the House bill (Section 17) the CIA, the FBI, the National Security Agency, and the intelligence and security functions of the Department of State, Department of Defense, and the Atomic Energy Commission are exempted. The CPA also does not have authority to involve itself in labor disputes and labor agreements.

Under the Senate bill (Section 17(d)), the CIA, FBI, and NSA are totally exempted. The intelligence and security functions of the Department of Defense are exempted, as well as the broadcast license renewal proceedings of the Federal Communications Commission. Labor disputes involving wages or working conditions affecting health or safety are exempted (Section 6(a)(11)).

There may be good reason for exempting those agencies which are involved in national security functions. If the CPA is to protect consumers, then there is no reason for exempting either the FCC or, more importantly, labor disputes. It is sheer nonsense to argue that the activities of labor unions do not affect consumers. For example, secondary boycott activities may have a more direct effect upon the cost and availability of consumer goods than an adjudication before the FTC to determine whether a firm has engaged in unfair or deceptive trade practices. The only rationale given for exempting labor totally from the House bill and partially from the Senate bill, is the obviously specious argument that labor disputes do not impact on the interest of consumers.

The Minority Report filed by the dissenting members of the Senate Government Operations Committee recites perhaps the most dramatic impact upon consumers of a labor dispute:

"Delay in settlement of a dock strike will have an *immediate* effect upon consumer prices and the availability of goods, both specifically mentioned as interests of consumers in the definition of that term in the bill. Anyone who cannot see that has not read the Committee Report in the 92d Congress on this bill, wherein Senator Allen pointed out that the AFL–CIO had submitted for a prior CPA bill hearing record a legal opinion which concluded that NLRB proceedings might result in a substantial impact upon consumer prices.

"Failure to see such an elemental fact tends to substantiate the theory that consumer interests are in the subjective eye of the beholder, and will vary considerably from person to person and from situation to situation; such failure to see the impact of labor dispute proceedings upon consumers also may indicate a bias against the business community, a bias that is reflected in this entire bill."

The proponents of this legislation do argue, nevertheless, that NLRB proceedings, by their very nature, are adversary proceedings. As a result, they maintain, unlike other agency activities which are biased and one-sided, NLRB proceedings do not demand the presence of an institutionalized consumer advocate. In some inexplicable fashion, the consumer interest will magically emerge and be championed. Further, it is argued, business will champion the consumer's cause in an attempt to minimize its costs. It is ironic that in this one area—and this area alone—business, which allegedly holds the regulatory agencies captive, will act in the consumer interest. Yet, in an FPC curtailment proceeding aimed at determining the allocation of natural gas among distributors from one supplier, the consumer is not represented and CPA must intervene.

One can only speculate that the desire of organized labor to exempt itself from CPA jurisdiction gives credence to the arguments of the opponents of this legislation that CPA intervention will only cause undue delay, extensive costs, and, ultimately, aggravate the very problems which the CPA was allegedly created to correct.

CONCLUSION

As the above materials show, the CPA legislation, while having a great impact on administrative law, has very little to do with consumer protection in the popular sense of the phrase. If the CPA bill is enacted, it will not result in consumers getting their money back if they feel they have been defrauded; it will not put fly-by-night shysters out of business. As a non-regulatory advocate, it will not be able to deal with the individualized problems which face consumers. Neither bill will give the consumers real consumer protection.

There is only one provision in this legislation which will even bring consumers into contact with the CPA, namely, the consumer complaint section. Section 10 of the Senate bill and Section 7 of the House bill are substantially similar. These sections state that the CPA is to receive and transmit to appropriate agencies consumer complaints which it receives. Other Federal agencies must then report their disposition of the complaint to the CPA. Thus, the CPA acts only as a bureaucratic referral service—it does not meaningfully deal with substantive consumer complaints itself.

When the individual consumer thinks of "consumer protection", he or she does not think in terms of intervention in complex, protracted administrative proceedings. Rather, the consumer is concerned with shoddy workmanship, ineffective guarantees, and false, misleading and deceptive practices. These concerns are not addressed by the CPA in any meaningful fashion. Thus, the very title of the legislation—a clever but deceptive gimmick—tells a lie. Consumer grievances will not be redressed by this proposal; only the self-styled consumer advocates stand to gain—at the expense of the *public* interest.

In sum, the Consumer Protection Act of 1974 is itself the largest fraud and hoax to be perpetrated upon the Congress and the public. One can only speculate how long it will take before it will be necessary to create a new layer of bureaucracy to protect the consumers and the public from the Consumer Protection Agency. One message is, nevertheless, clear: Neither the House nor the Senate bill would pass muster if the Fair Packaging and Labeling Act were applicable to them.

Mr. BUCKLEY. Mr. President, I understand the distinguished Senator from North Carolina has some questions he wanted to ask.

Mr. ERVIN. Mr. President, I invite the Senator's attention to page 55 of the bill as a preamble to asking the question. I shall go to page 86. Page 55 defines consumers interest as follows, and I read from subdivision (11):

(11) "interest of consumers" means any health, safety, or economic concern of consumers involving real or personal property, tangible or intangible goods, services, or credit, or the advertising or other description thereof, which is or may become the subject of any business, trade, commercial, or marketplace offer or transaction affecting commerce, or which may be related to any term or condition of such offer or transaction. Such offer or transaction need not involve the payment or promise of a consideration;

Mr. President, I wish to ask the Senator from New York if he agrees with the Senator from North Carolina that the only rational meaning one can give to that definition of what constitutes the interest of consumers is that the interest of consumers is anything which the Administrator says is an interest of the consumer outside of those areas of life which relate to spiritual and love affairs of the consumer.

Mr. BUCKLEY. The Senator from New York agrees with the interpretation of the Senator from North Carolina, but I am not at all sure these days what mystic insight an administrator may claim in some jurisdiction in the other world. Certainly, there is nothing in this legislation to regulate his determination of what is in the Senator's interest and mine.

Mr. ERVIN. In other words, for all practical intents and purposes, anything

in the interest of the consumer would be within the provisions of this bill and, therefore, subject to the supervisory conduct of the administrator, if it has any effect on any health, safety, or economic concern of the consumer.

Mr. BUCKLEY. Without doubt.

Mr. ERVIN. It does not even stop with the bill; it goes into the future. It states "which is or may become."

Can the Senator find any legislation in the history of this Nation which is as broad in the power it undertakes to vest this administration in this bill?

Mr. BUCKLEY. I believe this is the broadest delegation of undefined authority to be found anywhere in the legal statutes of this country or the Constitution of this Nation. It is unparalleled in scope and if we believe in a government of laws and not of men, then it is essential that this legislation not be enacted.

Mr. ERVIN. I invite the Senator's attention to page 86, subsection (b), line 17 which states:

(d) This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, or the national security or intelligence functions of the Department of Defense (including the Departments of the Army, Navy, and Air Force).

With the exception of the amendment which was adopted excluding organized labor, this is the only exception to the act, is it not?

Mr. BUCKLEY. I call the attention of the Senator from North Carolina to one additional exemption for which there is no logical explanation that I can see, and that is the licensing of radios and television under the Federal Communications Commission. Apparently for reasons unknown to the Senator from New York, one is not supposed to interfere in this particular area, just as one is not supposed to interfere in matters involving labor disputes, when it is clear to this Senator that the consequences of those disputes have a direct and immediate impact on consumers.

Mr. ERVIN. The Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, or the national security or intelligence functions of the Department of Defense are not organizations which are engaged in the rendering of services to consumers.

Mr. BUCKLEY. Not that the Senator is aware of, nor are they engaged in the kind of proceedings which the Administrator under this bill has a right to intervene in, so I am not sure why that is an exception.

Mr. ERVIN. So that with the exception of the FCC, every agency of the Federal Government other than those I have just mentioned, are under the supervisory jurisdiction of the Administrator?

Mr. BUCKLEY. That is correct.

Mr. ERVIN. So, in this bill, the advocacy of this bill is based on the premise that all of the Federal agencies which are subject to the supervisory authority of the Administrator are incapable of performing the functions which are vested in them, and which functions can be supervised by this superhuman Administrator?

Mr. BUCKLEY. That is substantially correct, and that is why I am so puzzled as to why the committee reporting the legislation should conclude that the existing consumer protection agencies are not competent to protect those interests and that, therefore, we need another agency layered on top with unbridled authority. Are we to believe that that super agency will be wiser and, in fact, better able to discharge its responsibilities than all the other Federal agencies?

Mr. ERVIN. Does the Senator from New York share the fear of the Senator from North Carolina that the human being who is capable of exercising vast powers of supervision given the Administrator by this proposed legislation has not been created by the Lord God Almighty?

Mr. BUCKLEY. The Lord God Almighty has not yet created such a human being whom I know of.

Under the circumstances, I think it is incredible, given the philosophical underpinnings of our Federal Government, that we should carve out an emperor, even in the name of consumerism.

Mr. ERVIN. The Senator from North Carolina construes this bill, with the exception of the few limitations we have discussed, and particularly with reference to subsection (d) on page 62, to give the administrator not only the right to intercede in formal proceedings, as set forth in subsection (a) of the preceeding section, but it also gives him the right to interfere in any other Federal agency activity, if he, the Administrator, in his uncontrolled and unreviewable discretion, comes to the conclusion that that activity could substantially affect the interests of the consumer, and it says he can make oral or written submissions.

Does not this mean that the Administrator could go into the Department of Defense, with its contract for research of a weapons system, and interfere in that activity, if he says to himself it affects the consumers' interest?

Mr. BUCKLEY. There is simply no limitation other than those narrow areas of exemption the Senator from North Carolina cited earlier. What concerns me, and I know it concerns the Senator from North Carolina equally, is the inevitable result of creating another agency, with the right to proceed at its own discretion, to reopen proceedings that were closed and final, to deal with proceedings at every agency level, to cause uncertainty and cause enormous overhead and expenses and, in effect, freeze out the small businesses that are finding it harder and harder to survive in our overbureaucratized society.

Mr. ERVIN. To put the question, then, in the North Carolina vernacular, does this bill authorize an administrator in his uncontrolled discretion to go around and throw monkey wrenches in the operations of all Government machinery?

Mr. BUCKLEY. It does precisely that, and who will pay? The consumer will pay. The consumer will pay all of the costs. It will be harder and harder for new products to be accepted. Businesses will pay because an administrator could very well come up and come to a decision that is not supported by the evidence and destroy the enterprise. It will be a heavy burden on the consumer.

Mr. ERVIN. Does the Senator agree that this proposed legislation, if enacted would give the administrator authority not given to any other Federal official—namely, the authority to undertake to inform the American people about the different goods and services being offered?

Mr. BUCKLEY. This legislation will do precisely that, and based on the standards that appeal uniquely to the administrator.

I would like to suggest that there are many consumer advocates around this country who are claiming that "my interest demands locked seatbelts." I believe it is dangerous when you give a governmental agency an arbitrary right to define what should go into a cake of soap and then say that all other brands of soap are not good because he does not like their fragrance or something or other. This could create havoc in the marketplace and would also shrink the options available to American consumers who, after all, represent a variety of desires, a variety of tastes.

Mr. ERVIN. Cannot a statement made by the administrator play havoc with private enterprise?

Mr. BUCKLEY. It can do absolutely that, in the judgment of the Senator from New York. I believe that this has been supported by Prof. Ralph Winter of Yale Law School, for example, and other experts on administrative law.

This can create havoc and cause uncertainty by dragging out proceedings and by giving this one individual the right to burrow into everyone's private files.

If, in the sole judgment of this one administrator, the disclosure of that private proprietary information is "in the interest of safety"—or something or other—of the consumer, then that vitally precious proprietary information will be disclosed.

Mr. ERVIN. Does the Senator from New York agree with the Senator from North Carolina that if Congress can be so foolish as to authorize a public official—namely, this administrator—to make statements to the public, this proposal should be amended so as to make the United States responsible for any slanders or libels he utters, just like other people who engage in talking?

Mr. BUCKLEY. I agree with the Senator.

Mr. ERVIN. In the last analysis, is not this proposal based on the theory that the bureaucracy which has heretofore been established and is now functioning is not functioning properly and has failed to perform its duties?

Mr. BUCKLEY. This Senator would suggest that one of the few accurate statements in the entire legislation before the Senate is the finding that bureaucracies do not operate efficiently. It

is for that reason that I query whether still another bureaucracy to be added to the pile we have in Washington will make life better rather than worse.

Mr. ERVIN. So this proposal, in effect, is based upon the promise that the way to cure the inefficiency of bureaucracy is to add another John Q. Bureaucracy to the chain of government.

Mr. BUCKLEY. That is the underlying philosophy that would suggest, if the findings are accurate, that some of the existing agencies have become captives of the industries they are supposed to regulate; then, the answer is not to create a czar over whom no one has control but, rather, to find ways to improve the procedures of the particular agencies in question.

Mr. ERVIN. That would be, would it not, the rational and forthright way to cure the alleged ills—that is, by changing the laws governing the regulatory powers existing in the regulators or by getting different personnel?

Mr. BUCKLEY. I agree wholeheartedly. In this particular matter, we could see to it that the input of the consumer, of consumer groups, and consumer representatives—Lord knows, there are enough of them in this country who are concerned over every aspect of consumer interest, whether it be fraud, safety, packaging—then we would be able to have accurate input, under controllable conditions, into the agency which has the expertise to assess this interest versus other interests.

Mr. ERVIN. I ask the Senator from New York if the proposed legislation is not, in the last analysis, bottomed upon three theories: First, that Government is highly inefficient, and therefore we must increase the amount of Government we have; second, that all businessmen and producers sit up all night thinking of new methods to defraud the customers on whose good will they are dependent for their prosperity; and, third, that the American consumers—and that includes all Americans—are mainly incapable of looking after their own interests and must be put under the bureaucratic guardianship of the administrator.

Mr. BUCKLEY. The Senator from North Carolina is correct on all three points.

Mr. ERVIN. I thank the Senator, and I commend him on the excellent speech he has made.

Mr. BUCKLEY. I thank the distinguished Senator from North Carolina.

Just to complete my remarks, I urge the Members of this body not to pay attention to pressure groups, but to do their homework, to read the material that I have entered into the RECORD, to read independent views which are excellent—in fact, devastating—in connection with the proposed legislation. I hope that when the time comes to vote on this measure, it will be defeated overwhelmingly.

Mr. RIBICOFF. Mr. President, I move the adoption of committee amendment No. 3. I understand that there is no opposition to it.

Mr. ERVIN. What does the amendment provide?

Mr. RIBICOFF. Committee amendment No. 3 prohibits the CPA from making available to the public a consumer complaint where the complainant has requested his identity be kept secret.

Before the committee amendment, the agency could publicly disclose a complaint submitted in confidence, even though the complainant's identity had not been disclosed.

Mr. ERVIN. I favor that. I do not think a man ought to be allowed to shoot from ambush and keep his identity hidden.

I would like to ask the Senator this question: Notwithstanding that this person, this complainant, does not wish to be identified and would not be identified—that the complaint would not be made public—would the firm or the person against whom the complaint was directed be permitted to know his identity?

Mr. RIBICOFF. No. The complaint will be made available to the company, but the complainant's identity will not be disclosed to the company.

The problem is that often in a situation such as this, the man might know of a great health wrong or a safety wrong, and yet does not want to lose his job. To protect the complainant, the complaint will, on his request, be available to the company without disclosing the complainant's name.

Mr. ERVIN. The person against whom it is directed has to answer the complaint of an unidentified individual and is not allowed to know the identity?

Mr. RIBICOFF. That is correct.

Mr. ERVIN. I think that one of the greatest methods of searching for truth in the courts of our land and in our everyday life is for us to know the identities of the people who make accusations, because these people may be actuated by bias and the desire to do injury to the person of whom they complain.

Mr. RIBICOFF. We may have a situation in which a conscientious employee who has worked for a company for 25 years knows that a company has committed fraud. He knows that there may be an unsafe drug or an unsafe product, and he feels motivated to make this available to the proper authorities. Yet, he is afraid for his future livelihood.

Mr. ERVIN. But the complainant does not necessarily have to be an employee. He may be a competitor who is desirous of harassing or having the Administrator harass his competition. Is that not so?

Mr. RIBICOFF. If the Administrator believes that there is no significance to the complaint, section 10 provides that he does not have to forward the complaint to the company. If the complaint is significant, it should be forwaded to the company. The complainant's motive for making the complaint in the first place would not affect the importance of such a complaint.

Mr. ERVIN. And we could have people set in motion false complaints and so have their identity protected, and deprive the person who is the victim of the false complaint of an opportunity to know whether the complaint is made by a competitor or by a person who is making the complaint out of hatred and malice.

Mr. RIBICOFF. The complaint goes to the person complained against. He will have ample opportunity to go into it, to explain whether there is a basis to the complaint or not. If the complaint is false, he may say so.

Mr. ERVIN. But he would not have an opportunity to show not only that the complaint was unfounded but also that it was made by one of his economic enemies.

Mr. RIBICOFF. I think the Senator is correct. While the complainant's identity would be indicated in the files, the information would be kept confidential.

Mr. ERVIN. I do not think there ought to be much confidentiality which might result in protection of character assassins.

Mr. RIBICOFF. I am assuming that we are not talking about character assassins. I do not believe the Administrator is going to forward every complaint that comes down the pike. If the complaint is insubstantial, if it amounts to no more than character assassination, he will not forward it. On the other hand, a complaint sent by a person who has requested that his identity be kept confidential, might concern a matter patently in the public interest, involving health, safety, or widespread fraud.

We had the situation of a large fraud taking place on the Pacific coast, involving a huge insurance company. False statements involving investments were involved. I believe the complaint was disclosed by somebody within that organization. Banks and individuals lost in the millions. The incident was widely reported in the newspapers.

It was important that this conduct not continue to go undetected.

Another example is the recent fiasco concerning an oil drilling company. Some of the largest and most knowledgeable investors, bankers, industrialists, and lawyers in the country were defrauded. Much of the information necessary to uncover this type of fraud comes from people within the organization.

When we have widespread fraud, unsafe products, or filthy products that injure the health, it would seem to me that it ought to be disclosed. I can understand that generally many employees who would be likely to know about such conditions, would be hesitant to speak for fear of losing their job.

It would be good if everybody had courage, and every once in a while you do read about a courageous individual who does speak out publicly only to find himself without a job. He loses his only means of support, because he has followed his own sense of public obligation and duty.

I think what we are concerned about is where people are reluctant to disclose important facts concerning widespread fraud or injury to the public interest for fear of reprisal. At the same time, we were concerned about making complaints available to the public where the complainant's identity was withheld. What we did in committee was to make sure that a person could disclose the facts in such a case without fear of reprisal, but then we also prevented disclosure of such facts to the public. The information will be kept confidential within the agency, but the agency would be required to make this information immediately available to the person or company complained against. I think we have struck a fair balance. The provision, as amended, encourages people to disclose important facts, while preventing any injustice to

the company complained about that could occur from public disclosure of the complaint.

Mr. ERVIN. I think that is an improvement, but I do not think it goes far enough.

I am sure they will have many complaints, thousands and thousands of complaints. Maybe we deserve them; but just the first few months the Senate Watergate Committee was in operation, we had 62,000 complaints from all over the United States about how we were perverting the Constitution and the truth and everything else.

Mr. RIBICOFF. Along that line, as long as the senior Senator mentions it, I think Woodward and Bernstein, with the distinguished chairman, did more than anyone to break this fantastic scandal known as Watergate. Yet they had a complainant by the name of "Deep Throat" that they referred to in their book and whose identity is still a secret. No one knows who it is except Woodward and Bernstein. That person could still be part of the administration. If so, he was able to keep his job only because his identity has been kept confidential.

I believe the distinguished Senator from North Carolina is probably better aware than any other Member of this body, or maybe of the public, of this example. Yet, I do not know whether even the distinguished chairman knows who "Deep Throat" is.

Mr. ERVIN. I have no idea, but I would say this is a good amendment. I support it, but I think it still does not go far enough.

It is the only thing on this bill that does not go too far.

Mr. RIBICOFF. Mr. President, I move the adoption of the committee amendment No. 3.

The PRESIDING OFFICER. The question is on the committee amendment.

The amendment was agreed to.

Mr. RIBICOFF. The next order of business is committee amendment No. 4, I believe.

The PRESIDING OFFICER. The clerk will report the next committee amendment.

The legislative clerk reads, as follows:

On page 71, line 8, after the word "agency", strike out "and"; after line 8, insert:

(6) information contained in or related to examination, operation, or condition reports concerning any individual financial institution prepared by, on behalf of, or for the use of an agency responsible for regulation or supervision of financial institutions, or any other information relating to the financial transactions of individual customers of such financial institutions; and

Mr. RIBICOFF. Mr. President, this prohibits CPA from obtaining from Federal banking agencies information prepared by such banking agencies relating to bank examination reports, bank operations or condition reports, and any other information relating to the financial transactions of individual customers of banks.

This amendment was proposed in the Government Operations Committee by Senator BROCK.

Mr. President, as I understand the situation, the distinguished Senator from Illinois (Mr. STEVENSON) has an amendment to the amendment.

Our distinguished colleague (Mr. BROCK) is now involved in a conference going on involving the Banking Committee. It is obvious that his duties in the conference make it impossible for him to be here.

As I understand the situation, no final action will be taken on this amendment at this time. As I understand it, the Senator from Illinois will offer his amendment, explain it, and then we will put in a quorum call. The leadership will then decide what will be the next order of procedure until the Senator from Tennessee has an opportunity to explain his proposition, and talk against the amendment of the Senator from Illinois.

Is my understanding correct?

Mr. STEVENSON. Mr. President, I have no understanding with the Senator from Tennessee.

He does expect me to offer this amendment, perfecting amendment to the committee amendment. I can do that now.

Mr. RIBICOFF. If the Senator will yield.

I think in all fairness to Senator BROCK, he should have the opportunity of being present to hear the explanation of the perfecting amendment by the Senator from Illinois, and I wonder if the majority whip, under the circumstances, would put this over in all fairness until Senator BROCK can be here. I think it would be unfair to Senator BROCK not to be present when the amendment is discussed.

Mr. ROBERT C. BYRD. Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Does the Senator from Illinois wish to offer his perfecting amendment at this time so that it will be before the Senate?

Mr. STEVENSON. Mr. President, I send the amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report it.

The legislative clerk proceeded to read the amendment.

Mr. STEVENSON. 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 71, line 9, in lieu of the language to be inserted by the Committee amendment insert the following: "and such information shall include, but shall not be limited to, such expressly prohibited information contained in or related to examination, operating, or condition reports concerning any individual financial institution prepared by, on behalf of, or for the use of any agency responsible for regulation or supervision of financial institutions; and".

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield to me for a unanimous-consent request?

Mr. STEVENSON. I am happy to yield.

ORDERS FOR RECOGNITION OF SENATORS TOMORROW; FOR TRANSACTION OF ROUTINE MORNING BUSINESS; AND FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 69, EDUCATION AMENDMENTS OF 1974

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after Mr. PROXMIRE is recognized under the previous order, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Mr. ROTH, Mr. BUCKLEY, Mr. MCCLURE; that there then be a period for routine morning business of not to exceed 15 minutes, with statements limited therein to 5 minutes each, and that at that time, notwithstanding the order entered earlier today, the Senate proceed to the consideration of the conference report on H.R. 69, the Education Amendments of 1974.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the conference report on HR. 69, if such disposition occurs tomorrow, it be within the discretion of the leadership, the majority leader or his designee, to proceed at that time with either the resumption of the real estate settlement services bill or the agency for consumer advocacy bill, whichever the leader wishes to proceed with.

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

CONSUMER PROTECTION AGENCY ACT

The Senate continued with the consideration of the bill (S. 707) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

Mr. ROBERT C. BYRD. Now, Mr. President, may I say to the distinguished Senator from Connecticut that there will be no more rollcall votes today. If the distinguished Senator from Illinois wishes to discuss his perfecting amendment, I think he should be allowed to do that. He has the floor, and he can do it in any regard, and whatever discussion he wishes to make today would appear in the RECORD. The Senator from Tennessee (Mr. BROCK) would read that RECORD, and I assume further discussion on that perfecting amendment would occur on tomorrow or the next day, whenever the Senate resumes its consideration of the unfinished business, at which time the Senator from Tennessee would have ample time to interrogate the Senator from Illinois concerning his perfecting amendment and make whatever statement he wishes.

So that what I am saying, in reality, is that the Senate need not necessarily

adjourn at this time, if the Senator from Illinois wishes to speak to his perfecting amendment or if any other Senator wishes to speak.

Mr. RIBICOFF. Just as a matter of comity. This is a controversial amendment; I believe the Senator from Tennessee feels very strongly about it.

My only thought was that while we might lose half an hour's time, in fairness to the distinguished Senator from Tennessee I would be reluctant not to give him the opportunity to be present when the Senator from Illinois made his position clear. As a matter of comity, I think it would be proper to wait for an explanation of the amendment until the Senator from Tennessee (Mr. BROCK) could be present, but I would defer, naturally, to the leadership.

Mr. ROBERT C. BYRD. If the Senator from Illinois is agreeable, the leadership is prepared to resume routine morning business, or adjourn.

Mr. STEVENSON. The Senator from Illinois is agreeable.

Mr. ROBERT C. BYRD. I thank the Senator, and I thank the distinguished manager of the bill.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent there now be a resumption of routine morning business with statements limited therein to 5 minutes.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MEMORIAL SERVICES FOR FORMER SENATOR WAYNE MORSE

Mr. HATFIELD. Mr. President, funeral arrangements have been made for former Oregon Senator Wayne Morse, and I want to bring them to the attention of my colleagues and the many friends of the late Senator, in case some of the Senators and his other friends are able to attend the service.

A public memorial service will be held at the State Capitol in Salem, Oreg., at 10 a.m., Friday morning, July 26. Later Friday, another public service is scheduled in Eugene at 3 p.m., at the First Congregational Church.

QUORUM CALL

Mr. HATFIELD. 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. 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.

EDUCATION AMENDMENTS OF 1974—CONFERENCE REPORT

Mr. PELL. Mr. President, I understand that by unanimous consent it has been agreed that the conference report on H.R. 69, the Education Amendments of 1974, will be taken up at the close of morning business tomorrow.

The PRESIDING OFFICER (Mr. BARTLETT). The Senator is correct.

Mr. PELL. Mr. President, the conference report now being considered by the Senate is the product of 6 weeks of continual meeting between the House and Senate conferees. Innumerable differences were contained in six separate comparative documents which were methodically and painstakingly reviewed. I do believe that this conference attained the very real essence of legislative activity—compromise.

Neither the House nor the Senate prevailed on all issues which were brought into the conference. For example, the so-called consolidation of certain education programs, opinions on which were strongly held by Senate conferees, was resolved along the lines of the House bill, this notwithstanding the strong views of the Senate, for it was understood that to get a bill, the House approach to consolidation was necessary.

Another example involves the impact aid provisions of the Senate bill, which contained a certain measure of reform and a new method of making payments for children in low-rent public housing. Here, in general, the Senate view prevailed, and the final conference report contains language reflecting much of the original Senate position. These are two instances which exemplify the bargaining, which ended in the final compromise on busing.

I will not go into a detailed discussion of the conference agreement here. It is contained in the conference report before you. I would like to touch upon what I think are the high points of the conference substitute bill.

Perhaps the subject of most interest to local educational agencies is the title I formula. This matter, which could have been the subject of great dispute, was generally resolved on the Senate floor when the Senate, on a rollcall vote, adopted the main part of the House formula. The Senate bill retained part B of title I—incentive grants—as well as part C, which created special payments for areas enrolling large numbers of low-income children. The conferees retained part B, in essence, as found in the Senate bill and kept part C for one year, while creating a new, imaginative approach to funding these highly impacted title I areas through the utilization of impact aid funds attributable to children residing in federally assisted public housing.

The impact aid provisions pretty much continue the provisions under the old law. The Senate bill contained a phase-out of the eligibility of children whose parents are employed in another State. Impact aid payments to those areas suffering from a decline in federally connected population due to military base closings are also protected by the phase-out.

The Senate bill contained a rewriting of that portion of the law pertaining to children in low-rent public housing. Existing law which separates those children from other federally connected children would be repealed so that they will count as "A" category children and "B" category children as all others are counted. This provision, which was probably the most contentious during the discussion on impact aid, was reformed to reflect the conferees' interest in those urban areas which are highly impacted with disadvantaged children, many of whom live in public housing projects. The conference agreement includes these children in the first and final tiers for payment and requires that funds attributable to their presence be used by the school district for compensatory education of children from low-income families.

The conference report retains the Senate provisions on bilingual education, aid for the education of handicapped children, and reading. It creates a National Center for Education Statistics in the office of the Assistant Secretary for Education and prohibits regionalization of education program administration without congressional approval.

Both the Senate and House bills contain provisions aimed at consolidating certain Federal programs. The major difference by the Senate attempted to protect those programs by requiring that only new funds be used in a consolidated manner. The conference dropped that Senate provision, and the following programs have been consolidated into two areas: First, in support of libraries and learning resources; and second, in support of innovation. Nevertheless, the Senate requirement that the consolidation operates only if there is true advance funding and if the appropriations levels are at least as high as the preceding year of the consolidation were retained by the conference. In addition, the conference agreed that, during the first year in which appropriations were made for the consolidated program, only 50 percent of the funds would be consolidated. The remainder would still flow to the States under the categorical programs.

The administration consolidation found in the original Senate bill was retained, as was the Special Projects Act, which sought to give the Commissioner of Education a certain amount of discretionary funds while retaining a mechanism for the adoption and funding of new innovative programs. Under that pilot project authority, the conferees retained metric education, gifted and talented children, women's equity education, consumers' education, career education, arts in education, and community schools.

The final major issue had to do with those two provisions of both bills which pertained to busing. This was the most contentious portion of the bill and required endless days and hours of debate. The language the Senate brought into the conference was totally unacceptable to the House, which was instructed three separate times not to recede on this is-

sue. Nevertheless, the Senate conferees held to the belief that there were also certain House provisions which were totally unacceptable to them. The final language is a melding of the two. While the very stringent reopener of court cases on the House side was dropped, an equally-controversial provision pertaining to termination of court orders was retained, as was a much more restrictive Ashbrook amendment having to do with the use of Federal funds for busing.

Mr. President, it is my belief that this is the best bill which the conference, considering these two very divergent bills, could have worked for. It is the result fully of 1½ years of work, and it is my hope that the Senate will approve the conference report.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PELL. Is it in order to lay before the Senate the conference report at this time, for taking up tomorrow?

The PRESIDING OFFICER. It could be done, but the Senate is not going to proceed with it until tomorrow.

Mr. PELL. Just for the purpose of the record, I ask that it be laid before the Senate, so that it will become the pending business at the close of morning business tomorrow.

The PRESIDING OFFICER. (Mr. BARTLETT). The report will be stated by title.

The second assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (H.R. 69) to extend and amend the the Elementary and Secondary Education Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of today.)

Mr. PELL. Mr. President, I ask unanimous consent that tomorrow, when consideration is given to the conference report on H.R. 69, the following staff members be permitted to have access to the floor: Stephen J. Wexler, Richard D. Smith, Jean S. Fislicher, Nik Edes, Lisa Walker.

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

What is the pleasure of the Senate?

Mr. WILLIAMS. Mr. President, there can be no finer tribute to a public official than to say that without his efforts the legislation we are considering today would not be possible. In this particular instance, I feel I must say that without the untiring efforts of Senator Wayne Morse, the man who was "Mr. Education" for so many years, the conference report on the Education Amendments of 1974, which the conference committee agreed upon last night, would not even have been a probability.

Following the passage of the landmark education bill of 1965, which for the first time provided major Federal assistance to elementary and secondary schools, President Johnson said about Morse: "No one else could have done it." With the tragic death of Senator Morse yesterday, during his campaign to be reelected to this body where he had dedicated 24 years of his life, there can be no more fitting memoriam than remembering the importance of his life, his work and his dedication to the principle that all children have the right to equal opportunity and the very basis of this opportunity is a solid foundation in basic education. Certainly, the Elementary and Secondary Education Act has been the cornerstone of this goal for many years, and the conference report today should be evidence that we are continuing to carry on Senator Morse's work.

Mr. President, Senate conferees entered the conference more than a month ago with a bill embodying major differences with the House. We met in conference throughout this time, with many sessions going long into the night. We return to the Senate today with a conference report that will not please everyone, because we are not all pleased. But we do return with a report which I believe will bolster the process of education in every part of this Nation, and represents an effort of all conferees to deal honestly and openly with all points of view.

Mr. President, this bill is an education bill. While I understand that the focus of the media, organizations and many of our colleagues has been on the provisions relating to school desegregation issues, the major intent and thrust of this bill is the equal educational opportunity of schoolchildren. I believe that we all can be very proud of major new steps this conference report takes in bolstering this birthright of education in urban areas, and for handicapped children and children who are bilingual.

Some of the most important provisions of H.R. 69 include the following:

HANDICAPPED CHILDREN

An entitlement of funds on the basis of young people, ages 3 to 21, in each State to bolster the education of handicapped children, originally offered by Senator MATHIAS. This provision, along with major new State plan requirements for the education of all handicapped children will focus Federal money on children within all of our States who are not presently receiving educational services. H.R. 69 also provides an extension of the Education of the Handicapped Act, and includes vitally important new provisions authorized by Senator STAFFORD, and joined by Senator RANDOLPH and myself to provide procedural protections and due process to handicapped children and their parents.

IMPACT AID

Incorporates the Senate provisions for major reform of the impact aid program, which for the first time automatically includes children living in low-rent public housing. For the first time, districts with public housing children will be assured funding to offset the education expenses normally shouldered by those local governments.

TITLE I

The conference report retains Senate provisions for the funding of part C, assistance for districts with high concentrations of low-income families, and part B, assistance for States which have made great effort to increase their expenditures for the education.

BILINGUAL EDUCATION

Provides major changes in title VII, the bilingual education program as contained in the Senate bill, intended to strengthen this initiative and assure greater sensitivity to the needs of children with limited English-speaking ability so that they may acquire literacy in their own native language and increase their fluency in the English language. In addition this section provides, for the first time, that a portion of the funding be utilized for teacher training, and establishes by law the Office of Bilingual Education.

CONSOLIDATION

The conference report also provides major new emphasis on the simplification and consolidation of Federal education programs. The first consolidation provides for a simplified single State application for Federal funds administered through the State education agency. Under this provision the State would submit one application specifying administrative provisions applicable to all Federal programs administered by the State education agency.

The second consolidation provides for a new consolidation of program funds in two primary areas: Innovation—including title III, ESEA; dropout prevention; health and nutrition programs; title V, ESEA—and library and instructional resources—including title II, ESEA; title III, NDEA; and guidance and counseling. I point out here, Mr. President, that this consolidation goes much further than many of us had wished. Under the conference agreement, all funds could be consolidated into these two broad categories. However, this consolidation can only occur if the following conditions are met: First, that all of these programs are fully funded at the fiscal year 1974 level, or at the level of the previous year's consolidation; and second, that these programs are forward funded. Should these conditions be met, 50 percent of all funds could be consolidated in the first year and 100 percent in the second year.

The third consolidation, the Senate's Special Project Act, is also contained in the conference report and involves discretionary programs now administered by the Commissioner of Education. Under this act, the Commissioner would be authorized to make contracts for almost any area of educational demonstration and innovation. However, 50 percent of the appropriations under this act must be spent on new categorical programs identified by the Congress and including: education for the use of the metric system, education of gifted and talented children, consumer education, career education, women's educational equity and the important new program for the development of community schools sponsored by Senator CHURCH and me.

OTHER PROVISIONS

A revitalized effort to provide assistance for readiing programs.

New authority and direction for the National Center for Education Statistics.

Mr. President, one of the major defeats suffered by the Committee on this bill during Senate consideration was the adoption of a formula for title I which was less than equitable for the major urban centers of this Nation. As my colleagues know, I fought that formula and feel very strongly that the formula adopted was not one which was fair to all parts of the country. I hope, Mr. President, that many of the decisions made by the conference will help offset the problem that this formula will represent for many States, including my own State of New Jersey. The adoption of separate authorization for part C of title I, part C of impact aid for children in low-rent housing, the formula under the second consolidation which is based on population—all of these provisions will assist our large urban centers and enable them to provide better educational opportunity for their children.

In conclusion, Mr. President, I would like to thank all of my colleagues on the conference for their efforts in reaching agreement on this legislation. The distinguished chairman of the Subcommittee on Education (Mr. PELL) has done the lion's share of the work here, sitting with the conferees throughout all sessions, and must be complimented for having the patience of Job; likewise, the distinguished ranking member of that subcommittee (Mr. DOMINICK) and of the full committee (Mr. JAVITS) did much to assure that the Senate position was maintained and that agreement could be reached. Finally, Mr. President, I would like to thank the staff of all Senators involved for their efforts over the last year to assure that this legislation represented the best efforts that could be achieved for education.

GOOD NEWS FROM GREECE

Mr. PELL. Mr. President, preliminary news reports from Greece this afternoon indicate that the Government of Greece will be returned to civilian control.

The same news agencies report that the restoration of civilian government has been underwritten by the real leadership of the Greek Armed Forces—by true military professionals whose interest lies in running the armed services, and not in running their country.

Mr. President, the news from Greece, if it is confirmed and sustained in the coming days, will be welcomed by freedom-loving people throughout the world.

As an outspoken critic of the repressive, undemocratic, and barbaric policies of the military juntas in Greece, I am deeply pleased that the junta has been deposed, and I am earnestly hopeful that this day will mark the turning point toward a restoration of individual freedom and democratic government for the people of Greece.

The people of the United States have a strong interest in the developments in Greece, not only because of the long history of friendship between the Greek and American peoples, but because the survival of democratic government in Europe and indeed throughout the world rest in part on the contributions of a strong and healthy Greek nation to the NATO community.

In conclusion, Mr. President, it is my earnest hope that the events in Greece today may mark the beginning of a new and brighter era for the people of Greece and for relations between the United States and Greece.

Mr. President, I yield the floor.

QUORUM CALL

Mr. ALLEN. 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. 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.

REVISION OF ORDER FOR RECOGNITION OF SENATORS PROXMIRE, BUCKLEY, MCCLURE, AND ROTH TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of speakers tomorrow morning before routine business is transacted be revised as follows: that following the remarks of Mr. PROXMIRE, Mr. BUCKLEY be recognized, that he be followed by Mr. MCCLURE, and that he be followed by Mr. ROTH, each for not to exceed 15 minutes.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

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

EDUCATION AMENDMENTS OF 1974

Mr. JAVITS. Mr. President, the conference committee on H.R. 69, the Education Amendments of 1974, has now concluded its deliberations and filed its report. These deliberations stretched over several weeks and on occasion a session went into the early morning hours. The conference report was signed by every Senate conferee, majority and minority.

The final bill is necessarily a compromise between the House and Senate versions. While there are provisions which leave me much dissatisfied—such as the title I, ESEA, formula and the anti-busing provisions—I feel that, on balance, we have before us a bill which resolves the issue and merits approval by the Congress and signature into law by the President.

The administration should be satisfied with this measure for it contains major recommendations made by the President. First, H.R. 69 includes reforms of the impact aid program, Public Law 874. Changes to impact aid have been urged, in turn, by Presidents Eisenhower, Kennedy, Johnson, and Nixon, but heretofore have not been enacted by the Congress.

Further, the administration can point to the adoption of a broad consolidation of categorical Federal education aid programs. In this connection, the conference followed the pattern of the House bill which was closest to the administration's proposals.

In addition, H.R. 69 contains alterations to the title I, ESEA formula urged by the administration, principally the so-called Orshansky formula for a flexible definition of poverty. This, too, is a major change.

As has been the case in past years, the education bill now before us is a bipartisan measure composed of provisions contributed by minority members as well as those of the majority. These provisions include contributions by committee members and also floor amendments by noncommittee minority Senators. Included among these, for example, is the Mathias amendment for the education of handicapped children; and the Buckley amendment for the protection of pupil rights. Provisions sponsored by Senators HANSEN, HELMS, and COOK, among others, are included in the final bill; and Senator BROOKE's amendment on counsel fees had a material effect on the bill's final form.

Major contributions by minority members of the committee include the following: A new program for bilingual vocational training by Senator DOMINICK for persons of limited English-speaking ability who have dropped out of school or finished secondary schooling found in section 841; grants for States to develop plans for equalization of educational expenditures between areas within the State, authored by Senator SCHWEIKER, and found in section 842; Senator BEALL's provisions for reading improvement contained in title VII; and Senator STAFFORD's provision for the handicapped in the section 406 career education program.

I take particular satisfaction in the provisions for gifted and talented children—section 404; Adult Education—part A of title VII; and the "basket" of pilot plant programs in title IV which I authored. A complete list of minority committee contributions is found on page 572 of Senate Report 93-763; most of these provisions in the Senate version of the bill were retained in the final version of the measure.

I should like to make reference to provisions particularly affecting my own State of New York and other urbanized and industrialized States. While there is especial concern as to the new title I formula as it affects local educational agencies which especially disadvantages urbanized and industrial States, this is balanced in some part—albeit not nearly enough—by the other provisions, as follows:

First. Inclusion in payments under the impact aid program—Public Law 874—of children living in public housing.

Second. Retention of the Bayh amendment providing for an authorization of $15.7 million to bring up to 90 percent hold harmless those local educational agencies suffering a diminution in title I–A funding.

Third. Retention of part B—State incentive grants—of title I as now written in law.

Fourth. Retention of the Senate provision for part C for areas with the heaviest concentrations of disadvantaged children for fiscal year 1975.

Fifth. Adoption of a 100-percent hold harmless for title I State agency programs for handicapped and other institutionalized children.

Finally, I should like to refer to title II of the bill pertaining to the issue of busing. I withheld discussion of this provision until last because I wish to stress that, despite headlines to the contrary, H.R. 69 is—and always has been—an education bill rather than a busing bill. Busing occupies really only a small portion in this legislation although it occupies a major portion of the news stories concerning it.

While I have my own personal doubts about the constitutionality of either the House or Senate language, both of which attempted to restrict the courts in their efforts to desegregate public schools, the House position was insistent and endorsed by that body in three successive votes, to instruct their conferees, each by a margin of better than 2 to 1. Bearing that in mind, I think the compromise language should be acceptable to both bodies.

The House bill, you will recall, would have provided for automatic reopeners of all existing busing orders not in compliance with the guidelines of the bill. This, we felt was disruptive to the point of being very dangerous, and we are pleased that the House conferees accepted our provision. As to the House provision allowing termination of court orders involving transportation upon a showing that a freedom-of-choice system was in operation; that section now allows it but that such motions shall be granted only if the school district is presently in compliance and if the judge specifically finds that such compliance will continue.

Essentially the final language of the bill preserves the Senate language which conditions future court actions on a showing that the fifth or fourteenth amendment has been complied with—that is, the courts are only bound to follow the guidelines set forth in the bill if these rights would not be infringed.

Second, we were able essentially to preserve the Senate language on reopener (though not on termination of orders), namely, that old cases can be reopened only if the health or educational advancement of the children involved were being adversely affected by busing.

Finally, on the question of the use of Federal funds, the Ashbrook amendment—which would have prohibited totally the use of such funds for busing—was amended to provide that funds appropriated under the impacted area program could be used for such a purpose, though all other funds cannot. We had proposed that the funds appropriated for the emergency school aid program be similarly exempted, but we were not successful.

In conclusion, I would be remiss if I did not express to my colleagues on the conference—and especially our distinguished chairman, Senator PELL—my appreciation for a difficult and arduous job, well done. The bill before us is landmark legislation which should be approved by the Senate and enactment into law as the best practicable result for a bill we must have.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at the hour of 10 o'clock tomorrow morning. After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized in the order stated and each for not to exceed 15 minutes: Mr. PROXMIRE, Mr. BUCKLEY, Mr. MCCLURE, and Mr. ROTH. There will then be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements limited therein to 5 minutes each. At the conclusions of which period the Senate will take up the conference report on the education bill, H.R. 69. Rollcall votes are expected to occur tomorrow.

ADJOURNMENT TO 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until the hour of 10 o'clock tomorrow morning.

The motion was agreed to; and at 4:52 p.m. the Senate adjourned until tomorrow, Wednesday, July 24, 1974, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate July 23, 1974:

IN THE U.S. NAVY

Vice Adm. Frank W. Vannoy, U.S. Navy, for appointment to the grade of vice admiral on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

Vice Adm. Kenneth R. Wheeler, Supply Corps, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

Vice Adm. William W. Behrens, Jr., U.S. Navy, for appointment to the grade of vice admiral on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

Vice Adm. John P. Weinel, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of admiral while so serving.

Rear Adm. Edwin K. Snyder, U.S. Navy, having been designated for commands and other duties of great importance and responsibility commensurate with the grade of vice admiral within the contemplation of title 10, United Sttaes Code, section 5231, for appointment to the grade of vice admiral while so serving.

IN THE AIR FORCE

The following officer under the provisions of title 10, United States Code, section 8066 to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be lieutenant general

Maj. Gen. Winton W. Marshall, [redacted] (major general, Regular Air Force), U.S. Air Force.

IN THE ARMY

The following-named Army Medical Department officer for temporary appointment in the Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3442 and 3447:

To be brigadier general, Medical Corps

Col. John W. White, [redacted] Army of the United States (colonel, Medical Corps, U.S. Army).

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Howard Wilson Penney, [redacted] Army of the United States (major general, U.S. Army).

EXTENSIONS OF REMARKS

BILL SCOTT REPORTS

HON. WILLIAM L. SCOTT

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Tuesday, July 23, 1974

Mr. WILLIAM L. SCOTT. Mr. President, since coming to the Congress I have endeavored to keep constituents informed regarding our activities, and ask unanimous consent that a copy of my current newsletter be printed in the RECORD for the information of Senate colleagues.

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

BILL SCOTT REPORTS, JULY-AUGUST 1974

CONSUMER PROTECTION AGENCY

A measure now under consideration in the Senate, known as the Consumer Protection Agency Act, sounds like a very desirable bill. Everyone would like to rid the marketplace of faulty products and of shoddy merchandise, but the proposed establishment of a new federal agency with an administrator who would be a government-sponsored